



**GWALIOR SMART CITY DEVELOPMENT CORPORATION
LIMITED**

**National Competitive Bidding
REQUEST FOR PROPOSAL (RFP)
For**

**Selection of Master System Integrator for Implementation of
Intelligent Traffic Management System (ITMS)
Volume-III**

**RFP No. GSCDCL/65/E-Tendering/2018-19
GMC, Authority / GSCDCL
Gwalior, Madhya Pradesh**

Disclaimer

The GSCDCL has prepared this Request for Proposals (RFP) for the “Request for Proposals for Selection of Master System Integrator for Implementation of ITMS Project”. The RFP is a detailed document with specifies terms and conditions on which the bidder is expected to work. These terms and conditions are designed keeping in view the overall aim and objectives of the ITMS Project. GSCDCL has taken due care in preparation of information contained herein and believes it to be accurate. However, neither GSCDCL or any of its authorities or agencies nor any of their respective officers employees, agents, or advisors gives any warranty or make any representations, express, or implied as to the completeness or accuracy of the information contained in this document or any information which may be provided in association with it.

The information provided in this document is to assist the bidder(s) for preparing their proposals. However this information is not intended to be exhaustive, and interested parties are expected to make their own inquiries to supplement information in this document. The information is provided on the basis that it is non-binding on GSCDCL any of its authorities or agencies, or any of their respective officers, employees, agents, or advisors. Each bidder is advised to consider the RFP as per its understanding and capacity. The bidders are also advised to do appropriate examination, enquiry and scrutiny of all aspects mentioned in the RFP before bidding. Bidders are encouraged to take professional help of experts on financial, legal, technical, taxation, and any other matters / sectors appearing in the document or specified work. The bidders should go through the RFP in detail and bring to notice of GSCDCL any kind of error, misprint, inaccuracy, or omission.

GSCDCL reserves the right not to proceed with the project, to alter the timetable reflected in this document, or to change the process or procedure to be applied. It also reserves the right to decline to discuss the Project further with any party submitting a proposal. No reimbursement of cost of any type will be paid to persons, entities, or consortiums submitting a Proposal.

Definitions/Acronyms

Terms	Meanings
ABD	Area Based Development
AMC	Annual Maintenance Contract
ANPR	Automatic Number Plate Recognition
ATCS	Adaptive Traffic Control System
BOM	Bill of Material
CCTV	Closed Circuit Television
COTS	Commercial Off-The-Shelf
DC	Data Centre
DMS	Document Management System
DRC	Disaster Recovery Centre
ECB	Emergency Call Box
EMD	Earnest Money Deposit
FMS	Facility Management Services
GIS	Geographical Information System
GIS	Geographical Information Systems
GPS	Global Positioning System
GSM	Global System for Mobile Communication
GST	Goods and Services Tax
ICCC	Integrated Command and Control Centre
ICT	Information and Communication Technology
IP	Internet Protocol
IPF	Information Processing Facility
ISO	International Organization for Standardization
ISWM	Integrated Solid Waste Management
IT	Information Technology
ITDP	Institute for Transportation and Development Policy
ITMS	Intelligent Integrated Traffic Management System
LOA	Letter of Acceptance
MIS	Management Information System
MSI	Master System Integrator
NIT	Notice Inviting Tender
OEM	Original Equipment Manufacture

Terms	Meanings
OFC	Optical Fibre Cable
PA	Public Address
PoP	Point of Presence
PTZ	Pan Tilt Zoom
RFP	Request for Proposal
RLVD	Red Light Violation Detection
GSCDCL	Gwalior Smart City Development Corporation Limited
SDC	State Data Centre
SLA	Service Level Agreement
SOP	Standard Operating Procedures
SPV	Special Purpose Vehicle
SVD	Speed Violation Detection
TCV	Total Contract Value
TDS	Tax Deducted at Source
TPA	Third Party Auditor
UAT	User Acceptance Testing
UPS	Uninterrupted Power Supply
VAT	Value Added Tax
VM	Virtual Machine
VMS	Variable Message Sign

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Section A: General Conditions of Contract (GCC)

1 Definition of Terms

1. **Acceptance of System/Solution** means; the system/solution shall be deemed to have been accepted by GSCDCL, subsequent to its installation, rollout and deployment of trained manpower, when all the activities as defined in Scope of Work (Refer to RFP Volume II. have been successfully executed and completed to the satisfaction of GSCDCL.
2. **Agreement/Contract** means; the Contract entered into by the parties with the entire documentation specified in the RFP.
3. **Applicable Law(s)** means; 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.
4. **GSCDCL** means; the Gwalior Smart City Development Corporation Limited. The project shall be executed in Gwalior City and shall be owned by GSCDCL.
5. **Commercial Off-The-Shelf (COTS)** means; software products that are ready-made and available for sale, lease, or license to the general public.
6. **Confidential Information** means; the information disclosed or submitted to the MSI by GSCDCL in written, representational, electronic, verbal or other forms and includes all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, human resource information and any other information disclosed or submitted whether prior to or after the date of this Agreement/Contract, including without limitation, the information on the contents and existence of this Agreement and analysis, compilations, studies and other documents prepared by either Party which contain or otherwise reflect or are generated from any Confidential Information.
7. **Contract Value** means; the price payable to MSI under this Contract for the full and proper performance of its contractual obligations
8. **Contract Period-** The Contract period shall commence from the date of signing of contract, and shall remain valid for 60 Months from the date of Go Live of the system.
9. **Date of Commissioning of the Project/ Go-Live** means; the date of completion and clearance of successful FAT by GSCDCL evidenced by way of written communication, of the entire system; such event shall be marked as the “date of commissioning/Go- Live”.
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.
11. **Go-Live -** Successful deployment, commissioning and UAT of the ITMS application modules implemented Procurement, deployment and commissioning of the hardware items and desired connectivity at the identified locations required to support the functioning of ITMS modules/components. Acceptance/Sign-off from GSCDCL or its constituted committees or representatives.

12. **Project** means; Implementation of Intelligent Traffic Management system (ITMS) for GSCDCL
13. **Master System Integrator (MSI)** means; the MSI chosen out of the bidding process to execute the Implementation of Intelligent Traffic Management system (ITMS) for GSCDCL
14. **Service level agreement (SLA)** is the service level and performance commitment of a Master System Integrator to GSCDCL that defines the performance output and availability of the deliveries and installations under this RFP Requirements.
15. **Final Acceptance Test (FAT)** means a test conducted by GSCDCL or its representatives or its third party testing agencies as may be decided by GSCDCL to determine if the requirements and performance of the equipment and systems delivered by MSI as laid in RFP, and the documents referred in General Terms and Conditions meet the specified output, functionality and performance in standalone and integrated mode.
16. **MSI's Team** means; MSI who has to provide goods & services to GSCDCL under the scope of this Contract. This definition shall also include any and/or all of the employees of MSI, authorized service providers/ partners and representatives or other personnel employed or engaged either directly or indirectly by MSI for the purposes of this Contract.
17. **Consortium** means; shall mean the association of persons to which the Project has been awarded, consisting of **the bidding parties**, and acting pursuant to the Joint Deed Agreement as entered into between the parties. The heirs, legal representatives, successors and assignees of such persons.
18. **Effective Date** means; the date on which this Contract is signed and executed by the parties hereto.
19. **Intellectual Property Rights** means; a 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.
20. **OEM** means; the Original Equipment Manufacturer of any equipment / system / software / product which are providing such goods to GSCDCL under the scope of the RFP.
21. **Program Manager** means; the duly authorized MSI's representative, who shall manage and be responsible for fulfillment of the MSI's for performance of the Agreement/Contract;
22. **Subcontractor** means; shall mean any person with whom the MSI has entered into/may enter into any material contract in relation with the execution of the Project ;
23. **SCC** means; Special Conditions of Contract.
24. **Services** means; the work to be performed by the agency pursuant to the RFP and to the contract to be signed by the parties in pursuance of any specific assignment awarded by GSCDCL

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 MSI.

- 3.1. Furnishing by MSI, an unconditional and irrevocable Performance Bank Guarantee (PBG) (Annexure 8 of the RFP Volume I) and acceptable to GSCDCL which would remain valid until **minimum six months after the contract completion period**
- 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 MSI/MSI's team, etc.
- 3.3. Furnish notarized copies of any/all contract(s) duly executed by MSI and its OEMs existing at the time of signing of this contract in relation to GSCDCL's project. Failure to do so within stipulated time of signing of contract would attract penalty as defined in Clause 40 in this Section.
- 3.4. Furnishing of such other documents as GSCDCL may specify/ demand.
- 3.5. GSCDCL reserves the right to waive any or all of the conditions specified in this clause in writing and no such waiver shall affect or impair any right, power or remedy that GSCDCL may otherwise have.
- 3.6. In the event that any of the conditions set forth in this Clause is not fulfilled within 1 months from the date of this Contract, or such later date as may be mutually agreed upon by the parties, GSCDCL 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. Volume III of RFP (GCC holds precedence over SCC)
3. Section 1, 2, 3, 4 and Annexures of RFP Volume I

4 Scope of work

- 4.1. Scope of the work shall be as defined in RFP Volume II and Annexures thereto of the tender.
- 4.2. GSCDCL has engaged MSI to provide services related to implementation of Intelligent Traffic Management System (ITMS) using which GSCDCL intends to perform its business operations. MSI is required to provide such goods, services and support as GSCDCL 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 GSCDCL, in order to meet its business requirements (hereinafter 'scope of work').

5 Key Performance Measurements

- 5.1. Unless specified by GSCDCL to the contrary, MSI shall deliver the goods, perform the services and carry out the scope of work in accordance with the terms of this Contract, Scope of Work and the Service Specifications as laid down under **Section C** (Service Level Agreement) of this section.
- 5.2. If the Contract, scheduled requirements, service specification includes more than one document, then unless GSCDCL specifies to the contrary, the later in time shall prevail over a document of earlier date to the extent of any inconsistency.
- 5.3. GSCDCL 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. MSI shall subject to the fulfillment of the conditions precedent above, commence the performance of its obligations in a manner as per the Scope of Work (RFP Volume II).
- 6.2. MSI shall proceed to carry out the activities / services with diligence and expedition in accordance with any stipulation as to the time, manner, mode, and method of execution contained in this Contract.
- 6.3. MSI shall be responsible for and shall ensure that all activities / services are performed in accordance with the Contract, Scope of Work and Service Specifications and that MSI's Team complies with such Specifications and all other standards, terms and other stipulations/conditions set out hereunder.
- 6.4. MSI shall perform the activities / services and carry out its obligations under the Contract with due diligence, efficiency and economy, in accordance with generally accepted techniques and practices used in the industry and shall observe sound management, engineering and security practices. MSI shall always act, in respect of any matter relating to this Contract, as faithful advisors to GSCDCL and shall, at all

times, support and safeguard GSCDCL's legitimate interests in any dealings with Third parties.

7 Standards of performance

- 7.1. MSI shall perform the Services and carry out its obligations under the Contract with due diligence, efficiency and economy, in accordance with generally accepted techniques and 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. MSI shall always act, in respect of any matter relating to the Contract, as faithful advisors to GSCDCL and shall, at all times, support and safeguard GSCDCL's legitimate interests in any dealings with Third Parties.

8 Approvals and Required Consents

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

9 Constitution of Consortium

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

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

The MSI shall not assign in favour of any person for this Agreement or any part of this agreement, the rights, benefits and obligations hereunder save and except with prior consent of GSCDCL. The MSI shall not create nor permit to subsist any encumbrance over the Project and Project Facilities

10 MSI's Obligations

- 10.1. MSI's obligations shall include all the activities as specified by GSCDCL in the Scope of Work and other sections of the Tender and Contract and changes thereof to enable GSCDCL to meet the objectives and operational requirements. It shall be MSI's responsibility to ensure the proper and successful implementation, performance and continued operation of the proposed solution in accordance with and in strict adherence to the terms of his Bid, the Tender and this Contract.
- 10.2. In addition to the aforementioned, MSI shall provide services to manage and maintain the said system and infrastructure as mentioned in RFP Volume II.
- 10.3. GSCDCL reserves the right to interview the personnel proposed that shall be deployed as part of the project team. If found unsuitable, GSCDCL may reject the deployment of the personnel. But ultimate responsibility of the project implementation shall lie with MSI.
- 10.4. GSCDCL reserves the right to require changes in personnel which shall be communicated to MSI. MSI with the prior approval of GSCDCL may make additions to the project team. MSI shall provide GSCDCL with the resume of Key Personnel and provide such other information as GSCDCL may reasonably require. GSCDCL also reserves the right to interview the personnel and reject, if found unsuitable. In case of change in its team members, for any reason whatsoever, MSI shall also ensure that the exiting members are replaced with at least equally qualified and professionally competent members.
- 10.5. MSI should submit profiles of only those resources who shall be deployed on the project. Any change of resource should be approved by GSCDCL and compensated with equivalent or better resource. GSCDCL may interview the resources suggested by MSI before their deployment on board. It does not apply in case of change requested by GSCDCL.
- 10.6. In case of change in its team members, MSI shall ensure a reasonable amount of time overlap in activities to ensure proper knowledge transfer and handover / takeover of documents and other relevant materials between the outgoing and the new member.

- 10.7. MSI shall ensure that MSI's Team is competent, professional and possesses the requisite qualifications and experience appropriate to the task they are required to perform under this Contract. MSI shall ensure that the services are performed through the efforts of MSI's Team, in accordance with the terms hereof and to the satisfaction of GSCDCL. Nothing in this Contract relieves MSI from its liabilities or obligations under this Contract to provide the Services in accordance with GSCDCL's directions and requirements and as stated in this Contract and the Bid to the extent accepted by GSCDCL and MSI shall be liable for any non-performance, non-compliance, breach or other loss and damage resulting either directly or indirectly by or on account of its Team.
- 10.8. MSI shall be fully responsible for deployment, installation, development and integration of all the software and hardware components and resolve any problems / issues that may arise due to integration of components.
- 10.9. MSI shall ensure that the OEMs supply equipment/ components including associated accessories and software required and shall support MSI in the installation, commissioning, integration and maintenance of these components during the entire period of contract. MSI shall ensure that the COTS OEMs supply the software applications and shall support MSI in the installation / deployment, integration, roll-out and maintenance of these applications during the entire period of contract. It must clearly be understood by MSI that warranty and O&M of the system, products and services incorporated as part of system would commence from the day of Go- Live of system as a complete solutions including all the solutions proposed. MSI would be required to explicitly display that he/ they have a back to back arrangement for provisioning of warranty/ O&M support till the end of contract period with the relevant OEMs. The annual maintenance support shall include patches and updates the software, hardware components and other devices.
- 10.10. All the software licenses that MSI proposes should be perpetual & unlimited software licenses as required for successful implementation of the Project. The software licenses shall not be restricted based on location and GSCDCL should have the flexibility to use the software licenses for other requirements if required.
- 10.11. All the OEMs that MSI proposes should have Dealer possession licenses.
- 10.12. GSCDCL reserves the right to review the terms of the Warranty and Annual Maintenance agreements entered into between MSI and OEMs and no such agreement/contract shall be executed, amended, modified and/or terminated without the prior written consent of GSCDCL. An executed copy of each of such agreements/contracts shall, immediately upon execution be submitted by MSI to GSCDCL.
- 10.13. MSI shall ensure that none of the components and sub-components is declared end-of-sale or end-of-support by the respective OEM at the time of submission of bid. If the OEM declares any of the products/ solutions end-of-sale subsequently, the MSI shall ensure that the same is supported by the respective OEM for contract period.
- 10.14. If a product is de-supported by the OEM for any reason whatsoever, from the date of Acceptance of the System till the end of contract, MSI should replace the products/ solutions with an alternate that is acceptable to GSCDCL at no additional cost to GSCDCL and without causing any performance degradation.
- 10.15. The Licenses will be in the name of GSCDCL only.

- 10.16. MSI shall ensure that the OEMs provide the support and assistance to MSI in case of any problems / issues arising due to integration of components supplied by him with any other component(s)/ product(s) under the purview of the overall solution. If the same is not resolved for any reason whatsoever, MSI shall replace the required component(s) with an equivalent or better substitute that is acceptable to GSCDCL without any additional cost to GSCDCL and without impacting the performance of the solution in any manner whatsoever.
- 10.17. MSI shall ensure that the OEMs for hardware servers/equipment supply and/or install all type of updates, patches, fixes and/or bug fixes for the firmware or software from time to time at no additional cost to GSCDCL and without impacting the performance of the solution in any manner whatsoever.
- 10.18. MSI shall ensure that the OEMs for hardware servers/ equipment or MSI's trained engineers conduct the preventive maintenance on a Quarterly basis and break-fix maintenance in accordance with the best practices followed in the industry. MSI shall ensure that the documentation and training services associated with the components shall be provided by the OEM partner or OEM's certified training partner without any additional cost to GSCDCL.
- 10.19. The training has to be conducted using official OEM course curriculum mapped with the hardware / Software Product's to be implemented in the project.
- 10.20. MSI and their personnel/representative shall not alter / change / replace any hardware component proprietary to GSCDCL and/or under warranty or O&M of third party without prior consent of GSCDCL.
- 10.21. MSI shall provision the required critical spares/ components at the designated Information Processing Facility / Data Center Sites / office locations of GSCDCL for meeting the uptime commitment of the components supplied by him.
- 10.22. MSI's representative(s) shall have all the powers requisite for the execution of scope of work and performance of services under this contract. MSI's representative(s) shall liaise with GSCDCL's representative for the proper coordination and timely completion of the works and on any other matters pertaining to the works. MSI shall extend full co-operation to GSCDCL's representative in the manner required by them for supervision/ inspection/ observation of the equipment/ goods/ material, procedures, performance, progress, reports and records pertaining to the works. He shall also have complete charge of MSI's personnel engaged in the performance of the works and to ensure compliance of rules, regulations and safety practice. He shall also cooperate with the other Service Providers/Vendors of GSCDCL working at GSCDCL's office locations & field locations.
- 10.23. GSCDCL reserves the right to review, approve and require amendment of the terms of any Contract or agreements entered into by the MSI as a consortium or through any of its members and no such agreement/contract shall be executed, amended, modified and/or terminated without the prior written consent of GSCDCL. An executed copy of each of such agreements/contracts shall, immediately upon execution be submitted by MSI to GSCDCL. Further, wherever desired by GSCDCL, Tri-partite agreement/ contract shall be executed.
- 10.24. MSI shall be responsible on an ongoing basis for coordination with other vendors and agencies of GSCDCL in order to resolve issues and oversee implementation of the same. MSI shall also be responsible for resolving conflicts between vendors in case of borderline integration issues.

10.25. The technical manpower deployed on the project should work from the GSCDCL office.

10.26. Access to Sites

10.26.1. Sites would include Command and Control Center and site locations.

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

10.26.3. At the site locations, GSCDCL's representative shall give to MSI access to as much as may be necessary to enable MSI to commence and proceed with the installation of the works in accordance with the program of work or for performance of Facilities Management Services.

10.27. Start of Installation

10.27.1. MSI shall co-ordinate with GSCDCL and stakeholders for the complete setup of sites before commencement of installation of other areas as mentioned in Section 3: of the RFP Volume I document. MSI shall also co-ordinate regarding Network / Bandwidth connectivity in order to prepare the installation plan and detailed design / architectural design documents.

10.27.2. Plan and design documents thus developed shall be submitted by MSI for approval by GSCDCL.

10.27.3. After obtaining the approval from GSCDCL, MSI shall commence the installation.

10.28. Reporting Progress

10.28.1. MSI shall monitor progress of all the activities related to the execution of this contract and shall submit to GSCDCL, 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. GSCDCL on mutual agreement between both parties may change the formats, periodicity and dissemination mechanism for such reports.

10.28.3. Periodic review meetings shall be held between the representatives of GSCDCL and MSI once in every 7 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 GSCDCL, to discuss the performance of the contract.

10.28.4. MSI shall ensure that the respective solution teams involved in the execution of work are part of such meetings.

10.28.5. Review committees involving representative of GSCDCL and senior officials of MSI shall be formed in accordance with Clause 7.11 of RFP Volume II for the purpose of this project. These committees shall meet at intervals, as decided by GSCDCL later, to oversee the progress of the implementation.

10.28.6. All the goods, services and manpower to be provided / deployed by MSI under the

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

- 10.28.7. GSCDCL reserves the right to inspect and monitor/ assess the progress/ performance of the work / services at any time during the course of the Contract. GSCDCL may demand and upon such demand being made, MSI shall provide documents, data, material or any other information which GSCDCL 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, GSCDCL shall also have the right to conduct, either itself or through another agency as it may deem fit, an audit to monitor the project performance by MSI of its obligations/ functions in accordance with the standards committed to or required by GSCDCL and MSI undertakes to cooperate with and provide to GSCDCL / any other agency appointed by GSCDCL, all Documents and other details as may be required by them for this purpose. Such audit shall not include MSI'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, GSCDCL 's representative shall so notify MSI in writing.
- 10.28.10. MSI shall reply to the written notice giving details of the measures it proposes to take to expedite the progress so as to complete the works by the prescribed time or to ensure compliance to RFP requirements. MSI shall not be entitled to any additional payment for taking such steps. If at any time it should appear to GSCDCL or GSCDCL's representative that the actual progress of work does not conform to the approved plan MSI shall produce at the request of GSCDCL'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 GSCDCL or GSCDCL's representative of such plan shall not relieve MSI 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 RFP requirements, MSI shall deploy extra manpower/ resources to make up the progress or to meet the RFP requirements. Plan for deployment of extra man power/ resources shall be submitted to GSCDCL for its review and approval. All time and cost effect in this respect shall be borne, by MSI within the contract value.
- 10.29. Knowledge of Command and Control.
- 10.29.1. MSI shall be granted access to the Command and Control Communication Center for inspection by GSCDCL before commencement of installation. The plan shall be drawn mutually at a later stage.
- 10.29.2. MSI shall be deemed to have knowledge of the Command and Control Center 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 its obligations and responsibilities

therewith under the Contract and its ability to perform it. However, if during pre-installation survey / during delivery or installation, MSI detects physical conditions and/or obstructions affecting the work, MSI shall take all measures to overcome them.

10.30. Project Plan

10.30.1. Within 15 calendar days of effective date of the contract/ Issuance of LoA, MSI shall submit to GSCDCL 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 MSI shall conform to the requirements and timelines specified in the Contract. GSCDCL and MSI shall discuss and agree upon the work procedures to be followed for effective execution of the works, which MSI intends to deploy and shall be clearly specified. The Project Plan shall include but not 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 GSCDCL's representative of the Project Plan shall not relieve MSI of any of his duties or responsibilities under the Contract.

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

10.31. Adherence to safety procedures, rules regulations and restriction

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

10.31.2. Access to Command and Control Center shall be strictly restricted. No access to any person except the essential members of MSI's Team who are authorized by GSCDCL 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 GSCDCL only. MSI shall maintain a log of all activities carried out by each of its team personnel.

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

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

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

10.32. Statutory Requirements

10.32.1. During the tenure of this Contract nothing shall be done by MSI or its 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 GSCDCL indemnified in this regard.

11 GSCDCL's Obligations

- 11.1. GSCDCL or its nominated representative shall act as the nodal point for implementation of the contract and for issuing necessary instructions, approvals, commissioning, acceptance certificates, payments etc. to MSI.
- 11.2. GSCDCL shall ensure that timely approval is provided to MSI as and when required, which may include approval of project plans, implementation methodology, design documents, specifications, or any other document necessary in fulfillment of this contract.
- 11.3. GSCDCL's representative shall interface with MSI, to provide the required information, clarifications, and to resolve any issues as may arise during the execution of the Contract. GSCDCL shall provide adequate cooperation in providing details, coordinating and obtaining of approvals from various governmental agencies, in cases, where the intervention of GSCDCL is proper and necessary.
- 11.4. GSCDCL may provide on MSI's request, particulars/ information/ or documentation that may be required by MSI for proper planning and execution of work and for providing services covered under this contract and for which MSI may have to coordinate with respective vendors.
- 11.5. GSCDCL shall provide to MSI only sitting space and basic infrastructure not including, stationery and other consumables at GSCDCL 's office locations.
- 11.6. Dependencies: GSCDCL hereby agrees to make available the necessary project dependencies identified and prepared by the MSI within the comprehensive project plan such as but not limited to input information, approvals etc. GSCDCL agrees that MSI shall not be in any manner liable for any delay arising out of GSCDCL 's failure to provide the necessary information within the stipulated time period as deemed reasonable by all concerned parties.

12 Payments

- 12.1. GSCDCL shall make payments to MSI at the times and in the manner set out in the Payment schedule as specified Section 6.13.2 in RFP Volume II subject to the penalties as mentioned under Section C - Service Levels of Volume III. GSCDCL shall make all efforts to make payments to MSI within 60 calendar days of receipt of invoice(s) and all necessary supporting documents.
- 12.2. All payments agreed to be made by GSCDCL to MSI in accordance with the Bid shall be inclusive of all statutory levies, duties, taxes except GST and other charges whenever levied/applicable, if any, and GSCDCL shall not be liable to pay any such levies/ other charges under or in relation to this Contract and/or the Services.
- 12.3. No invoice for extra work/change order on account of change order shall be submitted by MSI unless the said extra work /change order has been authorized/approved by GSCDCL in writing in accordance with Change Control Note (Annexure I of this section of the RFP Volume III) .
- 12.4. In the event of GSCDCL noticing at any time that any amount has been disbursed

wrongly to MSI or any other amount is due from MSI to GSCDCL , GSCDCL may without prejudice to its rights recover such amounts by other means after notifying MSI or deduct such amount from any payment falling due to MSI. The details of such recovery, if any, shall be intimated to MSI. MSI shall receive the payment of undisputed amount under subsequent invoice for any amount that has been omitted in previous invoice by mistake on the part of GSCDCL or MSI.

- 12.5. All payments to MSI shall be subject to the deductions of tax at source under Income Tax Act, and other taxes and deductions as provided for under any law, rule or regulation. All costs, damages or expenses which GSCDCL may have paid or incurred, for which under the provisions of the Contract, MSI is liable, the same shall be deducted by GSCDCL from any dues to MSI. All payments to MSI shall be made after making necessary deductions as per terms of the Contract and recoveries towards facilities, if any, provided by GSCDCL to MSI 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. MSI must ensure that while using any software, hardware, processes, document or material in the course of performing the Services, it does not infringe the Intellectual Property Rights of any person/Company. MSI shall keep GSCDCL indemnified against all costs, expenses and liabilities howsoever, arising out any illegal or unauthorized use (piracy) or in connection with any claim or proceedings relating to any breach or violation of any permission/license terms or infringement of any Intellectual Property Rights by MSI or MSI's Team during the course of performance of the Services. MSI's liability is excluded regarding any claim based on any of the following (a) anything GSCDCL provides which is incorporated into the Solution; (b) GSCDCL'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. GSCDCL 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 MSI solely during the performance of Services and for the purposes of inter-alia use or sub-license of such Services under this Contract. MSI undertakes to disclose all such Intellectual Property Rights arising in performance of the Services to GSCDCL, execute all such agreements/documents and obtain all permits and approvals that may be necessary in regard to the Intellectual Property Rights of GSCDCL.
- 13.5. If GSCDCL desires, MSI shall be obliged to ensure that all approvals, registrations, licenses, permits and rights etc. which are inter-alia necessary for use of the goods

supplied / installed by MSI, the same shall be acquired in the name of GSCDCL, prior to termination of this Contract and which may be assigned by GSCDCL to MSI for the purpose of execution of any of its obligations under the terms of the Bid, Tender or this Contract. However, subsequent to the term of this Contract, such approvals, registrations, licenses, permits and rights etc. shall endure to the exclusive benefit of GSCDCL.

- 13.6. MSI shall not copy, reproduce, translate, adapt, vary, modify, disassemble, decompile or reverse engineer or otherwise deal with or cause to reduce the value of the Materials except as expressly authorized by GSCDCL in writing.

14 Taxes

- 14.1. MSI shall fully familiarize itself about the applicable Domestic taxes (such as GST, Income Tax, duties, fees, levies, etc.) on amount payable by GSCDCL under the contract. The successful bidder shall pay such domestic tax, duties, fees and other impositions (wherever applicable) levied under the applicable law. Taxes shall be paid on actuals on production of supporting documents.
- 14.2 MSI shall bear all personnel taxes levied or imposed on its personnel, or any other member of MSI's Team, etc. on account of payment received under this Contract. MSI shall bear all corporate taxes, levied or imposed on MSI on account of payments received by it from GSCDCL for the work done under this Contract.
- 14.3. MSI shall bear all taxes and duties etc. levied or imposed on MSI under the Contract on account of material supplied and services rendered and payments received by him from GSCDCL under the Contract. It shall be the responsibility of MSI to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. MSI shall also provide GSCDCL such information, as it may be required in regard to MSI's details of payment made by GSCDCL under the Contract for proper assessment of taxes and duties. The amount of tax withheld by GSCDCL shall at all times be in accordance with Indian Tax Law and GSCDCL shall promptly furnish to MSI original certificates for tax deduction at source and paid to the Tax Authorities.
- 14.4. MSI 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.
- 14.5. If MSI fails 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 GSCDCL, MSI shall pay the same. MSI shall indemnify GSCDCL against any and all liabilities or claims arising out of this Contract for such taxes including interest and penalty by any such Tax GSCDCL may assess or levy against GSCDCL /MSI.
- 14.6. GSCDCL shall if so required by applicable laws in force, at the time of payment, deduct income tax payable by MSI at the rates in force, from the amount due to MSI and pay to the concerned tax GSCDCL directly.

15 Indemnity

- 15.1. MSI shall indemnify GSCDCL 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:
- any negligence or wrongful act or omission by MSI or any third party associated with MSI in connection with or incidental to this Contract; or
 - any breach of any of the terms of MSI's bid as agreed, the RFP and this Contract by MSI
 - 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. MSI shall also indemnify GSCDCL 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 MSI's liability for bodily injury and/ or damage to tangible and real property for which it is legally liable and its liability for patent and copyright infringement in accordance with the terms of this Agreement) the total liability of MSI, is restricted to the total value of the contract.

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 GSCDCL.
- 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 MSI warrants that the Goods supplied under the Contract are new, non- refurbished, unused and recently manufactured; shall not be nearing End of sale / End of support; and shall be supported by the MSI and respective OEM along with service and spares support to ensure its efficient and effective operation for the entire duration of the contract.
- 16.4. The MSI warrants that the goods supplied under this contract shall be of the highest grade and quality and consisted with the established and generally accepted standards for materials of this type. The 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 MSI further warrants that the Goods supplied under this Contract shall be free from all encumbrances and defects/faults arising from design, material, manufacture or workmanship (except insofar as the design or material is required by GSCDCL's Specifications) or from any act or omission of the MSI, that may develop under normal use of the supplied Goods in the conditions prevailing at the respective Command and Control Center.
- 16.6. GSCDCL shall promptly notify the MSI in writing of any claims arising under this warranty.
- 16.7. Upon receipt of such notice, the MSI shall, with all reasonable speed, repair or replace

the defective Goods or parts thereof, without prejudice to any other rights which GSCDCL may have against the MSI under the Contract.

- 16.8. If the MSI, having been notified, fails to remedy the defect(s) within a reasonable period, GSCDCL may proceed to take such remedial action as may be necessary, at the MSI's risk and expense and without prejudice to any other rights which GSCDCL may have against the MSI under the Contract.
- 16.9. Any OEM specific warranty terms that do not conform to conditions under this Contract shall not be acceptable

17 Term and Extension of the Contract

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

18 Dispute Resolution

- 18.1 All disputes or differences arising out of or in connection with this Contract, shall be raised before the Competent Authority, as defined in Contract data in writing giving full description and grounds of Dispute. It is clarified that merely recording protest while accepting measurement and/or payment shall not be taken as raising a dispute. Disputes between the Parties shall be resolved amicably within thirty days of such dispute arising, and at least one party having brought such dispute to the notice of either Party.
- 18.2 No issue of dispute can be raised after 45 (forty five) days of its occurrence. Any dispute raised after expiry of 45 (forty five) days of its first occurrence shall not be entertained and the Employer shall not be liable for claims arising out of such disputes.
- 18.3 The Competent Authority shall decide the matter within 45 (forty five) days of receipt of notice of such disputes.
- 18.4 Appeal against the order of the Competent Authority can be preferred within 30 (thirty)

days of the receipt of the Order of the Competent Authority to the Appellate Authority as defined in the Contract data. The Appellate Authority shall decide the dispute within a further period of 45 (forty five) days.

18.5 If the dispute persists then the aggrieved party shall refer the case to the tribunal constituted under Madhya Pradesh Madhyasthata Adhikaran Adhiniyam, 1983. Costs associated with arbitration and/or litigation shall be borne by the respective parties. Statutory costs and fees other than the costs stated above, wherever applicable shall be paid by the Party referring the matter to the tribunal. Place for dispute resolution shall be at Gwalior. The language of arbitration shall be English.

18.6 Appeals against arbitration orders can be filed only in Courts within the state of Madhya Pradesh. The language of all proceedings to this effect shall be English.

18.7 Notwithstanding the pendency of the outcome of any arbitration or suit, the Contractor shall continue to discharge his obligations under this Contract.

18.8 The courts at Gwalior shall have exclusive jurisdiction in respect of disputes.

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 MSI by the specified completion date.

20 Conflict of interest

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

21 Publicity

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

22 Force Majeure

22.1 The term "Force Majeure" means an exceptional event or circumstance:

- a) Which is beyond a party's control,
- b) Which such party could not reasonably have provided against before entering into the contract, and
- c) Which having arisen, such party could not reasonably have avoided or overcome
- d) Which is not substantially attributed to the other Party

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (c) above are satisfied:

- (i) War, hostilities (whether war be declared or not), invasion, act of foreign enemies),
- (ii) Rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- (iii) Riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
- (iv) Munitions of war, explosive materials, ionising radiation or contamination by radio activity, except as may be attributed to the Contractor's use of such munitions, explosives, radiation or radio activity, and
- (v) Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

- 22.2 In the event of either Party being rendered unable by *force majeure* to perform any duty or discharge any responsibility arising out of the Contract, the relative obligation of the party affected by such *force majeure* shall upon notification to the other party be suspended for the period during which *force majeure* event lasts. The cost and loss sustained by either Party shall be borne by respective Party.
- 22.3 For the period of extension granted to the Contractor due to *force majeure* the price adjustment clause shall apply but the penalty clause shall not apply. It is clarified that this sub clause shall not give eligibility for price adjustment to the Contract which are otherwise not subject to the benefit of price adjustment clause.
- 22.4 The time for performance of the relative obligation suspended by the *force majeure* shall stand extended by the period for which such cause lasts. Should the delay caused by *force majeure* exceed 03 (Three) months, the Parties to the Contract shall be at liberty to foreclose the Contract after holding mutual discussions.
- 22.5 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible to the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- 22.6 The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

23 Delivery

- 23.1. MSI shall bear the cost for packing, transport, insurance, storage and delivery of all the goods at all locations identified by GSCDCL in Gwalior for this Project
- 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 GSCDCL.
- 23.3. MSI shall only procure the hardware and software after approvals from a designated Committee/GSCDCL.

24 Insurance

- 24.1. The Goods supplied under this Contract shall be comprehensively insured by MSI at

his own cost, against any loss or damage, for the entire period of the contract. MSI shall submit to GSCDCL, documentary evidence issued by the insurance company, indicating that such insurance has been taken.

- 24.2. MSI 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 MSI.
- 24.3. MSI shall take out and maintain at its own cost, on terms and conditions approved by GSCDCL, insurance against the risks, and for the coverages, as specified below;
- a. At GSCDCL's request, shall provide evidence to GSCDCL 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. MSI must transfer all titles to the assets and goods procured for the purpose of the project to GSCDCL at the time of Acceptance of System. This includes all licenses, titles, source code, certificates, hardware, devices, equipment's etc. related to the system designed, developed, installed and maintained by MSI. MSI is expected to provide source code, transfer IPR and ownership right of only those solutions which would be customized by MSI for the use of GSCDCL. For any pre-existing work, MSI and GSCDCL shall be held jointly responsible and its use in any other project by MSI 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 GSCDCL, MSI shall deliver to GSCDCL all documents provided by or originating from GSCDCL and all documents produced by or from or for MSI in the course of performing the Services, unless otherwise directed in writing by GSCDCL at no additional cost. MSI shall not, without the prior written consent of GSCDCL store, copy, distribute or retain any such Documents.

26 Exit Management Plan

- 26.1. An Exit Management plan shall be furnished by MSI in writing to GSCDCL 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 MSI

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's, change requests if any, sources codes, wherever applicable, reports, documents and other relevant items to the Replacement Service Provider/ GSCDCL
- iii. Certificate of Acceptance from authorized representative of Replacement Service Provider issued to MSI on successful completion of handover and knowledge transfer

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

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

SECTION B: SPECIAL CONDITIONS OF CONTRACT (SCC)

27 Performance Security

27.1. MSI shall furnish Performance Security to GSCDCL at the time of signing the Contract which shall be equal to 10% of the value of the Contract Value and shall be in the form of a Bank Guarantee Bond from a Nationalized / Scheduled Commercial Bank in the Performa given in Annexure 8 RFP Volume I within 15 days after issuance of letter of acceptance (LOA). The Performance Security shall be valid till a minimum period of six months after completion of the Contract Period.

28 Liquidated Damages

28.1. If MSI fails to supply, install or maintain any or all of the goods as per the contract, within the time period(s) specified in the RFP Volume II, GSCDCL without prejudice to its other rights and remedies under the Contract, deduct from the Contract price, as liquidated damages, a sum equivalent to 1 % per week or part thereof of contract value for a milestone.

28.2 The combined deductions shall not in any case exceed 10% of the total contract value.

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

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

29 Limitation of Liability:

Limitation of MSI's Liability towards GSCDCL:

- 29.1. 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.
- 29.2. Except in case of gross negligence or willful misconduct on the part of MSI or on the part of any person or company acting on behalf of MSI in carrying out the Services, MSI, with respect to damage caused by MSI to GSCDCL's property, shall not be liable to GSCDCL:
- i. for any indirect or consequential loss or damage; and
 - ii. for any direct loss or damage that exceeds the total payments payable under the Contract to MSI hereunder.
- 29.3. This limitation of liability shall not affect MSI liability, if any, for damage to Third Parties caused by MSI or any person or company acting on behalf of MSI in carrying out the Services.

Except in the case of Gross Negligence or Willful Misconduct on the part of the MSI / MAI's Team or on the part of any person or firm acting on behalf of the MSI executing the work or in carrying out the services, the MSI, with respect to damage caused by the MSI including to property and/or assets of the GSCDCL or of any of GSCDCL's vendors shall regardless of anything contained herein, not be liable for any direct loss or damage that exceeds (A) the Project Capital Cost or (B) the proceeds the Concessionaire may be entitled to receive from any insurance maintained by the Concessionaire to cover such a liability, whichever of (A) or (B) is higher.

Except in the case of Gross Negligence or Willful Misconduct on the part of GSCDCL, GSCDCL shall, regardless of anything contained herein, not be liable for any direct loss or damage that exceeds (A) the Project Capital Cost actually incurred by the Concessionaire or (B) the amount guaranteed by the Concessionaire as Performance Security, whichever of (A) or (B) is higher.

30 Ownership and Retention of Documents

- 30.1. GSCDCL shall own the Documents, prepared by or for MSI arising out of or in connection with the Contract.
- 30.2. Forthwith upon expiry or earlier termination of this Contract and at any other time on demand by GSCDCL, MSI shall deliver to GSCDCL all documents provided by or originating from GSCDCL and all documents produced by or for MSI in the course of performing the Services, unless otherwise directed in writing by GSCDCL at no additional cost. MSI shall not, without the prior written consent of GSCDCL store, copy, distribute or retain any such documents.

31 Information Security

- 301.1. MSI shall not carry any written/printed document, layout diagrams, CD, hard disk, storage tapes, other storage devices or any other goods /material proprietary to GSCDCL into / out of any location without written permission from GSCDCL.
- 31.2. MSI shall not destroy any unwanted documents, defective tapes/media present at any location on their own. All such documents, tapes/media shall be handed over to GSCDCL.
- 31.3. All documentation and media at any location shall be properly identified, labeled and numbered by MSI. MSI shall keep track of all such items and provide a summary report of these items to GSCDCL whenever asked for.
- 31.4. Access to GSCDCL's data and systems, Internet facility by MSI at any location shall be in accordance with the written permission by GSCDCL. GSCDCL shall allow MSI to use facility in a limited manner subject to availability. It is the responsibility of MSI to prepare and equip himself in order to meet the requirements.
- 31.5. MSI must acknowledge that GSCDCL 's business data and other GSCDCL proprietary information or materials, whether developed by GSCDCL or being used by GSCDCL pursuant to a license agreement with a third party (the foregoing collectively referred to herein as "proprietary information") are confidential and proprietary to GSCDCL ; and MSI along with its team agrees to use reasonable care to safeguard the proprietary information and to prevent the unauthorized use or disclosure thereof, which care shall not be less than that used by MSI to protect its own proprietary information. MSI recognizes that the goodwill of GSCDCL depends, among other things, upon MSI keeping such proprietary information confidential and that unauthorized disclosure of the same by MSI or its team could damage the goodwill of GSCDCL, and that by reason of MSI's duties hereunder. MSI may come into possession of such proprietary information, even though MSI does not take any direct part in or furnish the services performed for the creation of said proprietary information and shall limit access thereto to employees with a need to such access to perform the services required by this agreement. MSI shall use such information only for the purpose of performing the said services.
- 31.6. MSI shall, upon termination of this agreement for any reason, or upon demand by GSCDCL , whichever is earliest, return any and all information provided to MSI by GSCDCL , including any copies or reproductions, both hardcopy and electronic.
- 31.7. By virtue of the Contract, MSI team may have access to personal information of GSCDCL and/or a third party. GSCDCL has the sole ownership of and the right to use, all such data in perpetuity including any data or other information pertaining to the citizens that may be in the possession of MSI team in the course of performing the Services under the Contract.

32 Records of contract documents

- 32.1. MSI shall at all-time make and keep sufficient copies of the process manuals, operating procedures, specifications, Contract documents and any other documentation for him to fulfil his duties under the Contract.
- 32.2. MSI shall keep on the Site at least three copies of each and every specification and Contract Document, in excess of his own requirement and those copies shall be

available at all times for use by GSCDCL 's Representative and by any other person authorized by GSCDCL 's Representative.

33 Security and Safety

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

34 Confidentiality

- 34.1. MSI shall not, either during the term or after expiration of this Contract, disclose any proprietary or confidential information relating to the Services/Contract and/or GSCDCL 's business/ operations, information, Application/software, hardware, business data, architecture schematics, designs, storage media and other information / documents without the prior written consent of GSCDCL .
Both Parties agree that confidentiality obligations do not apply to:
 - a. Information that is already known to third parties without breach of this Contract; and
 - b. Information that is required to be disclosed by an order of a court of competent jurisdiction or an appropriately empowered public authority, or as a result of an obligation arising under the Right to Information Act or other public disclosure law
- 34.2. GSCDCL reserves the right to adopt legal proceedings, civil or criminal, against MSI in relation to a dispute arising out of breach of obligation by MSI under this clause.
- 34.3. MSI shall do everything reasonably possible to preserve the confidentiality of the Confidential Information including execution of a confidentiality agreement with GSCDCL to the satisfaction of GSCDCL.
- 34.4. MSI shall notify GSCDCL promptly if it is aware of any disclosure of the Confidential Information otherwise than as permitted by the Contract or with GSCDCL of GSCDCL.
- 34.5. MSI shall be liable to fully recompensate GSCDCL for any loss of revenue arising from breach of confidentiality.

35 Termination

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

- 35.1. Where GSCDCL is of the opinion that there has been such Event of Default on the part of MSI/MSI's Team which would make it proper and necessary to terminate this Contract and may include failure on the part of MSI 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 GSCDCL's attention that MSI (or MSI's Team) is in a position of actual conflict of interest with the interests of GSCDCL, in relation to any of terms of

MSI's Bid, the RFP or this Contract.

- 35.3. Where MSI's ability to survive as an independent corporate entity is threatened or is lost owing to any reason whatsoever, including inter-alia the filing of any bankruptcy proceedings against MSI, any failure by MSI to pay any of its dues to its creditors, the institution of any winding up proceedings against MSI or the happening of any such events that are adverse to the commercial viability of MSI. In the event of the happening of any events of the above nature, GSCDCL 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: GSCDCL may at any time terminate the Contract by giving written notice to MSI, without compensation to MSI, if MSI 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 GSCDCL.
- 35.5. MSI may, subject to approval by GSCDCL, terminate this Contract before the expiry of the term by giving GSCDCL 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 GSCDCL shall be entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective business continuity of the project which MSI shall be obliged to comply with and take all available steps to minimize loss resulting from that termination/breach, and further allow and provide all such assistance to GSCDCL and/or the successor agency/ service provider, as may be required, to take over the obligations of MSI in relation to the execution/continued execution of the requirements of the Contract.
- 36.2. Where the termination of the Contract is prior to its stipulated term on account of a Default on the part of MSI or due to the fact that the survival of MSI as an independent corporate entity is threatened/has ceased, or for any other reason, whatsoever, GSCDC, through unilateral re-determination of the consideration payable to MSI, shall pay MSI for that part of the Services which have been authorized by GSCDCL and satisfactorily performed by MSI up to the date of termination. Without prejudice to any other rights, GSCDCL may retain such amounts from the payment due and payable by GSCDCL to MSI as may be required to offset any losses caused to GSCDCL as a result of any act/omissions of MSI. In case of any loss or damage due to default on the part of MSI in performing any of its obligations with regard to executing the Project under the contract, MSI shall compensate GSCDCL for any such loss, damages or other costs, incurred by GSCDCL. 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 MSI 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 GSCDCL and as may be proper and necessary to execute the Schedule of Requirements under the Contract in terms of MSI's Bid, the Bid Document and the Contract
- 36.3. Nothing herein shall restrict the right of GSCDCL to invoke the Bank Guarantee and other Guarantees furnished hereunder and pursue such other rights and/or remedies

that may be available to GSCDCL 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 Events of Default by MSI

The failure on the part of MSI to perform any of its obligations or comply with any of the terms of this Contract shall constitute an Event of Default on the part of MSI. The events of default are but not limited to:

- 37.1. MSI/ MSI's Team has failed to perform any instructions or directives issued by GSCDCL which it deems proper and necessary to execute the scope of work or provide services under the Contract, or
- 37.2. MSI/ MSI'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 MSI has fallen short of matching such standards / benchmarks / targets as GSCDCL may have designated with respect to the system or any goods, task or service, necessary for the execution of the scope of work and performance of services under this Contract. The above mentioned failure on the part of MSI may be in terms of failure to adhere to performance, quality, timelines, specifications, requirements or any other criteria as defined by GSCDCL;
- 37.3. MSI has failed to remedy a defect or failure to perform its obligations in accordance with the specifications issued by GSCDCL, despite being served with a default notice which laid down the specific deviance on the part of MSI/MSI's Team to comply with any stipulations or standards as laid down by GSCDCL ; or
- 37.4. MSI/MSI's Team has failed to adhere to any amended direction, instruction, modification or clarification as issued by GSCDCL during the term of this Contract and which GSCDCL deems proper and necessary for the execution of the scope of work under this Contract
- 37.5. MSI/MSI's Team has failed to demonstrate or sustain any representation or warranty made by it in this Contract, with respect to any of the terms of its Bid, the RFP and this Contract
- 37.6. 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 MSI.
- 37.7. MSI/ MSI's Team has failed to comply with or is in breach or contravention of any applicable laws.
- 37.8. Where there has been an occurrence of such defaults inter alia as stated above, GSCDCL shall issue a notice of default to MSI, 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.
- 37.9. Where despite the issuance of a default notice to MSI by GSCDCL, MSI fails to remedy the default to the satisfaction of GSCDCL, GSCDCL may, where it deems fit, issue to the defaulting party another default notice or proceed to contract termination.

38 Termination Payments and Rights on termination

a. MSI event of default

- i. GSCDCL shall be entitled to appropriate the amounts in the Performance Security,
- ii. GSCDCL shall be entitled to enter upon and take possession and control of the Project forthwith;
- iii. GSCDCL may prohibit the MSI and any person claiming through or under the Concessionaire from using/dealing with the Project;
- iv. In case of breach by the Concessionaire of any terms and conditions of the RFP or that of agreement, the Executive Director, GSCDCL shall have absolute right to terminate the contract without notice to the Concessionaire and cause the advertisements removed at the risk and cost of the Concessionaire and forfeit the Concession Fee for unexpired period and the security deposit. The GSCDCL reserves its right to encash

39 Change Control Note (CCN)

- 39.1. This applies to and describes the procedure to be followed in the event of any proposed change to contract, site Implementation, and Service levels. Such change shall include, but shall not be limited to, changes in the scope of services provided by MSI and changes to the terms of payment.
- 39.2. Change requests in respect of the contract, the site implementation, or the Service levels shall emanate from MSI's 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 (Annexure I, of this Contract). CCNs shall be presented to the GSCDCL's representative who shall acknowledge receipt by signature of the authorized representative of GSCDCL.
- 39.3. MSI and GSCDCL 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.
- 39.4. Quotation
 - 39.4.1. MSI shall assess the CCN and complete Part B of the CCN. In completing Part B of the CCN MSI/Lead Member shall provide as a minimum:
 - a description of the change;
 - a list of deliverables required for implementing the change;
 - a timetable for implementation;
 - an estimate of any proposed change;
 - any relevant acceptance criteria;
 - an assessment of the value of the proposed change;

- Material evidence to prove that the proposed change is not already covered within the scope of the RFP, Agreement and Service Levels.

39.4.2. Prior to submission of the completed CCN to GSCDCL or its nominated agencies, MSI shall undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, MSI shall consider the materiality of the proposed change in the context of the Agreement, the sites, Service levels affected by the change and the total effect that may arise from implementation of the change.

39.4.3. MSI 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 MSI meets the obligations as set in the CCN. In the event MSI is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party shall be borne by MSI. Change requests and CCNs shall be reported monthly to each Party's representative who shall prioritize and review progress.

40 Survival/ Termination of this Agreement

- Shall not relieve the MSI or GSCDCL of any obligations already incurred hereunder which expressly or by implication survives termination hereof, and
- except as otherwise provided in any provision of this Agreement expressly limiting the liability of the either party, shall not relieve the either party of any obligations or liabilities for loss or damage to the other party arising out of or caused by acts or omissions of such party prior to the effectiveness of such termination or arising out of such termination.

41 Amendments

This Agreement and the schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the parties on the subject hereof and no amendment or modification hereto will be valid and effective unless agreed to by all the parties hereto and evidenced in writing.

42 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized national courier, mail, registered speedpost, telex or facsimile transmission and delivered or transmitted to the parties at their respective addresses set forth below:

If to GSCDCL:

The Chief Executive Officer

Gwalior Smart City Development Corporation Limited

Gwalior Municipal Corporation,

Narayan Krishna Shejwalkar Bhawan,

City Center, Gwalior- 474011

If to the MSI:

The _____,

43 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions as nearly as is practicable.

44 No partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the parties. Neither party shall have any authority to bind the other in any manner whatsoever.

45 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

46 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other Agreement between the parties and any representation by any party not contained in a binding legal Agreement executed by the parties.

47 Counterparts

This Agreement may be constituted in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only one Agreement.

48 Costs

The MSI shall bear all the costs related to the signing and registration of this Agreement including but not limited to stamp duties and registration charges.

49 Entire Contract

This Agreement and the annexures together constitute a complete and exclusive understanding of the terms of the Agreement between the parties on the subject hereof and no amendment or modification hereto will be valid and effective unless agreed to by all the parties hereto and evidenced in writing and duly executed by persons especially empowered in this behalf by the respective Parties.

Section C: SERVICE LEVELS

50 General Principles of Service Level Agreements

Commented [DS1]: Move this clause after clause 42-Service Level Agreements & Target.

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

50.1. Service Level Agreement

- a. Service Level Agreement (SLA) shall become the part of contract between GSCDCL and the successful bidder. SLA defines the terms of the successful bidder's responsibility in ensuring the timely delivery of the deliverables and the correctness of the same based on the agreed Performance Indicators as detailed in this section.
- b. The successful bidder has to comply with service level requirements to ensure adherence to project timelines, quality and availability of services, throughout the Contract Period. The successful bidder has to supply appropriate software/hardware/automated tools as may be required to monitor and submit reports of all the SLAs mentioned in this section.
- c. For purposes of the SLA, the definitions and terms as specified in the document along with the following terms shall have the meanings set forth below:

- "Total Time" - Total number of hours in the quarter (or the concerned period) being considered for evaluation of SLA performance.
- "Uptime" - Time period for which the specified services/outcomes are available in the period being considered for evaluation of SLA.

Formula for calculation of Uptime: $\text{Uptime (\%)} = \{1 - [(\text{Downtime}) / (\text{Total time-scheduled maintenance time})]\} * 100$

- "Downtime" - Time period for which the specified services/components/outcomes are not available in the concerned period, being considered for evaluation of SLA, which would exclude downtime owing to Force Majeure & Reasons beyond control of the MSI.
- "Scheduled Maintenance Time" - Time period for which the specified services/components with specified technical and service standards are not available due to scheduled maintenance activity. The MSI is required to take at least 10 days prior approval from GSCDCL for any such activity. The scheduled maintenance should be carried out during non- peak hours (like post mid-night, and should not be for more than 4 hours. Such planned downtime would be granted max 4 times a year.
- "Incident" - Any event/abnormalities in the service being rendered, that may lead to disruption in normal operations and services to the end user.
- "Response Time" - Time elapsed from the moment an incident is reported in the Helpdesk over phone or by any applicable mode of communication, to the time when a resource is assigned for the resolution of the same.
- "Resolution Time" - Time elapsed from the moment incident is reported to Helpdesk either in person or automatically through system, to the time by which the incident is resolved completely and services as promised are restored.

50.2. Measurement of SLA

The SLA metrics provided specifies performance parameters as baseline performance, lower performance and breach. All SLA calculations will be done on quarterly basis. The SLA also specifies the penalties for lower performance and breach conditions.

Payment to the SI is linked to the compliance with the SLA metrics. The matrix specifies three levels of performance, namely,

- The MSI will get 100% of the Contracted value if all the baseline performance metrics are compiled and the cumulative credit points are 100
- The MSI will get lesser payment in case of the lower performance. (For e.g. if SLA point score is 80 then the MSI will get 20% less on the quarterly payment
- The formula calculating the deductions is “(100 – SLA Point Score)%”
- If the performance of the Agency in respect of any parameter falls below the prescribed lower performance limit, debit points are imposed for the breach.

The credit (+) points earned during the quarter will be considered for computing penalty.

The aforementioned SLA parameters shall be measured as per the individual SLA parameter requirements and measurement methods, through appropriate SLA Measurement tools to be provided by the SI and approved and audited by GSCDCL or its appointed Consultant for accuracy and reliability.

GSCDCL shall also have the right to conduct, either itself or through any other agency as it may deem fit, an audit / revision of the SLA parameters. The SLAs defined, shall be reviewed by GSCDCL on an annual basis after consulting the SI, Project Management Consultants and other experts. All the changes would be made by GSCDCL after consultation with the MSI However GSCDCL reserves the right to make the final decision.

Total liquidated damages to be levied on the SI shall be capped at 10% of the total contract value. However, GSCDCL would have right to invoke termination of the contract in case the overall liquidated damages equals 10% of total contract value. Liquidated damages to be levied during the Operation & Maintenance period shall be capped at 10% of the OPEX value. GSCDCL would also have right to invoke termination of contract in case cumulative debit point (breach points) are above 30 in 2 consecutive quarters.

50.3. Implementation Milestones

- 50.3.1. The milestones shall be used to evaluate the timelines for completion of deliverables that are listed in the RFP Volume II.
- 50.3.2. The MSI has to mobilize the team for commencement of work within 14 days from date of signing of Contract. In case of non-deployment of proposed resources, a penalty of INR 40,000/- per resource /per week will be imposed.
- 50.3.3. These SLAs for completion of individual milestones listed in the implementation schedule of the RFP Volume II. For delay of every week in completion & submission of the deliverable mentioned in the RFP, the MSI shall be charged with a penalty as follows:

Delay (Weeks)	Penalty % on the respective Payment milestone value
1	1%
2	2%
3	3%
4	4%
5	5%
6	6%
7	7%
8	8%
9	9%
10	10%

- 50.3.4 The upper limit of penalty shall be capped at 10% of the respective Payment Milestone value. In case the MSI reaches 10% of the respective Payment Milestone value in the form of penalty at any point of time during implementation phase, GSCDCL reserves the right to invoke the termination clause.
- 50.3.6. Delay of every week shall also account in increase of additional 2 weeks in the maintenance period which will be over and above the maintenance period of 5 (Five) years. This duration would be accounted without incurring any charges to GSCDCL.

50.4. SLAs for Operation & Maintenance Phase

- a. These SLAs shall be used to evaluate the performance of the services on monthly basis.
- b. Penalty levied for non- performance as per SLA requirements shall be deducted through subsequent payments due from GSCDCL or through the deductions from the Performance Bank Guarantee.
- c. The SLA parameters shall be measured for each of the sub systems' SLA parameter requirements and measurement methods, through appropriate SLA Measurement tools. All such required tools should be provided by the MSI. GSCDCL will have the right to audit these tools for accuracy and reliability.
- d. The upper limit of penalty would be capped at 10% of the OPEX value for each quarter. In case the calculated penalty crosses 10% penalty of the OPEX value in 2 subsequent quarters, GSCDCL reserves the right to unconditionally invoke the termination clause.
- e. SLAs for IT infrastructure such as surveillance cameras, RLVD cameras, ANPR cameras.

#	Uptime SLA (Monthly)	Penalty Clause
1	Uptime >= 98%	No Deduction
2	Uptime < 98%	(98%- Uptime %) of monthly OPEX for the component. For example if uptime of component is 95%, then penalty imposed will be 98%--95% i.e. 3% of Monthly OPEX.

f. SLA for Video Analytics Performance

#	Parameter	Penalty Clause
1	ANPR for Standard Roman Number plates (2 wheelers & above): 80% accuracy	Rs. 1000/- per wrongly identified regd. Number plate below the prescribed limit of SLA parameter
2	ANPR for Non-Standard Roman Number plates (2 wheelers & above): 60% accuracy	Rs. 500/- per wrongly identified regd. Number plate below the prescribed limit of SLA parameter

g. SLA and Penalty for Helpdesk Response and Resolution time

#	Parameter	Penalty Clause
1	For <= 1% of the calls not getting responded in less than or equal to 60 seconds per quarter	No Deduction
2	For > 1% of the calls not getting responded in less than or equal to 60 seconds per quarter	0.5% of the monthly OPEX value

h. SLA for Change Requests or enhancements

#	Parameter	Metric	Frequency	Penalty
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1	Criticality of Change – Low	< T, where T is the timeframe for completion of the Change request as agreed upon by GSCDCL and successful bidder	Weekly per Occurrence	1 % of change request value per week for the first two weeks for each occurrence, 2 % of change request value per week for every subsequent week, subject to a maximum of 10% post which GSCDCL may invoke termination of the contract.
2	Criticality of Change – Medium	< T, where T is the timeframe for completion of the Change request as agreed upon by GSCDCL and successful bidder	Weekly per Occurrence	1.5 % of change request value per week for the first two weeks for each occurrence, 2.5 % of change request value per week for every subsequent week, subject to a maximum of 10% post which GSCDCL may invoke termination of the contract.
3	Criticality of Change – High	< T weeks, where T is the timeframe for completion of the Change request as agreed upon by GSCDCL and successful bidder	Weekly per Occurrence	2 % of change request value per week for the first two weeks for each occurrence, 3 % of change request value per week for every subsequent week, subject to a maximum of 10% post which GSCDCL may invoke termination of the contract.

i. SLA for issue resolution

#	Parameter	Metric	Frequency	Penalty
1	Severity 1 Issue	Resolution Time: ≤ 8 Hrs from the time the call is logged by end user.	Daily	0.1% of monthly opex value per week for the first two weeks for each occurrence, 0.2% of monthly opex value per week for every subsequent week, subject to a maximum of 10% post which GSCDCL may invoke termination of the contract.
2	Severity 2 Issue	Resolution Time: ≤ 4 Days from the time the call is logged user. by end	Daily	0.1% of monthly opex value per week for the first two weeks for each occurrence, 0.2% of monthly opex value per week for every subsequent week, subject to a maximum of 10% post which GSCDCL may invoke termination of the contract.
3	Severity 3 Issue	Resolution Time: ≤ 10 Days from the time the call is logged by end user.	Daily	0.1% of monthly opex value per week for the first two weeks for each occurrence, 0.2% of monthly opex value per week for every subsequent week, subject to a maximum of 10% post which GSCDCL may invoke termination of the contract.

4	Severity 4 Issue	Resolution Time: ≤ 20 Days from the time the call is logged by end user.	Daily	0.1% of monthly opex value per week for the first two weeks for each occurrence, 0.2% of monthly opex value per week for every subsequent week, subject to a maximum of 10% post which GSCDCL may invoke termination of the contract.
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j. Miscellaneous SLAs

Sl. No	Parameter	Metric	Frequency	Penalty
1	Compliance in document versioning and maintenance (FRS, SRS, Business Blue Prints, User Training Manual etc.), application version control, updates & patches etc.	100% as per requirement timelines	Daily per occurrence	Rs. 10,000 per occurrence per week of delay subject to a maximum of Rs. 40,000
2	Scheduled downtime for System Maintenance per week	≤ 2 times per month	Per Occurrence	Rs. 1,00,000 per occurrence for unscheduled downtime or scheduled downtimes exceeding the specified metric
3	Application/ Services	Application/Services Downtime/Cyber Crime/Hacking /Data Theft/Fraud attributable to the service provider	Per Occurrence	Depending on the type of incident and its impact, penalty shall be applied as follows: <ul style="list-style-type: none"> • Penalty of 5% on the entire contract value for Severity 1 • Penalty of 2% on the entire contract value for Severity 2 • Penalty of 1% on the entire contract value for Severity 3

				<ul style="list-style-type: none"> Penalty of 0.5% on the entire contract value for Severity 4 <p>An expert committee shall be formally constituted to assess the situation before application of the penalty. The cumulative maximum penalty that can be applied is 11% of the entire contract value for the duration of the contract.</p>
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Definitions:

Severity 1: ITMS or applications down for more than 50% users.

Severity 2: ITMS or applications down for more than 30% users.

Severity 3: Modules of ITMS or applications are not functional for users.

Severity 4: Minor functionality issues with ITMS or applications

51 Purpose

- 51.1. The purpose is to define the levels of service provided by MSI to GSCDCL for the duration of the contract. The benefits of this are:
 - 51.1.1. Start a process that applies to GSCDCL and MSI attention to some aspect of performance, only when that aspect drops below the threshold defined by GSCDCL.
 - 51.1.2. Help GSCDCL control the levels and performance of MSI's services
- 51.2. The Service Levels are between GSCDCL and MSI

52 Service Level Agreements & Targets

- 52.1. This section is agreed to by GSCDCL and MSI as the key performance indicator for the project. This may be reviewed and revised according during the Contract signing stage with the successful Bidder.
- 52.2. This section is agreed to by GSCDCL and MSI 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.
- 52.3. The following section reflects the measurements to be used to track and report system's performance on a regular basis. The targets shown in the following tables are for the period of contract.
- 52.4. The procedures in Clause 43 shall be used if there is a dispute between GSCDCL and MSI on what the permanent targets should be.

53 Conditions for No Penalties

Penalties shall not be levied on the MSI in the following cases:

- 53.1. There is a force majeure event declared which is effecting the SLA and beyond the control of the MSI.
- 53.2. The non-compliance to the SLA has been due to reasons beyond the control of the MSI.
- 53.3. Theft cases by default/vandalism would not be considered as “beyond the control of MSI”. Hence, the MSI should be taking adequate anti-theft measures, spares strategy, Insurance as required to maintain the desired required SLA.

54 Reporting Procedure

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

55 Service Level Change Control

- 55.1. General: It is acknowledged that this Service levels may change as GSCDCL’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. GSCDCL and MSI 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.

- 55.2. Service Level Change Process: The parties may amend Service Level by mutual agreement in accordance. Changes can be proposed by either party .Unresolved issues shall also be addressed. MSI’s representative shall maintain and distribute current copies of the Service Level document as directed by GSCDCL. Additional copies of the current Service Levels shall be available at all times to authorized parties.
- 55.3. 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.

Section D: Annexure

Annexure – I: Change Control Note

Change Control Note	
CCN Number	
PART A Initiation	
Title	
Originator	
Sponsor	
Date of Initiation	
Details of Proposed Change	
<i>Include all necessary details substantiating the change request i.e. the need /constraints/risk mitigation etc. justifying the change and details of the nature of changes with specifications or any other supporting information that may support the decision process. MSI shall identify any attachments as A1, A2, A3 etc.</i>	
Authorized by GSCDCL	
Date of Authorization	
Name of Authorizing Officer	
Sign of Authorizing Officer	
Received by MSI Agency	
Date of Receipt	
Name of Receiving Representative	
Sign of Receiving Representative	

Change Control Note	
CCN Number	
PART B Evaluation	
Title	
Originator	

Sponsor	
Date of Initiation	
Details of Proposed Change	
<i>Include all necessary details such as Changes of services, Payment terms, Payment profile, Service Levels, Component working arrangements, any other contractual or related terms or obligations etc. MSI shall identify any attachments as B1, B2, B3 etc.</i>	
Brief Description of Solution	
Impact	
Deliverables	
Time table	
Charges for Implementation	
<i>Include a schedule of payments</i>	
Other Relevant Information	
<i>Include value added and acceptance criteria</i>	
Received by MSI Agency	
Date of Receipt	
Name of Receiving Representative	
Sign of Receiving Representative	

Change Control Note	
CCN Number	
PART B Evaluation	
Title	
Originator	
Sponsor	
Date of Initiation	
Details of Proposed Change	
<p><i>Include all necessary details such as Changes of services, Payment terms, Payment profile, Service Levels, Component working arrangements, any other contractual or related terms or obligations etc.</i></p> <p><i>MSI shall identify any attachments as B1, B2, B3 etc.</i></p>	
Brief Description of Solution	
Impact	
Deliverables	
Time table	
Charges for Implementation	
<p><i>Include a schedule of payments</i></p>	
Other Relevant Information	
<p><i>Include value added and acceptance criteria</i></p>	
Received by MSI Agency	
Date of Receipt	
Name of Receiving Representative	
Sign of Receiving Representative	

Change Control Note	
CCN Number	
PART C GSCDCL to Proceed	
Title	
Date of Initiation	
Implementation of CCN as submitted in Part A in accordance with Part B along with the supplementary information attached in Attachments of Part A and B.	
MSI shall List the Annexures	
Approved	Yes or No
Rejected	Yes or No
If Rejected then Reason for Rejection	
Date of Approval or Rejection	
For GSCDCL and its nominated agencies	For the MSI
Title of Authorised Officer	Title of MSI Representative
Name of Authorised Officer	Name of MSI Representative
Sign of Authorised Officer	Sign of MSI Representative

Annexure – II: Form of Agreement

THIS Agreement made thedate of.....2018, between.....
(Hereinafter.....referred to as the “MSI”) of the one part and (hereinafter
called the “GSCDCL”) of the other part.

WHEREAS MSI 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 the RFP(hereinafter called “works”)
mentioned, enumerated or referred to in certain Contract conditions, specification, scope of
work, other sections of the RFP, covering letter and schedule of prices which, for the purpose
of identification, have been signed by on behalf of the

MSI and(GSCDCL) on behalf of GSCDCL 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. GSCDCL has accepted the tender of MSI for the provision and execution of the said
works for the sum ofupon the terms laid out in the RFP.
- b. MSI hereby agrees to provide Services to GSCDCL, 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>MSI's Financial Proposal</i>
GSCDCL 's Letter of Acceptance dated<<>>	<i>To be issued later by GSCDCL</i>
MSI's Letter of acceptance dated <<>>	<i>To be issued later by the MSI</i>
Bid submitted by MSI as per file No. <<>>	<i>MSI's Technical bid</i>

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

MSI shall carry out and complete the Services in accordance with the provisions
of the Agreement; and the “GSCDCL” shall make payments to MSI 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 MSI by GSCDCL as
hereinafter mentioned, MSI shall deliver the services for the said works and shall do and

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

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

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

Signed

Name :

Designation :

Date :

Place :

Witnessed by :

Signed

Name :

Designation :

Date :

Place :

Signed

Name :

Designation :

Date :

Place :

Witnessed by :

Signed

Name :

Designation :

Date :

Place :

[End of Document](#)