



Metropolitan Transport Corporation (Chennai) Ltd. Pallavan House, Anna Salai, Chennai-600 002



Request for Proposal for selection of System Integrator to “Design, Supply, Implement, Commission, Operate & Manage the Safe City Solution” as a part of Nirbhaya Safe City Project for Metropolitan Transport Corporation

RFP No. : 17/44017/Proj/MTC/2020

Due Date :14.09.2020



Request for Proposal Volume 3: Master Service Agreement

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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 the Authority, subsequent to its installation, rollout and deployment of trained manpower, when all the activities as defined in Scope of Work have been successfully executed and completed to the satisfaction of Authority. Refer to RfP Volume II.
- 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 Agreement and during the subsistence thereof, applicable to the Project.
- 1.3. **“Authority”** means Metropolitan Transport Corporation. The project shall be executed in Chennai and shall be owned by Metropolitan Transport Corporation.
- 1.4. **“Bidder”** shall mean organization/consortium submitting the proposal in response to this RfP.
- 1.5. **“SI”** means the bidder who is selected by the Authority at the end of this RfP process. The agency shall carry out all the services mentioned in the scope of work of this RfP.
- 1.6. **“Contract”** means the Contract entered into by the parties with the entire documentation specified in the RfP.
- 1.7. **“Contract Value”** means the price payable to SI under this Contract for the full and proper performance of its contractual obligations.
- 1.8. **“Commercial Off-The-Shelf (COTS)”** refers to software products that are ready-made and available for sale, lease, or license to the general public.
- 1.9. **“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.
- 1.10. **“Document”** means any embodiment of any text or image however recorded and includes any data, text, images, sound, voice, codes, databases or any other electronic documents as per IT Act 2000.

- 1.11. **“Effective Date”** means the date on which this Contract is signed or LoA is issued by Authority, whichever is earlier and executed by the parties hereto. If this Contract is executed in parts, then the date on which the last of such Contracts is executed shall be construed to be the Effective Date.
- 1.12. **“GCC”** means General Conditions of Contract
- 1.13. **“Goods”** means all of the equipment, sub-systems, hardware, software, products accessories, software and/or other material/items which SI is required to supply, install and maintain under the contract.
- 1.14. **“CCC”** means **Command & Control Centre**.
- 1.15. **“Intellectual Property Rights”** means any patent, copyright, trademark, trade name, service marks, brands, proprietary information whether arising before or after the execution of this Contract and the right to ownership and registration of these rights.
- 1.16. **“Go- Live”** means commissioning of project after installation and commencement of all safe city components, including training as per scope of work mentioned in RfP. Bidder should have the approval from Authority for user acceptance testing.
- 1.17. **“Notice”** means: a notice; or a consent, approval or other communication required to be in writing under this Contract.
- 1.18. **“OEM”** means the **Original Equipment Manufacturer of any equipment/system/software/product** which are providing such goods to the Authority under the scope of this RfP.
- 1.19. **“SI’s Team”** means SI who has to provide goods & services to the Authority under the scope of this Contract. This definition shall also include any and/or all of the employees of SI, authorized service providers/partners and representatives or other personnel employed or engaged either directly or indirectly by SI for the purposes of this Contract.
- 1.20. **“Consortium”** means the entity named in the contract for any part of the work has been sublet with the consent in writing of the Authority and the heirs, legal representatives, successors and assignees of such person.
- 1.21. **“Replacement Service Provider”** means the organization replacing SI in case of contract termination for any reasons
- 1.22. **“Sub-Contractor”** shall mean the entity named in the contract for any part of the work or any person to whom any part of the contract has been sublet with the

consent in writing of the Authority and the heirs, legal representatives, successors and assignees of such person.

- 1.23. **“SCC”** means Special Conditions of Contract.
- 1.24. **“Services”** means the work to be performed by the agency pursuant to this RfP and to the contract to be signed by the parties in pursuance of any specific assignment awarded by the Authority.
- 1.25. **“Server Room”** or **“Data Centre”** shall have the same meaning.

2 Interpretation

- 2.1. In this Contract unless a contrary intention is evident:
 - a. the clause headings are for convenient reference only and do not form part of this Contract;
 - b. unless otherwise specified a reference to a clause number is a reference to all of its sub-clauses;
 - c. the word “include” or “including” shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
 - d. unless otherwise specified a reference to a clause, sub-clause or section is a reference to a clause, sub-clause or section of this Contract including any amendments or modifications to the same from time to time;
 - e. a word in the singular includes the plural and a word in the plural includes the singular;
 - f. a word importing a gender includes any other gender;
 - g. a reference to a person includes a partnership and a body corporate;
 - h. a reference to legislation includes legislation repealing, replacing or amending that legislation;
 - i. Where a word or phrase is given a particular meaning it includes the appropriate grammatical forms of that word or phrase which have corresponding meanings.
 - j. In the event of an inconsistency between the terms of this Contract and the RfP and the Bid, the terms hereof shall prevail.

3 Conditions Precedent

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

- 3.1. Furnishing by SI, an unconditional and irrevocable Performance Bank Guarantee (PBG) (as per the format in RfP Volume I) and acceptable to the Authority which would remain valid until such time as stipulated by the Authority.
- 3.2. Obtaining of all statutory and other approvals required for the performance of the Services under this Contract. This may include approvals/clearances, wherever applicable, that may be required for execution of this contract e.g. clearances from Government authorities for importing equipment, exemption of Tax/Duties/Levies, work permits/clearances for Bidder/Bidder's team, etc.
- 3.3. Furnish notarized copies of any/all contract(s) duly executed by SI and its OEMs existing at the time of signing of this contract in relation to the Authority's project. Failure to do so within stipulated time of signing of contract would attract penalty of 5% of the contract value
- 3.4. Furnishing of such other documents as the Authority may specify/demand.
- 3.5. The Authority 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 Authority may otherwise have.
- 3.6. In the event that any of the conditions set forth in Clause 3 hereinabove are not fulfilled within a month from the date of this Contract, or such later date as may be mutually agreed upon by the parties, the Authority may terminate this Contract.
- 3.7. In case there is a contradiction between the sections, the below hierarchy of sections in order of precedence:
 1. Pre-bid clarification and Corrigendum, if any
 2. RfP Volume III
 3. RfP volume II
 4. Annexures of RfP volume II
 5. RfP volume I

4 Scope of work

Scope of the work shall be as defined in RfP Volume II and Annexures thereto of the tender.

Authority has engaged SI to provide services related to implementation of Safe City Project using which the Authority intends to perform its business operations. SI is required to provide such goods, services and support as the Authority may deem proper and necessary, during the term of this Contract, and includes all such processes and activities

which are consistent with the proposals set forth in the Bid, the Tender and this Contract and are deemed necessary by the Authority, in order to meet its business requirements (hereinafter 'scope of work').

5 Key Performance Measurements

- 5.1. Unless specified by the Authority to the contrary, SI 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 section.
- 5.2. If the Contract, scheduled requirements, service specification includes more than one document, then unless the Authority specifies to the contrary, the later in time shall prevail over a document of earlier date to the extent of any inconsistency.
- 5.3. The Authority reserves the right to amend any of the terms and conditions in relation to the Contract/Service Specifications and may issue any such directions which are not necessarily stipulated therein if it deems necessary for the fulfilment of the Schedule of Requirements.

6 Commencement and Progress

- 6.1. SI shall subject to the fulfillment of the conditions precedent above, commence the performance of its obligations in a manner as per the Scope of Work (RfP Volume II).
- 6.2. SI 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.
- 6.3. SI 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 SI's Team complies with such Specifications and all other standards, terms and other stipulations/conditions set out hereunder.

7 Standards of performance

- 7.1. SI 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 best 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. SI shall always act, in respect of any matter relating to the Contract, as faithful advisors to the Authority and shall, at all times,

support and safeguard the Authority's legitimate interests in any dealings with Third Parties.

8 Approvals and Required Consents

- 8.1. The Authority shall extend necessary support to SI to obtain, maintain and observe all relevant and customary regulatory and governmental licenses, clearances and applicable approvals (hereinafter the "Approvals") necessary for SI to provide the Services. The costs of such Approvals shall be borne by SI. Both parties shall give each other all co-operation and information reasonably.
- 8.2. The Authority shall also provide necessary support to Bidder in obtaining the Approvals. In the event that any Approval is not obtained, SI and the Authority shall co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the Authority, 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 SI 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 SI 's obligations are dependent upon such Approvals.

9 Constitution of Consortium

- 9.1. For the purposes of fulfillment of its obligations as laid down under the Contract, where the Authority deems fit and unless the contract requires otherwise, Lead Bidder shall be the sole point of interface for the Authority and would be absolutely accountable for the performance of its own, the other member(s) of Consortium and/or its Team's functions and obligations.
- 9.2. The Consortium Partner(s) has agreed that SI is the prime point of contact between the Consortium Partner(s) and the Authority and it shall be primarily responsible for the discharge and administration of all the obligations contained herein and, the Authority, unless it deems necessary shall deal only with SI. SI along with all consortium members shall be jointly and solely responsible for the project execution
- 9.3. Without prejudice to the obligation of the Consortium Partner(s) to adhere to and comply with the terms of this Contract, the Consortium Partner(s) has executed and submitted a Power of Attorney in favor of SI authorizing him to act for and on behalf of such member(s) of the Consortium and do all acts as may be necessary for fulfillment of contractual obligations.
- 9.4. The Authority 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 Authority. An executed copy of each of such agreements/contracts shall, immediately upon execution be submitted by SI to the Authority.

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

10 Bidder's Obligations

- 10.1. SI's obligations shall include all the activities as specified by the Authority in the Scope of Work and other sections of the Tender and Contract and changes thereof to enable Authority to meet the objectives and operational requirements. It shall be SI's responsibility to ensure the proper and successful implementation, performance and continued operation of the proposed solution in accordance with and in strict adherence to the terms of his Bid, the Tender and this Contract.
- 10.2. In addition to the aforementioned, SI shall provide services to manage and maintain the said system and infrastructure as mentioned in RfP Volume II
- 10.3. Authority reserves the right to interview the personnel proposed that shall be deployed as part of the project team. If found unsuitable, the Authority may reject the deployment of the personnel. But ultimate responsibility of the project implementation shall lie with SI.
- 10.4. Authority reserves the right to require changes in personnel which shall be communicated to SI. SI with the prior approval of the Authority may make additions to the project team. SI shall provide the Authority with the resume of Key Personnel and provide such other information as the Authority may reasonably require. The Authority also reserves the right to interview the personnel and reject, if found unsuitable. In case of change in its team members, for any reason whatsoever, SI shall also ensure that the exiting members are replaced with at least equally qualified and professionally competent members.
- 10.5. SI shall ensure that none of the Key Personnel proposed (refer RfP Volume I) and manpower exit from the project during first 6 months of the beginning of the project. In such cases of exit, a penalty of INR 2 lakhs per such replacement shall be imposed on SI.
- 10.6. SI should submit profiles of only those resources who shall be deployed on the project. Any change of resource should be approved by the Authority and compensated with equivalent or better resource. The Authority may interview the

resources suggested by SI before their deployment on board. It does not apply in case of change requested by the Authority.

- 10.7. In case of change in its team members, SI shall ensure a reasonable amount of time overlap in activities to ensure proper knowledge transfer and handover/takeover of documents and other relevant materials between the outgoing and the new member.
- 10.8. SI shall ensure that SI's Team is competent, professional and possesses the requisite qualifications and experience appropriate to the task they are required to perform under this Contract. SI shall ensure that the services are performed through the efforts of SI's Team, in accordance with the terms hereof and to the satisfaction of the Authority. Nothing in this Contract relieves SI from its liabilities or obligations under this Contract to provide the Services in accordance with the Authority's directions and requirements and as stated in this Contract and the Bid to the extent accepted by the Authority and SI shall be liable for any non-performance, non-compliance, breach or other loss and damage resulting either directly or indirectly by or on account of its Team.
- 10.9. SI 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.
- 10.10. SI shall ensure that the OEMs supply equipment/components including associated accessories and software required and shall support SI in the installation, commissioning, integration and maintenance of these components during the entire period of contract. SI shall ensure that the COTS OEMs supply the software applications and shall support SI in the installation/deployment, integration, roll-out and maintenance of these applications during the entire period of contract. It must clearly be understood by SI 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 system as a complete Safe city solution including all the solutions proposed. SI 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.
- 10.11. All the software licenses that SI proposes should be perpetual software licenses. The software licenses shall not be restricted based on location and the Authority should have the flexibility to use the software licenses for other requirements if required.
- 10.12. All the OEMs that Bidder proposes should have Dealer possession licenses.

- 10.13. The Authority reserves the right to review the terms of the Warranty and Annual Maintenance agreements entered into between SI and OEMs and no such agreement/contract shall be executed, amended, modified and/or terminated without the prior written consent of the Authority. An executed copy of each of such agreements/contracts shall, immediately upon execution be submitted by SI to the Authority.
- 10.14. SI 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 SI shall ensure that the same is supported by the respective OEM for contract period.
- 10.15. If a product is de-supported by the OEM for any reason whatsoever, from the date of Acceptance of the System till the end of contract, SI should replace the products/solutions with an alternate that is acceptable to the Authority at no additional cost to the Authority and without causing any performance degradation.
- 10.16. The Licenses will be in the name of Authority only.
- 10.17. SI shall ensure that the OEMs provide the support and assistance to SI 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, SI shall replace the required component(s) with an equivalent or better substitute that is acceptable to Authority without any additional cost to the Authority and without impacting the performance of the solution in any manner whatsoever.
- 10.18. SI 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 Authority.
- 10.19. SI shall ensure that the OEMs for hardware servers/equipment or Bidder's trained engineers conduct the preventive maintenance on a Quarterly basis and break-fix maintenance in accordance with the best practices followed in the industry. SI shall ensure that the documentation and training services associated with the components shall be provided by the OEM partner or OEM's certified training partner without any additional cost to the Authority.
- 10.20. The training has to be conducted using official OEM course curriculum mapped with the hardware/Software Product's to be implemented in the project.
- 10.21. SI and their personnel/representative shall not alter/change/replace any hardware component proprietary to the Authority and/or under warranty or O&M of third party without prior consent of the Authority.

- 10.22. SI shall provision the required critical spares/components at the designated Datacenter Sites/office locations of the Authority for meeting the uptime commitment of the components supplied by him.
- 10.23. SI's representative(s) shall have all the powers requisite for the execution of scope of work and performance of services under this contract. SI's representative(s) shall liaise with the Authority's representative for the proper coordination and timely completion of the works and on any other matters pertaining to the works. SI shall extend full co-operation to Authority's representative in the manner required by them for supervision/inspection/observation of the equipment/goods/material, procedures, performance, progress, reports and records pertaining to the works. He shall also have complete charge of SI's personnel engaged in the performance of the works and to ensure compliance of rules, regulations and safety practice. He shall also cooperate with the other Service Providers/Vendors of the Authority working at the Authority's office locations & field locations and DC& DR sites. Such Bidder's representative(s) shall be available to the Authority's Representative at respective Datacenter during the execution of works.
- 10.24. SI shall be responsible on an ongoing basis for coordination with other vendors and agencies of the Authority in order to resolve issues and oversee implementation of the same. SI shall also be responsible for resolving conflicts between vendors in case of borderline integration issues.
- 10.25. SI is expected to set up a project office in Chennai 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 office during the contract period.
- 10.26. **Access to Sites**
- 10.26.1. Sites would include Server Room, Control Centre
- 10.26.2. The Authority's representative upon receipt of request from SI intimating commencement of activities at various locations shall give to SI access to as much of the Sites as may be necessary to enable SI to commence and proceed with the installation of the works in accordance with the program of work. Any reasonable proposal of SI 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 Authority. Such requests shall be made to the Authority's representative in writing at least 7 days prior to start of the work.
- 10.26.3. At the site locations, the Authority's representative shall give to SI access to as much as may be necessary to enable SI to commence and proceed with the installation of the works in accordance with the program of work or for performance of Facilities Management Services.

10.27. Start of Installation

- 10.27.1. Bidder shall co-ordinate with the Authority and stakeholders for the complete setup of sites before commencement of installation of other areas as mentioned in RfP Volume II.
- 10.27.2. As per TRAI guidelines, resale of bandwidth connectivity is not allowed. In such a case tripartite agreement should be formed between Authority, selected Bidder and Telecom Service Provider(s).
- 10.27.3. The plan and design documents thus developed shall be submitted by SI for approval by the Authority.
- 10.27.4. After obtaining the approval from the Authority, SI shall commence the installation.

10.28. Reporting Progress

- 10.28.1. SI shall monitor progress of all the activities related to the execution of this contract and shall submit to the Authority, progress reports with reference to all related work, milestones and their progress during the implementation phase.
- 10.28.2. Formats for all above mentioned reports and their dissemination mechanism shall be discussed and finalized along with project plan. The Authority on mutual agreement between both parties may change the formats, periodicity and dissemination mechanism for such reports.
- 10.28.3. Periodic meetings shall be held between the representatives of the Authority and SI at least once in every 15 days during the implementation phase to discuss the progress of implementation. After the implementation phase is over, the meeting shall be held as an ongoing basis, as desired by Authority, to discuss the performance of the contract.
- 10.28.4. SI shall ensure that the respective solution teams involved in the execution of work are part of such meetings.
- 10.28.5. Several review committees involving representative of the Authority and senior officials of SI shall be formed for the purpose of this project. These committees shall meet at intervals, as decided by the Authority later, to oversee the progress of the implementation.
- 10.28.6. All the goods, services and manpower to be provided/deployed by SI under the Contract and the manner and speed of execution and

maintenance of the work and services are to be conducted in a manner to the satisfaction of Authority's representative in accordance with the Contract.

- 10.28.7. The Authority 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 Authority may demand and upon such demand being made, SI shall provide documents, data, material or any other information which the Authority may require, to enable it to assess the progress/performance of the work/service.
- 10.28.8. At any time during the course of the Contract, the Authority shall also have the right to conduct, either itself or through another agency as it may deem fit, an audit to monitor the performance by SI of its obligations/functions in accordance with the standards committed to or required by the Authority and SI undertakes to cooperate with and provide to the Authority/any other agency appointed by the Authority, all Documents and other details as may be required by them for this purpose. Such audit shall not include Bidder's books of accounts.
- 10.28.9. 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 Authority's representative shall so notify SI in writing.
- 10.28.10. SI shall reply to the written notice giving details of the measures he proposes to take to expedite the progress so as to complete the works by the prescribed time or to ensure compliance to RfP requirements. SI shall not be entitled to any additional payment for taking such steps. If at any time it should appear to the Authority or Authority's representative that the actual progress of work does not conform to the approved plan SI shall produce at the request of the Authority's representative a revised plan showing the modification to the approved plan necessary to ensure completion of the works within the time for completion or steps initiated to ensure compliance to the stipulated requirements
- 10.28.11. The submission seeking approval by the Authority or Authority's representative of such plan shall not relieve SI of any of his duties or responsibilities under the Contract.
- 10.28.12. In case during execution of works, the progress falls behind schedule or does not meet the Tender requirements, SI 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 Authority for its review and approval. All time and cost effect in this respect shall be borne, by SI within the contract value.

10.29. Knowledge of Server Room, Control Centre.

10.29.1. SI shall be granted access to the Server Room, Control Centre, for inspection by the Authority before commencement of installation. The plan shall be drawn mutually at a later stage.

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

10.30. Project Plan

10.30.1. Within 15 calendar days of effective date of the contract/issuance of LoA, SI shall submit to the Authority for its approval a detailed Project Plan with details of the Project showing the sequence, procedure and method in which he proposes to carry out the works. The Plan so submitted by SI shall conform to the requirements and timelines specified in the Contract. The Authority and SI shall discuss and agree upon the work procedures to be followed for effective execution of the works, which SI intends to deploy and shall be clearly specified. The Project Plan shall include but not 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 Authority's Representative of the Project Plan shall not relieve SI of any of his duties or responsibilities under the Contract.

10.30.2. If SI's work plans necessitate a disruption/shutdown in Authority's operation, the plan shall be mutually discussed and developed so as to

keep such disruption/shutdown to the barest unavoidable minimum. Any time and cost arising due to failure of SI to develop/adhere such a work plan shall be to his account.

10.31. Adherence to safety procedures, rules regulations and restriction

- 10.31.1. SI's Team shall comply with the provision of all laws including labor laws, rules, regulations and notifications issued there under from time to time. All safety and labor laws enforced by statutory agencies and by Authority shall be applicable in the performance of this Contract and Bidder's Team shall abide by these laws.
- 10.31.2. Access to the Server Room, Control Centre shall be strictly restricted. No access to any person except the essential members of SI's Team who are authorized by the Authority 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 Authority only. SI shall maintain a log of all activities carried out by each of its team personnel.
- 10.31.3. 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
- 10.31.4. SI shall take all measures necessary or proper to protect the personnel, work and facilities and shall observe all reasonable safety rules and instructions. SI's Team shall adhere to all security requirement/regulations of the Authority during the execution of the work. Authority's employee also shall comply with safety procedures/policy.
- 10.31.5. SI 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.

10.32. Statutory Requirements

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

11 Authority's Obligations

- 11.1. Authority 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 SI.
- 11.2. Authority shall ensure that timely approval is provided to SI as and when required, which may include approval of project plans, implementation methodology, design documents, specifications, or any other document necessary in fulfillment of this contract.
- 11.3. The Authority's representative shall interface with SI, to provide the required information, clarifications, and to resolve any issues as may arise during the execution of the Contract. Authority shall provide adequate cooperation in providing details, coordinating and obtaining of approvals from various governmental agencies, in cases, where the intervention of the Authority is proper and necessary.
- 11.4. Authority may provide on Bidder's request, particulars/information/or documentation that may be required by SI for proper planning and execution of work and for providing services covered under this contract and for which SI may have to coordinate with respective vendors.
- 11.5. Authority shall provide to SI only sitting space and basic infrastructure not including, stationery and other consumables at the Authority's office locations.
- 11.6. Authority reserves the right to procure the hardware including devices on quarterly basis in first year based on actual deployment and O&M shall be applicable whenever the devices are procured and deployed till end of the contract.
- 11.7. **Site Not Ready:** Authority hereby agrees to make the project sites ready as per the agreed specifications, within the agreed timelines. Authority agrees that SI shall not be in any manner liable for any delay arising out of Authority's failure to make the site ready within the stipulated period.

12 Payments

- 12.1. Authority shall make payments to SI at the times and in the manner set out in the Payment schedule as specified Payment Milestones in RfP Volume II subject to the penalties as mentioned under Section 0:

- 12.2. SERVICE LEVELS. Authority shall make reasonable efforts to make payments to SI within 45 days of receipt of invoice(s) and all necessary supporting documents.
- 12.3. All payments agreed to be made by Authority to SI in accordance with the Bid shall be inclusive of all statutory levies, duties, taxes and other charges whenever levied/applicable, if any, and Authority shall not be liable to pay any such levies/other charges under or in relation to this Contract and/or the Services.
- 12.4. No invoice for extra work/change order on account of change order shall be submitted by SI unless the said extra work/change order has been authorized/approved by the Authority in writing in accordance with Change Control Note (Refer Annex I: Change Control Note)
- 12.4. In the event of Authority noticing at any time that any amount has been disbursed wrongly to SI or any other amount is due from SI to the Authority, the Authority may without prejudice to its rights recover such amounts by other means after notifying SI or deduct such amount from any payment falling due to SI. The details of such recovery, if any, shall be intimated to SI. SI 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 Authority or SI.
- 12.5. All payments to SI shall be subject to the deductions of tax at source under Income Tax Act, and other taxes and deductions as provided for under any law, rule or regulation. All costs, damages or expenses which Authority may have paid or incurred, for which under the provisions of the Contract, SI is liable, the same shall be deducted by Authority from any dues to SI. All payments to SI shall be made after making necessary deductions as per terms of the Contract and recoveries towards facilities, if any, provided by the Authority to SI on chargeable basis.

13 Intellectual Property Rights

- 13.1. Retention of Ownership except for the rights expressly granted to the Licensee under this Agreement, the Licensor shall retain all right, title and interest in and to the Licensed Technology, including all worldwide Technology and intellectual property and proprietary rights.
- 13.2. Preservation of Notice Licensee shall not remove, efface or obscure any copyright notices or other proprietary notices or legends from any Licensed Technology or materials provided under this Agreement, and shall reproduce all such notices and legends when incorporating Licensed Technology or materials into any Integrated Products.
- 13.3. SI 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. SI shall keep the Authority 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 SI or SI's Team during the course of performance of the Services. SI's liability is excluded regarding any claim based on any of the following (a) anything Authority provides which is incorporated into the Solution; (b) the Authority'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

- 13.4. Authority shall own and have a right in perpetuity to use all newly created Intellectual Property Rights which have been developed solely during execution of this Contract, including but not limited to all processes, products, specifications, reports and other documents which have been newly created and developed by SI solely during the performance of Services and for the purposes of inter-alia use or sub-license of such Services under this Contract. SI undertakes to disclose all such Intellectual Property Rights arising in performance of the Services to the Authority, execute all such agreements/documents and obtain all permits and approvals that may be necessary in regard to the Intellectual Property Rights of the Authority.
- 13.5. If Authority desires, SI shall be obliged to ensure that all approvals, registrations, licenses, permits and rights etc. which are inter-alia necessary for use of the goods supplied/installed by SI, the same shall be acquired in the name of the Authority, prior to termination of this Contract and which may be assigned by the Authority to SI for the purpose of execution of any of its obligations under the terms of the Bid, Tender or this Contract. However, subsequent to the term of this Contract, such approvals, registrations, licenses, permits and rights etc. shall endure to the exclusive benefit of the Authority.
- 13.6. SI 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 Authority in writing

14 Taxes

- 14.1. SI shall bear all personnel taxes levied or imposed on its personnel, or any other member of SI's Team, etc. on account of payment received under this Contract. SI shall bear all corporate taxes, levied or imposed on SI on account of payments received by it from the Authority for the work done under this Contract.
- 14.2. SI shall bear all taxes and duties etc. levied or imposed on SI under the Contract including but not limited to Goods and Service Tax (GST), import duty, excise, etc. 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 Authority under the Contract. It shall be the responsibility of SI to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. SI shall also provide the Authority such information, as it may be required in regard to SI's details of payment made by the Authority under the Contract for proper assessment of taxes and duties. The amount of tax withheld by the Authority shall at all times be in accordance with Indian Tax Law and the Authority shall promptly furnish to SI original certificates for tax deduction at source and paid to the Tax Authorities.

- 14.3. SI agrees that he 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
- 14.4. SIs shall fully familiarize themselves about the applicable domestic taxes (such as GST, income taxes, duties, fees, levies, etc.) on amounts payable by the Authority 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.)
- 14.5. Should SI fail to submit returns/pay taxes in times as stipulated under applicable Indian/State Tax Laws and consequently any interest or penalty is imposed by the concerned authority, SI shall pay the same. SI shall indemnify Authority against any and all liabilities or claims arising out of this Contract for such taxes including interest and penalty by any such Tax Authority may assess or levy against the Authority/Lead Bidder.
- 14.6. Supplies of materials from abroad are exempted from levy of Sales Tax/VAT on works/works Contract tax (Central or state). However, the Sales Tax/VAT on works (central or state) if levied on supplies made from indigenous vendors for the works shall be borne by SI within the Contract Price. GST, etc., if any applicable, shall be payable extra, at actuals by the Authority in accordance with the conditions of the Contract and upon submission of proof of payment of such taxes.
- 14.7. The Authority shall if so required by applicable laws in force, at the time of payment, deduct income tax payable by SI at the rates in force, from the amount due to SI and pay to the concerned tax authority directly.

15 Indemnity

- 15.1. SI shall indemnify the Authority 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:

- a. any negligence or wrongful act or omission by SI or any third party associated with SI in connection with or incidental to this Contract; or
 - b. any breach of any of the terms of SI's did as agreed, the RfP and this Contract by SI
 - c. any infringement of patent, trademark/copyright or industrial design rights arising from the use of the supplied goods and related services or any part thereof
- 15.2. SI shall also indemnify the Authority 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.
- 15.3. Regardless of anything contained (except for SI's liability for bodily injury and/or damage to tangible and real property for which it is legally liable and it's liability for patent and copyright infringement in accordance with the terms of this Agreement) the total liability of SI, is restricted to the total value of the contract and SI is not responsible for any third party claims.

16 Warranty

- 16.1. A comprehensive warranty applicable on goods supplied under this contract shall be provided for the period of contract from the date of acceptance of respective system by the Authority.
- 16.2. 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.
- 16.3. The SI 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 SI and respective OEM along with service and spares support to ensure its efficient and effective operation for the entire duration of the contract.
- 16.4. The SI 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 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.
- 16.5. The SI 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 Authority's Specifications) or from any act or omission of the SI, that may develop under normal use of the supplied Goods in the conditions prevailing at the respective Datacenter/Server Room Sites.

- 16.6. The Authority shall promptly notify the SI in writing of any claims arising under this warranty.
- 16.7. Upon receipt of such notice, the SI shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without prejudice to any other rights which the Authority may have against the SI under the Contract.
- 16.8. If the SI, having been notified, fails to remedy the defect(s) within a reasonable period, the Authority may proceed to take such remedial action as may be necessary, at the SI's risk and expense and without prejudice to any other rights which the Authority may have against the SI under the Contract.
- 16.9. Any OEM specific warranty terms that do not conform to conditions under this Contract shall not be acceptable.

16.10. Defect Liability Period

- The Authority will take over the works and Sections on issue of completion certificate as per the provisions of Contract. However, the SI will continue to be responsible to make good the defects and maintain the components during Defect Liability Period (DLP).
- The scope of works during the Defect Liability Period shall include the works remedying of defects and replace all the faulty components with any condition to the contractor. All the components, system and sub-system, software, hardware and any other device required to make the system operational; shall be 100% working during the DLP period. The SI shall ensure maintain the required spare parts to replace the faulty devices during the DLP, however the clause related to vandalism doesn't cover under the DLP service.
- The duration of Defect liability period (DLP) shall be One (1) Year after issuing the completion certificate by authority. Defects Liability Period begins at Completion of project and ends after Defects Liability Period. If any defect or defects appear and is observed by the Authority during the Defects Liability Period, the Contractor shall rectify the notified Defect/Defects at his own cost within the length of time specified by the Authority notice. The Defects Liability Period shall be extended for as long as Defects remain to be rectified after the Defects Liability Period.

- If any defect or defects are not rectified within length of time specified in the notice, the Authority shall be at liberty to rectify the defect or defects as the case may be at risk and cost to the SI. The cost of such rectification shall be recovered from amount of Performance Security/Balance Retention Money available with the Authority or from any amount due to the SI.
- On Completion of the whole of the Works; when the Defect Liability Period has passed and the authority has certified that all Defects notified by them to the SI before the end of this period have been corrected; then only rest of the portion of CAPEX will be paid to the SI after successful completion of Exit Management.
- The SI shall supply to the Authority a detailed account of the total amount that the SI considers payable under the Contract before the end of the Defects Liability Period. The Authority shall issue a Defect Liability Certificate and certify the final payment that is due to the SI after successful completion of Exit Management.

17 Term and Extension of the Contract

- 17.1. The Contract period shall commence from the date of signing of contract or Issuance of LoA, whichever is earlier, and shall remain valid for 60 Months from the date of Go Live of the system.
- 17.2. If the delay occurs due to circumstances beyond control of SI such as strikes, lockouts, fire, accident, defective materials, delay in approvals or any cause whatsoever beyond the reasonable control of SI, a reasonable extension of time shall be granted by the Authority.
- 17.3. The Authority shall reserve the sole right to grant any extension to the term abovementioned and shall notify in writing to SI, at least 3 (three) months before the expiration of the Term hereof, whether it shall grant SI an extension of the Term. The decision to grant or refuse the extension shall be at the Authority's discretion and such extension of the contract, if any, shall be as per terms agreed mutually between the Authority and SI.
- 17.4. Where the Authority is of the view that no further extension of the term be granted to SI, the Authority shall notify SI of its decision at least 3 (three) months prior to the expiry of the Term. Upon receipt of such notice, SI shall continue to perform all its obligations hereunder, until such reasonable time beyond the Term of the Contract within which, the Authority shall either appoint an alternative agency/SI or create its own infrastructure to operate such Services as are provided under this Contract.

18 Dispute Resolution

- 18.1. In case, a dispute is referred to arbitration, the arbitration shall be under the **Indian Arbitration and Conciliation Act, 1996** and any statutory modification or re-enactment thereof.
- 18.2. If during the subsistence of this Contract or thereafter, any dispute between the Parties hereto arising out of or in connection with the validity, interpretation, implementation, material breach or any alleged material breach of any provision of this Contract or regarding any question, including as to whether the termination of this Contract by one Party hereto has been legitimate, the Parties hereto shall endeavor to settle such dispute amicably and/or by Conciliation to be governed by the Arbitration and Conciliation Act, 1996 or as may be agreed to between the Parties. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the Parties hereto, after reasonable attempts; which attempt shall continue for not less than thirty (30) days, gives thirty (30) day notice to refer the dispute to arbitration to the other Party in writing.
- 18.3. The Arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996.
- 18.4. The Arbitration proceedings shall be held in Chennai, Tamil Nadu State, India.
- 18.5. The Arbitration proceeding shall be governed by the substantive laws of India.
- 18.6. The proceedings of Arbitration shall be in English language.
- 18.7. Except as otherwise provided elsewhere in the contract if any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, at any time in connection with construction, meaning, operation, effect, interpretation or out of the contract or breach thereof the same shall be referred to a Tribunal of three (3) Arbitrators, constituted as per the terms of and under the (Indian) Arbitration and Conciliation Act, 1996. 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.
- 18.8. In case, a party fails to appoint an arbitrator within 30 days from the receipt of the request to do so by the other party or the two Arbitrators so appointed fail to agree on the appointment of third Arbitrator within 30 days from the date of their appointment upon request of a party, the Chief Justice of the Tamil Nadu High Court or any person or institution designated by him shall appoint the Arbitrator/Presiding Arbitrator upon request of one of the parties.

- 18.9. Any letter, notice or other communications dispatched to SI relating to either arbitration proceeding or otherwise whether through the post or through a representative on the address last notified to the Authority by SI shall be deemed to have been received by SI although returned with the remarks, refused 'undelivered' where about not known or words to that effect or for any other reasons whatsoever
- 18.10. If the Arbitrator so appointed dies, resigns, incapacitated or withdraws for any reason from the proceedings, it shall be lawful for the Authority to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left if both parties consent for the same; otherwise, he shall proceed de novo.
- 18.11. 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.
- 18.12. 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.
- 18.13. The Arbitrator shall give reasoned award and the same shall be final, conclusive and binding on the parties.
- 18.14. The fees of the arbitrator, costs and other expenses incidental to the arbitration proceedings shall be borne equally by the parties.

19 Time is of the essence

- 19.1. 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 SI by the specified completion date.

20 Conflict of interest

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

21 Publicity

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

22 Force Majeure

- 22.1. Force Majeure shall not include any events caused due to acts/omissions of SI resulting in a breach/contravention of any of the terms of the Contract and/or SI's Bid. It shall also not include any default on the part of SI due to its negligence or failure to implement the stipulated/proposed precautions, as were required to be taken under the Contract.
- 22.2. 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. 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) , or where despite the presence of adequate and stipulated safeguards the failure to perform obligations has occurred at any location in scope. In such an event, the affected party shall inform the other party in writing within five days of the occurrence of such event. Any failure or lapse on the part of SI 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.
- 22.3. In case of a Force Majeure, all Parties shall endeavor 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.

23 Delivery

- 23.1. SI shall bear the cost for packing, transport, insurance, storage and delivery of all the goods for at all locations identified by the Authority in Chennai.
- 23.2. 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 Authority.
- 23.3. SI shall only procure the hardware and software after approvals from a designated Committee/Authority.

24 Insurance

- 24.1. The Goods supplied under this Contract shall be comprehensively insured by SI at his own cost, against any loss or damage caused due to fire, natural calamities, animals, etc. for the entire period of the contract. SI shall submit to the Authority,

documentary evidence issued by the insurance company, indicating that such insurance has been taken.

- 24.2. SI shall bear all the statutory levies like customs, insurance, freight, etc. applicable on the goods and also the charges like transportation charges, octroi, etc. that may be applicable till the goods are delivered at the respective sites of installation shall also be borne by SI.
- 24.3. SI shall take out and maintain at its own cost, on terms and conditions approved by the Authority, insurance against the risks, and for the coverage's, as specified below;
- a. At the Authority's request, shall provide evidence to the Authority showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.
 - b. 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

25 Transfer of Ownership

- 25.1. SI must transfer all titles to the assets and goods procured for the purpose of the project to the Authority 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 SI. SI is expected to provide source code, transfer IPR and ownership right of only those solutions which would be customized by bidder for the use of Metropolitan Transport Corporation. For any pre-existing work, SI and Metropolitan Transport Corporation Limited shall be held jointly responsible and its use in any other project by SI shall be decided on mutual consent.
- 25.2. Forthwith upon expiry or earlier termination of the Contract and at any other time on demand by the Authority, SI shall deliver to the Authority all Documents provided by or originating from the Authority and all Documents produced by or from or for SI in the course of performing the Services, unless otherwise directed in writing by the Authority at no additional cost. SI shall not, without the prior written consent of the Authority store, copy, distribute or retain any such Documents.

26 Exit Management Plan

- 26.1. An Exit Management plan shall be furnished by SI in writing to the Authority within 90 days from the date of signing the Contract, which shall deal with at least the

following aspects of exit management in relation to the contract as a whole and in relation to the Project Implementation, and Service Level monitoring.

- 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 SI

26.2. Exit Management plan at the minimum adhere to the following:

- i. Three (3) 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/Authority
- iii. Certificate of Acceptance from authorized representative of Replacement Service Provider issued to SI on successful completion of handover and knowledge transfer
- iv. All BOQs in good working condition to be handed over to MTC at free of cost as per the Exit management plan proposed by the System Integrator, otherwise MTC will invoke the Performance Bank Guarantee within 30 Days

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

26.4. During the exit management period, SI shall use its best efforts to deliver the services.

B SPECIAL CONDITIONS OF CONTRACT (SCC)

27 Performance Security

- 27.1. SI shall furnish Performance Security to the Authority at the time of signing the Contract which shall be equal to 5% of the value of the Contract and shall be in the form of a **Bank Guarantee Bond** from a Nationalized/Scheduled Bank in the Performa given in RfP volume I within 15 days after issuance of Letter of Acceptance (LoA) which would be valid up to a period of six months after the contract completion period.

28 Limitation of Liability:

Limitation of Bidder's Liability towards the Authority:

- 28.1. 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.
- 28.2. Except in case of gross negligence or willful misconduct on the part of SI or on the part of any person or company acting on behalf of SI in carrying out the Services, SI, with respect to damage caused by SI to Authority's property, shall not be liable to Authority:
- (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 SI hereunder, or (B) the proceeds SI may be entitled to receive from any insurance maintained by SI to cover such a liability, whichever of (A) or (B) is higher.
- 28.3. This limitation of liability shall not affect SI liability, if any, for damage to Third Parties caused by SI or any person or company acting on behalf of SI in carrying out the Services.

29 Ownership and Retention of Documents

- 29.1. The Authority shall own the Documents, prepared by or for SI arising out of or in connection with the Contract.
- 29.2. Forthwith upon expiry or earlier termination of this Contract and at any other time on demand by the Authority, SI shall deliver to the Authority all documents provided by or originating from the Authority and all documents produced by or for SI in the

course of performing the Services, unless otherwise directed in writing by the Authority at no additional cost. SI shall not, without the prior written consent of the Authority store, copy, distribute or retain any such documents.

30 Information Security

- 30.1. SI shall not carry any written/printed document, layout diagrams, CD, hard disk, storage tapes, other storage devices or any other goods/material proprietary to Authority into/out of any location without written permission from the Authority.
- 30.2. SI shall not destroy any unwanted documents, defective tapes/media present at any location on their own. All such documents, tapes/media shall be handed over to the Authority.
- 30.3. All documentation and media at any location shall be properly identified, labeled and numbered by SI. SI shall keep track of all such items and provide a summary report of these items to the Authority whenever asked for.
- 30.4. Access to Authority's data and systems, Internet facility by SI at any location shall be in accordance with the written permission by the Authority. The Authority shall allow SI to use facility in a limited manner subject to availability. It is the responsibility of SI to prepare and equip himself in order to meet the requirements.
- 30.5. SI must acknowledge that Authority's business data and other Authority proprietary information or materials, whether developed by Authority or being used by Authority pursuant to a license agreement with a third party (the foregoing collectively referred to herein as "proprietary information") are confidential and proprietary to Authority; and SI 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 SI to protect its own proprietary information. SI recognizes that the goodwill of Authority depends, among other things, upon SI keeping such proprietary information confidential and that unauthorized disclosure of the same by SI or its team could damage the goodwill of Authority, and that by reason of SI's duties hereunder. SI may come into possession of such proprietary information, even though SI 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. SI shall use such information only for the purpose of performing the said services.
- 30.6. SI shall, upon termination of this agreement for any reason, or upon demand by Authority, whichever is earliest, return any and all information provided to SI by Authority, including any copies or reproductions, both hardcopy and electronic.
- 30.7. By virtue of the Contract, SI team may have access to personal information of the Authority and/or a third party. The Authority 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 SI team in the course of performing the Services under the Contract

31 Records of contract documents

- 31.1. SI shall at all-time make and keep sufficient copies of the process manuals, operating procedures, specifications, Contract documents and any other documentation for him to fulfil his duties under the Contract.
- 31.2. SI shall keep on the Site at least three copies of each and every specification and Contract Document, in excess of his own requirement and those copies shall be available at all times for use by the Authority's Representative and by any other person authorized by the Authority's Representative.

32 Security and Safety

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

33 Confidentiality

- 33.1. SI 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 Authority's business/operations, information, Application/software, hardware, business data, architecture schematics, designs, storage media and other information/documents without the prior written consent of the Authority.
- 33.2. The Authority reserves the right to adopt legal proceedings, civil or criminal, against SI in relation to a dispute arising out of breach of obligation by SI under this clause.
- 33.3. SI shall do everything reasonably possible to preserve the confidentiality of the Confidential Information including execution of a confidentiality agreement with the Authority to the satisfaction of the Authority.
- 33.4. SI shall notify the Authority 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 Authority.
- 33.5. SI shall be liable to fully recompense the Authority for any loss of revenue arising from breach of confidentiality.

34 Events of Default by SI

The failure on the part of SI 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 SI. The events of default are but not limited to:

- 34.1. SI/Bidder's Team has failed to perform any instructions or directives issued by the Authority which it deems proper and necessary to execute the scope of work or provide services under the Contract, or
- 34.2. SI/Bidder's Team has failed to confirm/adhere to any of the key performance indicators as laid down in the Key Performance Measures/Service Levels, or if SI has fallen short of matching such standards/benchmarks/targets as the Authority may have designated with respect to the system or any goods, task or service, necessary for the execution of the scope of work and performance of services under this Contract. The above mentioned failure on the part of SI may be in terms of failure to adhere to performance, quality, timelines, specifications, requirements or any other criteria as defined by the Authority;
- 34.3. SI has failed to remedy a defect or failure to perform its obligations in accordance with the specifications issued by the Authority, despite being served with a default notice which laid down the specific deviance on the part of SI/SI's Team to comply with any stipulations or standards as laid down by the Authority; or
- 34.4. SI/SI's Team has failed to adhere to any amended direction, instruction, modification or clarification as issued by the Authority during the term of this Contract and which the Authority deems proper and necessary for the execution of the scope of work under this Contract.
- 34.5. SI/SI'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.
- 34.6. There is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to SI.
- 34.7. SI/Bidder's Team has failed to comply with or is in breach or contravention of any applicable laws.

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

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

35 Termination

The Authority may, terminate this Contract in whole or in part by giving SI a prior and written notice indicating its intention to terminate the Contract under the following circumstances:

- 35.1. Where the Authority is of the opinion that there has been such Event of Default on the part of SI/SI's Team which would make it proper and necessary to terminate this Contract and may include failure on the part of SI to respect any of its commitments with regard to any part of its obligations under its Bid, the RfP or under this Contract.
- 35.2. Where it comes to the Authority's attention that SI (or SI's Team) is in a position of actual conflict of interest with the interests of the Authority, in relation to any of terms of SI's Bid, the RfP or this Contract.
- 35.3. Where SI'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 SI, any failure by SI to pay any of its dues to its creditors, the institution of any winding up proceedings against SI or the happening of any such events that are adverse to the commercial viability of SI. In the event of the happening of any events of the above nature, the Authority shall reserve the right to take any steps as are necessary, to ensure the effective transition of the sites pilot site to a successor agency, and to ensure business continuity.
- 35.4. Termination for Insolvency: The Authority may at any time terminate the Contract by giving written notice to SI, without compensation to SI, if SI becomes bankrupt or otherwise insolvent, provided that such termination shall not prejudice or affect any right of action or remedy which has accrued or shall accrue thereafter to the Authority.
- 35.5. SI may, subject to approval by the Authority, terminate this Contract before the expiry of the term by giving the Authority a prior and written notice at least 3 months in advance indicating its intention to terminate the Contract.

36 Consequence of Termination

- 36.1. In the event of termination of the Contract due to any cause whatsoever, whether consequent to the stipulated Term of the Contract or otherwise the Authority shall be entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective

business continuity of the project which SI shall be obliged to comply with and take all available steps to minimize loss resulting from that termination/breach, and further allow and provide all such assistance to the Authority and/or the successor agency/service provider, as may be required, to take over the obligations of SI in relation to the execution/continued execution of the requirements of the Contract.

- 36.2. Where the termination of the Contract is prior to its stipulated term on account of Default on the part of SI or due to the fact that the survival of SI as an independent corporate entity is threatened/has ceased, or for any other reason, whatsoever, the Authority, through unilateral re-determination of the consideration payable to SI, shall pay SI for that part of the Services which have been authorized by the Authority and satisfactorily performed by SI up to the date of termination. Without prejudice to any other rights, the Authority may retain such amounts from the payment due and payable by the Authority to SI as may be required to offset any losses caused to the Authority as a result of any act/omissions of SI. In case of any loss or damage due to default on the part of SI in performing any of its obligations with regard to executing the Schedule of Requirements under the contract, SI shall compensate the Authority for any such loss, damages or other costs, incurred by the Authority. Additionally, members of its team shall perform all its obligations and responsibilities under the Contract in an identical manner as were being performed before the collapse of SI as described above in order to execute an effective transition and to maintain business continuity. All third parties shall continue to perform all/any functions as stipulated by the Authority and as may be proper and necessary to execute the Schedule of Requirements under the Contract in terms of SI's Bid, the Bid Document and the Contract
- 36.3. Nothing herein shall restrict the right of the Authority to invoke the Bank Guarantee and other Guarantees furnished hereunder and pursue such other rights and/or remedies that may be available to the Authority under law.
- 36.4. The termination hereof shall not affect any accrued right or liability of either Party nor affect the operation of the provisions of the Contract that are expressly or by implication intended to come into or continue in force on or after such termination.

37 Change Control Note (CCN)

- 37.1. This applies to and describes the procedure to be followed in the event of any proposed change to contract, site Implementation, and Service levels. Such change shall include, but shall not be limited to, changes in the scope of services provided by SI and changes to the terms of payment.
- 37.2. Change requests in respect of the contract, the site implementation, or the Service levels shall emanate from the Parties' representative who shall be responsible for obtaining approval for the change and who shall act as its sponsor throughout the

Change Control Process and shall complete Part A of the CCN (Annex I, Section 3 of the RfP). CCNs shall be presented to the other Party's representative who shall acknowledge receipt by signature of the authorized representative of the Authority.

- 37.3. SI and the Authority while preparing the CCN, shall consider the change in the context of whether the change is beyond the scope of Services including ancillary and concomitant services required. The CCN shall be applicable for the items which are beyond the stated/implied scope of work as per the RfP document.
- 37.4. SI shall assess the CCN and complete Part B of the CCN. In completing Part B of the CCN SI/Lead Bidder shall provide as a minimum:
- a description of the change;
 - a list of deliverables required for implementing the change;
 - a timetable for implementation;
 - an estimate of any proposed change; or any relevant acceptance criteria;
 - an assessment of the value of the proposed change;
 - Material evidence to prove that the proposed change is not already covered within the scope of the RfP, Agreement and Service Levels.
- 37.5. Prior to submission of the completed CCN to the Authority or its nominated agencies, SI shall undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, SI shall consider the materiality of the proposed change in the context of the Agreement, the sites, Service levels affected by the change and the total effect that may arise from implementation of the change.
- 37.6. Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided SI meets the obligations as set in the CCN. In the event SI is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party shall be borne by SI. Change requests and CCNs shall be reported monthly to each Party's representative who shall prioritize and review progress.

C SERVICE LEVELS

38 Purpose

- 38.1. The purpose is to define the levels of service provided by SI to the Authority for the duration of the contract. The benefits of this are:
- 38.2. Start a process that applies to Authority and SI attention to some aspect of performance, only when that aspect drops below the threshold defined by the Authority.
- 38.3. Help the Authority control the levels and performance of SI's services.
- 38.4. The Service Levels are between the Authority and SI.

39 Service Level Agreements & Targets

- 39.1. This section is agreed to by Authority and SI as the key performance indicator for the project. This may be reviewed and revised according to the procedures detailed in [Clause 43 - SLA Change Control](#).
- 39.2. The following section reflects the measurements to be used to track and report system's performance on a regular basis. The targets shown in the following tables are for the period of contact.
- 39.3. The procedures in Clauses 42 and 43 shall be used if there is a dispute between Authority and SI on what the permanent targets should be.

40 General principles of Service Level Agreements

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

40.1. Liquidated Damages

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

40.2. Service Level Agreements (SLA)

Service Level Agreement shall be made applicable as per Vol. II of this RFP

41 Reporting Procedures

- 41.1 SI representative shall prepare and distribute Service level performance reports in a mutually agreed format by the 5th working day of subsequent month. The reports

shall include “actual versus target” Service Level Performance, a variance analysis and discussion of appropriate issues or significant events. Performance reports shall be distributed to Authority management personnel as directed by Authority.

- 41.2 Also, SI may be required to get the Service Level performance report audited by a third-party Auditor appointed by the Authority.

42 Issue Management Procedures

42.1 General

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

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.

42.2 Issue Management Process

- 42.2.1 Either Authority or SI 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.
- 42.2.2 Any unresolved issues/disputes concerning the Project/Contract between the Parties shall first be referred in writing to the Project Manager for his consideration and resolution. If the Project Manager is unable to resolve any issue/dispute within 5 days of reference to them, the Project Manager shall refer the matter to the Program Management Committee. If the Program Management Committee is unable to resolve the issues/disputes referred to them within 15 days the unresolved issue/dispute shall be referred to Steering Committee/high powered committee/Project Implementation Committee for resolution. The Steering Committee within 30 days of reference to them shall try to resolve the issue/dispute.
- 42.2.3 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 18 of this section of RfP.

43 Service Level Change Control

43.1 General

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

- a. A process for negotiating changes to the Service Levels
- b. An issue management process for documenting and resolving particularly difficult issues.
- c. Authority and Bidder management escalation process to be used in the event that an issue is not being resolved in a timely manner by the lowest possible level of management.

Any changes to the levels of service provided during the term of this Agreement shall be requested, documented and negotiated in good faith by both parties. Either party can request a change.

43.2 **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. SI's representative shall maintain and distribute current copies of the Service Level document as directed by Authority. Additional copies of the current Service Levels shall be available at all times to authorized parties.

43.3 **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.

D ANNEXURES

Annex I: Change Control Note

Change Control Note		CCN Number:
Part A: Initiation		
Title		
Originator		
Sponsor		
Date of Initiation		
Details of Proposed Change		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)		
Authorized by Authority	Date	
Name		
Signature		
Received by the Bidder	Date	
Name		
Signature		
Change		

Change Control Note		CCN Number:
Part B: Evaluation		
(Identify any attachments as B1, B2, and B3 etc.)		
Changes to Services, payment terms, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue.		
Brief Description of Solution:		
Deliverables:		
Timetable:		
Charges for Implementation:		
Other Relevant Information: (including value-added and acceptance criteria)		
Authorized by Authority	Date	
Name		
Signature		

Change Control Note	CCN Number:
Part C: Authority to Proceed	
Implementation of this CCN as submitted in Part A, in accordance with Part B is: (tick as appropriate)	
Approved	
Rejected	
Requires Further Information (as follows, or as Attachment 1 etc.)	
For Authority and its nominated agencies	For SI
Signature	Signature
Name	Name
Title	Title
Date	Date

Annex II: Form of Agreement

THIS Agreement made thedate of.....2020, between..... (hereinafter.....referred to as the “SI”) of the one part and (hereinafter called the “Authority”) of the other part.

WHEREAS SI has the required professional skills, personnel and technical resources, 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

SI and(the Authority) on behalf of the Authority 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 between the parties as follows:

- a. The Authority has accepted the tender of SI for the provision and execution of the said works for the sum ofupon the terms laid out in this RfP.
- b. SI hereby agrees to provide Services to Authority, 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:

Complete Request for Proposal (RfP) Document	<i>Volumes I, II and III of the RfP and corrigendum and addendum, if any</i>
Break-up of cost components	<i>Bidder’s Commercial bid</i>
The Authority’s Letter of Intent dated <<>>	<i>To be issued later by the Authority</i>
SI’s Letter of acceptance dated <<>>	<i>To be issued later by the SI</i>
Bid submitted by SI	<i>Bidder’s Technical bid</i>

- d. The mutual rights and obligations of the “Authority” and SI shall be as set forth in the Agreement, in particular:

- SI shall carry out and complete the Services in accordance with the provisions of the Agreement; and
- The “Authority” shall make payments to SI in accordance with the provisions of the Agreement.

NOW THESE PRESENTS WITNESS and the parties hereto hereby agree and declare as follows, that is to say, in consideration of the payments to be made to SI by the Authority as hereinafter mentioned, SI 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 Authority shall pay to SI the said sum ofor such other sums as may become payable to SI 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 : _____

Signed
Name : _____
Designation : _____

Date :
Place :
in the presence of :
Signed
Name : _____
Designation : _____

Date :
Place :
in the presence of :
Signed
Name : _____
Designation : _____

Date :
Place :

Date :
Place :