



## **ROURKELA SMART CITY LIMITED**

**RFP. No. RSCL/110/2018/352**

# **Request for Proposal for Selection of Master System Integrator (MSI) for Implementation of Smart Solutions in Rourkela**

## **Volume 3 Master Service Agreement**

**Date: 25 July 2018**

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## A. General Conditions of Contract (GCC)

### 1 Definition of Terms

- 1.1 “Acceptance of System”** The system shall be deemed to have been accepted by Client, subsequent to its installation, rollout and deployment of the trained manpower, when all the activities as defined in Scope of Work have been successfully executed and completed to the satisfaction of the Client as evidenced by an Operational Acceptance Certificate.
- 1.2 “Applicable Law(s)”** Any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Contract and during the subsistence thereof, applicable to the project.
- 1.3 “Approvals”** shall have the meaning ascribed to it under clause 18.1 of the GCC.
- 1.4 “Bidder”** shall mean organization/consortium submitting the proposal in response to this RFP.
- 1.5 “Client”** means the Rourkela Smart City Limited (RSCL). The project shall be executed in Rourkela and shall be owned by Rourkela Smart City Limited and Rourkela Municipal Corporation.
- 1.6 “Clause”** means a clause of the GCC, as may be supplemented by the SCC.
- 1.7 “Client Event of Default”** has the meaning ascribed to it in GCC Clause 51.1.
- 1.8 “Communication”** shall have the meaning ascribed to it under clause 7.1 of the GCC.
- 1.9 “Contract”** means the Contract Agreement entered into by the Client and MSI, together with the entire contract documentation specified therein. The Contract Agreement and the Contract Documents shall constitute the Contract and the term “Contract” shall in all such documents be construed accordingly.
- 1.10 “Contract Agreement”** means the agreement entered between the Client and the MSI using the form of Contract Agreement contained in the Contract Documents. The date of the Contract Agreement shall be recorded in a signed form.
- 1.11 “Contract Documents”** means the documents specified in clause 1 of the Contract Agreement (including any amendments to these documents).
- 1.12 “Contract Value”** means the price payable to MSI under this Contract for the full and proper performance of its contractual obligations.
- 1.13 “Commercial Off-The-Shelf (COTS)”** refers to software products that are ready-made and available for sale, lease, or license to the general public.
- 1.14 “Consortium”** shall mean the group of companies/entities which has emerged as the successful bidder and to whom the Letter of Award (LoA) is issued by the Client and shall include the successors and permitted assigns.
- 1.15 “Day”** means a working day as per the calendar of Government of Odisha/ Rourkela Smart City Limited (RSCL).
- 1.16 “Data Centre Site”** means the Data Centre sites including their respective Data Centre space wherein the delivery, installation, integration, management and maintenance services as specified under the Scope of Work are to be carried out for the purpose of this Contract.

- 1.17** “**Deliverable**” means a work product (including materials, equipment, installations, reports, software, know-how, design, drawings, diagrams, maps, models, specifications, analysis, solutions, data base, programmes technical information, data and other documents) to be prepared and submitted by the MSI as a part of the Service, in accordance with the terms of this Contract and the term “Deliverables” shall be construed accordingly. The list of Deliverables to be provided by the MSI is set out in Volume 2 of the RFP.
- 1.18** “**Deliverable Due Date**” means with respect to a particular Deliverable, the date by which such Deliverable (in a final and approved form) is required to be submitted by the MSI to the Client for each Module, as specified in the Implementation Schedule as set out in Volume 2 of the RFP.
- 1.19** “**Document**” means any embodiment of any text or image howsoever recorded and includes any data, text, images, sound, voice, codes, databases or any other electronic documents as per Information Technology Act, 2000 read along with the rules and regulations made thereunder.
- 1.20** “**Effective Date**” means the date specified in clause 11.
- 1.21** “**Force Majeure**” shall have the meaning ascribed to it in GCC Clause 36.
- 1.22** “**GCC**” means General Conditions of Contract.
- 1.23** “**GoI**” means Government of India.
- 1.24** “**GoO**” means Government of Odisha.
- 1.25** “**Go-Live**” means commissioning of the project after commencement of all smart city components, including training as per Scope of Work mentioned in RFP. MSI should have the approval from the Client for user acceptance testing.
- 1.26** “**Goods**” means all of the equipment, sub-systems, hardware, software, products accessories, software and/or other material/items which MSI is required to supply, install and maintain under the contract.
- 1.27** “**Good Industry Practices**” means the exercise of that degree of skill, diligence and prudence, and those practices, methods, specifications and standards of safety and performance, with such variations and adaptations as may be required under the relevant time and circumstances and which would reasonably and ordinarily be expected to be used and exercised by a skilled and experienced MSI engaged in the performance of services of the type, size and nature similar to the services provided by MSI under this Contract.
- 1.28** “**Implementation Schedule**” means the schedule showing the sequence and timing of execution of the Services, supply of Goods and related activities and the Deliverable Due Dates set out in the Volume 2 of the RFP, as may be modified by the Finalized Project Plan approved by the Client.
- 1.29** “**Institution**” means the central or the state government as the case may be or any local authority or any department, instrumentality or agency thereof or any statutory body or corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Client or the MSI) or commission under the direct or indirect control of the central, state or local government or any political sub-division thereof or any court, tribunal or judicial body within India.
- 1.30** “**Integrated Command and Control Center**” OR “**ICCC**” means the integrated/centralized operation center to implement holistic and integrated solution for multiple (existing and future) IT initiative for the Client. The end objective of establishing

ICCC is to drive the actions by the Client on behalf of all the departments for city operations.

- 1.31** “**Intellectual Property Rights**” means in respect of Services any copyright, trademarks, technology, know-how, industrial processes, proprietary information, licenses, patents, permissions from or agreements with licensors of and processes, methods and systems incorporated or to be incorporated in the performance of the Service, registered designs, franchises, trade secrets, data bases, source codes, brand names, service marks, trade names, and any other intellectual and industrial property rights, whether registrable or not, subsisting or recognised under the Applicable Law or laws of any other jurisdiction, including all applications, renewals, extensions and revivals thereof.
- 1.32** “**IT Cell**” means the existing center being used by Rourkela Police for conducting surveillance in Rourkela.
- 1.33** “**LoA**” means the letter of award issued to the selected Bidder pursuant to the RFP for its appointment as the MSI.
- 1.34** “**Module**” means a component of smart solutions project in relation to which the MSI is required to execute the work and provide the services, as described in greater detail in the GCC, SCC and RFP Volume 2 – Scope of Work.
- 1.35** “**MSI**” means the bidder who is selected by the Client at the end of this RFP process.
- 1.36** “**MSI’s Team**” shall refer to any and/or all of the employees of MSI, authorized service providers/ sub-contractors/ partners/ Consortium members and representatives or other personnel employed or engaged either directly or indirectly by the MSI for the purposes of this Contract.
- 1.37** “**Notice**” means a letter, notice; or a consent, approval or other communication required to be provided in writing under this Contract.
- 1.38** “**OEM**” means the Original Equipment Manufacturer of any equipment/system/software/product or other Goods to be supplied by the MSI to the Client as a part of its Scope of Work.
- 1.39** “**Operational Acceptance**” means acceptance of the operable conditions of the System or Subsystem (as the case maybe) by the Client, as certified by the issuance of an Operational Acceptance Certificate.”
- 1.40** “**Operational Acceptance Certificate**” means a certificate issued by the Client to the MSI upon the Client’s approval of the relevant Deliverable/milestone.
- 1.41** “**Operation and Maintenance Phase (O&M Phase)** means the number of years defined in the SCC (if any).
- 1.42** “**Party**” means the Client or the MSI, (as the case may be), and the term “Parties” shall mean both of them.
- 1.43** “**Payment Schedule**” means the schedule for payment to MSI, as set out in Volume 2 of the RFP.
- 1.44** “**Replacement Service Provider**” means the organization replacing MSI in case of contract termination for any reasons.
- 1.45** “**RFP**” means Request for Proposal dated [●] along with schedules, annexures, appendices and the subsequent amendments (including addenda and corrigendum) issued by the Client for appointment of MSI.
- 1.46** “**SCC**” means Special Conditions of Contract.

- 1.47** “**Services**” means the work to be performed by the MSI pursuant to the RFP and the contract to be signed by the Parties in pursuance of any specific assignment awarded by the Client.
- 1.48** “**Service Level(s)**” means the service level parameters and targets and other performance criteria which will apply to the Services and Deliverables as described in the RFP and the Service Level Agreement.
- 1.49** “**Service Level Agreement or SLA**” means the service level agreement specified in the RFP.
- 1.50** “**Service Specifications**” means and includes detailed description, statements relating to technical data, performance characteristics and standards (Indian as well as well as international) as applicable and as specified in the RFP and the Contract, as well as those specifications relating to industry standards and codes applicable to the performance of work, work performance quality and specifications affecting the work or any additional specifications required to be produced by the MSI to meet the design criteria.
- 1.51** “**Server Room**” or “**Data Center**” shall have the same meaning assigned to it under the RFP.
- 1.52** “**Site**” shall have the meaning provided in clause 20.30 of the GCC.
- 1.53** “**Sub-Contractor**” shall mean the entity or any person to whom any part of the Contract or any Scope of Work has been sublet with the consent in writing of the Client and the heirs, legal representatives, successors and assignees of such person.
- 1.54** “**System**” shall mean the system to be installed by the MSI towards implementation of smart solutions in Rourkela in the manner provided in the Contract.

Capitalised words not defined herein shall have the meaning ascribed to them in the other Contract Documents.

## 2 Interpretation

In this Contract unless a contrary intention is evident:

- i. the clause headings are for convenient reference only and do not form part of this Contract;
- ii. unless otherwise specified a reference to a clause number is a reference to all of its sub-clauses;
- iii. the word “include” or “including” shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- iv. unless otherwise specified a reference to a clause, sub-clause or section is a reference to a clause, sub-clause or section of this Contract including any amendments or modifications to the same from time to time;
- v. a word in the singular includes the plural and a word in the plural includes the singular;
- vi. a word importing a gender includes any other gender;
- vii. a reference to a person includes a partnership and a body corporate;
- viii. a reference to legislation includes legislation repealing, replacing or amending that legislation;
- ix. Where a word or phrase is given a particular meaning it includes the appropriate grammatical forms of that word or phrase which have corresponding meanings.



- x. In the event of an inconsistency between the terms of this Contract and the RFP and the Bid, the terms hereof shall prevail.
- xi. unless otherwise expressly specified reference to 'MSI' shall mean all members of the Consortium along with the Lead member along with all Sub Contractors, OEM, agents, representatives, directors, trustees, partners, employees and assigns of the MSI.

### **3 Conditions Precedent**

The obligations of the Client under the Contract is subject to the fulfilment of the following conditions precedent by MSI.

- 3.1** Furnishing by MSI, of an unconditional and irrevocable Performance Bank Guarantee (PBG) being 10% of the Contract Value (Annexure 5 (a) of the RFP Volume I) in the form acceptable to the Client within 15 (fifteen) days after issuance of Letter of Award (LoA) which would remain valid until such time as stipulated by the Client. The timelines stipulated under this GCC Clause 3.6 shall not apply to the contents of this provision.
- 3.2** Obtaining all statutory and other approvals (including but not limited to obtaining third party approvals) required for the performance of the Services under this Contract. This may include approvals/clearances, wherever applicable, that may be required for execution of this Contract e.g. clearances from Government authorities for importing equipment, exemption of tax/duties/levies, work permits/clearances for MSI/MSI's team, etc.
- 3.3** Submitting notarized copies of any/all contract(s) duly executed by MSI and its OEMs and Sub-Contractor(s) existing at the time of signing of this Contract in relation to the Client's project. Failure to do so within stipulated time of signing of Contract would attract penalty as defined in Section C (Service Levels).
- 3.4** Submitting of such other documents as the Client may specify/demand.
- 3.5** The Client reserves the right to waive any or all of the conditions specified in Clause 3 above in writing and no such waiver shall affect or impair any right, power or remedy that the Client may otherwise have under Applicable Laws.
- 3.6** In the event that any of the conditions set forth in Clause 3 hereinabove are not fulfilled within 1(one) month from the date of this Contract/or execution of the Letter of Award (LoA) whichever is earlier, or any other later date as may be mutually agreed upon by the Parties, the Client may without prejudice to its rights under Applicable Law be entitled to terminate this Contract and forfeit the Earnest Money Deposit provided by the MSI. Notwithstanding anything contained in this clause, the provisions of this sub Clause 3.6 shall not be applicable to the provisions of sub Clause 3.1 of this Contract.

### **4 Relationship between the Parties**

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

### **5 Governing Law**

- 5.1** This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

## **6 Language**

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

## **7 Communications**

- 7.1 Any communication, approval, notice, report, consent, certificate or request required or permitted to be given or made pursuant to this Contract ("Communication") shall be in writing in the language specified in the Clause 7. Unless otherwise specified in the Contract, any such Communication shall be sent by electronic mail or facsimile transmission, with a confirmation copy by courier or registered post to the address specified in the SCC. Any Communication sent by electronic mail or facsimile shall be deemed to have been received on the date of transmission and any notice served by courier or registered post shall be deemed to be received when actually delivered to the address specified in the SCC.
- 7.2 A Party may change its address for Communication hereunder by giving the other Party 10(ten) days' notice of such change in the address specified in the SCC.

## **8 Location**

- 8.1 The System/sub-system shall be deployed at such locations as are specified in Volume 2 - Scope of Work, hereto and, where the location of a particular task is not so specified, at such locations, as the Client may approve in writing.

## **9 Authorised Representatives**

- 9.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the MSI may be taken or executed by the duly authorised officials specified in the SCC.

## **10 Fraud and Corrupt Practices**

- 10.1 The MSI shall comply with the Client's policy in regard to fraud and corrupt practices as set forth in Volume 1 (Instructions to the Bidder).
- 10.2 The Client requires the MSI to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract.

## **11 Effectiveness of Contract**

- 11.1 This Contract shall come into force and effect on the date on which the Contract Agreement has been duly executed for and on behalf of the Client and the MSI (the "Effective Date").

## **12 Expiration of Contract**

- 12.1 Unless terminated earlier pursuant to Clause 50, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC. However, Parties may extend the time-period of the Contract in accordance with the terms set out in this Contract.

## **13 Entire Agreement**

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

## **14 Scope of work**

- 14.1** Scope of the work shall be as defined in Volume 2 - Scope of Work and Annexures thereto of the Contract.
- 14.2** Client has engaged MSI to provide Services related to implementation of Rourkela Smart City solutions using which the Client intends to perform its city operations. MSI is required to provide such Goods, Services and support as the Client may deem proper and necessary, during the term of this Contract, and includes all such processes and activities which are consistent with the proposals set forth in the RFP and this Contract and are deemed necessary by the Client, in order to meet the city's requirements (hereinafter 'Scope of Work').

## **15 Key Performance Measurements**

- 15.1** Unless specified by the Client to the contrary, MSI shall deliver the Goods, perform the Services and carry out the Scope of Work in accordance with the terms of this Contract, Scope of Work and the Service specifications as laid down under Section C (Service Level Agreement) of this volume.
- 15.2** If the terms and conditions of Contract, Scope of Work and Service specification are covered under more than one document, then unless the Client specifies in writing to the contrary, the documents issued or executed later in time shall prevail over a document of earlier date to the extent of any inconsistency.
- 15.3** The Client reserves the right to amend any of the terms and conditions in relation to the Contract/Scope of Work/Service specifications and may issue any such directions which are not necessarily stipulated therein if it deems necessary for the fulfilment of the Scope of Work.

## **16 Commencement and Progress**

- 16.1** MSI shall subject to the fulfilment of the conditions precedent above, commence the performance of its obligations in a manner as per the Volume 2 - Scope of Work.
- 16.2** MSI shall proceed to carry out the activities/services with diligence and expedition in accordance with any stipulation as to the time, manner, mode, and method of execution contained in this Contract.
- 16.3** MSI shall be responsible for and shall ensure that all activities/services are performed in accordance with the Contract, Scope of Work and Service Specifications and that MSI's Team complies with such specifications and all other standards, terms and other stipulations/conditions set out hereunder.

## **17 Standards of performance**

- 17.1** MSI shall perform the Services and carry out its obligations under the Contract with due diligence, efficiency and economy, in accordance with generally accepted techniques and Good Industry Practices used in the industry and with IT standards recognized by

international professional bodies and shall observe sound management, engineering and security practices. It shall employ appropriate advanced technology and engineering practices and safe and effective equipment, machinery, material and methods. MSI shall always act, in respect of any matter relating to the Contract, as faithful advisors to the Client and shall, at all times, support and safeguard the Client's legitimate interests in any dealings with third parties. The MSI confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by the Client and on the basis of information that the MSI could have obtained from a visual inspection of the Site and on the basis of information readily available to the MSI relating to the System prior to the submission of the bid documents or which the MSI could have obtained by exercise of due diligence. The MSI agrees that the failure to acquaint itself with all such data and information shall not relieve its responsibility of performance of its obligations under the Contract Documents.

## 18 Approvals and Required Consents

- 18.1** The Client shall extend necessary support to MSI to obtain, maintain and observe all relevant and customary regulatory and governmental licenses, clearances and applicable approvals (hereinafter the “**Approvals**”) necessary for MSI to provide the Services. The costs of such Approvals shall be borne by MSI. Both Parties shall give each other all co-operation and information reasonably.
- 18.2** The Client shall also provide necessary support to MSI in obtaining the Approvals. In the event that any Approval is not obtained, MSI and the Client shall co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the Client, to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Approval is obtained, provided that MSI shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the Approvals are obtained if and to the extent that MSI's obligations are dependent upon such Approvals.

## 19 Consortium

- 19.1** For the purposes of fulfilment of its obligations as laid down under the Contract, where the Client deems fit and unless the Contract requires otherwise in a situation where MSI is a Consortium, lead bidder shall be the sole point of interface for the Client and would be absolutely accountable for the performance of its own, the other member of Consortium and/or its team's functions and obligations.
- 19.2** The Consortium member has agreed that lead bidder of the Consortium is the prime point of contact between the Consortium member and the Client and it shall be primarily responsible for the discharge and administration of all the obligations contained herein and, the Client, unless it deems necessary shall deal only with lead bidder of the MSI. The lead bidder along with all Consortium members shall however be jointly and severally responsible for the project execution.
- 19.3** Without prejudice to the obligation of the Consortium member to adhere to and comply with the terms of this Contract, the Consortium member has executed and submitted a power of attorney in favour of the lead bidder authorizing him to act for and on behalf of the other members of the Consortium and do all acts as may be necessary for fulfilment of contractual obligations.
- 19.4** The Client reserves the right to review, approve and require amendment of the terms of the Consortium contract or any contract or agreements entered into by and between the members of such Consortium and no such agreement/contract shall be executed,

amended, modified and/or terminated without the prior written consent of the Client. An executed copy of each of such agreements/contracts shall, immediately upon execution after obtaining prior permission of the Client be submitted by MSI to the Client. Further, the composition of the Consortium shall not be altered without prior consent of the Client.

- 19.5** Where, during the term of this Contract, MSI terminates any contract/arrangement or agreement relating to the performance of Services, MSI and all consortium members shall be jointly and severally liable for any consequences resulting from such termination. MSI shall in such case ensure the smooth continuation of Services by providing a suitable replacement to the satisfaction of the Client at no additional charge and at the earliest opportunity.

## **20 MSI's Obligations**

- 20.1** MSI's obligations shall include all the activities as specified by the Client in the Scope of Work and other sections of the RFP and Contract and changes made thereof to enable Client to meet the objectives and operational requirements. It shall be MSI's responsibility to ensure the proper and successful implementation, performance and continued operation of the proposed solution in accordance with and in strict adherence to the terms of this Contract Documents.
- 20.2** In addition to the aforementioned, MSI shall provide services to manage and maintain the said System and infrastructure as mentioned in RFP Volume 2.
- 20.3** The title, agreed job description and minimum qualification of each key expert to carry out the Scope of Work are described in RFP Volume 1. All key experts proposed by the MSI shall be stationed in Rourkela for the period of the Contract.
- 20.4** Client reserves the right to interview the personnel proposed that shall be deployed as part of the MSI's Team. If found unsuitable, the Client may reject the deployment of the personnel. Nonetheless, the ultimate responsibility of the project implementation shall lie with MSI.
- 20.5** Client reserves the right to require changes in personnel which shall be communicated to MSI. MSI with the prior approval of the Client may make additions to the MSI's Team. MSI shall provide the Client with the resume of key personnel, experts and of all the resources to be deployed in the project and provide such other information as the Client may reasonably require. In case of change in its team members/resource for any reason whatsoever, MSI shall also ensure that the exiting members are replaced with at least equally qualified and professionally competent members or better resource.
- 20.6** MSI shall ensure that none of the key personnel (refer Section 6.1.1 of the RFP Volume 1 proposed) and manpower exit from the project during first 6(six) months of the beginning of the project. In such cases of exit, except for medical reason/death/resignation a penalty of INR 2,00,000 (two lakhs) per such replacement shall be imposed on MSI.
- 20.7** In case any resource resigns then the MSI has to inform the Client within 1(one) week of such resignation and the MSI shall promptly initiate a search for a replacement to ensure that the position of any member of the key personnel, expert is not vacant at any point of time during the Contract period.
- 20.8** If Client objects to any replacement or appointment, the MSI shall not assign the individual to that position and shall seek an alternative candidate in accordance with the resource requirement.
- 20.9** The MSI agrees that it shall not engage and shall cause its personnel to not engage either directly or indirectly in any business or professional activities that would conflict

with the activities assigned to them under this Contract. Further, MSI shall have an obligation to disclose any situation of a possible or actual conflict that impacts their capacity to serve the best interest of the Client or may be reasonably perceived to have such an effect. Failure to disclose such situations may lead to the disqualification of the MSI or termination of the Contract.

- 20.10** In case of change in its team members, MSI shall ensure at least 1(one) month of time overlap in activities to ensure proper knowledge transfer and handover/takeover of documents and other relevant materials between the outgoing and the new member.
- 20.11** MSI shall ensure that its MSI's Team is competent, professional and possesses the requisite qualifications and experience appropriate to the task they are required to perform under this Contract. MSI shall ensure that the services are performed through the efforts of MSI's Team, in accordance with the terms hereof and to the satisfaction of the Client. Nothing in this Contract shall relieve MSI from its liabilities or obligations under this Contract to provide the Services in accordance with the Client's directions and requirements and as stated in this Contract and the Bid to the extent accepted by the Client and MSI shall be liable for any non-performance, noncompliance, breach or other loss and damage resulting either directly or indirectly by or on account of MSI's Team.
- 20.12** MSI shall be fully responsible for deployment/installation/development and integration of all the software and hardware components and resolve any problems/issues that may arise due to integration of components.
- 20.13** MSI shall ensure that the OEMs supply equipment/components including associated accessories and software required and shall support in the installation, commissioning, integration and maintenance of these components during the entire period of Contract. MSI shall ensure that the OEMs supply the software applications and shall support in the installation/deployment, integration, rollout and maintenance of these applications during the entire period of Contract. It must clearly be understood by MSI that warranty and O&M of the System, products and services incorporated as part of System would commence from the day of Go-Live of the System as complete Smart city solutions including all the solutions proposed. MSI would be required to explicitly display that he/they have a back to back arrangement for provisioning of warranty/O&M support till the end of Contract period with the relevant OEMs. The annual maintenance support shall include patches and updates the software, hardware components and other devices.
- 20.14** All the software licenses that MSI proposes should be perpetual software licenses. The software licenses shall not be restricted based on location and the Client should have the flexibility to use the software licenses for other requirements if required. The MSI shall be responsible for performing and safely storing timely and regular back-ups of its data and software in accordance with accepted data management principles.
- 20.15** All the OEMs that MSI proposes should have dealer/manufacturer possession licenses. Also, throughout the duration of the Contract, the MSI shall comply with the prohibitions in India in relation to the import of goods and services when as a matter of law or official regulation, there is a prohibition on entering into or maintaining commercial relations with the country from where the import is proposed to be made.
- 20.16** The Client reserves the right to review the terms of the warranty and annual maintenance agreements entered into between MSI and OEMs and no such agreement/contract shall be executed, amended, modified and/or terminated without the prior written consent of the Client. An executed copy of each of such agreements/contracts shall, immediately upon execution be submitted by MSI to the Client.

- 20.17** MSI shall ensure that none of the components and sub-components is declared end of sale or end-of-support by the respective OEM at the time of submission of bid. If the OEM declares any of the products/solutions end-of-sale subsequently, the MSI shall ensure that the same is supported by the respective OEM for contract period.
- 20.18** If a product reaches end-of-sale or end-of-support by the OEM for any reason whatsoever, from the date of Acceptance of the System till the end of the Contract, MSI should replace the products/solutions with an alternate that is acceptable to the Client at no additional cost to the Client and without causing any performance degradation.
- 20.19** The licenses will be in the name of Client only.
- 20.20** MSI shall ensure that the OEMs provide the support and assistance to MSI in case of any problems/issues arising due to integration of components supplied by him with any other component(s)/product(s) under the purview of the overall solution. If the same is not resolved for any reason whatsoever, MSI shall replace the required component(s) with an equivalent or better substitute that is acceptable to the Client without any additional cost to the Client and without impacting the performance of the solution in any manner whatsoever.
- 20.21** MSI shall ensure that the OEMs for hardware servers/equipment supply and/or install all type of updates, patches, fixes and/or bug fixes for the firmware or software from time to time at no additional cost to the Client.
- 20.22** MSI shall ensure that the OEMs for hardware servers/equipment or Bidder's trained engineers conduct the preventive maintenance on a quarterly basis or as per OEM recommended period of higher frequency than quarterly or as may be instructed by the Client and break-fix maintenance in accordance with the best practices followed in the industry. MSI shall ensure that the documentation and training services associated with the components shall be provided by the OEM partner or OEM's certified training partner without any additional cost to the Client.
- 20.23** The training has to be conducted using official OEM course curriculum mapped with the hardware/software product's to be implemented in the project.
- 20.24** MSI and their personnel/representative shall not alter/change/replace any hardware component proprietary to the Client and/or under warranty or O&M of third party without prior consent of the Client.
- 20.25** MSI shall provision the required critical spares/components at the designated Data Center Sites/office locations of the Client for meeting the uptime commitment of the components supplied by MSI.
- 20.26** MSI's representative(s) shall have all the powers requisite for the execution of the Scope of Work and performance of Services under this Contract. MSI's representative(s) shall liaise with the Client's representative for the proper coordination and timely completion of the works and on any other matters pertaining to the works. MSI shall extend full cooperation to Client's representative in the manner required by them for supervision/inspection/observation of the equipment/Goods/material, procedures, performance, progress, reports and records pertaining to the works. MSI's representative shall also have complete charge of MSI's personnel engaged in the performance of the works and to ensure compliance of rules, regulations and safety practice. MSI's representative shall also cooperate with the other service providers/vendors of the Client working at the Client's office locations & field locations and DC & DR sites. Such MSI's representative(s) shall be available to the Client's Representative at respective Data center during the execution of works.

**20.27** MSI shall be responsible on an ongoing basis for coordination with other vendors and agencies of the Client in order to resolve issues and oversee implementation of the activities as specified in the RFP. MSI shall also be responsible for resolving conflicts between vendors in case of borderline integration issues.

**20.28** MSI is expected to set up a project office in Rourkela City. The technical manpower deployed on the project should work from the same office. However, some resources may be required to work from the Client's office during the Contract period.

**20.29 Technical specifications and drawings**

**20.29.1** The MSI shall execute the detailed design and the implementation activities necessary for successful installation of the System in compliance with the provisions of the Contract or, where not so specified, in accordance with Good Industry Practice.

**20.29.2** The MSI shall be responsible for any discrepancies, errors or omissions in the specifications, drawings, and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Client or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the MSI by or on behalf of the Client.

**20.29.3** The MSI shall prepare and furnish to the Client the documents as specified in the SCC for approval or review.

**20.29.4** The Client can request for additional submissions during the course of the project. Any part of the System covered by or related to the documents to be approved by the Client shall be executed only after the Client's approval of these documents. However, approval of the documents does not absolve the MSI of its obligations under the Contract and the MSI shall alone be responsible for the execution of the project in accordance with the Contract.

**20.30 Access to Sites**

**20.30.1** Sites would include Server Room, Integrated Command and Control Center, IT Cell, traffic junctions, kiosks and other places as may be required by MSI to perform its obligations as required under the RFP.

**20.30.2** The Client's representative upon receipt of request from MSI intimating commencement of activities at various locations shall give to MSI access to as much of the Sites as may be necessary to enable MSI to commence and proceed with the installation of the works in accordance with the program of work. Any reasonable proposal of MSI for access to Site to proceed with the installation of work in accordance with the program of work shall be considered for approval and shall not be unreasonably withheld by the Client. Such requests shall be made to the Client's representative in writing at least 7(seven) days prior to start of the work.

**20.30.3** At the Site locations, the Client's representative shall give to MSI access to as much as may be necessary to enable MSI to commence and proceed with the installation of the works in accordance with the program of work or for operation and maintenance activities.

**20.30.4** Access to locations, office equipment and Services shall be made available to the MSI on an "as is, where is" basis by the Client as the case may be or its nominated agencies. The MSI agrees to ensure that its employees, agents and contractors/sub-contractors shall not use the Site for the following purposes:

- i. For the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or



- ii. In a manner which constitutes violation of any law or a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality); or
- iii. For their own purpose or for conducting their own business or for providing services to any third party.

**20.31 Start of Installation**

- 20.31.1** MSI shall co-ordinate with the Client and stakeholders for the complete setup of Sites before commencement of installation of other areas as mentioned in the RFP Volume 2. MSI shall also coordinate regarding network / bandwidth connectivity in order to prepare the installation plan and detailed design / architectural design documents.
- 20.31.2** As per TRAI guidelines, resale of bandwidth connectivity is not allowed. In such a case tripartite agreement should be formed between Client, MSI and Internet Service Provider(s)/Telecom Service Provider.
- 20.31.3** The plan and design documents thus developed shall be submitted by MSI for approval by the Client.
- 20.31.4** After obtaining the approval from the Client, MSI shall commence the installation.

**20.32 Inspections and Tests**

- 20.32.1** The Client or its representative shall have the right to inspect and/or test any components of the System, as specified in Volume 2 of the RFP, to confirm their good working order and/or conformity to the Contract at the point of delivery and/or at the project site.
- 20.32.2** The Client or its representative shall be entitled to attend any such inspections and/or tests of the components.
- 20.32.3** Should the inspected or tested components fail to conform to the Contract, the Client may reject the component(s), and the MSI shall either replace the rejected component(s), or make alterations as necessary so that it meets the Contract requirements at no cost to the Client.
- 20.32.4** The Client or its representative may require the MSI to carry out any inspection and/or test not specified in the Contract, provided that the MSI's reasonable costs and expenses incurred in the carrying out of such inspection and/or test shall be added to the Contract Value.
- 20.32.5** Client may employ qualified inspectors to inspect and certify the Information Technologies, Materials, and other Goods prior to shipment. A Prototype Approval Test might be requested by the Client to be conducted before shipment. If such a test is required, the expenses of the trip for the Inspectors shall be borne by the MSI.

**20.33 Installation of the System**

- 20.33.1** As soon as the System, or any Subsystem, has, in the opinion of the MSI, been delivered, Pre-commissioned, and made ready for Commissioning and Operational Acceptance Testing in accordance with Volume 2 and the agreed and finalized project plan, the MSI shall so notify the Client in writing.
- 20.33.2** The Client shall, within 14(fourteen) days after receipt of the MSI's notice under Clause 20.33.1, either issue an installation certificate stating that the System, or major component or sub-system (if acceptance of major component or sub-system is specified pursuant to RFP Volume 2), has achieved installation by the date of the MSI's notice under Clause 20.33.1 or notify the MSI in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or subsystems making up the System. The MSI shall use

all reasonable endeavours to promptly remedy any defect and/or deficiencies that the Client has notified the MSI of. The MSI shall then promptly carry out retesting of the System or sub-system and, when in the MSI's opinion the System or subsystem is ready for Commissioning and Operational Acceptance Testing, notify the Client in writing, in accordance with Clause 20.33.1. The procedure set out in this Clause 20.33.2 shall be repeated, as necessary, until an Installation Certificate is issued.

**20.33.3** If the Client fails to issue the Installation Certificate and fails to inform the MSI of any defects and/or deficiencies within 14(fourteen) days after receipt of the MSI's notice under Clause 20.33.1, or if the Client puts the System or a subsystem into production operation, then the System (or subsystem) shall be deemed to have achieved successful Installation as of the date of the MSI's notice or repeated notice, or when the Client put the System into production operation, as the case may be.

#### **20.34 Commissioning and Operational Acceptance**

**20.34.1 Commissioning** - Commissioning of the System (or sub-system if specified pursuant to Volume 2) shall be commenced by the MSI:

- i. immediately after the installation certificate is issued by the Client, pursuant to Clause 20.33.2; or
- ii. as otherwise specified in Volume 2 or the agreed and finalized project plan; or
- iii. immediately after installation is deemed to have occurred, under GCC Clause 20.33.3.

The Client shall supply the operating and technical personnel and all materials and information reasonably required to enable the MSI to carry out its obligations with respect to Commissioning.

**20.34.2 Operational Acceptance Tests** - The Operational Acceptance Tests (and repeats of such tests) shall be facilitated by MSI during Commissioning of the System (or major components or subsystem[s] as specified in the RFP Volume 2 - Scope of Work, to ascertain whether the System (or major component or Subsystem[s]) conforms to the RFP Volume 2 – Scope of Work and meets the standard of performance quoted in the MSI's bid, including, but not restricted to, the functional and technical performance requirements. Operational Acceptance Testing shall be conducted in accordance with System, sub-systems, tests, test procedures, and the required results for acceptance as specified in Volume 2.

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

**20.34.3** Subject to GCC clause 20.34.2, Operational Acceptance shall occur in respect of the System, when:

- i. the Operational Acceptance Tests, as specified in the RFP Volume 2 – Scope of Work, and/or the Agreed and Finalized Project Plan have been successfully completed; or
- ii. the Client has put the System into production or use for 60(sixty) consecutive days. If the System is put into production or use in this manner, the MSI shall notify the Client and document such use.

**20.34.4** At any time after any of the events set out in GCC clause 20.34.3 have occurred, the MSI may give a notice to the Client requesting issuing of an Operational Acceptance Certificate.

- 20.34.5** The Client within 14(fourteen) days after receipt of MSI's notice, shall
- i. issue an Operational Acceptance Certificate; or
  - ii. notify the MSI in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or
- 20.34.6** The MSI shall use all reasonable endeavours to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the Client has notified the MSI of. Once such remedies have been made by the MSI, the MSI shall notify the Client, and the Client, with the full cooperation of the MSI, shall use all reasonable endeavours to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the Operational Acceptance Re-Tests, the MSI shall notify the Client of its request for Operational Acceptance Certification, in accordance with GCC Clause 20.34.5. The Client shall then issue to the MSI the Operational Acceptance Certification in accordance with GCC Clause 20.34.5(i), or shall notify the MSI of further defects, deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this clause para shall be repeated, as necessary, until an Operational Acceptance Certificate is issued.
- 20.34.7** If the System or Subsystem fails to pass the Operational Acceptance Test(s) in accordance with this Clause, then the Client may consider terminating the Contract, pursuant to GCC Clause 50.1.

## **20.35 Subcontracting**

- 20.35.1** The MSI shall provide a list to the Contract Agreement specifying critical items of supply or services and a list of subcontractors for each item that are considered acceptable by the Client.
- 20.35.2** The MSI may, at its discretion, select and employ subcontractors for such critical items from those subcontractors listed pursuant to GCC Clause 20.35.1. If the MSI wishes to employ a subcontractor not so listed, or subcontract an item not so listed, it must seek the Client's prior approval under GCC Clause 20.35.3.
- 20.35.3** For items for which pre-approved subcontractor lists have not been specified as above to the Contract Agreement, the MSI may employ such Subcontractors as it may select, provided: (i) the MSI notifies the Client in writing at least 28(twenty-eight) days prior to the proposed mobilization date for such subcontractor; and (ii) by the end of this period either the Client has granted its approval in writing or fails to respond. The MSI shall not engage any subcontractor to which the Client has objected in writing prior to the end of the notice period. The absence of a written objection by the Client during the above specified period shall constitute formal acceptance of the proposed subcontractor. Except to the extent that it permits the deemed approval of the Client of subcontractors not listed in the Contract Agreement, nothing in this Clause, however, shall limit the rights and obligations of either the Client or MSI as they are specified in herein. Where the Client deems it necessary, it shall have the right to require replacement of any of the sub-contractors with another suitable sub-contractor. The MSI shall in such case terminate forthwith all their agreements/contracts, other arrangements with such sub-contractor and find out the suitable replacement for such outgoing subcontractor with another sub-contractor to the satisfaction of the Client, who shall execute such contracts with the Client as the Client may require. Failure on the part of the MSI to find a suitable replacement and/or terminate all agreements/contracts with such member, shall amount to a breach of the terms hereof and the Client in addition to all other rights, have the right to claim damages and recover from the MSI all losses/ or other damages that may have resulted from such failure.

## **20.36 Reporting Progress**

- 20.36.1** MSI shall monitor progress of all the activities related to the execution of this Contract and shall submit to the Client, progress reports with reference to all related work, milestones and their progress during the implementation phase.
- 20.36.2** Formats for all above mentioned reports and their dissemination mechanism shall be discussed and finalized along with project plan. The Client on mutual agreement between both Parties may change the formats, periodicity and dissemination mechanism for such reports.
- 20.36.3** Periodic meetings shall be held between the representatives of the Client and MSI once in every 15(fifteen) days during the implementation phase to discuss the progress of implementation. After the implementation phase is over, the meeting shall be held on an ongoing basis, as desired by Client, to discuss the performance of the Contract.
- 20.36.4** MSI shall ensure that the respective solution teams involved in the execution of work are part of such meetings.
- 20.36.5** The Client may constitute appropriate review committees for the purpose of this project. These committees shall meet at periodic intervals, as decided by the Client later, to oversee the progress of the implementation.
- 20.36.6** All the Goods, Services and manpower to be provided/deployed by MSI under the Contract and the manner and speed of execution and maintenance of the work and services are to be conducted in a manner to the satisfaction of Client's representative in accordance with the Contract.
- 20.36.7** The Client reserves the right to inspect and monitor/assess the progress/performance of the work/services at any time during the course of the Contract. The Client may demand and upon such demand being made, MSI shall provide documents, data, material or any other information which the Client may require, to enable it to assess the progress/performance of the work/service.
- 20.36.8** At any time during the course of the Contract, the Client shall also have the right to conduct, either itself or through another agency as it may deem fit, bills of quantity (BoQ) audit, security audit, an audit to monitor the performance by MSI of its obligations/functions in accordance with the standards committed to or required by the Client and MSI undertakes to cooperate with and provide to the Client/any other agency appointed by the Client, all Documents and other details as may be required by them for this purpose. Such audit shall not include MSI's books of accounts.
- 20.36.9** Should the rate of progress of the works or any part of them at any time fall behind the stipulated time for completion or is found to be too slow to ensure completion of the works by the stipulated time, or is in deviation to Tender requirements/standards, the Client's representative shall so notify MSI in writing.
- 20.36.10** MSI shall reply to the written notice giving details of the measures they propose to take to expedite the progress so as to complete the works by the prescribed time or to ensure compliance to RFP requirements. MSI shall not be entitled to any additional payment for taking such steps. If at any time it should appear to the Client or Client's representative that the actual progress of work does not conform to the approved plan, MSI shall produce at the request of the Client's representative a revised plan showing the modification to the approved plan necessary to ensure completion of the works within the time for completion or steps initiated to ensure compliance to the stipulated requirements

**20.36.11** The submission seeking approval by the Client or Client's representative of such plan shall not relieve MSI of any of his duties or responsibilities under the Contract.

**20.36.12** In case during execution of works, the progress falls behind schedule or does not meet the RFP requirements, MSI shall deploy extra manpower/resources to make up the progress or to meet the RFP requirements. Plan for deployment of extra man power/resources shall be submitted to the Client for its review and approval. All time and cost effect in this respect shall be borne, by MSI within the Contract Value.

**20.37 Knowledge of Server Room, Integrated Command and Control Center, IT Cell**

**20.37.1** MSI shall be deemed to have knowledge of the Server Room, Integrated Command and Control Center, IT Cell and its surroundings and information available in connection therewith and to have satisfied itself the form and nature thereof including, the data contained in the RFP, the physical and climatic conditions, the quantities and nature of the works and materials necessary for the completion of the works, the means of access, etc. and in general to have obtained itself all necessary information of all risks, contingencies and circumstances affecting his obligations and responsibilities therewith under the Contract and his ability to perform it. However, if during pre-installation survey/during delivery or installation, MSI detects physical conditions and/or obstructions affecting the work, MSI shall take all measures to overcome them.

**20.38 Project Plan**

**20.38.1** Within 15 (fifteen) calendar days of Effective Date, MSI shall submit to the Client for its approval a detailed project plan with details of the project showing the sequence, procedure and method in which MSI proposes to carry out the works. The plan so submitted by MSI shall conform to the requirements and timelines specified in the Contract. The Parties shall discuss and agree upon the work procedures to be followed for effective execution of the works, which MSI intends to deploy and shall be clearly specified. The project plan shall include but not be limited to project organization, communication structure, proposed staffing, roles and responsibilities, processes and tool sets to be used for quality assurance, security and confidentiality practices in accordance with industry best practices, project plan and delivery schedule in accordance with the Contract. Approval by the Client's representative of the project plan shall not relieve MSI of any duties or responsibilities under the Contract. The project plan as accepted by the Client shall be the Agreed and Finalised Project Plan.

**20.38.2** MSI's work plans necessitate a disruption/shutdown in Client's operation, the plan shall be mutually discussed and developed so as to keep such disruption/shutdown to the barest unavoidable minimum. Any time and cost arising due to failure of MSI to develop/adhere such a work plan shall be to his account.

**20.39 Adherence to safety procedures, rules, regulations and restriction**

**20.39.1** MSI's Team shall comply with the provision of all Applicable Laws including labour laws, rules, regulations and notifications issued there under from time to time. All safety and labour laws enforced by statutory agencies and by Client shall be applicable in the performance of this Contract and MSI's Team shall abide by these laws.

**20.39.2** Access to the Server Room, Command and Communications Center shall be strictly restricted. No access to any person except the essential members of MSI's Team who are authorized by the Client and are genuinely required for execution of work or for carrying out management/maintenance shall be allowed entry. Even if allowed, access shall be restricted to the pertaining equipment of the Client only. MSI shall maintain a log of all activities carried out by each of its team personnel.

**20.39.3** No access to any staff of bidder, except the essential staff who has genuine work-related need, should be given. All such access should be logged in a loss free manner for permanent record with unique biometric identification of the staff to avoid misrepresentations or mistakes.

**20.39.4** MSI shall take all measures necessary or proper to protect the personnel, work and facilities and shall observe all reasonable safety rules and instructions. MSI's Team shall adhere to all security requirement/ regulations of the Client during the execution of the work. Client's employee also shall comply with safety procedures/policy.

**20.39.5** MSI shall report as soon as possible any evidence, which may indicate or is likely to lead to an abnormal or dangerous situation and shall take all necessary emergency control steps to avoid such abnormal situations.

#### **20.40 Statutory Requirements**

**20.40.1** During the tenure of this Contract nothing shall be done by MSI or MSI's Team including consortium in contravention of any Applicable Law, act and/or rules/regulations, there under or any amendment thereof governing inter-alia customs, stowaways, foreign exchange etc. and shall keep Client indemnified in this regard.

#### **20.41 Codes and Standards**

**20.41.1** 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 28(twenty-eight) days prior to date of bid submission shall apply. During Contract execution, any changes in such codes and standards shall be applied after approval by the Client and shall be treated in accordance with the GCC.

#### **20.42 Product Upgrades**

**20.42.1** At any point during performance of the Contract, should technological advances be introduced by the MSI for information technologies originally offered by the MSI in its Bid and still to be delivered, the MSI shall be obligated to offer to the Client the latest versions of the available information technologies having equal or better performance or functionality at the same or lesser unit prices.

**20.42.2** At any point during performance of the Contract, for information technologies still to be delivered, the MSI will also pass on to the Client any cost reductions and additional and/or improved support and facilities that it offers to other Clients of the MSI in the Client's country.

**20.42.3** During performance of the Contract, the MSI shall offer to the Client all new versions, releases, and updates of standard software, as well as related documentation and technical support services, within 30(thirty) days of their availability from the MSI to other Clients of the MSI in the Client's country, and no later than 12(twelve) months after they are released in the country of origin. In no case will the prices for these Software exceed those quoted by the MSI in the Opex costs tables in its Bid.

**20.42.4** The MSI shall provide the Client with all new versions, releases, and updates for all software used in the system during the operation and maintenance period at no additional cost to the Client.

**20.42.5** In cases where the new version, release, or update adversely affects System operation or performance, or requires extensive reworking of the System, the MSI shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the MSI stop supporting or maintaining a version or release of the Software less than 24

(twenty four) months after the Client receives a production-ready copy of a subsequent version, release, or update. The Client shall use all reasonable endeavours to implement any new version, release, or update as soon as practicable, subject to the twenty-four-month-long stop date. MSI shall perform the activities/services and carry out its obligations under the Contract with due diligence, efficiency and economy, in accordance with generally accepted techniques and practices used in the industry and shall observe sound management, engineering and security practices. MSI shall always act, in respect of any matter relating to this Contract, as faithful advisors to the Client and shall, at all times, support and safeguard the Client's legitimate interests in any dealings with third parties.

#### **20.43 Accounting and Auditing**

- 20.43.1** The MSI shall keep accurate and systematic accounts and records in respect of the Services required of MSI under this Contract, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and costs and the basis thereof.
- 20.43.2** The MSI shall permit, the Client and/or persons appointed by the Client to inspect all accounts and records relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Client, if requested by the Client. Any act intended to materially impede the exercise of the Client's inspection and audit rights provided for under this Clause shall constitute a material breach of the Contract, which would give the Client the right to terminate the Contract.

### **21 Client's Obligations**

- 21.1** The Client or his/her nominated representative shall act as the nodal point for implementation of the contract and for issuing necessary instructions, approvals, commissioning, acceptance certificates, payments etc. to MSI.
- 21.2** The Client shall ensure that timely approval is provided to MSI as and when required, which may include approval of project plans, implementation methodology, design documents, specifications, or any other document necessary in fulfilment of this contract.
- 21.3** The Client's representative shall interface with MSI, to provide the required information, clarifications, and to resolve any issues as may arise during the execution of the Contract. Client shall provide adequate cooperation in providing details, coordinating and obtaining of approvals from various governmental agencies, in cases, where the intervention of the Client is proper and necessary.
- 21.4** Client may provide on Bidder's request, particulars/information/or documentation that may be required by MSI for proper planning and execution of work and for providing services covered under this Contract and for which MSI may have to coordinate with respective vendors.
- 21.5** Client may provide to MSI only sitting space and basic infrastructure not including, stationery and other consumables at the Client's office locations.
- 21.6** Client reserves the right to procure the hardware in a phased manner, which will be finalized during implementation, and O&M Period shall be applicable whenever the devices are procured and deployed till end of the contract.
- 21.7** **Site to be made ready:** Client hereby agrees to make the project sites ready as per the agreed specifications, within the agreed timelines. Client agrees that MSI shall not be in any manner liable for any delay arising out of Client's failure to make the Site ready within the stipulated period.

## 22 Change or Modifications and Variations

- 22.1** Any change or modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the System, Service Levels, Site implementation may only be made by written agreement between the Parties.
- 22.2** Both the Client and the MSI may, at any time during the term of the Contract, propose a variation to the System or solution and/or any other provision of the Contract (Variation).
- 22.3** No change made necessary because of any default of the MSI in the performance of its obligations under the Contract shall be deemed to be a change, and such change shall not result in any adjustment of the Contract Price or the time for achieving Operational Acceptance.
- 22.4** Moreover, the Client and MSI will agree, during development of the Project Plan, to a date prior to the scheduled date for Operational Acceptance, on or before which the Technical Requirements for the System shall be “frozen.” Any change initiated after this date will be dealt with after the date of Operational Acceptance.
- 22.5 Client Proposed Variation**
- 22.5.1** The Client may, at any time during the term of the Contract, instruct the MSI, by issuing a written notice, to carry out a variation (a Variation Order). Provided that, the Client shall not propose a variation which is not technically or financially feasible, such feasibility being determined in accordance with Good Industry Practice, or any variation that constitutes unrelated work.
- 22.5.2** Within 15(fifteen) days of receipt of a Variation Order or on a date mutually agreed between the Client and MSI in writing, the MSI shall submit a proposal setting out in sufficient detail the implications of the proposed variation, including the (a) description of the work required or no longer required; (b) an estimate of the increase or decrease in the Contract Value; and (c) Implementation Schedule and Payment Terms.
- 22.5.3** Based on its review of the proposal submitted by the MSI, the Client may: (a) accept the proposal and the corresponding adjustments to the Total Contract Value and Implementation Schedule and Payment Terms; (b) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the MSI; or (c) reject the proposal submitted by the MSI and withdraw the Variation Order, within 7(seven) days from the date of receipt of the MSI's proposal under Clause 22.5.2.
- 22.5.4** If the Client accepts the MSI's proposal under Clause 22.5.2 of this Section, it shall issue an instruction identifying the offer that is being accepted and requesting the MSI to proceed with the variation. Upon the Client's acceptance of the MSI's proposal, the MSI shall proceed with the variation.
- 22.5.5** To the extent the Client seeks amendments and/or justification in the proposal submitted by the MSI, the MSI shall incorporate or address, in writing, the Client's comments and submit a revised proposal. On approval of the revised proposal in accordance with Clause 22.5.4, the MSI shall proceed with the variation.
- 22.5.6** On implementation of a Variation Order, the MSI shall be entitled to the agreed increase in the Contract Value and/or adjustment to the implementation and payment schedule for carrying out the variation.
- 22.5.7** Notwithstanding anything to the contrary in this Clause 22.5, the MSI shall be bound to implement any variation that is necessitated by a Change in Law (discussed in Clause 23 below) and any consequent adjustment in the Contract Value, Implementation Schedule and Payment Terms on account of such variation, shall be determined in accordance with Clause 23 below.



## **22.6 MSI Proposed Variation**

- 22.6.1** The MSI may propose a variation, which it considers necessary or desirable to improve the quality of the System and Solution to be deployed. While proposing a variation, the MSI shall submit a proposal to the Client, with a statement setting out: (a) detailed particulars of the variation; (b) the work required or no longer required; (c) an estimate of any adjustment in the Total Value of Contract; (d) any adjustment to the Implementation Schedule and Payment Terms and (e) any other effect the proposed variation would have on any other provision of the Contract. Draft Template for proposing such variation is provided in Annexure D.
- 22.6.2** Based on its review of the variation proposed by the MSI, the Client may: (a) confirm the variation; (b) provide its comments on the proposed variation; or (c) reject the proposed variation, while giving reasons in writing for such rejection, within 7 (seven) days of the submission of the proposal for a variation. Upon the Client's acceptance of the proposed variation, the MSI shall proceed with the variation.
- 22.6.3** To the extent the Client seeks amendments in the proposed variation, the MSI shall incorporate or address, in writing, the Client's comments and submit a revised proposal. On approval of the revised proposal in accordance with Clause 22.6.2, the MSI shall proceed with the variation.
- 22.6.4** If the Parties are unable to reach agreement regarding the terms of a Variation Order, such disagreement shall be resolved pursuant to Clause 32.
- 22.6.5** Notwithstanding anything contained in this Clause 22, a variation made necessary due to any act, omission or default of the MSI in the performance of its obligations under the Contract will not result in any increase in the total value of contract or extension of any Deliverable Due Date.
- 22.6.6** No variation invalidates the Contract: The MSI agrees that a Variation may involve the omission of any part of the Scope and further, the MSI agrees that the Client may engage others to perform that part of the Scope of Work, which has been omitted. The MSI further acknowledges that any omission or omissions will not constitute a basis to allege that the Client has repudiated the Contract no matter the extent or timing of the omission(s).
- 22.6.7** Notwithstanding anything contained in this Clause 22, the Client shall not agree to any variation if: (i) the MSI seeks any variation in its obligations which is due to any shortcoming or deficiency in the documents provided by the MSI; (ii) the variation relates to repeat performance of the solution due to the MSI's failure to comply with the Client's requirements; or (iii) escalation in the cost of equipment, materials or the work force, other than on account of a Change in Law.
- 22.6.8** If due to any reason the MSI and Client are not able to finalize a change in the system (ex: including a hardware component or a software functionality which was not anticipated earlier), the Client reserves a right to get the change executed by any other third party. However, the component or functionality being a part of the comprehensive system, the original MSI shall have obligation to support any integration effort required whatsoever and extend full co-operation to the third party and the Client. MSI shall continue to be responsible for operation and maintenance of the entire System.
- 22.6.9** The unit rates as indicated in the Contract shall be fixed during the MSI's performance of the Contract and shall not be subject to increase on any account for any variation order during the currency of the Contract.
- 22.6.10** Notwithstanding anything contained herein no such variation shall be finalised unless the Board of directors of the Client provides an approval in this regard.

## 23 Change in Law

**23.1** For the purposes of this Contract, "Change in Law" means the occurrence of any of the following events after the date of execution of the Contract: (i) the modification, amendment or repeal of any existing Applicable Law; (ii) the enactment, promulgation, bringing into effect, adoption of any new Applicable Law; (iii) change in the interpretation or application of any Applicable Law by any Institution; (iv) the introduction of a requirement for the MSI to obtain any new approval or permit or the unlawful revocation of an applicable approval or permit; or (v) the introduction of any new Tax or a change in the rate of an existing Tax.

**23.2** Change in Law does not include: (i) any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the MSI; (ii) any statute that has been published in draft form or as a bill that has been placed before the legislature or that has been passed by the relevant legislature as a bill but has not come into effect prior to the date of the Contract and which is a matter of public knowledge; or (iii) a draft statutory instrument or delegated legislation that has been published prior to the date of the Contract, which is under the active consideration or contemplation of the Gol or GoO and which is a matter of public knowledge.

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

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

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

Where it is not possible to address the effect of a Change in Law (through an adjustment in the Contract Value and/or the Project Schedule), the Parties shall agree on a mechanism, including amending the terms of the Contract, to mitigate the adverse effects of the Change in Law to MSI. If the Parties are unable to reach an agreement within 30 (thirty) days of the notification of a Change in Law, then the matter shall be referred to dispute resolution in accordance with Clause 32.

## 24 Removal of Personnel

**24.1** If the Client finds that any of the MSI's personnel has committed serious misconduct or has been charged with having committed a criminal action, or if the Client determines that MSI's Personnel have engaged in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practices (as specified in Volume 1 of the RFP) while performing the Work, the MSI shall, at the Client's written request, provide a replacement for such Personnel.

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

**24.3** The replacement of any Personnel shall possess equivalent or better qualifications and experience and shall be approved by the Client.

## **25 Payments**

- 25.1** Client shall make payments to MSI at the times and in the manner set out in the Payment schedule as specified payment milestones in RFP Volume 2, subject to the penalties as mentioned under Section C of this Volume. Client shall make all efforts to make payments to MSI within 45 (forty five) days of receipt of invoice(s) and all necessary supporting documents.
- 25.2** All payments agreed to be made by Client to MSI in accordance with the Bid shall be inclusive of all statutory levies, duties, taxes and other charges whenever levied/applicable, if any, and Client shall not be liable to pay any such levies/other charges under or in relation to this Contract and/or the Services.
- 25.3** No invoice for extra work/change order on account of change order shall be submitted by MSI unless the said extra work/change order has been authorized/approved by the Client in writing in accordance with Variation Control Note (Annexure I of this section of the RFP).
- 25.4** In the event of Client noticing at any time that any amount has been disbursed wrongly to MSI or any other amount is due from MSI to the Client, the Client may without prejudice to its rights recover such amounts by other means after notifying MSI or deduct such amount from any payment falling due to MSI. The details of such recovery, if any, shall be intimated to MSI. MSI shall receive the payment of undisputed amount under subsequent invoice for any amount that has been omitted in previous invoice by mistake on the part of the Client or MSI.
- 25.5** All payments to MSI shall be subject to the deductions of tax at source under Income Tax Act, and other taxes and deductions as provided for under Applicable Law, rule or regulation. All costs, damages or expenses which Client may have paid or incurred, for which under the provisions of the Contract, MSI is liable, the same shall be deducted by Client from any dues to MSI. All payments to MSI shall be made after making necessary deductions as per terms of the Contract and recoveries towards facilities, if any, provided by the Client to MSI on chargeable basis.
- 25.6** No payment made by the Client herein shall be deemed to constitute Acceptance of System by the Client.
- 25.7** Notwithstanding anything to the contrary in the Contract, the Client may withhold from any payment due to the MSI any amounts that the Client deems reasonably necessary or appropriate because of any one or more of the following reasons:
- i. Any penalties applicable on the MSI as per SCC;
  - ii. Failure by the MSI to provide certificates of insurance;
  - iii. Any overpayments made by the Client in a previous payment;
  - iv. Any payment required to be withheld under any Applicable Law;
  - v. The invoice is not accompanied by all necessary supporting documents;
  - vi. A dispute exists as to the accuracy or completeness of any invoice; or
  - vii. Any amounts due to the Client from the MSI under the Contract.

## **26 Guarantees by MSI**

### **26.1 Functional Guarantees**

- 26.1.1** The MSI guarantees that, once the operational acceptance certificate(s) has been issued, the System represents a complete, integrated solution to the Client's

requirements set forth in the RFP Volume 2 - Scope of Work and it conforms to all other aspects of the Contract. The MSI acknowledges that Clause 20.34 regarding Commissioning and Operational Acceptance governs how technical conformance of the System to the Contract requirements will be determined.

**26.1.2** If, for reasons attributable to the MSI, the System does not conform to the RFP Volume 2 – Scope of Work or does not conform to all other aspects of the Contract, the MSI shall at its cost and expense make such changes, modifications, and/or additions to the System as may be necessary to conform to the RFP Volume 2 – Scope of Work and meet all functional and performance standards. The MSI shall notify the Client upon completion of the necessary changes, modifications, and/or additions and shall request the Client to repeat the Operational Acceptance Tests until the System achieves Operational Acceptance.

**26.1.3** If the System (or subsystem[s]) fails to achieve Operational Acceptance, the Client may consider termination of the Contract, pursuant to Clause 50, and forfeiture of the MSI's Performance Security in accordance with Clause 50.1.22 in compensation for the extra costs and delays likely to result from this failure.

## **26.2 Operational Acceptance Time Guarantee**

**26.2.1** The MSI guarantees that it shall complete the supply, Installation, Integration, Commissioning, and achieve Operational Acceptance of the System (or Subsystems) within the time periods specified in the Implementation Schedule in the RFP Volume 2 - Scope of Work and/or the Agreed and Finalized Project Plan, or within such extended time to which the MSI shall be entitled under Clause 26.3 (Extension of Time for Achieving Operational Acceptance).

**26.2.2** If the MSI fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems) within the time for achieving Operational Acceptance specified in the Implementation Schedule in the RFP Volume 2 – Scope of Work or the Agreed and Finalized Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GCC Clause 26.3 (Extension of Time for Achieving Operational Acceptance), the MSI shall pay to the Client liquidated damages at the rate specified in Clause 42 as a percentage of the Contract Price, or the relevant part of the Contract Price if a Subsystem has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount specified in Clause 42 (“the Maximum”). Once the Maximum is reached, the Client may consider termination of the Contract, pursuant to Clause 50.

**26.2.3** Unless otherwise specified in the SCC, liquidated damages payable under GCC Clause 26.2.2 shall apply only to the failure to achieve Operational Acceptance of the System (and Subsystems) as specified in RFP Volume 2 – Scope of Work and/or Agreed and Finalized Project Plan. This Clause 26.2.3 shall not limit, however, any other rights or remedies the Client may have under the Contract for other delays.

**26.2.4** The payment of liquidated damages shall not in any way relieve the MSI from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract.

**26.2.5** The liquidated damages as per GCC Clause 26.2.2 above, shall be applicable on all Deliverables/milestones as defined in Implementation Schedule. The liquidated damages shall be calculated on the payment due against that Deliverable/milestone which the MSI has failed to achieve.

## **26.3 Extension of Time for Achieving Operational Acceptance**

- 26.3.1** The time(s) for achieving Operational Acceptance specified in the Schedule of Implementation shall be extended if the MSI is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:
- i. Any Change in the System as provided in Clause 22.6 (Variation);
  - ii. Any occurrence of Force Majeure as provided in Clause 36 (Force Majeure);
  - iii. Default of the Client; or
  - iv. Any other matter specifically mentioned in the Contract.

By such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the MSI.

- 26.3.2** Except where otherwise specifically provided in the Contract, the MSI shall submit to the Client, a notice of a claim for an extension of the time for achieving Operational Acceptance, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Client and the MSI shall agree upon the period of such extension. In the event that the MSI does not accept the Client's estimate of a fair and reasonable time extension, the MSI shall be entitled to refer the matter to the provisions for Dispute resolution pursuant to GCC Clause 32.
- 26.3.3** The MSI shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

## **27 Intellectual Property Rights**

- 27.1** The Client (or its nominated agency as decided by the Client) shall have a right in perpetuity to use all newly created Intellectual Property Rights which have been developed solely during execution of the Contract, including but not limited to all processes, products, specifications, reports and other documents which have been newly created and developed by MSI solely during the performance of Services and for the purposes of inter-alia use or sub-license of such Services under the Contract. MSI undertakes to disclose all such Intellectual Property Rights arising in performance of the Services to the Client, execute all such agreements/documents and obtain all permits and approvals that may be necessary in regard to the Intellectual Property Rights of the Client (or its nominated agency/respective smart city, as decided by the Client).
- 27.2** All COTS products/ Open Source/Open Standards Solutions and related solutions and fixes provided pursuant to this Contract shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such products. Such licenses shall be brought on behalf of and in the name of the Client (or its nominated agency/respective smart city, as decided by the Client) or mentioning the Client (or its nominated agency/respective smart city, as decided by the Client) as the end user of such licenses. MSI shall be responsible for arranging any licenses associated with products. "Product" means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to the Client for license which is published by product owner or its affiliates, or a third party. "Fixes" means product fixes that are either released generally (such as commercial product service packs) or that are provided to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing. Unless otherwise specifically restricted by the Licensing Terms of the COTS products/ Open Source Solutions, all intellectual property rights in any

development/enhancement/customization etc. done on the COTS products/ Open Source Solutions pursuant to this Contract shall be owned by the Client. Further, the MSI shall be obliged to ensure that all approvals, registrations, licenses, permits and rights which are, inter-alia, necessary for use of the deliverables, goods, services, applications, services etc. provided by the MSI / Consortium / subcontractors under this Agreement shall be acquired in the name of the Client (or its nominated agency/respective smart city, as decided by the Client) and MSI shall have the non-exclusive, limited right to use such licenses till the Term on behalf of the Client solely for the purpose of execution of any of its obligations under the terms of this Agreement. However, subsequent to the term of this Agreement, such approvals etc. shall ensure to the exclusive benefit of the Client (or its nominated agency/respective smart city, as decided by the Client).

- 27.3** Pre-existing work: All intellectual property rights existing prior to the Effective Date of the Contract shall belong to the Party that owned such rights immediately prior to the Effective Date. Subject to the foregoing, the Client will also have rights to use and copy all intellectual property rights, process, specifications, reports and other document, drawings, manuals provided or used by the MSI as part of the Scope of Works under the Contract for the purpose of the Contract on non-exclusive, non-transferable, perpetual, royalty-free license to use basis.
- 27.4** Third Party Products: If license agreements are necessary or appropriate between the MSI and third parties for purposes of enabling/enforcing/implementing the provisions hereinabove, the MSI shall enter into such agreements at its own sole cost, expense and risk and all such licenses etc. shall be bought in name of the Client unless otherwise directed in writing by the Client.
- 27.5** MSI shall not copy, reproduce, translate, adapt, vary, modify, disassemble, decompile or reverse engineer or otherwise deal with or cause to reduce the value of the materials except as expressly authorized by the Client in writing.
- 27.6** MSI must ensure that while using any software, hardware, processes, document or material in the course of performing the Services, it does not infringe the Intellectual Property Rights of any person/Company. MSI shall keep the Client indemnified against all costs, expenses and liabilities howsoever, arising out any illegal or unauthorized use (piracy) or in connection with any claim or proceedings relating to any breach or violation of any permission/license terms or infringement of any Intellectual Property Rights by MSI or MSI's Team during the course of performance of the Services. MSI's liability is excluded regarding any claim based on any of the following (a) anything Client provides which is incorporated into the Solution; (b) the Client's modification of the solution; (c) the combination, operation, or use of the solution with other materials, if the third party claim has been caused by the combination, operation or use of the solution.

## **28 Taxes**

- 28.1** MSI shall bear all taxes levied or imposed on its personnel, or any other member of MSI's Team, etc. on account of payment received under this Contract. MSI shall bear all corporate taxes, levied or imposed on MSI on account of payments received by it from the Client for the work done under this Contract.
- 28.2** MSI shall bear all taxes and duties etc. levied or imposed on MSI under the Contract including but not limited to The Goods and Services Tax, Customs duty, Excise duty, and all Income Tax levied under Indian Income Tax Act – 1961 or any amendment thereof during the entire contract period, i.e., on account of material supplied and Services rendered and payments received by him from the Client under the Contract. It shall be the responsibility of MSI to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. MSI shall also provide the

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

- 28.3** MSI agrees that they shall comply with the Indian Income Tax Act in force from time to time and pay Indian Income Tax, as may be imposed/levied on them by the Indian Income Tax Authorities, for the payments received by them for the works under the Contract.
- 28.4** MSI shall fully familiarize themselves about the applicable domestic taxes (such as Goods and Services Tax, income taxes, duties, fees, levies, etc.) on amounts payable by the Client under the Agreement. All such taxes must be included by Bidders in the financial proposal. (Bidder to find out applicable taxes for the components being proposed).
- 28.5** Should MSI fail to submit returns/pay taxes in times as stipulated under Applicable Laws and consequently any interest or penalty is imposed by the concerned Authority, MSI shall be liable to pay the same MSI shall indemnify Client against any and all liabilities or claims arising out of this Contract for non-payment of such taxes including interest and penalty by any such tax authority may assess or levy against the Client.

## **29 Indemnity**

- 29.1** MSI shall indemnify the Client and the Client's staff, from and against any costs, loss, damages, expense, claims including those from third parties or liabilities of any kind howsoever suffered, arising or incurred inter alia during and after the Contract period out of:
- i. any negligence or wrongful act or omission by MSI or any third party associated with MSI in connection with or incidental to this Contract; or
  - ii. any failure of the MSI to pay taxes or any statutory dues;
  - iii. any non-compliance or violation of Applicable Law or applicable permits by the MSI's team;
  - iv. breach of the MSI's representations and warranties set out in the Contract;
  - v. bodily injury, sickness or death of any person whatsoever engaged by MSI, Client or any of their subcontractor on the site during duty hours;
  - vi. breach of the MSI's obligations under the Contract;
  - vii. physical damage to the Project office or any property therein;
  - viii. loss of or physical damage to property of any third party; or
  - ix. infringement of the Intellectual Property Rights of any third party by the MSI under the Contract
- 29.2** MSI shall also indemnify the Client against any privilege, claim or assertion made by a third party with respect to right or interest in, ownership, mortgage or disposal of any asset, property etc.
- 29.3** Regardless of anything contained (except for MSI's liability for bodily injury and/or damage to tangible and real property for which it is legally liable and its liability for patent and copyright infringement in accordance with the terms of this Agreement) the total liability of MSI shall be as specified in Clause 43.



**29.4** The obligation to indemnify stipulated in this Clause 29 is continuing, separate and independent obligation of the Parties from their other obligations and shall survive the termination of this Contract; and shall not be limited or reduced by any insurance, except to the extent that the proceeds of any such insurance are capable of being applied to reduce claims made against the affected Party.

## **30 Warranty**

**30.1** A comprehensive warranty under this Contract shall be provided by the MSI for the period of Contract from the date of acceptance of respective System by the Client.

**30.2** Technical support for Software applications shall be provided by the respective OEMs for the period of Contract. The technical support should include all upgrades, updates and patches to the respective software applications.

**30.3** The MSI warrants that the Goods supplied under the Contract are new, non-refurbished, unused and recently manufactured; shall not be nearing end of sale/end of support; and shall be supported by the MSI and respective OEM along with service and spares support to ensure its efficient and effective operation for the entire duration of the Contract.

**30.4** The MSI warrants that the Goods supplied under this Contract shall be of the highest grade and quality and consisted with the established and Generally Accepted Standards for materials of this type. The products shall be in full conformity with the specifications and shall operate properly and safely. All recent design improvements in goods, unless provided otherwise in the Contract, shall also be made available.

**30.5** The MSI further warrants that the Goods supplied under this Contract shall be free from all encumbrances and defects/faults arising from design, material, manufacture or workmanship (except insofar as the design or material is required by the Client's specifications) or from any act or omission of the MSI, that may develop under normal use of the supplied products in the conditions prevailing at the respective Data center/Server Room sites.

**30.6** The Client shall promptly notify the MSI in writing of any claims arising under this warranty.

**30.7** Upon receipt of such notice, the MSI shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without prejudice to any other rights which the Client may have against the MSI under the Contract.

**30.8** If the MSI, having been notified, fails to remedy the defect(s) within a reasonable period, the Client may proceed to take such remedial action as may be necessary, at the MSI's risk and expense and without prejudice to its right to invoke the Performance Security or any other rights which the Client may have against the MSI under the Contract.

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

**30.10** Warranty for Services – The MSI warrants that all services under the Contract will be performed with promptness and diligence and will be executed in a workmanlike and professional manner, in accordance with the practices and high professional standards used in well-managed operations performing services similar to the services under the Contract. The MSI represents that it shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services hereunder.

**30.11** Upon receipt of such notice, the MSI shall, with all reasonable speed, repair or replace the defective Goods or replace such Goods with similar Goods free from defect at MSI's



own cost and risk. Any Goods repaired or replaced by the MSI shall be delivered at the Client's premises without costs to the Client. Notwithstanding the foregoing, these are not the sole and exclusive remedies available to the Client in case of breach of any warranty and are also not the sole and exclusive obligations on the MSI in case of breach of any warranty.

- 30.12** If the MSI, having been notified, fails to remedy the defect(s) within a reasonable period, the Client may proceed to take such remedial action as may be necessary, at the MSI's risk and expense and without prejudice to any other rights which the Client may have against the MSI under the Contract.
- 30.13** The representations, warranties and covenants provided by the MSI under the Contract will not be affected by the Client's modification of any portion of the software so long as the MSI can discharge its obligations despite such modifications, or following their removal by the Client.
- 30.14** Notwithstanding anything contained in the Contract, unless the Client has otherwise agreed in writing, the Client reserves the right to reject Goods which do not conform to the specifications provided in the Contract.

## **31 Term and Extension of the Contract**

- 31.1** Contract period shall commence from the date of signing of contract and shall remain valid for 60(Sixty) months from the date of Go Live of the system ("**Term**").
- 31.2** If the delay occurs due to a Force Majeure event, a reasonable extension of time shall be granted by the Client.
- 31.3** The Client shall reserve the sole right to grant any extension to the term abovementioned and shall notify in writing to MSI, at least 3(three) months before the expiration of the Term hereof, whether it shall grant MSI an extension of the Term. The decision to grant or refuse the extension shall be at the Client's discretion and such extension of the Contract, if any, shall be as per terms agreed mutually between the Parties.
- 31.4** Where the Client is of the view that no further extension of the term be granted to MSI, the Client shall notify MSI of its decision at least 3(three) months prior to the expiry of the Term. Upon receipt of such notice, MSI shall continue to perform all its obligations hereunder, until such reasonable time beyond the Term of the Contract within which, the Client shall either appoint an alternative agency/MSI or create its own infrastructure to operate such Services as are provided under this Contract.

## **32 Dispute Resolution**

- 32.1** If any claim, dispute or disagreement of any kind whatsoever arises between the MSI and the Client, in connection with or arising out of or touching upon this Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, termination, or execution, whether before or after the termination, abandonment or breach of this Contract ("**Dispute**"), the Parties will seek to resolve the Dispute by mutual consultation, within 10(ten) days from the occurrence of such Dispute. If the Parties fail to resolve the Dispute by mutual consultation within 30(thirty) days after notice of the Dispute by one Party to the other Party, then, the provisions of Clause 32.2 will apply.
- 32.2** If any Dispute is not resolved by the Parties pursuant to Clause 32.1 within 30(thirty) days of the notice of the Dispute, then either Party may provide notice to the other Party, of its intention to commence arbitration, as hereinafter provided, as to the matter in

- Dispute, and no arbitration in respect of the said Dispute will be commenced unless such notice is provided.
- 32.3** The Arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996.
- 32.4** The Arbitration proceedings shall be held in the State of Odisha, India.
- 32.5** The proceedings of Arbitration shall be in English language.
- 32.6** Each party to the contract shall appoint/nominate one Arbitrator each, the two Arbitrators so appointed/nominated by the Parties herein shall together choose the third Arbitrator, who shall be the Presiding Arbitrator of the Tribunal. The consortium of the three Arbitrators shall form the Arbitral Tribunal.
- 32.7** In case, a party fails to appoint an arbitrator within 30(thirty) days from the receipt of the request to do so by the other party or the two Arbitrators so appointed fail to agree on the appointment of third Arbitrator within 30(thirty) days from the date of their appointment upon request of a party, the Chief Justice of the Odisha High Court or any person or institution designated by him shall appoint the Arbitrator/Presiding Arbitrator upon request of one of the Parties. Any letter, notice or other communications dispatched to MSI relating to either arbitration proceeding or otherwise whether through post or through a representative on the address last notified to the Client by MSI shall be deemed to have been received by MSI although returned with the remarks, refused 'undelivered' where about not known or words to that effect or for any other reasons whatsoever.
- 32.8** If the Arbitrator so appointed dies, resigns, incapacitated or withdraws for any reason from the proceedings, it shall be lawful for the Client to appoint another person in his/her place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his/her predecessor had left if both parties consent for the same; otherwise, he/she shall proceed de novo.
- 32.9** It is a term of the Contract that the party invoking arbitration shall specify all disputes to be referred to arbitration at the time of invocation of arbitration and not thereafter.
- 32.10** It is also a term of the Contract that neither Party to the Contract shall be entitled for any interest on the amount of the award.
- 32.11** The Arbitrator shall give reasoned award and the same shall be final, conclusive and binding on the parties. The Parties hereby waive any objections to or claims of immunity in respect of such enforcement.
- 32.12** The fees of the arbitrator, costs and other expenses incidental to the arbitration proceedings shall be borne equally by the parties.
- 32.13** Performance under the Contract shall continue during the arbitration proceedings and the payment due to the contractor by the Bidder shall not be withheld unless they are the subject matter of the arbitration proceedings.

### **33 Time is of the essence**

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

### **34 Conflict of interest**

- 34.1** MSI shall disclose to the Client in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for MSI or MSI's Team or any of the consortium member or sub-contractors or OEMs) in the course of performing the Services as soon as practical after it becomes aware of that conflict.

### **35 Publicity**

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

### **36 Force Majeure**

- 36.1** Force Majeure shall not include any events caused due to acts/omissions of MSI resulting in a breach/contravention of any of the terms of the Contract and/or MSI's Bid. It shall also not include any default on the part of MSI due to its negligence or failure to implement the stipulated/proposed precautions, as were required to be taken under the Contract.
- 36.2** The failure or occurrence of a delay in performance of any of the obligations of either party shall constitute a Force Majeure event only where such failure or delay could not have reasonably been foreseen i.e. it is caused due to events beyond the control of such Party like war, or hostility, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restriction, strikes, lockouts or act of God (hereinafter referred to as events). In such an event, the affected party shall inform the other party in writing within seven days of the occurrence of such event. Any failure or lapse on the part of MSI in performing any obligation as is necessary and proper, to negate the damage due to projected force majeure events or to mitigate the damage that may be caused due to the above-mentioned events or the failure to provide adequate disaster management/recovery or any failure in setting up a contingency mechanism would not constitute force majeure, as set out above.
- 36.3** In case of a Force Majeure, all Parties shall endeavour to agree on an alternate mode of performance in order to ensure the continuity of service and implementation of the obligations of a party under the Contract and to minimize any adverse consequences of Force Majeure. The Party affected by the Force Majeure event shall use reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the Contract and to fulfil its obligations under the Contract.
- 36.4** The affected Party shall notify the other Party of a Force Majeure event within seven days of occurrence of the same. Upon cessation of the force majeure event, the aggrieved Party shall notify the other Party in writing of the cessation and the Parties shall as soon as practicable thereafter resume performance of all obligations under the Contract.
- 36.5** In the event of termination pursuant to Clause 36, the rights and obligations of the Parties shall be as specified in GCC Clauses 50 and 51.

### **37 Delivery**

- 37.1** MSI shall bear the cost for packing, transport, insurance, storage and delivery of all the Goods for "Selection of Master System Integrator (MSI) for implementation of Smart Solutions in Rourkela" at all locations identified by the Client in Rourkela, Odisha.

**37.2** The Goods and manpower supplied under this Contract shall conform to the standards mentioned in the RFP, and, when no applicable standard is mentioned, to the authoritative standards; such standard shall be approved by Client.

## **38 Insurance**

**38.1** The Goods supplied under this Contract shall be comprehensively insured by MSI at their own cost, against any loss or damage, for the entire period of the contract. MSI shall submit to the Client, documentary evidence issued by the insurance company, indicating that such insurance has been taken.

**38.2** MSI shall bear all the statutory levies and duties like customs, insurance, freight etc. applicable on the Goods and also the charges like transportation charges etc. that may be applicable till the Goods are delivered at the respective sites of installation shall also be borne by MSI.

**38.3** MSI shall take out and maintain at its own cost, on terms and conditions approved by the Client, insurance against the risks, and for the coverage's, as specified below:

- i. At the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.
- ii. Employer's liability and workers' compensation insurance in respect of the Personnel of the Company, 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
- iii. Third-Party Liability Insurance on terms as specified in the SCC, covering bodily injury or death suffered by third parties (including the Client's personnel) and loss of or damage to property (including the Client's property and any Subsystems that have been accepted by the Client) occurring in connection with the supply and installation of the Information System.

**38.4** If the MSI fails to take out and/or maintain in effect the insurance referred to in Clause 38, the Client may take out and maintain in effect any such insurance and may from time to time deduct from any amount due the MSI under the Contract any premium that the Client shall have paid to the insurer or may otherwise recover such amount as a debt due from the MSI.

**38.5** The Client shall be named as the co-insured under all insurance policies taken out by the MSI pursuant to this clause 38, save and except for Third Party Liability. All insurer's right of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

**38.6** Unless otherwise provided under the Contract, the MSI shall prepare and conduct all and any claims made under the policies effected by it pursuant to this Contract and all monies payable by any insurers shall be paid to the MSI. With respect to the insurance claims which the Client's interest is involved, the MSI shall not give any release or make any compromise with the insurer without prior written consent of the Client.

## **39 Transfer of Ownership**

**39.1** MSI must transfer all titles to the assets, Goods and Solutions procured for the purpose of the project to the Client at the time of Acceptance of System. This includes all licenses, titles, source code, certificates, hardware, devices, equipment's etc. related to the system designed, developed, installed and maintained by MSI. MSI is expected to provide source code, transfer IPR and ownership right of only those solutions which

would be customized by MSI for the use of Rourkela Smart City Limited. For any pre-existing work, MSI & Rourkela Smart City Limited shall be jointly and severally responsible and its use in any other project by MSI shall be decided on mutual consent.

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

## **40 Exit Management Plan**

### **A. Under Contract Completion**

- 40.1** An Exit Management plan shall be furnished by MSI in writing to the Client within 90(ninety) days from the date of signing the Contract, which shall deal with at least the following aspects of exit management in relation to the Contract as a whole and in relation to the Project Implementation, and Service Level monitoring.

- i. A detailed program of the transfer process that could be used in conjunction with a Replacement Service Provider including details of the means to be used to ensure continuing provision of the Services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
- ii. Plans for provision of contingent support to Project and Replacement Service Provider for a reasonable period after transfer.
- iii. Exit Management plan in case of normal termination of Contract period.
- iv. Exit Management plan in case of any eventuality due to which Project is terminated before the Contract period.
- v. Exit Management plan in case of termination of MSI.

- 40.2** Exit Management plan shall at minimum adhere to the following:

- i. 6(Six) months of the support to Replacement Service Provider post termination of the Contract.
- ii. Complete handover of the Planning documents, bill of materials, functional requirements specification, technical specifications of all equipment, change requests if any, sources codes, wherever applicable, reports, documents and other relevant items to the Replacement Service Provider/Client.
- iii. The MSI shall be responsible for transferring all the knowledge regarding the Systems, technically and operationally to enable the new agency/ Client to carry out the requisite functions.
- iv. All latest operations & technical manuals, configuration files, software, licenses, as-built drawings etc. shall be handed over to Client at least 3(three) months before contract completion.
- v. Client shall release the performance security to the MSI only after satisfactory Exit Management is achieved as part of the project and MSI is obligated to perform all required additional functions to facilitate the same for a smooth transfer of the duties.
- vi. Certificate of Acceptance from authorized representative of Replacement Service Provider issued to MSI on successful completion of handover and knowledge transfer

40.3 In the event of termination or expiry of the Contract, Project Implementation, or Service Level monitoring, both Bidder and Client shall comply with the Exit Management Plan.

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

#### **B. Under Termination**

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

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

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

40.8 All latest operations & technical manuals, configuration files, software, licenses, as-built drawings etc. shall be handed over to Client within 1(one) day after termination notice.

40.9 Client shall release the requisite payments to the MSI upon termination to the MSI only after satisfactory Exit Management is achieved as part of the project and MSI is obligated to perform all required additional functions to facilitate the same for a smooth transfer of the duties.

### **41 Performance Security**

41.1 MSI shall furnish Performance Security to the Client at the time of signing the Contract which shall be equal to 10%(Ten Percent) of the Contract Value and shall be in the form of a **Bank Guarantee** from a Nationalized/Scheduled Bank in the Performa given in Annexure 5 (a) RFP Volume 1 within 15(fifteen) days after issuance of Letter of Intent (LoI) or Letter of Award (LoA) which would be valid up to a period of six months after the contract completion period.

41.2 MSI shall be required to submit five Bank Guarantees of equal amount totalling 10% (Ten Percent) of the value of the Contract. The Client shall return 1st Bank Guarantee after 2 years of signing of contract and successful project execution, 2nd Bank Guarantee after 3 years of contract signing and successful project execution, 3rd Bank Guarantee after 4 years of contract signing and successful project execution and the 4th and 5th Bank Guarantee one year after successful completion of the contract.

### **42 Liquidated Damages (Phase 1)**

42.1 If MSI fails to supply, install or maintain any or all of the Goods as per the Contract, within the time period(s) specified in the RFP Volume 2, the Client without prejudice to its other rights and remedies under the Contract, shall be entitled to deduct from the Contract price, as liquidated damages, a sum equivalent to 0.1% (zero point one percent) per week or part thereof of Contract Value for a milestone/quarter.

42.2 The deduction shall not in any case exceed 10% (ten percent) of the contract value.

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



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

### **43 Limitation of Liability**

**43.1** Neither Party shall be liable to the other Party for any indirect or consequential loss or damage (including loss of revenue and profits) arising out of or relating to the Contract. Provided that this exclusion shall not apply to any obligation of the MSI to pay liquidation damages to the Client.

**43.2** Except in case of gross negligence or wilful misconduct on the part of MSI or on the part of any person or company acting on behalf of MSI in carrying out the Services, MSI, with respect to damage caused by MSI to Client's property, shall not be liable to Client:

- i. for any indirect or consequential loss or damage; and
- ii. for any direct loss or damage that exceeds (A) the total payments payable under the Contract to MSI hereunder, or (B) the proceeds MSI may be entitled to receive from any insurance maintained by MSI to cover such a liability, whichever of (A) or (B) is higher.

**43.3** This limitation of liability shall not affect MSI liability, if any, for damage to Third Parties caused by MSI or any person or company acting on behalf of MSI in carrying out the Services. Further the liability cap provided under any provision of the Contract and the limitations provided herein in so far as the MSI is concerned, shall not be applicable to a breach of indemnification obligations, confidentiality obligations and breach committed by the MSI to the safety and security measures as provided in the Contract.

### **44 Ownership and Retention of Documents**

**44.1** The Client shall own the Documents, prepared by or for MSI arising out of or in connection with the Contract.

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

### **45 Information Security**

**45.1** MSI shall not carry any written/printed document, layout diagrams, CD, hard disk, storage tapes, other storage devices or any other Goods/material proprietary to Client into/out of any location without written permission from the Client.

**45.2** MSI shall not destroy any unwanted documents, defective tapes/media present at any location on their own. All such documents, tapes/media shall be handed over to the Client.

**45.3** All documentation and media at any location shall be properly identified, labelled and numbered by MSI. MSI shall keep track of all such items and provide a summary report of these items to the Client whenever asked for.

**45.4** Access to Client's data and systems, Internet facility by MSI at any location shall be in accordance with the written permission by the Client. The Client shall allow MSI to use facility in a limited manner subject to availability. It is the responsibility of MSI to prepare and equip himself in order to meet the requirements.

- 45.5** MSI must acknowledge that Client's business data and other Client proprietary information or materials, whether developed by Client or being used by Client pursuant to a license agreement with a third party (the foregoing collectively referred to herein as "proprietary information") are confidential and proprietary to Client; and MSI along with its team agrees to use reasonable care to safeguard the proprietary information and to prevent the unauthorized use or disclosure thereof, which care shall not be less than that used by MSI to protect its own proprietary information. MSI recognizes that the goodwill of Client depends, among other things, upon MSI keeping such proprietary information confidential and that unauthorized disclosure of the same by MSI or its team could damage the goodwill of Client, and that by reason of MSI's duties hereunder. MSI may come into possession of such proprietary information, even though MSI does not take any direct part in or furnish the services performed for the creation of said proprietary information and shall limit access thereto to employees with a need to such access to perform the services required by this agreement. MSI shall use such information only for the purpose of performing the said services.
- 45.6** MSI shall, upon termination of this agreement for any reason, or upon demand by Client, whichever is earliest, return any and all information provided to MSI by Client, including any copies or reproductions, both hardcopy and electronic.
- 45.7** By virtue of the Contract, MSI team may have access to personal information of the Client and/or a third party. The Client has the sole ownership of and the right to use, all such data in perpetuity including any data or other information pertaining to the citizens that may be in the possession of MSI Team in the course of performing the Services under the Contract.

## **46 Records of contract documents**

- 46.1** MSI shall at all-time make and keep sufficient copies of the process manuals, operating procedures, specifications, Contract Documents and any other documentation for them to fulfil their duties under the Contract.
- 46.2** MSI shall keep on the Site at least three copies of each and every specification and Contract Document, in excess of their own requirement and those copies shall be available at all times for use by the Client's Representative and by any other person authorized by the Client's Representative.

## **47 Security and Safety**

- 47.1** MSI shall comply with the directions issued from time to time by the Client and the standards related to the security and safety, in so far as it applies to the provision of the Services.
- 47.2** MSI shall upon reasonable request by the Client, or its nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.

## **48 Confidentiality**

- 48.1** MSI shall not, either during the term or after expiration of this Contract, disclose any proprietary or confidential information relating to the Services/Contract and/or Client's business/operations, Information, Application/software, hardware, business data, architecture schematics, designs, storage media and other information/documents without the prior written consent of the Client.
- 48.2** The Client reserves the right to adopt legal proceedings, civil or criminal, against MSI in relation to a dispute arising out of breach of obligation by MSI under this clause.



- 48.3** MSI shall do everything reasonably possible to preserve the confidentiality of the Confidential Information including execution of a confidentiality agreement with the Client to the satisfaction of the Client.
- 48.4** MSI shall notify the Client promptly if it is aware of any disclosure of the Confidential Information otherwise than as permitted by the Contract or with the authority of the Client.
- 48.5** MSI shall be liable to fully recompense the Client for any loss of revenue arising from breach of confidentiality.

## **49 Suspension**

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

## **50 Events of Default by MSI**

- 50.1** The failure on the part of MSI to perform any of its obligations or comply with any of the terms of this Contract shall constitute an Event of Default on the part of MSI. The events of default are but not limited to the following:
- 50.1.1** MSI/MSI's Team has failed to perform any instructions or directives issued by the Client which it deems proper and necessary to execute the Scope of Work or provide Services under the Contract.
- 50.1.2** MSI/MSI's Team has failed to confirm/adhere to any of the key performance indicators as laid down in the Key Performance Measurements/Service Levels/Contract Documents, or if MSI has fallen short of matching such standards/benchmarks/targets as the Client may have designated with respect to the System or any Goods, task or service, necessary for the execution of the Scope of Work and performance of Services under this Contract. The above-mentioned failure on the part of MSI may be in terms of failure to adhere to performance, quality, timelines, specifications, requirements or any other criteria as defined by the Client.
- 50.1.3** MSI's liability to pay liquidated damages reaches the cap on delay liquidated damages as specified in GCC Clause 42, but the delay in respect of which the delayed liquidated damages is payable continues to exist.
- 50.1.4** MSI has failed to remedy a defect or failure to perform its obligations in accordance with the specifications issued by the Client, despite being served with a default notice which laid down the specific deviance on the part of MSI/MSI's Team to comply with any stipulations or standards as laid down by the Client.
- 50.1.5** MSI/MSI's Team has failed to adhere to any amended direction, instruction, modification or clarification as issued by the Client during the term of this Contract and which the Client deems proper and necessary for the execution of the scope of work under this Contract.
- 50.1.6** MSI/MSI's Team has failed to demonstrate or sustain any representation or warranty made by it in this Contract, with respect to any of the terms of its Bid, the RFP and this Contract.
- 50.1.7** MSI/MSI's Team has failed to deliver the System/Services as per the agreed timelines.
- 50.1.8** Quality of Deliverables and Services not being to the satisfaction of the Client.

- 50.1.9** There is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, resolution professional, liquidator, assignee, or similar official against or in relation to MSI.
- 50.1.10** Any change in control of the MSI without the prior written consent of the Client.
- 50.1.11** MSI/MSI's Team has failed to comply with or is in breach or contravention of any Applicable Laws.
- 50.1.12** MSI/MSI's Team has been involved in fraudulent or corrupt practices or any other practice of similar nature;
- 50.1.13** When it comes to the attention of the Client that MSI/MSI's Team is in a position of actual conflict of interest with the interest of the Client in relation to any of the terms of MSI's Bid, the RFP or the Contract.
- 50.1.14** Where circumstances exist which make the performance by the MSI of its obligations under the Contract improbable.
- 50.1.15** Where MSI's ability to survive as an independent corporate entity is threatened or is lost owing to any reason whatsoever, including inter-alia the filing of any bankruptcy proceedings against MSI, any failure by MSI to pay any of its dues to its creditors, the institution of any winding up proceedings against MSI or the happening of any such events that are adverse to the commercial viability of MSI. In the event of the happening of any events of the above nature, the Client shall reserve the right to take any steps as are necessary, to ensure the effective transition of the sites pilot site to a successor agency, and to ensure business continuity.
- 50.1.16** If the MSI fails to furnish, renew and/or maintain the Performance Security in accordance with the Contract.
- 50.1.17** If MSI assigns or transfers the Contract or its rights and obligations therein without the prior written consent.
- 50.1.18** If the MSI:
- 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 Goods, materials, Services, or labour to execute and complete the System in the manner specified in the Agreed and Finalized Project Plan at rates of progress that give reasonable assurance to the Client that the MSI can attain Operational Acceptance of the System by the Time for Achieving Operational Acceptance as extended.
  - v. fails to provide sufficient manpower, material and Services for maintenance as required for meeting the SLAs specified under the Service Level Agreement during the maintenance Period (including warranty period and post-warranty service period);
  - vi. if the penalties calculated as per SLA exceed 30% (thirty percent) of the monthly payment of recurrent cost (OPEX) for that month.
  - vii. Has engaged in corrupt, fraudulent, collusive, coercive, undesirable or restrictive practice 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 licence from the owner to offer the hardware, software, or material provided under this Contract.

**50.1.19** Where there has been an occurrence of such defaults inter alia as stated above, the Client shall issue a notice of default to MSI, setting out specific defaults / deviances / omissions / non-compliances / non-performances and providing a notice of 30(thirty) days to enable such defaulting Party to remedy the default committed.

**50.1.20** Where despite the issuance of a default notice to MSI by the Client, MSI fails to remedy the default to the satisfaction of the Client, the Client may, where it deems fit, issue to the defaulting party another default notice or proceed to contract termination.

**50.1.21** Provided however that in respect of events of default covered under clause 50.1.9, 50.1.11 or 50.1.12, 50.1.13, 50.1.14, 50.1.15 and 50.1.18 the Client shall be entitled to terminate the Contract forthwith without any cure period.

**50.1.22** Upon termination of the Contract:

- i. The MSI shall cease all further work, except for such work as the Client may specify in the notice of termination for the sole purpose of protecting that part of the System already executed or any work required to leave the Site in a clean and safe condition or to perform any work contemplated under the Exit Management Plan or in order to execute an effective transition and to maintain business continuity or any other matter provided for in the Contract;
- ii. terminate all subcontracts, except those to be assigned to the Client in the manner provided below;
- iii. deliver to the Client the parts of the System executed by the MSI up to the date of termination;
- iv. to the extent legally possible, assign to the Client all right, title and benefit of the MSI to the System or Subsystems as at the date of termination, and, as may be required by the Client, in any subcontracts concluded between the MSI and its Subcontractors;
- v. deliver to the Client all drawings, specifications, and other documents etc. developed and/or prepared by MSI or its Subcontractors at the date of termination in connection with the System;
- vi. The Client may enter upon the Site, expel the MSI, and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as the Client thinks appropriate, the Client shall give notice to the MSI that such MSI's Equipment will be returned to the MSI at or near the site and shall return such MSI's Equipment to the MSI in accordance with such notice. The MSI shall thereafter without delay and at its cost remove or arrange removal of the same from the site;
- vii. The Client shall be entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective business continuity of the project which MSI shall be obliged to comply with and take all available steps to minimize loss resulting from that termination/breach, and further allow and provide all such assistance to the Client and/or the successor agency/service provider, as may be required, to take over the obligations of MSI in relation to the execution/continued execution of the requirements of the Contract;
- viii. The Client shall pay MSI for that part of the Services which have been authorized by the Client and satisfactorily performed by MSI up to the date of termination. Without prejudice to any other rights, the Client may retain from the payments all amounts which the Client is entitled to under this Contract including costs incurred to complete the System or any Scope of Work remaining incomplete and amounts payable by the Client to MSI as may be required to offset any losses caused to the Client as a result

of any act/omissions of MSI and the balance if any shall only be payable to the MSI. In case of any loss or damage due to default on the part of MSI in performing any of its obligations with regard to executing the Schedule of Requirements under the contract, MSI shall compensate the Client for any such loss, damages or other costs, incurred by the Client;

- ix. Nothing herein shall restrict the right of the Client to invoke the Performance Security and other Guarantees furnished hereunder and pursue such other rights and/or remedies that may be available to the Client under law;
- x. The termination hereof shall not affect any accrued right or liability of either Party nor affect the operation of the provisions of the Contract that are expressly or by implication intended to come into or continue in force on or after such termination;
- xi. Notwithstanding anything to the contrary contained anywhere in the Contract, any and all payments shall be payable by the Client only after the MSI has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Client.

## **51 Event of Default of the Client**

**51.1** “Client Event of Default” means any of the following events set out below, unless such event has occurred as a consequence of a default by the MSI, a Change in Law or any event of Force Majeure:

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

**51.2** Without prejudice to other provisions of this Contract, upon the occurrence of a Client Event of Default, the MSI may deliver a notice to the Client specifying the nature of the breach and giving a cure period of 30(thirty) days to the Client to cure the Client Event of Default. If the Client fails to cure the breach within the cure period, the MSI may terminate the Contract forthwith.

**51.3** If the Contract is terminated under GCC Clause 51.1, then the MSI shall immediately:

- i. cease all further work, except for such work as may be necessary for the purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;

- ii. terminate all subcontracts, except those to be assigned to the Client;
- iii. remove all MSI's Equipment from the site and repatriate the MSI and its Subcontractor's personnel from the Site;
- iv. In addition, the MSI shall:
  - deliver to the Client the parts of the System executed by the MSI up to the date of termination;
  - to the extent legally possible, assign to the Client all right, title, and benefit of the MSI to the System, or Subsystems, as of the date of termination, and, as may be required by the Client, in any subcontracts concluded between the MSI and its Subcontractors;
  - to the extent legally possible, deliver to the Client all drawings, specifications, and other documents prepared by the MSI or its Subcontractors as of the date of termination in connection with the System.

**51.4** The Client shall pay to the MSI all amounts owed to the MSI upto the date of termination after deducting any payments owed by the MSI to the Client.

**51.5** Termination by the MSI pursuant to this GCC Clause 51 is without prejudice to any other rights or remedies of the MSI that may be exercised in lieu of or in addition to rights conferred by GCC Clause 51.

In this Clause 50 and 51, the expression "parts of the System executed" shall include all work executed, Services provided, and all information technologies, or other Goods acquired (or subject to a legally binding obligation to purchase) by the MSI and used or intended to be used for the purpose of the System, up to and including the date of termination.

## **52 At the Client's Convenience**

**52.1** The Client may at any time terminate the Contract for any reason by giving the MSI a notice of termination.

**52.2** Upon receipt of the notice of termination under GCC Clause 52.1, the MSI 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 Client may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
- ii. terminate all subcontracts, except those to be assigned to the Client;
- iii. remove all MSI's equipment from the site, repatriate the MSI's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
- iv. in addition, the MSI, shall
  - deliver to the Client, the parts of the System executed by the MSI up to the date of termination;
  - to the extent legally possible, assign to the Client all right, title, and benefit of the MSI to the System, or subsystem, as at the date of termination, and, as may be required by the Client, in any sub-contracts concluded between the MSI and its Sub-Contractors;

- deliver to the Client all non-proprietary drawings, specifications, and other documents prepared by the MSI or its Sub-Contractors as of the date of termination in connection with the System;
- If termination takes place after Operational Acceptance is achieved, the MSI shall fully comply with the exit management plan as specified in the Contract.

## 53 Termination for Force Majeure

- 53.1** If a Force Majeure event affecting any Party subsists for a continuous period of 180(one hundred eighty) days, then either Party may issue a notice of termination to the other Party. Upon receipt of this notice, the Parties shall have a period of 15(fifteen) Days to agree on the manner in which the Contract may be progressed upon cessation of the Force Majeure event and the variations, if any, required to the Contract to address the consequences of the Force Majeure event. If on the expiry of the 15(fifteen) Day period, the Parties fail to arrive at an agreement, either Party may immediately terminate this Contract by written notice to the other Party and the consequences of termination provided in Clause 50.1.22 shall mutatis mutandis apply.
- 53.2** Notwithstanding anything to the contrary in this Contract, in case of occurrence of a Force Majeure event which affects one or more of the Modules but not the entire Contract, the Contract may be partially terminated with respect to the Modules affected by such Force Majeure event. Such partial termination shall not impact the validity of the Contract or the obligations of the MSI with regard to the Modules which are not affected by the Force Majeure event.

## 54 Miscellaneous

- 54.1 Assignment** - All terms and provisions of this Contract shall be binding on and shall inure to the benefit of the Client, smart cities mentioned in this Contract, the MSI, the Consortium member and their respective successors and permitted assigns. Except as otherwise expressly provided in this Contract, the MSI and Consortium member shall not be permitted to assign its rights and obligations under this Contract to any third party. The Client may assign or novate all or any part of this Contract and schedules/annexures, and the MSI shall be a Party to such novation, to any third party contracted to provide outsourced services to the purchaser or any of its nominees.
- 54.2 Severability** - If any provision of this Contract, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this Contract or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.
- 54.3 Waiver** - No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Contract of any right, remedy or provision of this Contract shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision.
- 54.4 Amendment** - Any amendment to this Contract shall be made by mutual written consent of the Parties.

**54.5 Survival** - Any provision of this Contract which imposes or intends to impose an obligation on any of the Parties after termination or expiration of this Contract shall survive the termination or expiration of this Contract. Such provisions include, without limitation, obligations related to confidentiality, indemnity, licenses, risk purchase and AMC/ ATS provided by the OEMs or the MSI.

**54.6 Good Faith** – The parties undertake to act in good faith with respect to each other's rights under this contract and to adopt all reasonable measures to ensure the realization of the objectives of this contract.

## **55 Representations and Warranties of the Parties**

**55.1 Client's Representations and Warranties:** The Client represents and warrants to the MSI:

- i. It is duly incorporated under the laws of India and is validly existing under Applicable Laws;
- ii. It has all powers and applicable authorizations and requisite approvals to own its property and to carry on its business as now conducted and is duly qualified to do business in the jurisdiction where it operates;
- iii. This Contract and the transactions under it do not contravene its constituent documents or any Applicable Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers of its directors to be exceeded;
- iv. It has in full force and effect the authorizations necessary for it to execute, deliver and perform the Contract and the transactions under it and all actions on part of the Client necessary for the authorizations, execution, delivery of and the performance of all obligations of the Client under the Contract has been taken;
- v. The execution and delivery by the Client of this Contract and any other documents pursuant to this Contract and its performance by the Client will not (a) constitute a breach or a default under its charter documents; (b) result in breach of, or constitute a default under, conflict with or result in termination or give rise to a right of any person to terminate any contract to which the Client is a party or by which it is bound and does not impair the ability of the Client to consummate the transaction or result in the creation of any encumbrance under any agreement, license or other instruments or result in a violation or breach of or default under any Applicable Law.
- vi. Its obligations under this Contract are valid and binding and are enforceable against it in accordance with the terms of this Contract.

**55.2 MSI's Representations and Warranties:** The MSI makes the following representations and warranties to the Client:

- i. It is duly incorporated/registered as a company/firm under the laws of its incorporation/registration (as the case may be) and is duly and validly existing under Applicable Laws;
- ii. It has all powers and applicable authorizations and requisite approvals to own its property and to carry on its business as now conducted and is duly qualified to do business in the jurisdiction where it operates and all actions on part of the MSI and all corporate action on part of the board/partnership/trustee of the MSI for the necessary authorizations, execution, delivery, performance of all obligations of the MSI under the Contract, and requisite corporate approvals has been obtained.;

- iii. It has due power and authority to enter into this Contract and comply with its obligations under it;
- iv. The Contract to which the MSI is a Party when executed will be valid and binding obligations of the MSI enforceable against the MSI in accordance with their terms. This Contract to which the MSI is a Party will, when executed be the valid and binding obligation of the MSI, enforceable against it in accordance with the terms thereof. As of the date hereof, the MSI is not subject to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors right generally.
- v. This Contract and the transactions under it do not contravene its constituent documents or any Applicable Law of its jurisdiction or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers of its directors to be exceeded;
- vi. Its obligations under this Contract are valid and binding and are enforceable against it in accordance with the terms of this Contract;
- vii. It is not in breach of any Applicable Law in a way which may result in a material adverse effect on its business or financial condition;
- viii. There is no pending or threatened proceeding affecting the MSI or any of its assets that would affect the validity or enforceability of this Contract, the ability of the MSI to fulfil its commitments under this Contract, or that could have a material adverse effect on the business or financial condition of the MSI;
- ix. It has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under the Contract;
- x. The Goods supplied under the Contract are new, non-refurbished, unused and recently manufactured; shall not be nearing end of sale/end of support.
- xi. A comprehensive warranty applicable on Goods supplied under this Contract shall be provided for the period of Contract from the date of acceptance of respective system by the Client.
- xii. The Goods supplied under this Contract shall be of the highest grade and quality and consisted with the established and generally accepted standards for materials of this type. The Goods shall be in full conformity with the specifications and shall operate properly and safely. All recent design improvements in Goods, unless provided otherwise in the Contract, shall also be made available.
- xiii. The Goods supplied under this Contract shall be free from all encumbrances and defects/faults arising from design, material, manufacture or workmanship (except insofar as the design or material is required by the Client's specifications) or from any act or omission of the MSI, that may develop under normal use of the supplied Goods in the conditions prevailing at the respective Data-Center/Server Room Sites.
- xiv. Technical support for software applications shall be provided by the respective OEMs for the period of Contract. The technical support should include all upgrades, updates and patches to the respective software applications.
- xv. It has the necessary skill and experience to perform the Services in accordance with this Contract;
- xvi. It owns or has the right to use and license to the Client all Intellectual Property Rights in relation to the Services and the deliverables to be provided under this Contract;



- xvii. The performance of the Services shall not infringe the Intellectual Property Rights of any third party and that the MSI has not received notice of any claim, and is not aware of any facts or circumstances that may give rise to such claim;
- xviii. It will perform its obligations under the Contract and conduct its business with a high level of integrity which is reasonably expected of an international contractor of similar size and profile, conducting a similar line of business, and will not engage in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practices; and
- xix. Without prejudice to any express provision contained in the Contract, the MSI acknowledges that prior to the execution of the Contract, the MSI has after a complete and careful examination made an independent evaluation of the technical requirements and any information provided by or on behalf of the Client and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the MSI in the course of performance of its obligations hereunder.

## B. Special Conditions of Contract (SCC)

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

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<b>GCC 1.41</b>	The Operations & Maintenance period (O&M Phase) is:60 months (5 years) from the date of Go Live
<b>GCC 5.1</b>	The Contract shall be construed in accordance with the Applicable Laws of India.
<b>GCC 7.1 and 7.2</b>	<p>The addresses are:</p> <p>Client: Rourkela Smart City Limited (RSCL)</p> <p>Attention: _____</p> <p>Facsimile: _____</p> <p>E-mail (where permitted): _____</p> <p>MSI: _____</p> <p>Attention: _____</p> <p>Facsimile: _____</p> <p>E-mail (where permitted): _____</p>
<b>GCC 9.1</b>	<p>The Authorized Representatives are:</p> <p>For the Client: [Insert Name]</p> <p>Chief Executive Officer,</p> <p>Rourkela Smart City Limited (RSCL)</p> <p>_____</p> <p>For the MSI: [Insert Name, Title]</p> <p>_____</p>
<b>GCC 12.1</b>	<p>Expiration of Contract:</p> <p>The term of the Contract shall be Seventy Two (72) Months, which may be extended on mutually agreed terms and conditions, subject to satisfactory performance of the Services by the MSI. Seventy Two (72) months including Implementation period of Twelve Months (12 months), and operations and maintenance support for Sixty (60) months from the date of go-live.</p>

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	If the term of the Contract is extended pursuant to the [GCC Clause 12] of the GCC, then the MSI shall also extend the validity of the Performance Security for an equivalent period.
<b>GCC 20.29.3</b>	<p>The MSI shall prepare and furnish to the Client all the necessary documents for which the MSI must obtain the Client's approval before proceeding with work on the System or any Sub-system covered by the documents. The following is an indicative but not an exhaustive list of documentation and the Client can request for additional submissions during the course of the project:</p> <ul style="list-style-type: none"> <li>i. System detailed design;</li> <li>ii. System Operation manuals;</li> <li>iii. Delivery and Installation Plan;</li> <li>iv. Training Plan;</li> <li>v. Pre-commissioning Plan;</li> <li>vi. Prototype Approval Tests and Plan;</li> <li>vii. Factory Acceptance Tests and Plan;</li> <li>viii. Pilot Tests and Plan;</li> <li>ix. Burn-in Tests and Plan;</li> <li>x. System Acceptance Tests and Plan;</li> <li>xi. Operational Acceptance Tests and Plan;</li> <li>xii. Maintenance Support Service Plan;</li> <li>xiii. Task, Time, and Resource Schedules;</li> <li>xiv. Technical Support Plan;</li> <li>xv. Preventive Maintenance Plan;</li> <li>xvi. Exit Management Plan.</li> </ul>
<b>GCC 38.3 (iii)</b>	The MSI shall obtain Third-Party Liability Insurance for the contract amount. The Insurance shall cover the entire Contract Period.
<b>GCC 41.1</b>	<p>Performance Security:</p> <ul style="list-style-type: none"> <li>i. The Client shall not make a claim under the Performance Security, except for amounts to which the Client is entitled under the Contract in the event of: <ul style="list-style-type: none"> <li>a. failure by the MSI to extend the validity of the Performance Security on extension of the validity of the Contract, in which event the Client may claim the full amount of the Performance Security;</li> <li>b. failure by the MSI to pay the Client an amount due, as either agreed or determined pursuant to the dispute</li> </ul> </li> </ul>

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>resolution process specified in the Contract, within forty two (42) days after determination of the dispute;</p> <ul style="list-style-type: none"> <li>c. failure by the MSI to pay any damages due to the Client under the Contract;</li> <li>d. failure by the MSI to pay any amounts that are due to the Client on termination of the Contract;</li> <li>e. the MSI engaging in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practice.</li> </ul> <p>ii. If the Performance Security is or becomes invalid for any reason during the term of the Contract, the MSI shall immediately notify the Client and provide the Client with a replacement Performance Security in the form set out in Annexure 5 (a) of Volume 1 of the RFP within five (5) days of the earlier Performance Security becoming invalid;</p> <p>iii. If the validity period of the Performance Security is less than the period specified in sub-clause (ii) above, then no later than thirty (30) days before the expiry of the Performance Security, the MSI shall obtain an extension of the validity of such Performance Security and provide the Client with a copy of the renewed security. If the MSI fails to extend the Performance Security, the Client shall be entitled to draw on and claim the un-drawn amount thereunder, provided that the amount so received shall be treated as a cash security and to the extent that there are no outstanding claims, shall be released upon submission of a new Performance Security acceptable to the Client;</p> <p>iv. The provision, maintenance or renewal of the Performance Security by the MSI in accordance with the terms of the Contract, shall be a condition precedent to any payment by the Client to the MSI.</p>

## **C. Service Levels**

### **56 Purpose**

**56.1** The purpose of current section is to define the levels of service provided by MSI to the Client for the duration of the contract. The benefits of this are:

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

**56.2** The Service Levels are between the Client and MSI.

### **57 Service Level Agreements & Targets**

**57.1** This section is agreed to by Client and MSI as the key performance for the project. SLAs may be reviewed and revised according to the procedures detailed in Clause 64 Service Level Change Control.

**57.2** The following section reflects the measurements to be used to track and report system's performance on a regular basis. The targets shown in the following tables are for the period of contract.

**57.3** The procedures in Clause 64 shall be used if there is a dispute between Client and MSI on what the permanent targets should be.

### **58 General principles of Service Level Agreements**

**58.1** The Service Level agreements have been logically segregated in the following categories:

#### **58.2 Liquidated Damages (Phase 2)**

The liquidated damages shall come into effect once the notification of Award/Agreement has been issued/signed by the Client. It would be mainly applicable on the implementation phase of the project.

#### **58.3 Service Level Agreements**

SLAs would be applicable for Implementation and Operations & Maintenance (O&M) phases of the project. The penalties for Implementation Phase shall be on the overall value of the contract. The penalties applicable for Operations & Maintenance Phase of the project shall be on the payment associated with the Operation & Maintenance Phase as mentioned in the Payment Schedule in Volume 2 of the RFP, and shall be calculated quarterly. SLA would be applicable on:

- i. Integrated Command and Control Centre
- ii. Data Centre/Disaster Recovery
- iii. City Network
- iv. Intelligent Solid Waste Management System
- v. Intelligent Traffic Management System (ITMS)
- vi. Safety and Surveillance
- vii. City Governance

- viii. Other Smart Solutions (Environmental Sensors, Variable Message Signboards, Public Address System, City Wi-Fi, Smart Classrooms)

## 59 Service Levels Monitoring

- 59.1** Service Level Agreement (SLA) shall become the part of the Contract between the Client and the MSI. SLA defines the terms of MSI's responsibility in ensuring the timely delivery of the deliverables and the correctness of the deliverables based on the agreed performance indicators as detailed in this section.
- 59.2** The MSI shall comply with the SLAs to ensure adherence to project timelines, quality and availability of services throughout the duration of the Contract, i.e., during the Implementation Phase and the Operation & Maintenance Phase.
- 59.3** The Service Level parameters defined in Clause 61 shall be monitored on a periodic basis, as per the individual parameter requirements. MSI shall be responsible for providing appropriate web based online SLA measurement and monitoring tools and the Client may also appoint an independent technical auditor or third party for monitoring the service levels. MSI shall be expected to take immediate corrective action for any breach in SLA. In case issues are not rectified to the complete satisfaction of Client, within a reasonable period of time defined in this RFP, then the Client shall have the right to take appropriate penalizing actions, or termination of the Contract.
- 59.4** For the purpose of the SLA, definitions and terms as specified in the document along with the following terms shall have the meanings set forth below:
- i. **“Total Time”** – Total number of hours in consideration for evaluation of SLA performance.
  - ii. **“Downtime”**– Time period for which the specified services/ components/ system/ equipment become unavailable (due to any reason whatsoever) for business processing to the end user in the concerned period, being considered for evaluation of SLA, which shall exclude downtime owing to Force Majeure and reasons beyond control of the MSI.
 

Note 1: Any downtime for maintenance shall be with prior written intimation to the Client.

Note 2: Please note that continuous downtime of every 2 hours (from 7 am to 12 midnight) would raise the severity by one level. For Example, the severity level will raise from 0 to 1

Note 3: Please note that continuous downtime of every 4 hours (from 12 midnight to 7 am) would raise the severity by one level. For Example, the severity level will raise from 0 to 1
  - iii. **“Scheduled Maintenance Time”** – Time period for which the specified services/components/system with specified technical and service standards are not available due to scheduled maintenance activity. The MSI shall take at least 15 days prior approval from the Client for any such activity. The scheduled maintenance shall be carried out during non-peak hours and shall not exceed more than four (4) hours and not more than four (4) times in a year.
  - iv. **“Uptime”** – Time period for which the specified services are available in the period being considered for evaluation of SLA.

$$\text{Uptime (\%)} = [1 - \{(\text{Total Downtime} - \text{Scheduled Maintenance Time}) / (\text{Total Time} - \text{Scheduled Maintenance Time})\}] * 100.$$

- v. **“Penalty”** - Penalties shall be applied for each criteria individually and then added together for the total penalty for a particular quarter.
- vi. **“Incident”** – Any event/abnormalities in the service/system being provided that may lead to disruption in regular/normal operations and services to the end user.
- vii. **“Response Time”** – Time elapsed from the moment an incident is reported to the Helpdesk either manually or automatically through the system to the time when a resource is assigned for the resolution of the same.
- viii. **“Resolution Time”** – Time elapsed from the moment incident is reported to the Helpdesk either manually or automatically through system, to the time by which the incident is resolved completely and services as per the Contract are restored.
- ix. **“Network Availability (%)”** -  $(\text{Total minutes during the month} - \text{Planned downtime} - \text{Downtime minutes during the month}) * 100 / \text{Total minutes during the month}$

Note 1: Total Time shall be measured on 24x7 basis.

Note 2: Network components (availability for a month is defined as total time (in minutes) in a month less total down time (in minutes) in a month excluding planned network downtime. Network is considered available when all services in full capacity are available.

Note 3: Planned Network Component Downtime refers to unavailability of network services due to infrastructure maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure details related to such planned outage shall be agreed with the Client.

- x. **“Quality of Service(QoS)”** - Capability of a network to provide traffic engineering to selected network traffic from
  - Field Level Infrastructure and Access Point
  - Access point to DC, DR and ICCC switch and optical fibre
  - Leased Line between Switch at CCC and DC and DR
  - The primary goal of QoS is to provide priority including dedicated bandwidth, controlled jitter, latency and improved loss characteristics.

## 60 Penalties

**60.1** A maximum level of performance penalties is established and described in the section below:

Severity Level	Penalty as a percentage of applicable payment milestone
9	Event of default and termination as per Clause 50 of this section of RFP respectively and the consequences as provided in Clause 50.1.22 of this section of RFP
8	5.0%
7	4.0%
6	2.0%
5	1.0%
4	0.5%
3	0.4%

Severity Level	Penalty as a percentage of applicable payment milestone
2	0.3%
1	0.2%
0	No Penalty

- 60.2** Performance Penalty for not meeting a measurement parameter for any two months in consecutive quarters shall result in twice the penalty percentage of that respective measurement parameter in the third quarter for all the 3(three) months
- 60.3** Maximum Penalty applicable for any quarter shall not exceed 30% (thirty percent) of the 'applicable fees' for the respective quarter.
- 60.4** Three consecutive quarterly deductions of 30%(thirty percent) of the applicable fee on account of any reasons shall be deemed to be an event of default and termination as per Clause 50 of this Section of RFP respectively and the consequences as provided in Clause 50.1.22 of this section of RFP shall follow.
- 60.5** The payment to the agency shall be on Quarterly basis however the penalty shall be calculated on monthly basis as per the SLAs stated in the RFP.

## 61 Measurements and Targets

- 61.1** The SLA metrics provided specifies performance parameters as baseline performance, lower performance and breach. All SLA calculations will be done on quarterly basis. The SLA also specifies the liquidated damages for lower performance and breach conditions.
- 61.2** Payment to the MSI is linked to the compliance with the SLA metrics, as applicable
- 61.3** The SLA parameters shall be measured as per the individual SLA parameter requirements and measurement methods, through appropriate SLA Measurement tools to be provided by the MSI and approved and audited by the Client or its appointed Consultant or authorized representative for accuracy and reliability.
- 61.4** Client shall also have the right to conduct, either itself or through any other agency as it may deem fit, an audit / revision of the SLA parameters. The SLAs defined, shall be reviewed by the Client on an annual basis after consulting the MSI, Project Management Consultants and other experts. All the changes would be made by the Client after consultation with the MSI and might include some corrections to reduce undue relaxation in Service levels or some corrections to avoid unrealistic imposition of liquidated damages, which are noticed after project has gone live.



**61.5 Implementation Phase related performance levels**

Timely delivery of the Scope of Work as per the table provided below:

S. No.	Measurement	Definition	Target	Penalty
1.	Team mobilization and commencement of work	MSI is expected to mobilize project team for commencement of work  Commencement of work would mean reporting and availability of MSI's resources (90% Key Personnel as per the RFP requirement) at the Client's office for the project within defined period of 15 days and remaining 10% in next 15 days)	Within 15 days of issuance of LoA or Contract agreement, whichever is	Delay upto 15 calendar days = 0.2% of the contract value  <ul style="list-style-type: none"> <li>• Delay upto 16-30 calendar days = 0.5% of the contract value</li> <li>• Delay beyond 30 calendar days may lead to termination of the contract at the discretion of the Client</li> </ul>
2.	Implementation on progress	Deliverables as defined in the Contract	All the deliverables defined in the contract has to be submitted On-time on the date as mentioned in the contract with no delay.	<ul style="list-style-type: none"> <li>• Delay upto 7 calendar days = 0.5% of the contract value</li> <li>• Delay beyond 7 calendar days may lead to termination of the contract at the discretion of the Client</li> </ul>

**61.6 Operation & Maintenance Phase related performance levels****61.6.1 Integrated Command and Control Centre (ICCC) performance levels**

ICCC related performance levels as per the table provided below:

Sl. No.	Measurement	Definition	Target	Severity Level
1.	Availability of Fixed ICCC infrastructure including: <ul style="list-style-type: none"> <li>Workstations</li> <li>Video Wall</li> </ul>	Measurement Tool: Reports from EMS	Minimum 99% up time measured on a monthly basis	0
			≥97.0% to <99.0% up time measured on a monthly basis	4
			≥95.0% to <97.0% up time measured on a monthly basis	6
			<95.0% up time measured on a monthly basis	7
2.	Availability of Fixed ICCC infrastructure including: <ul style="list-style-type: none"> <li>Cameras</li> <li>Phones</li> <li>Biometric access control system</li> </ul>	Measurement Tool: Reports from EMS	Minimum 97% up time measured on a monthly basis	0
			≥95.0% to <97.0% up time measured on a monthly basis	5
			<95.0% up time measured on a monthly basis	7
3.	Availability of Mobile ICCC infrastructure including: <ul style="list-style-type: none"> <li>Workstation</li> <li>Camera</li> <li>UPS/DG set etc.</li> </ul>	Measurement Tool: System generated reports from Mobile ICCC controller	Minimum 97% up time measured on a monthly basis	0
			≥96.0% to <97.0% up time measured on a monthly basis	4
			≥95.0% to <96.0% up time measured on a monthly basis	6
			<95.0% up time measured on a monthly basis	7
4.	Battery replacement for UPS for all	Replacement of battery used for UPS	Batteries to be replaced every 3rd year	5 (will increase by 1 every

Sl. No.	Measurement	Definition	Target	Severity Level
	equipment/devices procured	This excludes regular maintenance of the UPS and its batteries  Measurement Tool: SLA monitoring tool for inventory management		subsequent 6 months of non-compliance
5.	Fire Detection and Suppression system up time	Availability of fire detection and suppression system in the ICC. Periodic audits would be done by the agency to check the availability of this system  Measurement Tool: Random Check	100% availability measured	0
			Any incident of non-compliance	5

#### 61.6.2 Data Centre and Disaster Recovery related performance levels

Date Centre and Disaster Recovery related performance levels as per the table provided below:

Sl. No.	Measurement	Definition	Target	Severity Level
1.	Network: <ul style="list-style-type: none"> <li>Wired and Wireless Networks</li> <li>Covering routers and switches</li> <li>Storage</li> <li>Backup drives</li> <li>IOT platform</li> <li>Enterprise network firewalls/Intrusion Prevention System</li> <li>Modular servers</li> </ul>	Data center components (availability for a month is defined as total time (in minutes) in a month less total down time (in minutes) in a month excluding planned data center downtime.  The data center is considered available when all the services in full capacity are available.  Data center Availability (%) = (Total minutes during the month – Planned downtime - Downtime minutes during the month) *100 / Total minutes during the month  Total Time shall be measured on 24x7 basis for DC depending upon functional requirement.	99.98%	> 99.98 = 0 < 99.98 to 97 = 5 < 97 = 9

Sl. No.	Measurement	Definition	Target	Severity Level
		Planned data center Downtime refers to unavailability of data center services due to infrastructure maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure. Details related to such planned outage shall be agreed with the Client and data center  Measurement Tool: Reports from EMS		
2.	Availability of other software including: <ul style="list-style-type: none"> <li>Enterprise Management System (EMS)</li> <li>E-Governance Application</li> </ul>	Measurement Tool: Reports from EMS	Minimum 99% up time measured on a monthly basis	0
			≥97.0% to <99.0 % up time measured on a monthly basis	4
			≥95.0% to <97.0% up time measured on a monthly basis	6
			<95.0% up time measured on a monthly basis	9
3.	Availability of other software including: <ul style="list-style-type: none"> <li>Anti-virus</li> </ul>	Measurement Tool: Reports from EMS	Minimum 97.0% up time measured on a monthly basis	0
			≥96.0% to <97.0 % up time measured on a monthly basis	4
			≥95.0% to <96.0 % up time measured on a monthly basis	6
			<95.0% time measured on a monthly basis	7

Sl. No.	Measurement	Definition	Target	Severity Level
4.	DR availability	<p>Maximum Downtime Tolerated per Day: 5 minutes</p> <p>Maximum Downtime Tolerated per Week: 24 minutes</p> <p>Maximum Downtime Tolerated per Month: 1 hours 55 minutes</p> <p>Maximum Downtime Tolerated per Quarter: 5 hours 52 minutes</p> <p>Maximum Downtime Tolerated per Year: 22 hours 53 Minutes</p>	99.451%	<p>&gt; 99.98 = 0</p> <p>&lt; 99.98 to 97 = 5</p> <p>&lt; 97 = 9</p>

### 61.6.3 City Network related performance levels

City Network related performance levels as per the table provided below:

Sl. No.	Measurement	Definition	Target	Severity Level
1.	Network Availability for all field level devices to ICC	Measurement Tool: Reports from EMS. MSI shall submit monthly reports on the performance and adherence to the SLA while the penalties shall be charged on quarterly basis	≥99.0%	0
			≥98.5% to <99.0%	6
			≥98.0% to <98.5%	7
			<98%	8
2.	Network Availability between <ul style="list-style-type: none"> <li>Field device/unit and network switch</li> </ul>	Measurement Tool: Reports from EMS.	>98.5%	0
			≤98.5% to >97.0% up time measured on a monthly basis	4

Sl. No.	Measurement	Definition	Target	Severity Level
	<ul style="list-style-type: none"> <li>Network switch and optical fibre</li> <li>Optical fibre to switch at ICC and DC and DR</li> </ul>		<p>≤97.0% to &gt;95.0% up time measured on a monthly basis</p> <p>≤95.0% to &gt;93.0% up time measured on a monthly basis</p> <p>&lt;93.0% up time measured on a monthly basis</p>	<p>5</p> <p>6</p> <p>7</p>
3.	<p>Network Availability for all GPRS enabled equipment and other connectivity for equipment including:</p> <ul style="list-style-type: none"> <li>Variable Message Signboards</li> <li>GPS Unit</li> <li>Biometric Device</li> <li>Environment Sensors</li> <li>Other Equipment</li> </ul>	Measurement Tool: Reports from EMS.	<p>&gt;95.0%</p> <p>≤95.0% to &gt;93.0% up time measured on a monthly basis</p> <p>≤93.0% to &gt;90.0% up time measured on a monthly basis</p> <p>&lt;90.0% up time measured on a monthly basis</p>	<p>0</p> <p>4</p> <p>5</p> <p>7</p>
4.	Network Quality Of Service	Measurement Tool: Reports from EMS	<p>99% throughput of minimum stipulated bandwidth during 24*7 hours</p> <p>≥97% and &lt;99% throughput of minimum stipulated bandwidth</p>	<p>0</p> <p>5</p>

Sl. No.	Measurement	Definition	Target	Severity Level
			during 24*7 hours	
			<97% throughput of minimum stipulated bandwidth during 24*7 hours	6
			Average Packet loss exceeding 0.5% over a month (at Data Centre and WAN level)	4
			Latency Delay > 150 ms (every instance) (at Data Centre and WAN level)	4
5.	City network backbone packet loss	The SLA for backbone packet loss shall be identified on per quality basis.  Measurement Tool: Reports from EMS. MSI shall submit monthly reports on the performance and adherence to the SLA while the penalties shall be charged on quarterly basis	≤1%	0
			>1%	1
6.	Network Latency / Jitter (Core to Access)	Measurement Tool: Reports from EMS. MSI shall submit monthly reports on the performance and adherence to the SLA while the penalties shall be charged on quarterly basis	≤40 ms	0
			>40 ms	1
7.	Mean Time To Repair (MTTR) for Fibre	Mean Time To Repair (MTTR) shall be monitored on the time taken between logging of complain against the network and its closure	≤8 hrs per reported fibre failure	0
			>8 hrs – 12 hrs	1

Sl. No.	Measurement	Definition	Target	Severity Level
		Measurement Tool: Reports from EMS. MSI shall submit monthly reports on the performance and adherence to the SLA while the penalties shall be charged on quarterly basis	>12 hrs	2

#### 61.6.4 Intelligent Traffic Management System (ITMS) related performance levels

ITMS related performance levels as per the table provided below:

Sl. No.	Measurement	Definition	Target	Severity Level
1.	Availability of applications including: <ul style="list-style-type: none"> <li>• Video Management</li> <li>• Video Analytics</li> <li>• ANPR</li> <li>• Red light violation detection</li> </ul>	Measurement Tool: Reports from EMS	Minimum 98% up time measured on a monthly basis	0
			≥96.0% to <98.0% up time measured on a monthly basis	5
			<96.0% time measured on a monthly basis	9
2.	Availability of other ITMS applications	Measurement Tool: Reports from EMS	Minimum 95.0% up time measured on a monthly basis	0
			≥93.0% to <95.0% up time measured on a monthly basis	4
			≥90.0% to <93.0% up time measured on a monthly basis	6
			<90.0% time measured on a monthly basis	9
3.	Repair/Replacement of	MSI should keep adequate spares at any	Within 4 business hours	0



Sl. No.	Measurement	Definition	Target	Severity Level
	infrastructure equipment including:	given point of project execution.	of logging complaint	
	<ul style="list-style-type: none"> <li>Cameras</li> <li>Variable Message Signboard</li> </ul>	Infrastructure equipment should be replaced or repaired after complaint logging from Client officials	>4 business hours to 1 business day of logging complaint	2
	<ul style="list-style-type: none"> <li>Public Address System</li> <li>Other Equipment</li> </ul>	Measurement Tool: System generated call log at Helpdesk	>1 to $\leq 2$ business days of logging complaint	3
			More than 2 business of logging complaint	4
4.	Asset/Inventory Management	Provide monthly MIS of Asset Inventory to check asset inventory level. Measurement Tool: SLA monitoring tool for inventory management	$\geq 95\%$ of the minimum required inventory level should be available measured on monthly basis	0
			<95% of the minimum required inventory level	3 (Severity level would increase by 1 for every 5% drop in inventory level)
		Conduct Annual Physical Asset verification once in a year and give a report within 2 months from the date of verification.	100% Management approval of Physical Asset Verification report	5

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

**61.6.5 Camera feed and quality related performance levels**

Camera feed and quality related performance levels as per the table provided below:

Sl. No.	Measurement	Definition	Target	Severity Level
1.	Ratio of Live cameras v/s Total number of cameras at any point of time (To be measured every 1 hour)	Number of live working cameras divided by the total number of cameras  Measurement tool: Log from VMS tools wherein alerts to the control room shall be generated on non-functioning of the camera	≥98%	0
			≥95 % to <98%	3
			<95%	5
2.	Quality of Video feeds (Bad feeds due to Video Jitter, dim, blurred, unfocused, obstructed, non-aligned feeds)	"Poor quality video feed" means blurred, jiggered, dim or unclear video. Camera Feed Error Resolution time is the time taken to improve the feed to satisfactory levels after it has been detected & logged by the Surveillance System / administrative officials. Logging of such calls would be through IT helpdesk system.	≥98%	0
			≥95 % to <98%	3
			<95%	4
3.	Average Frame rate maintained for viewing	Average frame rate as per the requirement of the RFP to be maintained by all cameras  Measurement tool: Log from VMS	≥90% calculated on a monthly basis	0
			≥85 % to <90% calculated on a monthly basis	3
			<85% calculated on a monthly basis	4
4.	Average Frame rate maintained for recording	Average frame rate as per the requirement of the RFP to be maintained by all cameras  Measurement tool: Log from VMS	≥95% calculated on a monthly basis	0
			≥90 % to <95% calculated on a monthly basis	3
			<90% calculated on a monthly basis	4
5.	Video stream Latency	The time required for transmission of video feed from one point to another  Measurement tool: Report from EMS	≤40ms	0
			>40ms to ≤60ms	3
			>60ms	4

Sl. No.	Measurement	Definition	Target	Severity Level
6.	Change of Screen from one camera source to another	The time required for transmission of screen from one camera source to another  Measurement tool: Log from VMS	≥2s	0
			>2s to ≤5s	3
			>5s	4
7.	Video Feed Query Retrieval Response Time	The time taken for receiving response to a query raised for video feed  Measurement tool: Log from VMS	≤10s	0
			>10s to ≤20s	3
			>20s	4
8.	PTZ Lag Time	The time taken between movement at keyboard/joystick and actual moving indication through video feed viewed  Measurement tool: Report from EMS	≤2s	0
			>2s to ≤5s	3
			>5s	4
9.	ANPR for Standard Number plates (4 wheelers & above)	Percentage of correct readings by ANPR camera for standard number plates for 4 wheelers and above  Measurement tool: ANPR system reports	≥70%	0
			≥60% to <70%	3
			<60%	4
10.	ANPR for Non-Standard Number plates (4 wheelers & above)	Percentage of correct readings by ANPR camera for non-standard number plates for 4 wheelers and above  Measurement tool: ANPR system reports	≥60%	0
			>50% to <60%	3
			<50%	4
11.	ANPR for Standard Number plates (2 & 3 wheelers)	Percentage of correct readings by ANPR camera for standard number plates for 2 and 3 wheelers)  Measurement tool: ANPR system reports	≥50%	0
			>35% to <50%	3
			<35%	4
12.	ANPR for Non-Standard Number	Percentage of correct readings by ANPR camera for non-standard	≥35%	0
			>30% to <35%	3

Sl. No.	Measurement	Definition	Target	Severity Level
	plates (2 & 3 wheelers)	number plates for 2 and wheelers Measurement tool: ANPR system reports	<30%	4

**61.6.6 Wi-Fi related performance levels**

Wi-Fi related performance levels as per the table provided below:

Sl. No.	Measurement	Definition	Target	Severity Level
1.	Availability of Wi-Fi through Access Points (AP)	<p>Downtime means non-working/non-availability of APs at all locations. Uptime shall be calculated as {1-(no. of AP hours not available) / (Total no of APs* Total hrs. per quarter)}.</p> <p>For ex, if 600 nos. of APs are deployed at various locations, and 20 AP do not work for 1 hour, the total non-working AP hours with be 20 and the uptime would be {1-(20/(600*90*24))}, 600 being the number of APs, for 90 days on 24 hours basis. This down time shall be used for penalty calculations on quarterly basis and debited from the quarterly payables. The penalties would be levied for every AP down time – be it for non-availability of network, theft, damage or non- availability of power etc.</p> <p>Measurement Tool: Reports from EMS. MSI shall submit monthly reports on the performance and adherence to the SLA while the penalties shall be charged on quarterly basis</p>	Upto $\geq 98\%$ uptime	0
			$\geq 96\%$ to $<98\%$ up time measured on a monthly basis	2
			$\geq 92\%$ to $<96\%$ up time measured on a monthly basis	4
			$<92\%$	5
2.	Average bandwidth to the user	1 Mbps Measurement Tool: Reports from EMS. MSI shall submit monthly reports on the performance and adherence to the SLA while the penalties shall be charged on quarterly basis	$<1\text{Mbps}$	2

**Note:** Downtime for single AP at any location should not be greater than 12 hours. For every hour beyond this penalty of Rs.1000/- per AP per location would be applicable additional to penalty specified as per SLA and Penalty Deduction for Wi-Fi.

#### 61.6.7 Service Level for ICT solutions

Service Level for ICT solutions as per the table provided below:

Sl. No.	Measurement	Definition	Target	Severity Level
1.	Availability of Applications including: <ul style="list-style-type: none"> <li>• Mobile Application</li> <li>• RFID based Bin Management System</li> <li>• Automated Vehicle Locator System</li> <li>• Environmental Sensor</li> <li>• Staff Attendance Management System</li> <li>• Adaptive Traffic Control Signal System (ATCS)</li> </ul>	Measurement Tool: Reports from EMS	Minimum 98% up time measured on a monthly basis	0
			≥96.0% to <98.0% up time measured on a monthly basis	5
			<96.0% time measured on a monthly basis	9
2.	Availability of Intelligent Traffic Applications like: <ul style="list-style-type: none"> <li>• Variable message system</li> <li>• Public address system</li> </ul>	Measurement Tool: Reports from EMS	Minimum 95% up time measured on a monthly basis	0
			≥93.0% to <95.0% up time measured on a monthly basis	4
			≥90.0% to <93.0% up time measured on a monthly basis	6

Sl. No.	Measurement	Definition	Target	Severity Level
			<90.0% up time measured on a monthly basis	9
3.	Availability of field infrastructure including: <ul style="list-style-type: none"> <li>• GPS Unit</li> <li>• RFID Readers and Tags</li> <li>• GPS based handheld Device</li> <li>• Public Address System Loudspeakers</li> <li>• Environmental Sensors</li> <li>• Smart Traffic Detectors, Sensors &amp; Controllers</li> <li>• Variable Message Signboard</li> <li>• PA System</li> <li>• Other Equipment</li> </ul>	Measurement Tool: Reports from EMS	Minimum 99% up time measured on a monthly basis	0
			≥96.0% to <97.0% up time measured on a monthly basis	4
			≥95.0% to <96.0% up time measured on a monthly basis	6
			<95.0% time measured on a monthly basis	7
4.	Battery replacement for all equipment / devices procured	Replacement of various equipment batteries. This excludes regular maintenance of the UPS and its batteries.  Measurement Tool: SLA Monitoring tool for inventory management	Batteries to be replaced every 3 <sup>rd</sup> year	5
5.	Repair / replacement of infrastructure	MSI should keep adequate spares at any given point of project execution.	Within 4 business hours of logging complaint	0

Sl. No.	Measurement	Definition	Target	Severity Level
	equipment including: <ul style="list-style-type: none"> <li>• GPS Unit</li> <li>• RFID Readers and Tags</li> <li>• GPS based handheld Device</li> <li>• Public Address System – Loudspeakers</li> <li>• Environmental Sensors</li> <li>• Smart Traffic Detectors, Sensors &amp; Controllers</li> <li>• Variable Message Signboard</li> <li>• PA System</li> <li>• Other Equipment</li> </ul>	Infrastructure equipment should be replaced or repaired after complaint logging from Client officials  Measurement Tool: System generated call log at Helpdesk	>1 to ≤2 business days of logging complaint	3
			More than 2 business days of logging complaint	4
6.	Asset/ Inventory Management	Provide monthly MIS of Asset Inventory to check asset inventory level.  Measurement Tool: SLA monitoring tool for inventory management	≥95% of the minimum required inventory level should be available measured on monthly basis	0

Sl. No.	Measurement	Definition	Target	Severity Level
			<95% of the minimum required inventory level	3 (Severity level would increase by 1 for every 5% drop in inventory Level)
		Conduct Annual Physical Asset verification once in a year and give a report within 2 months from the date of verification.	100% Management approval of Physical Asset Verification report	5

#### 61.6.8 Helpdesk SLA

Helpdesk SLA as per the table provided below:

Service	Parameter	SLA	Validation	Penalty	Tools Used
Helpdesk Availability	Help desk should be available and All incidents/ events raised with the IT helpdesk should be logged into the system and service ticket number should be provided to the employee	100% calls to be logged and service ticket no. shall be generated	Reports generated from Ticket logging system	95%-99% calls are logged and ticket is generated: penalty of 2% of monthly O&M charges	Automated Monitoring Tool
				90%-95% calls are logged and ticket is generated: penalty of 5% of monthly O&M charges	
				<90% call resolved in specific time:	



Service	Parameter	SLA	Validation	Penalty	Tools Used
				penalty of 10% of monthly O&M charges	
Helpdesk	Resolution of ticket logged as per the severity definition chart	99%	Reports generated from Ticket logging system	95%-99% calls are logged and ticket is generated: penalty of 2% of monthly O&M charges	Automated Monitoring Tool
				90%-95% calls are logged and ticket is generated: penalty of 5% of monthly O&M charges	
				<90% call resolved in specific time: penalty of 10% of monthly O&M charges	
Desk Side technical support services	Resolution of ticket logged as per the severity definition chart	95%	Reports generated from Ticket logging system	1% of monthly O&M charges	Automated Monitoring Tool
					OV Performance Insight (OVPI)
Problem Management	Supplier shall analyse all the incidents and provide a root cause report every month if there are more	100% timely submission covering all incident	Root cause report	5% penalty on the monthly O&M charges of that project area, if the	

Service	Parameter	SLA	Validation	Penalty	Tools Used
	than 10 incidents of the same type. Supplier shall take the needed corrective action to prevent further issues due to the same cause	s logged in that month		supplier does not submit a problem report for that month	
			Incident report stating problems faced by the users	5% penalty on the monthly O&M charges of that project area, if the supplier does not perform the corrective action for more than one calendar month	
			Document detailing corrective action		

## 62 Reporting Procedure

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

## 63 Issue Management Procedures

### 63.1 General

**63.1.1** This process provides an appropriate management structure for the orderly consideration and resolution of business and operational issues in the event that quick consensus is not reached between Client and Bidder.

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

### 63.2 Issue Management Process

- 63.2.1** Either Client or MSI may raise an issue by documenting the business or technical problem, which presents a reasonably objective summary of both points of view and identifies specific points of disagreement with possible solutions.
- 63.2.2** Any unresolved issues/disputes concerning the Project/Contract between the Parties shall first be referred in writing to the Client for its consideration and resolution. If the Client is unable to resolve any issue/dispute within 10 days of reference to them, the Client shall refer the matter to the Steering Committee. The Steering Committee within 30 days of reference to them shall try to resolve the issue/dispute.
- 63.2.3** If the Steering Committee fails to resolve a dispute as per the above clause, the same shall be referred to arbitration. The arbitration proceedings shall be carried out as per the Arbitration procedures mentioned in Clause 32 of this section of RFP.

## **64 Service Level Change Control**

- 64.1 General:** It is acknowledged that this Service levels may change as Client's business needs evolve over the course of the contract period. As such, this document also defines the following management procedures:
- i. A process for negotiating changes to the Service Levels
  - ii. An issue management process for documenting and resolving particularly difficult issues.
  - iii. Client and Bidder management escalation process to be used in the event that an issue is not being resolved in a timely manner by the lowest possible level of management.
  - iv. Any changes to the levels of service provided during the term of this Agreement shall be requested, documented and negotiated in good faith by both parties. Either party can request a change.
- 64.2 Service Level Change Process:** The parties may amend Service Level by mutual agreement in accordance. Changes can be proposed by either party. Unresolved issues shall also be addressed. MSI's representative shall maintain and distribute current copies of the Service Level document as directed by Client. Additional copies of the current Service Levels shall be available at all times to authorized parties.
- 64.3 Version Control / Release Management:** All negotiated changes shall require changing the version control number. As appropriate, minor changes may be accumulated for periodic release or for release when a critical threshold of change has occurred.
- 64.4 Conditions for No Penalties**
- Penalties shall not be levied on the Bidder in the following cases:
- i. There is a force majeure event effecting the SLA which is beyond the control of the successful bidder. Force Majeure events shall be considered in line with the clause mentioned RFP.
  - ii. The non-compliance to the SLA has been due to reasons beyond the control of the successful bidder.
  - iii. Theft cases by default/vandalism would not be considered as "beyond the control of bidder". Hence, the Bidder should be taking adequate anti-theft measures, spares strategy, Insurance as required to maintain the desired required SLA.

## D. Annexures

### Annexure I: Draft Template for Variation Control Note

Variation Control Note	VCN Number:
<b>Part A: Initiation</b>	
Title	
Originator	
Sponsor	
Date of initiation	
<b>Details of Proposed Change</b>	
Authorized by Client	Date
Name	
Signature	
Received by MSI	
Name	
Signature	
Change	
Variation Control Note	VCN Number:
<b>Part B: Evaluation</b>	
(Identify any attachments as B1, B2, and B3 etc.)	
Changes to services, payment terms, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue	
Brief Description of proposed variation:	
Rationale and Justification for the Proposed Change:	
List of enablers required for implementing the Proposed Change:	
Timetable for implementation of the Proposed Change:	
Material Evidence to prove that the Proposed Change is not already covered within the scope of the RFP, Contract and the Service Levels (Applicable, if initiated by MSI)	
Cost for Change:	
Other Relevant Information: (including value-added and acceptance criteria)	
Authorized by Client	Date
Name	
Signature	

Variation Control Note	VCN Number:
Part C: Client to Proceed <<For Official Use Only>>	
Implementation of this VCN 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.)	
<b>For Client and its nominated agencies</b>	<b>For MSI</b>
Signature	Signature
Name	Name
Title	Title
Date	Date

**Annexure II: Form of Agreement**

This Agreement made on the ..... date of ..... 2018, between ..... (hereinafter referred to as the “MSI”) of the one-part and Rourkela Smart City Limited (hereinafter called the “Client”) of the other part.

**WHEREAS** the Client desires to engage the MSI to supply, install, achieve operational acceptance of, and support the Implementation of Rourkela Smart City Solutions in Rourkela, Odisha, India (“**System**”).

**WHEREAS** MSI has represented that it has the required professional skills, personnel and technical resources to perform the services and has agreed to provide the Services on the terms and conditions set forth in this Contract and is about to perform services as specified in this RFP ..... (hereinafter called “works”) mentioned, enumerated or referred to in certain Contract conditions, specification, scope of work, other sections of the RFP, covering letter and schedule of prices which, for the purpose of identification, have been signed by ..... on behalf of the ..... MSI and Rourkela Smart City Limited (the Client) on behalf of the Client and all of which are deemed to form part of the Contract as though separately set out herein and are included in the expression “Contract” whenever herein used.

**NOW, THEREFORE, IT IS HEREBY AGREED**

- a. The Client has accepted the tender of MSI for the provision and execution of the said works for the sum of .....upon the terms laid out in this RFP.
- b. MSI hereby agrees to provide Services to Client, conforming to the specified Service Levels and conditions mentioned
- c. The following documents attached hereto shall be deemed to form an integral part of this Agreement:

<b>Complete Request for Proposal (RFP) Document</b>	<i>Volumes 1, 2 and 3 of the RFP and corrigendum and addendum, if any</i>
<b>Break-up of cost components</b>	<i>MSI’s Commercial bid</i>
<b>The Client’s Letter of Intent dated &lt;&lt;&gt;&gt;</b>	<i>To be issued later by the Client</i>
<b>MSI’s Letter of acceptance dated &lt;&lt;&gt;&gt;</b>	<i>To be issued later by the MSI</i>
<b>Bid submitted by MSI as per file No. &lt;&lt;&gt;&gt;</b>	<i>MSI’s Technical bid</i>

- d. The mutual rights and obligations of the “Client” and MSI shall be as set forth in the Agreement, in particular:
  - MSI shall carry out and complete the Services in accordance with the provisions of the Agreement; and
  - The “Client” shall make payments to MSI in accordance with the provisions of the Agreement.

**NOW THESE PRESENT WITNESS** and the parties hereto hereby agree and declare as follows, that is to say, in consideration of the payments to be made to MSI by the

Client as hereinafter mentioned, MSI shall deliver the services for the said works and shall do and perform all other works and things in the Contract mentioned or described or which are implied there from or there in respectively or may be reasonably necessary for the completion of the said works within and at the times and in the manner and subject to the terms, conditions and stipulations mentioned in the said Contract.

**AND** in consideration of services and milestones, the Client shall pay to MSI the said sum of ..... or such other sums as may become payable to MSI under the provisions of this Contract, such payments to be made at such time and in such manner as is provided by the Contract.

IN WITNESS WHEREOF the parties hereto have signed this deed hereunder on the dates respectively mentioned against the signature of each.

Signed  
Name : \_\_\_\_\_  
Designation : \_\_\_\_\_  
Date : \_\_\_\_\_  
Place : \_\_\_\_\_

Signed  
Name : \_\_\_\_\_  
Designation : \_\_\_\_\_  
Date : \_\_\_\_\_  
Place : \_\_\_\_\_

**in the presence of :**

**in the presence of :**

Signed  
Name : \_\_\_\_\_  
Designation : \_\_\_\_\_  
Date : \_\_\_\_\_  
Place : \_\_\_\_\_

Signed  
Name : \_\_\_\_\_  
Designation : \_\_\_\_\_  
Date : \_\_\_\_\_  
Place : \_\_\_\_\_