

SECTION - 7

STANDARD FORM OF CONTRACT

Project Name: **Implementation of Smart Solution Projects under Smart City Project in Bhubaneswar City**

Name of Assignment: **Selection of Programme Management Consultant (PgMC) for Smart Solutions Projects for Bhubaneswar Smart City Limited**

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CONTRACT FOR CONSULTANT'S SERVICES
Time-Based linked with performance

**Project Name: Implementation of Smart Solution Projects under Smart
City Project in Bhubaneswar City**

Contract No. _____

between

Bhubaneswar SmartCity Limited

and

[Name of the Consultant]

Dated:

I. Form of Contract

TIME-BASED PERFORMANCE LINKED

(Text in brackets [] is optional; all notes should be deleted in the final text)

This CONTRACT (hereinafter called the “**Contract**”) is made the *[number]* day of the month of *[month]*, *[year]*, between, on the one hand, Bhubaneswar Smart City Limited (hereinafter called the “**Client**”) and *[insert name of Consultant]*, a *[company/firm]* duly *[incorporated/registered]* under the provisions of *[•]*, with its registered/principal office at *[•]*, on the other hand, (hereinafter called the “**Consultant**”).

WHEREAS

- (a) The city of Bhubaneswar has been selected to be developed into a smart city under the first phase of the Smart Cities Mission launched by the Ministry of Urban Development, GoI. The Client is the special purpose vehicle incorporated to implement the Smart Cities Mission in Bhubaneswar in accordance with the Smart City Proposals. The Smart City Proposals include the application of certain pan-city smart solutions, which involve the use of technology, information and data to improve infrastructure and services within the city of Bhubaneswar (the “**Smart Solutions Project**”).
- (b) The Client has, by way of its request for proposal for Selection of Programme Management Consultant for Smart Solutions Projects for Bhubaneswar Smart City issued on *[date]* (hereinafter called the “**RFP**”), invited proposals for providing certain consultancy services for the Smart Solutions Projects as defined in this Contract (hereinafter called the “**Services**”).
- (c) The Consultant submitted its proposal dated *[insert date]* in response to the RFP for award of the Contract (the “**Proposal**”), whereby the Consultant represented to the Client that it has the required professional skills, expertise and technical resources and is willing to provide the Services on the terms and conditions set forth in this Contract.

- (d) The Client has, by way of a letter of award dated [*insert date*] (the “**LOA**”), accepted the offer of the Consultant to provide the Services on the terms and conditions set forth in this Contract.

NOW THEREFORE, the Parties hereto hereby agree as follows:

1. The following documents shall constitute the Contract:
 - (i) The Special Conditions of Contract;
 - (ii) The General Conditions of Contract(including Attachment 1 “Corrupt and Fraudulent Practices);
 - (iii) Appendices:
 - Appendix A:Terms of Reference
 - Appendix B:Key Experts
 - AppendixC:Remuneration Cost Estimates
 - AppendixD:ReimbursableCost Estimates
 - Appendix E:Form of Performance Security
 - Appendix F: Services Schedule
 - Appendix G: Smart City Proposals
 - (iv) RFP;
 - (v) LOA; and
 - (vi) the Proposal.

All of the foregoing documents are referred to herein as the Contract. In the event of a conflict, ambiguity or discrepancy between:

- (a) the contents of the Contract, the document specified earlier in the list set out above shall prevail over the latter documents;
- (b) between two or more Clauses of the Contract, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (c) between any two appendices, the appendix relevant to the issue shall prevail; and

(d) between any value written in numerals and that in words, the latter shall prevail.

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract. In particular,

- (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
- (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *Bhubaneswar Smart City Limited*

[Authorized Representative of the Client – name, title and signature]

For and on behalf of *[Name of Consultant]*

[Authorized Representative of the Consultant – name and signature]

II. General Conditions of Contract

A. GENERAL PROVISIONS

1. Definitions	<p>Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:</p> <p>(a) “Activity” means an activity or action specified in the Terms of Reference, which is to be performed by the Consultant as a part of the scope of Services.</p> <p>(b) “Additional Resource” means any professional and support staff, in addition to the Key Experts and the Programme Support Staff, who may be engaged by the Consultant to provide the Services.</p> <p>(c) “Applicable Law” means all laws in force and effect in India, as on the date of the Contract, or which may be promulgated or brought into force and effect after the date of the Contract, including all regulations, rules and notifications made thereunder and all judgments, decrees, injunctions, writs, orders, directives and notifications issued by any court or Authority, as may be in force and effect during the subsistence of the Contract and applicable to either Party, their obligations or this Contract, from time to time.</p> <p>(d) “Affiliates” means, in relation to the Consultant, a Person who Controls or is Controlled by such Consultant, or a Person who is under the common Control of the same Person who Controls such Consultant.</p> <p>(e) “Authority” means the GoI, GoO or any local authority or any department, instrumentality or agency thereof or any statutory body or corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Client or the Consultant) or commission under the direct or indirect control of the central, state or local government or any political sub-division thereof or any court, tribunal or judicial body within India.</p> <p>(f) “Breakage Costs” means the amount payable by the Client to the Consultant that is attributable to the</p>
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losses, costs, claims and expenses that have been or will reasonably and properly be incurred by the Consultant in respect of: (i) any contracts placed that cannot be terminated, without such losses, costs, claims and expenses being incurred; and (ii) any expenditure incurred in anticipation of the performance of the Services, provided however that the Consultant has used its reasonable endeavors to mitigate the losses, costs, claims and expenses incurred, as a result of the termination of the Contract due to a Client default (as set out in Clause 18.1.5), to the extent that such losses, costs, claims and expenses are or may be incurred in connection with the performance of the Services.

For the avoidance of doubt, the Breakage Costs shall mean any losses, costs, claims and expenses incurred or to be incurred in respect of: (i) any contracts placed that cannot be terminated, without such losses, costs, claims and expenses being incurred; and (ii) any expenditure incurred in anticipation of the performance of the Services, provided however that the Consultant has used its reasonable endeavors to mitigate the losses, costs, claims and expenses incurred.

- (g) “CEO” means the Chief Executive Officer of the Client.
- (h) “Clause” means a clause of the GCC, as may be supplemented by the SCC.
- (i) “Client” shall have the meaning ascribed to it in the preamble of the Contract.
- (j) “Client Event of Default” has the meaning ascribed to it in Clause 18.1.5.
- (k) “Client Indemnified Party” has the meaning ascribed to it in Clause 19.1.
- (l) “Communication” has the meaning ascribed to it in Clause 6.1.
- (m) “Completion Certificate” means the certificate issued or deemed to be issued by the Client to the Consultant to certify satisfactory completion of the Services and handover of the monitoring, supervision and control over the implementation of the Smart

	<p>Solutions Project to the Client or any other agency nominated by it, in accordance with Clause 41.7.</p> <p>(n) “Conflict of Interest” shall have the meaning ascribed to it in Clause 21 read with clause 3 of section 1 of the RFP.</p> <p>(o) “Consultant” shall have the meaning ascribed to it in the preamble of the Contract.</p> <p>(p) “Consultant Event of Default” has the meaning ascribed to it in Clause 18.1.1.</p> <p>(q) “Consultant Indemnified Party” has the meaning ascribed to it in Clause 19.2.</p> <p>(r) “Contract” shall have the meaning ascribed to it in clause 1 of the Form of Contract.</p> <p>(s) “Control” in relation to a Person, means: (i) the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or (ii) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise. The term “Controls” and “Controlled” shall be construed accordingly.</p> <p>(t) “Day” means a working day unless indicated otherwise.</p> <p>(u) “Delay Event” has the meaning given to it in Clause 29.3.</p> <p>(v) “Deliverable” means a work product (including reports, software, know-how, design, drawings, diagrams, maps, models, specifications, analysis, solutions, data base, programmes, technical information, data and other documents) to be prepared and submitted by the Consultant as a part of the Services, in accordance with the terms of this Contract and the term “Deliverables” shall be construed accordingly. The list of Deliverables to be provided by the Consultant is set out in the Terms of Reference.</p> <p>(w) “Deliverable Acceptance Certificate” means a certificate issued by the Consultant to the Client upon the Client’s approval of the relevant Deliverable, which may be endorsed by the Client in accordance with Clause 41.4.</p>
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	<p>(x) “Deliverable Due Date” means, with respect to a particular Deliverable, the date by which such Deliverable (in a final and approved form) is required to be submitted by the Consultant to the Client for all the Modules, as specified in the Services Schedule.</p> <p>(y) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause 10.</p> <p>(z) “Expert Pool” means the team of Key Experts engaged by the Consultant, to perform the Services, which at a minimum must include such number of Key Experts, as specified in Appendix B and Form TECH-4 of the RFP. It is clarified that the Expert Pool will not include any Programme Support Staff.</p> <p>(aa) “Force Majeure” shall have the meaning ascribed to it in Clause 16.</p> <p>(bb) “GCC” means these General Conditions of Contract.</p> <p>(cc) “GoO” means the Government of Odisha</p> <p>(dd) “GoI” means the Government of India.</p> <p>(ee) “Good Industry Practices” means the exercise of that degree of skill, diligence and prudence, and those practices, methods, specifications and standards of safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used and exercised by a skilled and experienced consultant engaged in the performance of services of the type, size and nature similar to the Services.</p> <p>(ff) “Indemnified Party” has the meaning ascribed to it in Clause 19.3.</p> <p>(gg) “Indemnifying Party” has the meaning ascribed to it in Clause 19.3.</p> <p>(hh) “Intellectual Property Rights” means, in respect of the Services, any copyright, trademarks, technology, know-how, industrial processes, proprietary information, licenses, patents, permissions from or agreements with licensors of any processes, methods and systems incorporated or to be incorporated in the performance of the Services, registered designs, franchises, trade secrets, data bases, source codes,</p>
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	<p>brand names, service marks, trade names, and any other intellectual and industrial property rights, whether registrable or not, subsisting or recognized under the Applicable Law or laws of any other jurisdiction, including all applications, renewals, extensions and revivals thereof.</p> <p>(ii) “Key Expert” means an individual engaged by the Consultant, as a part of the Expert Pool, to provide the Services or any part thereof, who has the minimum qualification and experience as specified in paragraph 6.5.3 of the Terms of Reference in the RFP for the position that such individual holds in the Expert Pool and whose curriculum vitae (CV) was evaluated as a part of the Consultant's Technical Proposal and approved by the Client at the time of finalization of the Contract.</p> <p>(jj) “LOA” has the meaning ascribed to it in recital (d) of the Contract.</p> <p>(kk) “Local Currency” means the official currency of India (i.e., Indian Rupees).</p> <p>(ll) “Module” means a component of the Smart Solutions Project in relation to which the Consultant is required to provide the Services, as described in greater detail in the Terms of Reference.</p> <p>(mm) “Party” means the Client or the Consultant, as the case may be, and “Parties” means both of them.</p> <p>(nn) “Payment Schedule” means the schedule for payment of the Price to the Consultant, as set out in the SCC.</p> <p>(oo) “Performance Security” means a duly executed, irrevocable and unconditional bank guarantee to be procured and maintained by the Consultant in accordance with Clause 51 read with the SCC, to secure the due and proper performance of the Contract.</p> <p>(pp) “Person” means any individual, company, corporation, firm, partnership, trust, sole proprietor, limited liability partnership, co-operative society, government company or any other legal entity.</p> <p>(qq) “Personnel” means, collectively, the Expert Pool, Program Support Team, and any other personnel of</p>
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	<p>the Consultant engaged by the Consultant to perform the Services or any part thereof under the Contract.</p> <p>(rr) “Programme Support Team” means the team of Programme Support Staff engaged by the Consultant to perform the Services, which at a minimum must include such number of Programme Support Staff, as specified in Form TECH-4 of the RFP. It is clarified that the Programme Support Team will not include any Key Experts.</p> <p>(ss) “Programme Support Staff” means an individual engaged by the Consultant, as a part of the Programme Support Team, to provide the Services or any part thereof, who has the minimum qualification and experience as specified in paragraph 6.5.3 of the Terms of Reference of the RFP for the function that such individual is required to perform as a part of the Programme Support Team.</p> <p>(tt) “Project Office” means the office space provided by the Client to the Consultant within the Client’s office in the city of Bhubaneswar, for the Consultant to set up its project office for the Personnel and Additional Resources, if any, who are or will be engaged to provide the Services.</p> <p>(uu) “Proposal” has the meaning ascribed to it in recital (c) of the Contract.</p> <p>(vv) “Reimbursable Expenses” means the expenses incurred by the Consultant under the various heads of expenditure listed in Appendix D, which will be reimbursed by the Client up to the maximum amount specified for each head.</p> <p>(ww) “Remuneration” means the aggregate remuneration payable for the Expert Pool and the Programme Support Team, based on the agreed man month rates for the Key Experts and the Programme Support Staff, as set out in Appendix C.</p> <p>(xx) “Reports” has the meaning ascribed to it in Clause 26.</p> <p>(yy) “RFP” has the meaning ascribed to it in recital (b) of the Contract.</p> <p>(zz) “Smart City Proposals” means the stage 1 and stage 2 proposals submitted by GoO to the Ministry of</p>
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	<p>Urban Development, GoI for the selection of Bhubaneswar as a smart city under the first phase of the Smart Cities Mission launched by the Ministry of Urban Department, which are appended to the Contract at Appendix G.</p> <p>(aaa) “SCC” means the special conditions of contract with specific details and information to supplement (and not override) the GCC.</p> <p>(bbb) “Section” means a section of the Contract.</p> <p>(ccc) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.</p> <p>(ddd) “Services Schedule” means the schedule showing the sequence, method and timing of execution of the Services and related activities and the Deliverable Due Dates, as set out in Appendix F.</p> <p>(eee) “Taxes” means all taxes, duties, imposts, levies and charges pursuant to any law (whether currently in force or coming into force on or after the Effective Date), including income tax, service tax, value added tax, central sales tax, customs duty excise duty, fees, cess, octroy, entry tax, and any interest, surcharge, penalty or fine in connection therewith.</p> <p>(fff) “Third Party” means any person or entity other than the Client and the Consultant.</p> <p>(ggg) “Technical Proposal” means the technical proposal forming part of the Proposal submitted by the Consultant in response to the RFP.</p> <p>(hhh) “Terms of Reference” means the terms of reference set out in Appendix A that explain the objectives and scope of the Services, activities, tasks to be performed, respective roles and responsibilities of the Client and Consultant, and expected results and deliverables of the Smart Solutions Project.</p> <p>(iii) “Total Value of Contract” means, collectively, the Remuneration, the maximum Reimbursable Expenses specified in Appendix D and any Taxes payable in connection with the performance of the Services.</p> <p>(jjj) “Variation” has the meaning ascribed to it in Clause 14.2.</p>
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	(kkk) “Variation Order” has the meaning to it in Clause 14.3.
2. Relationship between the Parties	2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has complete charge of the Personnel, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.
3. Governing Law	3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.
4. Language	4.1. This Contract has been executed in the language specified in the SCC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
5. Headings	5.1. The headings are for convenience of reference only and shall not limit, alter or affect the meaning of this Contract.
6. Communications	<p>6.1. Any communication, approval, notice, report, consent, certificate or request required or permitted to be given or made pursuant to this Contract (“Communication”) shall be in writing in the language specified in the SCC. Unless otherwise specified in the Contract, any such Communication shall be sent by electronic mail or facsimile transmission, with a confirmation copy by courier or registered post to the address specified in the SCC. Any Communication sent by electronic mail or facsimile shall be deemed to have been received on the date of transmission and any notice served by courier or registered post shall be deemed to be received when actually delivered to the address specified in the SCC.</p> <p>6.2. A Party may change its address for Communication</p>

	hereunder by giving the other Party notice of such change to the address specified in the SCC.
7. Location	7.1. The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in India or elsewhere, as the Client may approve.
8. Authorized Representatives	8.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the SCC.
9. Corrupt and Fraudulent Practices	9.1. The Consultant shall comply with the Client's policy in regard to corrupt and fraudulent practices as set forth in Attachment 1 to the GCC.
a. Commissions and Fees	9.2. The Client requires the Consultant to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract and/or sanctions by the Bank.

B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

10. Effectiveness of Contract	10.1 This Contract shall come into force and effect on the date (the "Effective Date") of the Client's notice to the Consultant instructing the Consultant to begin carrying out the Services.
11. Commencement of Services	11.1 The Consultant shall confirm availability of the Key Experts for the term of the Contract and begin carrying out the Services no later than the date specified in the

	SCC.
12. Expiration of Contract	12.1 Unless terminated earlier pursuant to Clause 18, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC, unless extended in accordance with this Contract.
13. Entire Agreement	13.1 This Contract constitutes the entire understanding between the Parties regarding the scope of the Services and supersedes all prior written or oral understandings, offers, agreements, communication or representations affecting the same subject matter. It is clarified that the obligations of the Consultant under the RFP shall continue to subsist and shall be deemed to form part of the Contract.
14. Modifications or Variations	<p>14.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties.</p> <p>14.2. Both the Client and the Consultant may, at any time during the term of the Contract, propose a variation to the Services, the Terms of Reference (as set out in Appendix A), Payment Schedule and/or any other provision of the Contract (Variation).</p> <p>14.3. <i>Client Proposed Variation</i></p> <p>(i) The Client may, at any time during the term of the Contract, instruct the Consultant, by issuing a written notice, to carry out a Variation (a Variation Order). Provided that, the Client shall not propose a Variation which is not technically or financially feasible, such feasibility being determined in accordance with Good Industry Practice, or any Variation that constitutes unrelated work.</p> <p>(ii) Within fifteen(15)days of receipt of a Variation Order, the Consultant shall submit a proposal setting out in</p>

sufficient detail the implications of the proposed Variation, including the (a) description of the work required or no longer required; (b) an estimate of the increase or decrease in the Total Value of Contract; (c) the Service Schedule; and (d) Payment Schedule.

(iii) Based on its review of the proposal submitted by the Consultant, the Client may: (a) accept the proposal and the corresponding adjustments to the Total Value of Contract, Services Schedule and Payment Schedule; (b) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the Consultant; or (c) reject the proposal submitted by the Consultant and withdraw the Variation Order, within seven (7) days from the date of receipt of the Consultant's proposal under Clause 14.3(ii).

(iv) If the Client accepts the Consultant's proposal under Clause 14.3(ii) of this Section, it shall issue an instruction identifying the offer that is being accepted and requesting the Contractor to proceed with the Variation. If the Client fails to provide any comments or reject the Consultant's proposal within ten (10) days of receipt of such proposal, the proposal shall be deemed to be accepted by the Client. Upon the Client's acceptance or deemed acceptance of the Consultant's proposal, the Consultant shall proceed with the Variation.

(v) To the extent the Client seeks amendments and/or justification in the proposal submitted by the Consultant, the Consultant shall incorporate or address, in writing, the Client's comments and submit a revised proposal. On approval of the revised proposal or deemed approval of the revised proposal in accordance with Clause 14.3(iv), the Consultant shall proceed with the Variation.

(vi) On implementation of a Variation Order, the Consultant shall be entitled to the agreed increase in the Total Value of Contract and/or adjustment to the Services Schedule or Payment Schedule for carrying out

the Variation.

(vii) Notwithstanding anything to the contrary in this Clause 14.3, the Consultant shall be bound to implement any Variation that is necessitated by a Change in Law (*discussed in Clause 15 below*) and any consequent adjustment in the Total Value of Contract, Services Schedule or Payment Schedule, on account of such Variation, shall be determined in accordance with Clause 15 below.

14.4. *Consultant Proposed Variation*

(i) The Consultant may propose a Variation, which it considers necessary or desirable to improve the quality of the Services. While proposing a Variation, the Consultant shall submit a proposal to the Client, with a statement setting out: (a) detailed particulars of the Variation; (b) the work required or no longer required; (c) an estimate of any adjustment in the Total Value of Contract; (d) any adjustment to the Services Schedule or Payment Schedule; and (e) any other effect the proposed Variation would have on the Services or on any other provision of the Contract.

(ii) Based on its review of the Variation proposed by the Consultant, the Client may: (a) confirm the Variation; (b) provide its comments on the proposed Variation; or (c) reject the proposed Variation, while giving reasons in writing for such rejection, within seven (7) days of the submission of the proposal for a Variation. If the Client fails to provide any comments or reject the Consultant's proposed Variation within ten (10) days of receipt of such proposed Variation, the Variation shall be deemed to be accepted by the Client. Upon the Client's acceptance or deemed acceptance of the proposed Variation, the Consultant shall proceed with the Variation.

(iii) To the extent the Client seeks amendments in the proposed Variation, the Consultant shall incorporate or address, in writing, the Client's comments and submit a

	<p>revised proposal. On approval or deemed approval of the revised proposal in accordance with Clause 14.4(ii), the Consultant shall proceed with the Variation.</p> <p>(iv) If the Parties are unable to reach agreement regarding the terms of a Variation Order, such disagreement shall be resolved pursuant to Clause 50.</p> <p>14.5. Notwithstanding anything contained in this Clause 14, a Variation made necessary due to any act, omission or default of the Consultant in the performance of its obligations under the Contract will not result in any increase in the Total Value of Contract or extension of any Deliverable Due Date.</p> <p>14.6. No Variation invalidates the Contract. The Consultant agrees that a Variation may involve the omission of any part of the Services and further, the Consultant agrees that the Client may engage others to perform that part of the Services which has been omitted. The Consultant further acknowledges that any omission or omissions will not constitute a basis to allege that the Client has repudiated the Contract no matter the extent or timing of the omission(s).</p> <p>14.7. Notwithstanding anything contained in this Clause 14, the Client shall not agree to any Variation if: (i) the Consultant seeks any Variation in its obligations which is due to any shortcoming or deficiency in the documents provided by the Consultant; (ii) the Variation relates to repeat performance of any Services due to the Consultant's failure to comply with the Client's requirements; or (iii) escalation in the cost of equipment, materials or the work force, other than on account of a Change in Law.</p>
<p>15. Change in Law</p>	<p>15.1. For the purposes of this Contract, "Change in Law" means the occurrence of any of the following events after the date of execution of the Contract: (i) the modification, amendment or repeal of any existing Applicable Law; (ii) the enactment, promulgation,</p>

bringing into effect, adoption of any new Applicable Law; (iii) change in the interpretation or application of any Applicable Law by any Authority; (iv) the introduction of a requirement for the Consultant to obtain any new approval or permit or the unlawful revocation of an applicable approval or permit; or (v) the introduction of any new Tax or a change in the rate of an existing Tax.

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

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

- (i) increases the cost incurred by the Consultant in performing the Services; and/or
- (ii) affects the Services Schedule,

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

	<p>and/or the Services Schedule.</p> <p>Where it is not possible to address the effect of a Change in Law (through an adjustment in the Total Value of Contract and/or the Services Schedule), the Parties shall agree on a mechanism, including amending the terms of the Contract, to mitigate the adverse effects of the Change in Law. If the Parties are unable to reach an agreement within thirty (30) days of the notification of a Change in Law, then the matter shall be referred to dispute resolution in accordance with Clause 50.</p>
<p>16. Force Majeure</p>	
<p>a. Définition</p>	<p>16.1 For the purposes of this Contract, “Force Majeure” means any of the following events, which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances:</p> <ul style="list-style-type: none"> (i) acts of God; (ii) accidents, except as may be attributable to the Parties; (iii) earthquake, storm or flood; (iv) fires or explosions, except as may be attributable to the Parties; (v) acts of Authorities, except as may be attributable to the Parties; (vi) epidemics; (vii) war, terrorism, sabotage, civil commotions/civil disorder, or riots; and (viii) general strikes or lockouts or other industrial action/confiscation (which are not restricted to the Consultant or its Personnel). <p>16.2 Force Majeure shall not include: (i) any event which is caused by the negligence or intentional act or</p>

	<p>omission of a Party or any Personnel or its agents or employees, (ii) any event which a diligent Party could reasonably have been expected to take into account at the time of the conclusion of this Contract, or be able to avoid or overcome in the carrying out of its obligations hereunder; (iii) insufficiency of funds or commercial hardship; and (iv) unavailability, or increase in the cost of any Personnel or component required to perform the Services, unless such unavailability or increase in costs is due to a Force Majeure event.</p>
<p>b. No Breach of Contract</p>	<p>16.3The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures to mitigate and overcome the effects of the Force Majeure event. Performance of any obligations affected by a Force Majeure event must be resumed as soon as reasonably possible after the abatement of such Force Majeure event.</p>
<p>c. Measures to be Taken</p>	<p>16.4A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.</p> <p>16.5A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.</p> <p>16.6Any period within which the Consultant is required to complete any action or task, in terms of the Services Schedule, shall be extended for a period equal to the time during which the Consultant was unable to</p>

	<p>perform such action as a result of an event of Force Majeure.</p> <p>16.7 During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either: (i) demobilize, in which case the Consultant shall be reimbursed for additional costs it reasonably and necessarily incurs in demobilization, and, if required by the Client, in reactivating the Services; or (ii) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract for the part of the Services performed by it during the subsistence of the Force Majeure event and be reimbursed for additional costs reasonably and necessarily incurred in demobilizing for the part of the Services which are affected by the Force Majeure event and, if required by the Client, in reactivating such part of the Services.</p> <p>16.8 Not later than thirty (30) days after the Consultant has, as a result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on the appropriate measures to be taken in the circumstances.</p> <p>16.9 In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause 50.</p> <p>16.10 Save and except as expressly provided in the Contract, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss relating to or arising from any event of Force Majeure or the exercise by it of any right pursuant to this Clause 16.</p>
<p>d. Prolonged Force</p>	<p>16.11 If a Force Majeure event affecting any Party subsists for a continuous period of one hundred eighty</p>

<p>Majeure</p>	<p>(180) days, the affected party may issue a notice of termination of the entire Contract or such part of the Services as is affected by the Force Majeure event, in accordance with Clause 18 below.</p>
<p>17. Suspension</p>	<p>17.1 The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform or is in breach of any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension: (i) shall specify the nature of the failure or breach, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.</p>
<p>18. Termination</p>	<p>18.1. This Contract may be terminated by either Party as per provisions set out below:</p>
<p>a. By the Client</p>	<p>18.1.1 A “Consultant Event of Default” means any of the events set out below, unless such event has occurred as a consequence of a default by the Client as set out in Clause 18.1.5, a Change in Law or any event of Force Majeure (“Consultant Event of Default”):</p> <ul style="list-style-type: none"> (i) if the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 17 within thirty (30) days of receipt of such notice of suspension or within such further period as the Client may have subsequently granted in writing; (ii) if the Consultant becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary; (iii) if the Client, in its sole discretion and for any reason whatsoever which reason is required to be recorded in writing, decides to terminate this Contract; (iv) if the Consultant’s liability to pay delay

	<p>liquidated damages reaches the cap on delay liquidated damages specified in Clause 29.8 but the delay in respect of which the delay liquidated damages are payable continues to exist;</p> <ul style="list-style-type: none">(v) if the Consultant fails to confirm availability of Key Experts as required in Clause 11;(vi) if the Consultant replaces any Key Expert in contravention of the provisions of this Contract;(vii) if the Consultant has engaged in corrupt, fraudulent, collusive, coercive, undesirable or restrictive practice in bidding for or in subsequently executing the Contract;(viii) if the Consultant fails to furnish, renew and/or maintain the Performance Security in accordance with this Contract;(ix) if the Consultant assigns or novates its rights and obligations under this Contract without the prior written consent of the Client;(x) if any of the Consultant's representations and warranties are found to be false and/or misleading; or(xi) if the Consultant is in breach of any Applicable Laws. <p>18.1.2 Without prejudice to other provisions of this Contract, upon the occurrence of a Consultant Event of Default, the Client may deliver a notice to the Consultant specifying the nature of the breach and giving a cure period of thirty (30) days to the Consultant to cure the Consultant Event of Default.</p> <p>Provided that, in case of occurrence of a Consultant Event of Default set out in Clauses 18.1.1(ii), 18.1.1(iv), 18.1.1(vii), the Client shall have the right to terminate the Contract immediately, without any obligation to provide a cure period.</p> <p>18.1.3 Subject to Clause 18.1.2, and except in case of the event set out at Clause 18.1.1(iii), if by the end of the</p>
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	<p>cure period, the Consultant has not remedied the Consultant Event of Default or taken steps to remedy the Consultant Event of Default to the satisfaction of the Client, then the Client shall have the right to issue a termination notice, upon which this Contract shall terminate forthwith.</p> <p>18.1.4 Notwithstanding anything to the contrary in this Contract, in case of occurrence of a Consultant Event of Default set out in Clauses 18.1.1(i), 18.1.1(iv) or 18.1.1(vi), to the extent such Consultant Event of Default affects one or more of the Modules but not the entire Contract, the Client shall have the right to partially terminate the Contract with respect to the Modules affected by such Consultant Event of Default and not the entire Contract. Such partial termination shall not impact the validity of the Contract or the obligations of the Consultant with regard to the Modules which are not affected by the Consultant Event of Default.</p> <p>Upon total or partial termination of the Contract for a Consultant Event of Default, the Client will have the right to engage a third party consultant to complete the Services or the Modules which have been deleted from the Consultant’s scope and the Client shall recover the incremental costs incurred by the Client in engaging a third party consultant from the Consultant.</p>
<p>b. By the Consultant</p>	<p>18.1.5A “Client Event of Default” means any of the following events set out below, unless such event has occurred as a consequence of a default by the Consultant as set out in Clause 18.1.1, a Change in Law or any event of Force Majeure:</p> <ul style="list-style-type: none"> (i) if the Client fails to pay any undisputed money due to the Consultant pursuant to this Contract within fortyfive (45) calendar days after receiving written notice from the Consultant that such payment is overdue; (ii) if the Client is in material breach of its obligations under this Contract and has not remedied the same within fortyfive (45) days (or

	<p>such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach;</p> <p>(iii) if the Client becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary; or</p> <p>(iv) if the Client suspends the performance of the Services for more than sixty (60) days, for reasons not attributable to the Consultant.</p> <p>18.1.6 Without prejudice to other provisions of this Contract, upon the occurrence of a Client Event of Default, the Consultant may deliver a notice to the Client specifying the nature of the breach and giving a cure period of thirty (30) days to the Client to cure the Client Event of Default.</p> <p>Provided that, in case of occurrence of a Client Event of Default set out in Clauses 18.1.5(iii) or 18.1.5(iv), the Consultant shall have the right to terminate the Contract immediately, without any obligation to provide a cure period.</p> <p>Notwithstanding anything to the contrary in this Contract, in case of occurrence of a Client Event of Default set out in Clauses 18.1.5(i) or 18.1.5(ii), to the extent such Client Event of Default affects one or more of the Modules but not the entire Contract, the Consultant will not have a right to terminate the entire Contract for such Client Event of Default, but will only have a right to partially terminate the Contract with respect to the Modules affected by such Client Event of Default. Such partial termination shall not impact the validity of the Contract or the obligations of the Consultant and the Client with regard to the Modules which are not affected by the Client Event of Default.</p>
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<p>c. Termination for Force Majeure</p>	<p>18.1.7 If a Force Majeure event affecting any Party subsists for a continuous period of one hundred eighty (180) days, then either Party may issue a notice of termination to the other Party. Upon receipt of this notice, the Parties shall have a period of fifteen (15) days to agree on the manner in which the Contract may be progressed upon cessation of the Force Majeure event and the variations, if any, required to the Contract to address the consequences of the Force Majeure event. If on the expiry of the fifteen (15) day period, the Parties fail to arrive at an agreement, either Party may immediately terminate this Contract by written notice to the other Party.</p> <p>Notwithstanding anything to the contrary in this Contract, in case of occurrence of a Force Majeure event which affects one or more of the Modules but not the entire Contract, the Contract may be partially terminated with respect to the Modules affected by such Force Majeure event. Such partial termination shall not impact the validity of the Contract or the obligations of the Consultant with regard to the Modules which are not affected by the Force Majeure event.</p>
<p>d. Cessation of Rights and Obligations</p>	<p>18.1.8 Upon termination of this Contract pursuant to Clause 18, or upon expiration of this Contract pursuant to Clause 12, all rights and obligations of the Parties hereunder shall cease, except (i) any cause or action which may have occurred in favour of either Party or any right which is vested in either Party under any provision of the Contract as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry or termination of the Contract, (ii) the obligation of confidentiality set forth in Clause 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause 25, (iv) the indemnity obligations of the Parties as set out in Clause 19; (v) the obligations in relation to intellectual property rights under Clause 27; and (vi) any right which a Party may have under the Applicable Law.</p>

<p>e. Cessation of Services</p>	<p>18.1.9 Upon termination of this Contract by either Party , the Consultant shall:(i) immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum; and (ii) transfer to the Client all documents, data, programmes, applications, software, equipment etc. developed or acquired by the Client for the purposes of performing the Services along with the right to use the Intellectual Property in such documents, data, programmes, applications, software, equipment for the Smart Solutions Project.</p>
<p>f. Payment upon Termination</p>	<p>18.1.10 Upon termination or partial termination of this Contract for a Consultant Event of Default (except the event set out in Clause 18.1.1(iii) above), the Client shall make the following payments to the Consultant:</p> <ul style="list-style-type: none"> (i) Remuneration for the duly and satisfactorily completed Deliverables for all Modules or, the terminated Modules, as the case may be, prior to the date of termination, in accordance with Clause 43. Less (ii) all amounts previously paid to the Consultant under the Contract for all Modules or the terminated Modules, as the case may be; (iii) all amounts due to the Client from the Consultant, including any damages payable by the Consultant to the Client in respect of all Modules or the terminated Modules, as the case may be; and (iv) the incremental cost incurred by the Client in engaging a third party to complete all Modules or the terminated Modules, as the case may be. <p>If the aggregate of (ii), (iii), and (iv) above is: (a) less than (i) above, the Client shall pay the differential amount to the Consultant within thirty (30) days of the Consultant raising an invoice for the amount; or (b) more than (i) above, then the Consultant shall pay the differential</p>

	<p>amount to the Client within thirty (30) days of the Client raising an invoice for the amount, failing which the Client may invoke the Performance Security to recover such amounts.</p> <p>18.1.11 Upon termination or partial termination of this Contract for a Client Event of Default, a Force Majeure event or for the event set out in Clause 18.1.1(iii) above, the Client shall make the following payments to the Consultant:</p> <ul style="list-style-type: none"> (i) Remuneration for the duly and satisfactorily completed Deliverables for all Modules or terminated Modules, as the case may be, prior to the date of termination, in accordance with Clause 43; and (ii) if the Contract is terminated for a Client Event of Default or for the event set out in Clause 18.1.1(iii), any Breakage Costs reasonably incurred by the Consultant as a direct result of termination or partial termination of the Contract; Less (iii) all amounts previously paid to the Consultant under the Contract for all Modules or terminated Modules, as the case may be; (iv) all amounts due to the Client from the Consultant, including any damages payable by the Consultant to the Client in respect of all Modules or the terminated Modules, as the case may be. <p>The Client shall pay the termination compensation specified in this Clause 18.1.11 to the Consultant within thirty (30) days of the Consultant raising an invoice for that amount.</p>
<p>19. Indemnity and Limitation of Liability</p>	<p>19.1 Consultant's indemnity</p> <p>The Consultant must indemnify and hold harmless the Client and the Client's staff, their Affiliates and directors of their Affiliates (each a "Client Indemnified Party") from and against any and all claims and losses suffered or</p>

	<p>incurred by the Client Indemnified Party, including claims by a third party, arising out of:</p> <ul style="list-style-type: none">(i) any failure of the Consultant to pay taxes or any statutory dues;(ii) any non-compliance or violation of Applicable Law or applicable permits by the Consultant;(iii) breach of the Consultant's representations and warranties set out in the Contract;(iv) bodily injury, sickness or death of any person whatsoever;(v) breach of the Consultant's obligations under the Contract;(vi) physical damage to the Project Office or any property therein;(vii) loss of or physical damage to property of any third party; or(viii) infringement of the Intellectual Property Rights of any third party by the Consultant under the Contract. <p>19.2 Client's indemnity</p> <p>The Client agrees to indemnify and hold harmless the Consultant and the Personnel (each a "Consultant Indemnified Party") from and against any and all claims or losses suffered or incurred by the Consultant Indemnified Party arising out of:</p> <ul style="list-style-type: none">(i) breach of the Client's representations and warranties under the Contract; or(ii) any non-compliance or violation of Applicable Laws or any Client's applicable permits or consents by the Client.
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19.3 On receipt of a notice of any claim, which would entitle any Party (“Indemnified Party”) to claim indemnification from the other Party (“Indemnifying Party”), the Indemnified Party shall, within a reasonable time, provide a written notice of the claim to the Indemnifying Party along with all the documents available with it in respect of the claim, specifying in detail the claim, the amount claimed by the third party, the date on which the claim arose and the nature of the default to which such claim relates (including a reference to the applicable provision of the Contract) and the Indemnifying Party shall settle the claim accordingly. The Indemnifying Party shall be entitled to but not obliged to participate in and control the defence of any such suit, action or proceeding at its own expense or direct the Indemnified Party to defend such claim, at the cost of the Indemnifying Party. If the Indemnifying Party elects to control the defence of any such suit, action or proceeding, the Indemnified Party shall render all necessary assistance for the purposes of enabling the Indemnifying Party to take the action referred to in this Clause 19.3. The Indemnifying Party may also request the Indemnified Party, at the cost of the Indemnifying Party to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against the third party the Indemnifying Party's rights in relation to the matter and in connection with proceedings related to the matter, use reputable advisers and lawyers chosen by the Indemnifying Party. The Indemnified Party shall not settle any such suit, action or proceeding without the prior written consent of the Indemnifying Party.

19.4 The Indemnifying Party agrees and acknowledges that it shall fully indemnify the Indemnified Party for all amounts paid and/or costs incurred by the Indemnified Party in accordance with this Clause 19.

19.5 Unless otherwise specified in the Contract, neither Party shall be liable to the other Party for any kind of

indirect, punitive or consequential loss or damage or for any economic loss, loss of profit, loss of revenue, loss of use or business interruption which may be suffered by the other Party in connection with this Contract, except for losses caused by the fraud or wilful misconduct of the Party.

19.6 The Party entitled to the benefit of an indemnity under this Clause 19 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

19.7 The obligation to indemnify stipulated in this Clause 19 is:

- (i) continuing, separate and independent obligation of the Parties from their other obligations and shall survive the termination of this Contract; and
- (ii) shall not be limited or reduced by any insurance, except to the extent that the proceeds of any such insurance are capable of being applied to reduce claims made against the affected Party.

19.8 For the purpose of this Clause 19:(i) "claim" means any claim, liability, proceeding, cause of action, action, suit, demand at law or in equity, in each case brought against either Party (including by any third party); and (ii) "loss" means all losses (excluding consequential losses, indirect losses and loss of profit), damages, liabilities, fines, interest, awards, penalties, costs (including, reasonable legal costs, lawyers' and arbitrators' fees), charges and expenses of whatever nature or howsoever occasioned including any of the above suffered by the non-defaulting Party or a third party as a result of any act or omission in the course of or in connection with the performance, non-performance or deficiency in the performance of obligations under this Contract.

C. RIGHTS AND OBLIGATIONS OF THE CONSULTANT

20. General	
a. Standard of Performance	<p>20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with Good Industry Practices and this Contract, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client’s legitimate interests in any dealings with third parties.</p> <p>20.2The Consultant shall employ and provide such qualified and experienced Personnel as are required to carry out the Services.</p> <p>20.3 The Consultant shall not subcontract any part of the Services.</p>
b. Law Applicable to Services	<p>20.4 The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that all of its Personnel comply with the Applicable Law.</p> <p>20.5 Throughout the duration of the Contract, the Consultant shall comply with the prohibitions in India in relation to the import of goods and services when as a matter of law or official regulation, there is a prohibition on entering into or maintaining commercial relations with the country from where the import is proposed to be made.</p> <p>20.6 The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall give due regard to such local customs in performing the Services.</p>

	<p>20.7 The Consultant shall obtain, maintain and comply with the terms of all applicable permits, including work permits for its Personnel, required to perform the Services, at its own risk and cost.</p>
<p>21. Conflict of Interest</p>	<p>21.1 The Consultant shall hold the Client’s interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.</p>
<p>a. Consultant Not to Benefit from Commissions, Discounts, etc.</p>	<p>21.1.1 The Remuneration of the Consultant pursuant to Clauses 42 through 47 shall constitute the Consultant’s only payment in connection with this Contract or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that the Personnel and agents of either of them, similarly shall not receive any such additional payment.</p> <p>21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the applicable procurement guidelines of the GoO, and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be to the account of the Client.</p>
<p>b. Consultant and Affiliates Not to Engage in Certain Activities</p>	<p>21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and its Affiliates, shall be disqualified from providing goods, works, or non-consulting services resulting from or directly related to the Services, for the implementation of the Smart Solutions Project, unless otherwise indicated in the SCC.</p>

<p>c. Prohibition of Conflicting Activities</p>	<p>21.1.4 The Consultant shall not engage, and shall cause its Personnel to not engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.</p>
<p>d. Strict Duty to Disclose Conflicting Activities</p>	<p>21.1.5 The Consultant has an obligation and shall ensure that its Personnel shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.</p>
<p>22. Confidentiality</p>	<p>22.1 Except with the prior written consent of the Client, the Consultant and the Personnel shall not at any time communicate to any person or entity any proprietary or confidential information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Client to the Personnel; any information provided by or relating to the Client, its technology, technical processes, business affairs or finances or any other information acquired in the course of the Services, nor shall the Consultant and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.</p> <p>Notwithstanding the aforesaid, the Consultant and the Personnel may disclose such information to the extent that such information:</p> <ul style="list-style-type: none"> (i) was in the public domain prior to its delivery to the Consultant/Personnel or becomes a part of the public domain from a source other than the Consultant/Personnel; (ii) was obtained from a third party with no known duty to maintain its confidentiality;

	<p>(iii) is required to be disclosed under Applicable Laws or judicial/ administrative/arbitral process or by any government instrumentality, provided that such disclosure is made: (a) after giving a prior written notice to the Client; and (b) using reasonable efforts to ensure that such disclosure is accorded confidential treatment; (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant on a needs basis as is reasonable under the circumstances, provided that the Consultant shall require such professional advisers, agents, auditors or representatives to undertake in writing to keep the information provided confidential, and further provided that the Consultant shall use best efforts to ensure compliance with such undertaking.</p>
<p>23. Liability of the Consultant</p>	<p>23.1 Subject to the exclusions set out in the SCC, the overall liability of the Consultant and the Client under this Contract shall not exceed the amounts specified in the SCC.</p> <p>23.2The Parties agree and acknowledge that the provisions of this Clause 23 read with the SCC in respect of limitation and exclusion of liabilities is an agreed allocation of risk between the Parties, the sufficiency of which the Parties hereby agree and acknowledge.</p>
<p>24. Insurance to be Taken out by the Consultant</p>	<p>24.1 The Consultant: (i) shall take out and maintain, at its own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the SCC, and (ii) at the Client’s request, shall provide evidence to the Client within fifteen (15) days of the request, showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause 11.</p>
<p>25. Accounting, Inspection and</p>	<p>25.1 The Consultant shall keep accurate and systematic accounts and records in respect of the</p>

<p>Auditing</p>	<p>Services, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and costs and the basis thereof.</p> <p>25.2 The Consultant shall permit, the Client and/or persons appointed by the Client to inspect all accounts and records relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Client, if requested by the Client. Any act intended to materially impede the exercise of the Client’s inspection and audit rights provided for under this Clause 25.2 shall constitute a material breach of the Contract, which would give the Client the right to terminate the Contract.</p>
<p>26. Reporting Obligations</p>	<p>26.1 The Consultant shall submit to the Client the reports and documents specified in Appendix A, in the form, in the numbers and within the time periods set forth in the said Appendix (the “Reports”).</p>
<p>27. Proprietary Rights of the Client in Reports and Records</p>	<p>27.1 The Client shall own all Intellectual Property Rights in the Deliverables, Reports, programmes, data, information such as maps, diagrams, plans, specifications, technical information, solutions, models, databases, drawings, software, supporting records, or other documents and material compiled or prepared by the Consultant for the Client in the course of the Services. The Consultant shall, upon termination or expiration of this Contract, deliver all such Deliverables, Reports, data, information and documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such Deliverables, Reports, documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.</p> <p>27.2 Subject to Clause 27.1 above, all Intellectual Property Rights in the documents, know-how, data, software and programmes used in connection with preparing the Deliverables and the Services, which are proprietary to the Consultant or its third party licensors</p>

	<p>shall belong to the Consultant, or, as the case may be, its third party licensors and the Consultant hereby grants to the Client a royalty-free, irrevocable, non-exclusive licence to use, modify and reproduce the Deliverables and any Intellectual Property Rights contained in the Services for any purpose whatsoever connected with the Smart Solutions Project; and the licence hereby granted shall carry the right to grant sub-licences and shall be transferable to third parties. The cost of such license shall be deemed to be included in the Total Value of Contract.</p> <p>27.3 The Consultant shall not use the technology, technical information, software, designs or know-how licensed for the purposes of providing the Services for any purposes unrelated to the Contract, without the prior written approval of the Client.</p> <p>The Consultant shall indemnify and hold harmless the Client from and against all claims and losses that the Client may suffer or incur on account of infringement (or alleged infringement) of any third party's Intellectual Property Rights in performance of the Services.</p>
<p>28. Equipment, Vehicles and Materials</p>	<p>28.1 Equipment, vehicles and materials, if any made available to the Consultant by the Client, or purchased by the Consultant wholly or partly with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Client's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.</p> <p>28.2 Any equipment or materials owned or purchased by the Consultant or its Personnel at its own cost for use either in the performance of the Services or personal use</p>

	<p>shall remain the property of the Consultant or Personnel concerned, as the case may be.</p>
<p>29. Timelines for Completion and Liquidated Damages</p>	<p>29.1The Consultant shall perform the Services strictly in accordance with the Services Schedule and complete each Deliverable on or before the relevant Deliverable Due Date.</p> <p>29.2 If the Consultant fails to comply with the Services Schedule for reasons attributable to the Consultant, then, without prejudice to the right of the Client to recover delay liquidated damages, the Client may, in its sole discretion, revise the Services Schedule to mitigate the effects of such delay and the Consultant shall comply with the revised Services Schedule.</p> <p>29.3Subject to Clause 29.4 below, the Consultant shall be entitled to a day-for-day extension of the relevant Deliverable Due Date if and only to the extent that performance of Services is or will be delayed due to any of the following reasons (each such event, a Delay Event):</p> <ul style="list-style-type: none"> (i) any delay, impediment or prevention caused by or attributable to the Client, or the Client's personnel, including any delay or impediment in accessing the Project Office; (ii) an order issued by the Client to suspend the Services, unless such suspension is attributable to an act or omission of the Consultant or the Personnel; (iii) any delay in the approval of any Deliverable in accordance with Clause 41; (iv) occurrence of a Force Majeure event, provided that the requirements of Clause 16 above have been complied with; (v) Change in Law; (vi) delay by any Authority in renewing any applicable permit, despite the Consultant having applied for such renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;

- (vii) any Variation;
- (viii) any order of a court restraining the performance of the Contract in full or in any part thereof, for reasons not attributable to the Consultant;
- (ix) delay caused in complying with any instructions of the Client or the Client's representative, which instructions are not attributable to any default or failure of the Consultant; or
- (x) delay in providing any services, facilities or property required to be provided by the Client in accordance with Appendix A.

29.4 The Consultant shall promptly provide the Client with: (i) a notice upon becoming aware of any Delay Event listed in Clause 29.3 above; and (ii) a notice of its claim for extension of any Deliverable Due Date, with such notice specifying the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Consultant, the mitigation measures being taken or proposed to be taken by the Consultant, and any other information relevant to claim such extension.

29.5 The Consultant shall ensure that the particulars provided to the Client under Clause 29.4 above are kept up to date and shall continuously submit such further particulars as may be necessary or which may be requested by the Client, from time to time.

29.6 Any extension in accordance with this Clause 29 shall be implemented by way of a Variation Order in accordance with Clause 14.

29.7 If there are two or more concurrent causes of delay and only one of those concurrent causes is a cause of delay which would entitle the Consultant to an extension of time in accordance with this Clause 29, then the Consultant shall not be entitled to an extension of time for the period of such concurrency.

29.8 Subject to Clause 29.3 above, if the Consultant fails to complete any Deliverable in a manner

	<p>satisfactory to the Client on or before the relevant Deliverable Due Date, the Consultant shall pay to the Client delay liquidated damages at the rate set out in the SCC for each week of delay until completion of the Deliverable. Provided that the aggregate delay liquidated damages payable by the Consultant to the Client under the Contract shall not exceed the maximum amount set out in the SCC.</p>
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D. PERSONNEL

<p>30. Description of Key Experts (Core Team)</p>	<p>30.1 The title, agreed job description, minimum qualification and time-input estimates of each Key Expert to carry out the Services are described in Appendix B.</p> <p>30.2 If required to comply with the provisions of Clause 20.a, adjustments with respect to the estimated time-input of Key Experts set forth in Appendix B may be made by the Consultant with prior approval of the Client, provided (i) that such adjustments shall not alter the original time-input estimates for any Key Expert by more than 10% or one week, whichever is longer; and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the maximum Remuneration set forth in Clause 42.1.</p> <p>30.3 If any additional work is required by the Client beyond the scope of the Services specified in Appendix A pursuant to a Variation Order the estimated time-input for the Key Experts and maximum Remuneration payable to the Client may be increased by agreement in writing between the Client and the Consultant in accordance with Clause 15. .</p>
<p>31. Replacement of Key Experts (Expert Pool and Deputy Team Leader and</p>	<p>31.1 Except as the Client may otherwise agree in writing and subject to sub-Clauses (i) – (iii) below, no changes shall be made in the Key Experts without the prior consent of the Client:.</p> <p>(i) during the (first) 1st year of the Contract, the</p>

<p>Additional Resources, any)</p>	<p>if</p> <p>(ii) Consultant may change a maximum of two (2) Key Experts with the prior consent of the Client;</p> <p>(ii) during the (second) 2nd year of the Contract, the Consultant may change a maximum of (three) 3 Key Experts with the prior consent of the Client; and</p> <p>(iii) from the third (3rd) year of the Contract and for the rest of the term of the Contract, the Consultant may change maximum of fifty percent (50%) of the Key Experts forming part of the Expert Pool as on the date of commencement of the third (3rd) year of the term of the Contract.</p> <p>Any change, replacement or substitution of a Key Expert, whether temporary or permanent, in contravention of the Contract (specifically this Clause 31.1) shall constitute a material breach of the Contract.</p> <p>31.2 A request for substitution of a Key Expert during the term of the Contract may be considered based on the Consultant's written request and only in circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity of any Key Expert. In such case, the Consultant shall submit a written request for replacement of the Key Expert with a person of equivalent or better qualifications and experience, and at the same man month rate as specified in Appendix C for such Key Expert being replaced. The request for replacement of a Key Expert should state in sufficient detail the reasons for the proposed replacement and should be accompanied by the CV of the substitute Key Expert with details of his experience and qualification and in the format set out in Form TECH-4 of the RFP. If the Client does not raise any objection in writing (stating the reasons for the objection) within twenty two (22) days from receipt of a written request for replacement of a Key Expert, then the substitute Key Expert shall be deemed to have been approved by the Client.</p>
<p>32. Approval of</p>	<p>32.1 If during the term of the Contract, Additional</p>

<p>Additional Resources</p>	<p>Resources are required to carry out the Services, the one party shall submit a written request to the other party, stating in sufficient detail the reasons for requiring Additional Resources. The consultant shall, on receiving/submitted request, submit detailed CVs of the Additional Resources in the format set out in Form TECH-4 of the RFP for the approval of the client. The remuneration payable to such new Additional Resources shall be mutually discussed between the Parties at the time of appointment of the relevant Additional Resources and payments made to the Additional Resources shall be in the nature of Reimbursable Expenses.</p>
<p>33. Removal of Personnel</p>	<p>33.1 If the Client finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or if the Client determines that Consultant's Personnel have engaged in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practices (as specified in Attachment 1 to the GCC) while performing the Services, the Consultant shall, at the Client's written request, provide a replacement for such Personnel.</p> <p>33.2 In the event that any of Personnel is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.</p> <p>33.3 The replacement of any Personnel shall possess equivalent or better qualifications and experience and shall be approved by the Client. The process for obtaining the approval of the Client for any Additional Resources or for replacement of a Key Expert, as set out in Clauses 31 and 32 above, must also be followed for removal and replacement of any Personnel under this Clause 33.</p>
<p>34. Replacement / Removal of Personnel -</p>	<p>34.1 Except as the Client may otherwise agree: (i) the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or</p>

<p>Impact on Payments</p>	<p>replacement, and (ii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced or removed.</p>
<p>35. Working Hours, Overtime, Leave, etc.</p>	<p>35.1 Working hours and holidays for Personnel are set forth in Appendix B.</p> <p>35.2 The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in Appendix B.</p> <p>35.3 Any taking of leave by Key Experts shall be subject to the prior approval by the Consultant who shall ensure that absence for leave purposes will not delay the progress and or impact the overall performance of the Services.</p>

E. RIGHTS AND OBLIGATIONS OF THE CLIENT

<p>36. Assistance and Exemptions</p>	<p>36.1 Unless otherwise specified in the SCC, the Client shall use its best efforts to:</p> <ul style="list-style-type: none"> (i) Assist the Consultant with obtaining any applicable permits, including work permits and such other documents as shall be necessary to enable the Consultant to perform the Services. (ii) Assist the Consultant with promptly obtaining, for the Personnel who are not residents of India and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in India while carrying out the Services under the Contract. (iii) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Personnel who are not residents of India and their eligible dependents. Provided that, clearance through customs of any property required for the Services will remain the primary obligation of the Consultant and the Consultant shall not be entitled to any extension of
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	<p>time on account of any delay in obtaining any customs clearance.</p> <p>(iv) Issue to officials, agents and representatives of the government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.</p> <p>(v) To the extent permissible under Applicable Laws, assist the Consultant and the Personnel with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity under Applicable Laws.</p> <p>(vi) Provide to the Consultant any such other assistance as may be specified in the SCC.</p>
<p>37. Access to Project Office</p>	<p>37.1 The Client warrants that on and from the Effective Date and until the expiry or early termination of the Contract, the Consultant shall have unimpeded and unhindered access to the Project Office for the performance of the Services, at no additional cost to the Consultant. The Consultant will be responsible for any damage to the Project Office or any property thereon resulting from such access and will indemnify the Client in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Client.</p> <p>37.2 The Client shall provide basic utilities (including water and electricity) to the Consultant at the Project Office, at no additional cost to the Consultant.</p>
<p>38. Services, Facilities and Property of the Client</p>	<p>38.1 The Client shall make available to the Consultant and the Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (Appendix A) at the times and in the manner specified in said Appendix A.</p> <p>38.2 In case that such services, facilities and property shall not be made available to the Consultant as and when specified in Appendix A, the Parties shall agree on</p>

	<p>(i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services,(ii) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultant as a result thereof. Any adjustment to the Services Schedule and/or the Remuneration pursuant to this Clause 38 shall be by way of a Variation in accordance with Clause 14.</p>
<p>39. Counterpart Personnel</p>	<p>39.1 The Client shall make available to the Consultant free of charge such professional and support personnel, to be nominated by the Client with the Consultant’s advice, as specified in Appendix A.</p> <p>39.2 If counterpart personnel are not provided by the Client to the Consultant as and when specified in Appendix A, the Client and the Consultant shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Client to the Consultant as a result thereof. Any adjustment to the Remuneration pursuant to this Clause 39 shall be by way of a Variation in accordance with Clause 14.</p> <p>39.3 Professional and support counterpart personnel, excluding Client’s liaison personnel, shall work under the exclusive direction of the Consultant, who will be solely responsible for any and all acts and omissions of such personnel. If any such personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.</p>
<p>40. Payment Obligation</p>	<p>40.1In consideration of the Services performed by the Consultant under this Contract, the Client shall make payments of the Remuneration and the Reimbursable Expenses to the Consultant in such manner as is</p>

	<p>provided in Clause 43 read with the SCC.</p>
<p>41. Review and Approval of Deliverables and Completion Certificate</p>	<p>41.1 The Client shall review and provide comments on all Deliverables and other documents submitted by the Consultant, including any subsequent amendments to these documents, in a timely manner so as to enable the Consultant to perform the Services in accordance with the Services Schedule and to comply with its obligations within the time lines prescribed under the Contract.</p> <p>41.2 Unless otherwise specified in the Terms of Reference, the Consultant shall submit copies of each draft Deliverable to the Client for its review and approval in a manner such that the final approved Deliverable is submitted to the Client within the time lines specified in the Services Schedule.</p> <p>41.3 The Client shall review and provide comments, if any, on each draft Deliverable submitted by the Consultant or notify the Consultant of its approval of the draft Deliverable within fifteen (15) days from the date of receipt of the draft Deliverable. The Client shall have the right to require the Consultant to amend or modify the draft Deliverable if the Client identifies any deficiencies or shortcomings in the draft Deliverable. If the Consultant receives any comments, suggestions or instructions to modify the draft Deliverable from Client, then the Consultant shall modify the draft Deliverable to correct any shortcomings or deficiencies identified by Client and submit the revised Deliverable to the Client for its approval. This process shall continue until the draft Deliverable is approved by the Client.</p> <p>41.4 Upon approval of a Deliverable by the Client in accordance with Clause 41.3, the Consultant shall issue a Deliverable Acceptance Certificate to the Client for the approved Deliverable, and the Client shall duly endorse the Deliverable Acceptance Certificate to signify its acceptance of the relevant Deliverable. If the Client fails to endorse the Deliverable Acceptance Certificate</p>

within twenty(20)working days of receipt of the Deliverable Acceptance Certificate, then the Deliverable Acceptance Certificate shall be deemed to have been endorsed by the Client. The performance of the Services (covered by the relevant Deliverable) shall be complete upon the endorsement or deemed endorsement of the Deliverable Acceptance Certificate for such Services by the Client.

41.5 Notwithstanding any review or approval of a Deliverable by the Client or issuance or deemed endorsement of a Deliverable Acceptance Certificate by the Client, the Consultant shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the final Deliverable. Subject to Clause 29.3, the Consultant shall not be entitled to any extension of a Deliverable Due Date or compensation for complying with the requirements of this Clause 41.

41.6 Notwithstanding any review or approval of a Deliverable by the Client or issuance or deemed endorsement of a Deliverable Acceptance Certificate by the Client, at the time of implementation of the Smart Solutions Project, if the Client discovers any inaccuracies, discrepancies or shortcomings in a Deliverable, then the Client shall have the right to require the Consultant to rectify any such discrepancy, inaccuracy or shortcoming in the relevant Deliverable, without any additional cost to the Client.

41.7 Within ninety (90) days of the expiry of the post implementation support period, the Consultant shall facilitate the smooth transfer of the overall monitoring, supervision and control of the implementation of the Smart Solutions Project to the Client or any other agency nominated by it.

Within twenty(20) working days of the expiry of the ninety (90) day transition period and the successful handing over of the monitoring, supervision and control

	<p>of the Smart Solutions Projects as certified by the Client, the Client shall issue the Completion Certificate to the Consultant. The issue of the Completion Certificate shall certify that the Services have been completed in accordance with the Contract.</p> <p>Upon issuance of the Completion Certificate by the Client, the Consultant shall be entitled to the last milestone payment as per the Payment Schedule.</p> <p>If the Client does not issue the Completion Certificate after the expiry of the above twenty(20) day period for any reason not attributable to the Consultant, then the Completion Certificate shall be deemed to have been issued to the Client and the Consultant shall be entitled to the last milestone payment as per the Payment Schedule.</p>
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F. PAYMENTS TO THE CONSULTANT

<p>42. Total Value of Contract</p>	<p>42.1 In consideration of the Services, the Client shall pay to the Consultant the Remuneration in accordance with the Payment Schedule. In addition to the Remuneration, the Consultant shall also be paid the Reimbursable Expenses for the costs incurred by the Consultant under the various heads of expenditure specified in Appendix D.</p> <p>42.2 The Consultant is deemed to have satisfied itself of the correctness and sufficiency of the Remuneration and Reimbursable Expenses and except as otherwise provided in the Contract, the aggregate Remuneration and the Reimbursable Expenses payable under this Contract shall not exceed the ceilings in INR specified in the SCC. Any payments in excess of the ceiling for any additional scope of work or otherwise shall only be way of a Variation in accordance with Clause 14.</p>
<p>43. Remuneration and Reimbursable</p>	<p>43.1 The Client shall pay to the Consultant:</p> <p>(i) up to 20% of the Remuneration based on the actual</p>

<p>Expenses</p>	<p>man months spent by the Programme Support Team on providing the Services;</p> <p>(ii) 70% of the Remuneration based on satisfactory completion of the various Deliverables specified in the Terms of Reference, in the manner set out in the Payment Schedule, for Activity 1-7 and Activity 9;</p> <p>(iii) up to 10% of the Remuneration based on the actual man months spent by the Personnel/Key Experts on providing the Services for Activity 8; and</p> <p>(iv) Reimbursable Expenses that are actually and reasonably incurred by the Consultant in the performance of the Services or as specified in the SCC, not exceeding the ceiling specified in Appendix D.</p> <p>43.2 All payments shall be at the rates set forth in Appendix C and Appendix D.</p> <p>43.3 The man month rates considered for the Remuneration will not be adjusted for the term of the Contract.</p> <p>43.4 The Remuneration shall cover: (i) such salaries and allowances as the Consultant shall have agreed to pay to the Personnel as well as factors for social charges and overheads (bonuses or other means of profit-sharing shall not be allowed as an element of overheads), (ii) the cost of backstopping by home office staff not included in the Personnellist in Appendix B, (iii) the Consultant's profit, and (iv) any other items as specified in the Clause 43.2 of the SCC.</p>
<p>44. Taxes and Duties</p>	<p>44.1The Consultant and Personnel are responsible for meeting any and all Tax liabilities arising out of the Contract in India or elsewhere, unless it is stated otherwise in the SCC.</p> <p>44.2All local indirect taxes itemized and finalized during Contract negotiations and specified in the SCC shall be reimbursed to the Consultant.</p> <p>44.3All payments made by the Client to the Contractor</p>

	<p>shall be subject to deductions and withholding of applicable Taxes in accordance with Applicable Laws.</p>
<p>45. Currency of Payment</p>	<p>45.1 Any payment under this Contract shall be made in Indian Rupees.</p>
<p>46. Mode of Billing and Payment</p>	<p>46.1 Billings and payments in respect of the Services shall be made in accordance with the Payment Schedule.</p> <p>46.2 <u>Monthly invoices.</u> For the payments specified in Clauses 43.1(i), 43.1(iii) and 43.1(iv) above, as soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, the Consultant shall submit to the Client, in duplicate, itemized invoices stating: (i) the Remuneration payable for the Programme Support Staff and Key Experts who have provided Services in the relevant month based on the man month rates specified in Appendix C, including all applicable Taxes; and (ii) the Reimbursable Expenses, if any, incurred by the Consultant in the relevant month. Each monthly invoice shall be accompanied by the time sheets of the Programme Support Staff and Key Experts who have provided Services in the month to which the invoice relates and other supporting documents, as may be specified in the SCC. Each monthly invoice will include a description of the Services provided, the name and agreed man month rate of the Programme Support Staff and the Key Expert providing the Services in the relevant month, and itemization and description of Reimbursable Expenses and disbursements in the relevant month. The Client shall pay the Consultant's monthly invoices within thirty (30) days after the receipt by the Client of such monthly invoices with supporting documents. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Client may add or subtract the difference from any subsequent</p>

	<p>payments to the Consultant.</p> <p>46.3 <u>Milestone Invoices.</u></p> <p>(i) For the payments specified in Clause 43.1(ii) above, within seven (7) days after the issuance of the Deliverable Acceptance Certificate, for the relevant Module, the Consultant may submit to the Client an invoice for the payment linked to completion of such Deliverable.</p> <p>(ii) Each milestone invoice must set out: (a) details of the Deliverable covered by the relevant milestone invoice; (b) the amount payable for the relevant Deliverable, including all applicable Taxes; and (c) any other additions or deductions which may have become due under the Contract. Each milestone invoice will be accompanied by supporting documents as set out in the SCC.</p> <p>(i) Within thirty (30) days of receipt of a milestone invoice, the Client shall verify completion of the Deliverable covered under such invoice and either:</p> <p>(a) approve the milestone invoice and issue a certificate, conveying its approval for release of the amount specified in the milestone invoice, less any necessary deductions and adjustments in accordance with the Contract and/or Applicable Laws. If the amount approved by the Client is less than the full amount of the milestone invoice (other than for any deductions in accordance with Applicable Laws), the Client shall state in writing the reasons for approving a lesser amount; or</p> <p>(b) issue a notice to the Consultant disputing the milestone invoice and directing the Consultant to issue a revised milestone invoice after rectifying the errors or discrepancies identified by the Client. The</p>
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	<p>Consultant shall submit a revised milestone invoice to the Client after rectifying the errors or discrepancies identified by the Client and this process will be repeated until the Client approves the milestone invoice and issues a certificate, conveying its approval for release of the amount specified in the milestone invoice. Any dispute between the Parties in relation to a disputed milestone invoice will be settled in accordance with Clause 50.</p> <p>(iv) If the Client does not dispute or provide comments on any milestone invoice within thirty (30) days from the date of receipt of a milestone invoice, then the milestone invoice shall be deemed to have been approved by the Client.</p> <p>(v) The Client shall pay the Consultant's milestone invoice within ten (10) days after the acceptance or deemed acceptance of such milestone invoice.</p> <p>46.4 Notwithstanding anything to the contrary in the Contract, the Client may withhold from any payment due to the Consultant any amounts that the Client deems reasonably necessary or appropriate because of any one or more of the following reasons:</p> <ul style="list-style-type: none">(i) failure by the Consultant to provide certificates of insurance;(ii) any overpayments made by the Client in a previous payment;<ul style="list-style-type: none">(iii) any payment required to be withheld under any Applicable Law;(v) the invoice is not accompanied by all necessary supporting documents;(iv) a dispute exists as to the accuracy or completeness of any invoice; or(v) any amounts due to the Client from the Consultant under the Contract.
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	<p>46.5All payments under this Contract shall be made by wire transfer to the accounts of the Consultant specified in the SCC.</p> <p>46.6The payments made to the Consultant pursuant to this Contract do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.</p>
<p>47. Interest on Delayed Payments</p>	<p>47.1If the Client had delayed payments beyond fifteen (15) days after the due date stated in Clause 29, interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the SCC.</p>

G. FAIRNESS AND GOOD FAITH

<p>48. Good Faith</p>	<p>48.The Parties undertake to act in good faith with respect to each other’s rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.</p>
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H. MISCELLANEOUS

<p>49. Amicable Settlement</p>	<p>49.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.</p> <p>49.2 If either Party objects to any action or inaction of the other Party, the objecting Party may send a written notice of dispute to the other Party providing in detail the basis of the dispute. The Party receiving the notice of dispute will consider it and respond in writing within fourteen (14) days after receipt. If such Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause 50 shall apply.</p>
<p>50. Dispute Resolution</p>	<p>50.1Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably</p>

	<p>may be referred to by either Party to arbitration in accordance with the provisions specified in the SCC.</p>
<p>51. Performance Security</p>	<p>51.1 The Consultant shall furnish to the Client the Performance Security in the format set out in Appendix E, from a scheduled commercial bank in India, to secure the performance of its obligations under the Contract. The Performance Security shall be for an amount specified in the SCC.</p>
<p>52. Assignment</p>	<p>52.1 Except as expressly permitted in the Contract, the Consultant shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under the Contract, without the prior written consent of the Client.</p> <p>52.2 The Client shall be entitled to assign, transfer or novate its rights and obligations under the Contract or any part thereof to any third party or to an affiliate, without the requirement of any further consent from the Consultant, provided that where such assignment is made to a third party, the Client shall use its best efforts to ensure that the third party to whom the benefits and obligations under the Contract or any part thereof has been assigned, has the necessary financial capability to comply with the obligations under the Contract.</p>
<p>53. Representations and Warranties</p>	<p>53.1 <u>Client's Representations and Warranties</u> The Client makes the following representations and warranties to the Consultant:</p> <ul style="list-style-type: none"> (i) it has been incorporated as a company under the laws of India and is validly existing under those laws; (ii) it has power to enter into this Contract and comply with its obligations under it; (iii) this Contract and the transactions under it do not contravene its constituent documents or any Applicable Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or

	<p>the powers of its directors to be exceeded;</p> <p>(iv) it has in full force and effect the authorisations necessary for it to enter into this Contract and the transactions under it; and</p> <p>(v) its obligations under this Contract are valid and binding and are enforceable against it in accordance with the terms of this Contract.</p> <p><u>53.2 Consultant's Representations and Warranties</u></p> <p>The Consultant makes the following representations and warranties to the Client:</p> <p>(i) it has been incorporated/registered as a company/firm under the laws of [<i>Insert country of incorporation/registration</i>] and is validly existing under those laws;</p> <p>(ii) it has power to enter into this Contract and comply with its obligations under it;</p> <p>(iii) this Contract and the transactions under it do not contravene its constituent documents or any applicable law of its jurisdiction or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers of its directors to be exceeded;</p> <p>(iv) it has in full force and effect the authorisations necessary for it to enter into this Contract and the transactions under it;</p> <p>(v) its obligations under this Contract are valid and binding and are enforceable against it in accordance with the terms of this Contract;</p> <p>(vi) it is not in breach of any Applicable Law in a way which may result in a material adverse effect on its business or financial condition;</p> <p>(vii) there is no pending or threatened proceeding affecting the Consultant or any</p>
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	<p>of its assets that would affect the validity or enforceability of this Contract, the ability of the Consultant to fulfil its commitments under this Contract, or that could have a material adverse effect on the business or financial condition of the Consultant;</p> <p>(viii) it has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under the Contract;</p> <p>(ix) it has the necessary skill and experience to perform the Services in accordance with this Contract;</p> <p>(x) it owns or has the right to use and license to the Client all Intellectual Property Rights in relation to the Services and the Deliverables to be provided under this Contract;</p> <p>(xi) the performance of the Services shall not infringe the Intellectual Property Rights of any third party and that the Consultant has not received notice of any claim, and is not aware of any facts or circumstances that may give rise to such claim;</p> <p>(xii) it will perform its obligations under the Contract and conduct its business with a high level of integrity which is reasonably expected of an international contractor of similar size and profile, conducting a similar line of business, and will not engage in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practices; and</p> <p>(xiii) without prejudice to any express provision contained in the Contract, the Consultant acknowledges that prior to the execution of the Contract, the Consultant has after a complete and careful examination made an independent evaluation of the Terms of Reference and any information provided by or on behalf of the Client and has determined</p>
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	<p>to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Consultant in the course of performance of its obligations hereunder.</p>
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II. General Conditions

Attachment 1: Corrupt and Fraudulent Practices

- 1.1 The Consultants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the selection process. Notwithstanding anything to the contrary contained in the RFP, the Client shall reject a Proposal without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “Prohibited Practices”) in the selection process. In such an event, the Client shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Performance Security, if available, as mutually agreed genuine pre-estimated compensation and damages payable to the Client for, *inter alia*, time, cost and effort of the Client, in regard to the RFP, including consideration and evaluation of such Consultant’s Proposal.
- 1.2 Without prejudice to the rights of the Client under the RFP and the rights and remedies which the Client may have under the LOA or the Contract, if an Consultant is found by the Client to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the selection process, or after the issue of the LOA or the execution of the Contract, such Applicant or Consultant shall not be eligible to participate in any tender or RFP issued by the Client during a period of 2 (two) years from the date such Consultant is found by the Client to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 1.3 For the purposes of this clause, the following terms shall have the meaning hereinafter respectively assigned to them:
 - (i) “corrupt practice” means (a) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the selection process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Client who is or has been associated in any manner, directly or indirectly with the selection process) or the LOA or has dealt with matters concerning the Contract or

arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Client, shall be deemed to constitute influencing the actions of a person connected with the selection process; or (b) save as provided herein, engaging in any manner whatsoever, whether during the selection process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Services or the LOA or the Contract, who at any time has been or is a legal, financial or technical consultant/ adviser of the Client in relation to any matter concerning the Contract;

- (ii) “fraudulent practice” means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the selection process;
- (iii) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the selection process;
- (iv) “collusive practices” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party¹;
- (v) “undesirable practice” means (a) establishing contact with any person connected with or employed or engaged by the Client with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the selection process; or (b) having a Conflict of Interest; and
- (vi) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Consultants with the objective of restricting or manipulating a full and fair competition in the selection process.

¹ For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

III. Special Conditions of Contract

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

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
3.1	The Contract shall be construed in accordance with the law of India.
4.1	The language is: English
6.1 and 6.2	<p>The addresses are:</p> <p>Client : Bhubaneswar Smart City Limited</p> <p>Attention : _____</p> <p>Facsimile : _____</p> <p>E-mail (where permitted): _____</p> <p>Consultant : _____</p> <p>_____</p> <p>Attention : _____</p> <p>Facsimile : _____</p> <p>E-mail (where permitted) : _____</p>
8.1	<p>The Authorized Representatives are:</p> <p>For the Client: [Insert name] Chief Executive Officer, Bhubaneswar Smart City Limited</p> <p>_____</p> <p>For the _____ Consultant: <i>[name, title]</i> _____</p>
11.1	<p>Commencement of Services:</p> <p>The number of days shall be 30 (thirty) Days</p>

	<p>Confirmation of Key Experts' availability to perform the Services shall be submitted by the Consultant to the Client in the form of a written statement signed by each Key Expert.</p>
12.1	<p>Expiration of Contract:</p> <p>The term of the Contract shall be four (4) years, which may be extended on mutually agreed terms and conditions, up to the expiry of the Smart City Mission period, subject to satisfactory performance of the Services by the Consultant. If the term of the Contract is extended pursuant to the Clause 13 of the GCC, then the Consultant shall also extend the validity of the Performance Security for an equivalent period.</p>
21.	<p>The Client reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing Services described in Clause 21.1.3.</p>

<p>23.1</p>	<p>(i) The maximum overall liability of the Consultant under this Contract shall not exceed the Total Value of Contract.</p> <p>(ii) Provided that the above limitation of liability shall not apply and the Consultant's liability shall be unlimited in the following instances: (a) for damage to third parties caused by the Consultant, any Personnel, person or firm acting on behalf of the Consultant in carrying out the Services; (b) if any limitation or exclusion from liability is prohibited by the Applicable Law. (c) for breach of Applicable Law and any applicable permits; (d) for breach of any third party Intellectual Property Rights; (e) for fraud and wilful misconduct; (f) for any gross negligence; (g) for damage to or loss of third party property; (h) for misrepresentation by the Consultant; and (i) bodily injury or loss of life.</p> <p>(iii) Except in the case of gross negligence or willful misconduct on the part of the Consultant, the Personnel or any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant shall not be liable to the Client for any indirect or consequential loss or damage.</p> <p>(iv) The maximum overall liability of the Client under this Contract shall not exceed the Total Value of Contract.</p>
<p>24.1</p>	<p>The insurance coverage against the risks shall be as follows:</p> <p>(i) Professional liability insurance, with a minimum coverage of equal to the Total Value of Contract.</p> <p>(ii) Third Party motor vehicle liability insurance in respect of motor vehicles operated in India by the Consultant or its Personnel, with a minimum coverage as per Indian Motor Vehicle Act 1988 and any amendments thereof.</p> <p>(iii) Third Party liability insurance, with a minimum coverage in</p>

	<p>accordance with the Applicable Law.</p> <p>(iv) Employer’s liability and workers’ compensation insurance in respect of the Personnel in accordance with Applicable Law, including any life, health, accident, travel or other insurance as may be appropriate for the Personnel.</p> <p>(v) Insurance against loss of or damage to: (a) equipment purchased in whole or in part with funds provided under this Contract, (b) the Consultant’s property used in the performance of the Services, and (c) any documents prepared by the Consultant in the performance of the Services.</p> <p>Within fifteen (15) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this Clause, the Consultant shall furnish to the Client, copies of such policy certificates, policies and evidence that the insurance premia have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the term of the Contract.</p> <p>If the Consultant fails to effect and keep in force the insurances set out above, the Client shall, without prejudice to its other rights under the Contract, have the right, to procure and/or keep in force the aforesaid insurance(s), pay the premium as required and recover the costs thereof from the Consultant. If the Consultant fails to reimburse the Client for any insurance premium paid by the Client on behalf of the Consultant, the Client may deduct the relevant amount from the next payment to be made in accordance with the Payment Schedule.</p> <p>The Consultant shall ensure that, in each insurance policy, the Client is named as the beneficiary.</p>
<p>29</p>	<p>The Consultant shall be liable to pay delay liquidated damages at the rate of zero point five percent (0.5%) of the Total Value of Contract per week or part thereof of delay, for each Module in respect of which there has been a delay. Provided that the maximum delay liquidated damages paid by the Consultant to the</p>

	<p>Client under the Contract shall not exceed ten percent (10%) of the Total Value of Contract.</p>						
<p>42.2</p>	<p>The ceiling in local currency on the Remuneration is: _____ <i>[insert amount and currency as mentioned in the Proposal] [indicate: inclusive or exclusive]</i> of local indirect taxes.</p> <p>The ceiling in local currency on the Reimbursable Expenses is: _____ <i>[insert amount and currency as mentioned in the RFP.]</i></p>						
<p>43.1</p>	<p>Payments shall be made according to the following schedule (Payment Schedule)²:</p> <table border="1" data-bbox="496 963 1487 1787"> <thead> <tr> <th data-bbox="496 963 626 1052">S No.</th> <th data-bbox="626 963 1252 1052">Activity wise Deliverable</th> <th data-bbox="1252 963 1487 1052">Payment Schedule</th> </tr> </thead> <tbody> <tr> <td data-bbox="496 1052 626 1787"></td> <td colspan="2" data-bbox="626 1052 1487 1787"> <p>The Remuneration shall be paid as follows;</p> <p>(i) Accepted Remuneration (M)= [insert amount]</p> <p>(ii) Programme Support Team to be paid monthly throughout the term of the Contract. The Remuneration shall be paid as per actual man months deployed but not exceeding the 25% of the total Remuneration [M₁]= 25% of the accepted Remuneration</p> <p>(iii) For activity 1 [M₂] = 5% of the M {insert amount}</p> <p>(iv) For activity 2 to activity 6 (M₃) = 25% of M = { insert amount}</p> <p>The total amount for activity 2 to 6 shall be paid not more than 25% of the M as</p> </td> </tr> </tbody> </table>	S No.	Activity wise Deliverable	Payment Schedule		<p>The Remuneration shall be paid as follows;</p> <p>(i) Accepted Remuneration (M)= [insert amount]</p> <p>(ii) Programme Support Team to be paid monthly throughout the term of the Contract. The Remuneration shall be paid as per actual man months deployed but not exceeding the 25% of the total Remuneration [M₁]= 25% of the accepted Remuneration</p> <p>(iii) For activity 1 [M₂] = 5% of the M {insert amount}</p> <p>(iv) For activity 2 to activity 6 (M₃) = 25% of M = { insert amount}</p> <p>The total amount for activity 2 to 6 shall be paid not more than 25% of the M as</p>	
S No.	Activity wise Deliverable	Payment Schedule					
	<p>The Remuneration shall be paid as follows;</p> <p>(i) Accepted Remuneration (M)= [insert amount]</p> <p>(ii) Programme Support Team to be paid monthly throughout the term of the Contract. The Remuneration shall be paid as per actual man months deployed but not exceeding the 25% of the total Remuneration [M₁]= 25% of the accepted Remuneration</p> <p>(iii) For activity 1 [M₂] = 5% of the M {insert amount}</p> <p>(iv) For activity 2 to activity 6 (M₃) = 25% of M = { insert amount}</p> <p>The total amount for activity 2 to 6 shall be paid not more than 25% of the M as</p>						

² Based on the discussions with the Consultant, the manner in which each milestone payment will be allocated between different Modules will be set out here.

	<p>illustrated below.</p> <p>(v) For Activity 7 (M_4) = 25% of M = {insert Amount} The total amount for activity 7 shall be paid not more than 25% of the M on submission and approval of the Go-Live Report.</p> <p>(vi) For Activity 8 (M_8) = 10% of M {insert Amount} The total amount for activity 8 shall be paid not more than 10% of the M or as per actual man days deployed, whichever is less.</p> <p>(vii) Project handing over and issuance of Completion Certificate (M_9) = 10 % of M [insert amount]</p>	
1	Activity 1: Submission and Approval of Inception Report by the Client	10 % of M
	<p>For Activity 2 to Activity 6 payment shall be made on pro rata basis for each Module</p> <p>[Example: Number of modules n. For each Module, payment shall be $M_p = M_3/n$</p> <p>The total amount of Remuneration for activity 2 to activity 6 shall be paid not more than 25% of the M</p>	
	<p>Activity 2: Preparation and Submission of As-Is (Situation Analysis) Report for Modules and its acceptance & approval by the Client on prorata basis for each Module</p>	5% of M on pro rata basis
	<p>Activity 3: Preparation and Submission of Business Re-engineering Report (BPR) and Final function requirement specifications (FRS) and its acceptance & approval by the Client on prorata basis for each Module</p>	5% of M on pro rata basis
	<p>Activity 4: Preparation and</p>	5% of M on

		<p>submission of feasibility study report and its acceptance & approval by the Client on prorata basis for each Module</p>	<p>pro rata basis</p>
		<p>Activity 5: Preparation and submission of DPR and its acceptance & approval by the Client on prorata basis for each Module</p>	<p>5% of M on pro rata basis</p>
		<p>Activity 6: Preparation and submission of bid documents for selection of the system integrator (as defined in the Terms of Reference), its acceptance and approval by the Client, successful completion of bid process and selection of the system integrator on prorata basis for each Module</p>	<p>5% of M on pro rata basis</p>
		<p>Activity 7: Submission and Approval of Go-Live Report the Client. During project implementation period the payment shall be made on percentage basis of the Module amount of the SI after Go-live report as follows. [For Example: Total Payment (M₄) = 25% of M, Example : Total Modules 4 = Total Cost 200 Cr Implementing Agency Cost of Module 1= 100 Cr = 50% Implementing Agency Cost of Module 2= 50 Cr = 25% Implementing Agency Cost of Module 3= 40 Cr = 20% Implementing Agency Cost of Module 4= 10 Cr = 5% The Payment shall be made after Go-Live For Module 1= 50% of the 25% cost of M₄</p>	<p>25% of M on pro rata basis</p>

	<table border="1"> <tr> <td data-bbox="451 203 578 453"></td> <td data-bbox="578 203 1203 453"> <p>For Module 2= 25% of the 25% cost of M₄ For Module 3= 20% of the 25% cost of M₄ For Module 4= 5% of the 25% cost of M₄</p> </td> <td data-bbox="1203 203 1435 453"></td> </tr> <tr> <td data-bbox="451 453 578 905"></td> <td data-bbox="578 453 1203 905"> <p>Activity 8: Post Implementation Support The amount shall be paid quarterly on pro rata basis for the period of the post implementation as per actual man months deployed during the quarter but not exceeding the 10% of the total accepted remuneration amount whichever is less [M₈]= 10% of M</p> </td> <td data-bbox="1203 453 1435 905">10% of M</td> </tr> <tr> <td data-bbox="451 905 578 1234"></td> <td data-bbox="578 905 1203 1234"> <p>Activity 9: Project Handover : The last milestone payment shall be made in a single instalment on the successful handing over of the monitoring, supervision and control of the Smart Solutions Project and issuance of Completion Certificate by the Client.</p> </td> <td data-bbox="1203 905 1435 1234">10% of M</td> </tr> </table> <p>(a) Only Service Tax chargeable in respect of this Contract for the Services provided by the Consultant shall be reimbursed by the Client to the Consultant.</p> <p>The amount of such taxes is _____ <i>[insert the amount as finalized at the Contract's negotiations on the basis of the estimates provided by the Consultant in Form FIN-2 of the Consultant's Financial Proposal.]</i></p>		<p>For Module 2= 25% of the 25% cost of M₄ For Module 3= 20% of the 25% cost of M₄ For Module 4= 5% of the 25% cost of M₄</p>			<p>Activity 8: Post Implementation Support The amount shall be paid quarterly on pro rata basis for the period of the post implementation as per actual man months deployed during the quarter but not exceeding the 10% of the total accepted remuneration amount whichever is less [M₈]= 10% of M</p>	10% of M		<p>Activity 9: Project Handover : The last milestone payment shall be made in a single instalment on the successful handing over of the monitoring, supervision and control of the Smart Solutions Project and issuance of Completion Certificate by the Client.</p>	10% of M
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	<p>Activity 9: Project Handover : The last milestone payment shall be made in a single instalment on the successful handing over of the monitoring, supervision and control of the Smart Solutions Project and issuance of Completion Certificate by the Client.</p>	10% of M								
<p>44.1 and 44.2</p>	<p><u>For domestic consultants / personnel and foreign consultants/personnel who are permanent residents in India</u> (a) Other than any indirect local Taxes chargeable in respect of this Contract for the Services provided by the Consultant, which shall be reimbursed by the Client to the Consultant, the</p>									

	<p>Consultant and the Personnel shall pay the Taxes levied under Applicable Laws during the term of the Contract and the Client shall perform such duties in regard to the deduction of such Taxes as may be lawfully imposed.</p> <p>The Client warrants that the Client shall reimburse the Consultant for any indirect Taxes imposed under Applicable Laws, on the Consultant in respect of:</p> <ul style="list-style-type: none"> (i) any payments whatsoever made to the Consultant and the Personnel, in connection with the carrying out of the Services; (ii) any equipment, materials and supplies brought into India by the Consultant for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them; (iii) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client; (iv) any property brought into India by the Consultant or the Personnel (other than nationals or permanent residents of the India), or the eligible dependents of such Personnel for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Client's country, provided that: <ul style="list-style-type: none"> (i) the Consultant and its Personnel shall follow the usual customs procedures of India in importing property into India; and (ii) if the Consultant or Personnel do not withdraw but dispose of any property in India upon which customs duties and Taxes have been exempted, the Consultant or Personnel, as the case may be, (a) shall bear such customs duties and Taxes in conformity with Applicable Laws; or (b) shall reimburse them to the Client if they were paid by the Client at the time the property in question was brought into India.
<p>46.2</p>	<p>Each monthly invoice will be accompanied by the following supporting documents in accordance with the Terms of Reference set out in the RFP:</p>

	<ul style="list-style-type: none"> (i) Time sheet of the relevant Personnel; and (ii) Progress reports.
46.3	<p>Each milestone invoice will be accompanied by the following supporting documents:</p> <ul style="list-style-type: none"> (i) Deliverable Acceptance Certificate; and (ii) Progress reports in accordance with the Terms of Reference set out in the RFP.
46.5	<p>The accounts are: for local currency INR: <i>[insert account]</i>.</p>
47.1	<p>The interest rate is: <i>SBI Base rate</i></p>
50.1	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <ol style="list-style-type: none"> 1. <u>Selection of Arbitrators</u>. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions: <ul style="list-style-type: none"> (i) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to <i>[Capacity Building for Urban Development, New Delhi]</i> for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, <i>Capacity Building for Urban Development, New Delhi</i> shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute. (ii) Where the Parties do not agree that the dispute

	<p>concerns a technical matter, the Client and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by <i>Registrar, The Indian Council of Arbitration, New Delhi</i>.</p> <p>(iii) If, in a dispute subject to paragraph (ii) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the <i>Registrar, The Indian Council of Arbitration, New Delhi</i> to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute..</p>
	<p>2. <u>Substitute Arbitrators</u>. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p>3. <u>Nationality and Qualifications of Arbitrators</u>. The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(i) through 1(iii) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant's home country. For the purposes of this Clause, "home country" means any of:</p> <p>(i) the country of incorporation of the Consultant; or</p> <p>(ii) the country in which the Consultant's principal place of business is located; or</p> <p>(iii) the country of nationality of a majority of the Consultant's shareholders.</p>

	<p>However, the above restriction will not apply if the Consultant's home country is India.</p>
	<p>5. <u>Miscellaneous</u>. In any arbitration proceeding hereunder:</p> <ul style="list-style-type: none"> (i) the seat of the arbitration shall be India and the arbitration proceedings shall, unless otherwise agreed by the Parties, be held in Bhubaneswar; (ii) the English language shall be the official language for all purposes; (iii) the arbitration shall be governed by the (Indian) Arbitration and Conciliation Act, 1996, as amended from time to time; (iv) responsibility of payment for all costs of arbitration shall be as per the arbitration award; and (v) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.
<p>51</p>	<p>Performance Security</p> <ul style="list-style-type: none"> (i) The Performance Security shall be for 10% of the Total Value of Contract (ii) The Performance Security shall be issued by a nationalized bank in India and acceptable to the Client. The Performance Security shall be valid until a date 60 days beyond the issuance of the Completion Certificate. (iii) The Client shall not make a claim under the Performance Security, except for amounts to which the Client is entitled under the Contract in the event of: <ul style="list-style-type: none"> (a) failure by the Consultant to extend the validity of the Performance Security on extension of the validity of the contract, in which event the Client may

	<p>claim the full amount of the Performance Security,</p> <ul style="list-style-type: none">(b) failure by the Consultant to pay the Client an amount due, as either agreed or determined pursuant to the dispute resolution process specified in the Contract, within forty two (42) days after determination of the dispute;(c) failure by the Consultant to pay any damages due to the Client under the Contract;(d) failure by the Consultant to pay any amounts that are due to the Client on termination of the Contract;(e) the Consultant engaging in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practice. <p>(iv) If the Performance Security is or becomes invalid for any reason during the term of the Contract, the Consultant shall immediately notify the Client and provide the Client with a replacement Performance Security in the form set out in Appendix E within five (5) days of the earlier Performance Security becoming invalid.</p> <p>(v) If the validity period of the Performance Security is less than the period specified in sub-clause (ii) above, then no later than thirty (30) days before the expiry of the Performance Security, the Consultant shall obtain an extension of the validity of such Performance Security and provide the Client with a copy of the renewed security. If the Consultant fails to extend the Performance Security, the Client shall be entitled to draw on and claim the un-drawn amount thereunder, provided that the amount so received shall be treated as a cash security and to the extent that there are no outstanding claims, shall be released upon submission of a new Performance Security acceptable to the Client.</p> <p>(vi) The provision, maintenance or renewal of the Performance Security by the Consultant in accordance with the terms of the Contract, shall be a condition precedent to any payment by the Client to the Consultant.</p> <p>(vii) On completion of the contractual obligations under the Contract by the Consultant, the Client shall return the Performance Security within twenty one (21) days of the last payment made to the Consultant under the</p>
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	Contract.
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IV. Appendices

APPENDIX A – TERMS OF REFERENCE

[This Appendix shall include the final Terms of Reference (TORs) worked out by the Client and the Consultant during the negotiations; dates for completion of various tasks (Deliverables Milestones); location of performance for different tasks; detailed reporting requirements; Client’s input, including counterpart personnel assigned by the Client to work on the Consultant’s team; specific tasks that require prior approval by the Client.]

Insert the text based on the Section 6 (Terms of Reference) of the RFP and modified based on the Forms TECH-1 through TECH-4 in the Consultant’s technical proposal. Highlight the changes to Section 6 of the RFP]

APPENDIX B - KEY EXPERTS

[Insert a table based on Form TECH-4 of the Consultant’s Technical Proposal and finalized at the Contract’s negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]

[Specify Hours of Work for Key Experts: List here the hours of work for Key Experts; travel time; entitlement, if any, to leave pay; public holidays list; etc. Make sure there is consistency with Form TECH-4. In particular: one month equals twenty two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.]

APPENDIX C – REMUNERATION COST ESTIMATES

1. Monthly rates for the Personnel:

[Insert the table with the remuneration rates. The table shall be based on [Form FIN-3] of the Consultant’s Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes]

made to [Form FIN-3] at the negotiations or state that none has been made.]

2. *[When the Consultant has been selected under Quality-Based Selection method, or the Client has requested the Consultant to clarify the breakdown of very high remuneration rates at the Contract's negotiations also add the following:*

“The agreed remuneration rates shall be stated in the attached Model Form I. This form shall be prepared on the basis of Appendix A to Form FIN-3 of the RFP “Consultants’ Representations regarding Costs and Charges” submitted by the Consultant to the Client prior to the Contract’s negotiations.

Should these representations be found by the Client (either through inspections or audits pursuant to Clause 27.2 or through other means) to be materially incomplete or inaccurate, the Client shall be entitled to introduce appropriate modifications in the remuneration rates affected by such materially incomplete or inaccurate representations. Any such modification shall have retroactive effect and, in case remuneration has already been paid by the Client before any such modification, (i) the Client shall be entitled to offset any excess payment against the next monthly payment to the Consultants, or (ii) if there are no further payments to be made by the Client to the Consultants, the Consultants shall reimburse to the Client any excess payment within thirty (30) days of receipt of a written claim of the Client. Any such claim by the Client for reimbursement must be made within twelve (12) calendar months after receipt by the Client of a final report and a final statement approved by the Client in accordance with Clause 47.1(d) of this Contract.”

Model Form I

Breakdown of Agreed Fixed Rates in Consultant’s Contract

We hereby confirm that we have agreed to pay to the Personnel listed, who will be involved in performing the Services, the basic fees and away from the home office allowances (if applicable) indicated below:

(Expressed in [insert name of currency])*

No.	Name (A)	Position (as in TECH-4) (B)	Location (C)	Time Input in Man- Months (from TECH-4) (D)	Rate per Man Month (in INR) (E)	Total Remuneration (INR) (D*E)
_____	Expert Pool					_____
1	Team Leader cum IOC Expert		[HO] [PO]			
2	Public Transit ITS				
3	Sr. Business Analyst/ BPR Specialist				
4	IoTExpert				
5	ICT Expert				
6	IT Systems Architect				

7	Information Security Systems Expert					
8	Traffic Signaling and parking specialist					
9	Urban transport planner					
10	Common payment card module expert					
11	Procurement specialist					
	Programme Support Team					
1	Deputy Team Leader		[HO] [PO]			
2	Support-Data analytics					
3	Support-Transit Operations					
4	Support-Traffic Signalling and parking					
5	Support- City operation					

1 Expressed as percentage of 1

2 Expressed as percentage of 4

* If more than one currency, add a table

Signature

Date

Name and Title: _____

APPENDIX D – REIMBURSABLE EXPENSES COST ESTIMATES

1. *[Insert the table with the reimbursable expenses rates. The table shall be based on [Form FIN-2] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [Form FIN-2] at the negotiations or state that none has been made.*

2. *All reimbursable expenses shall be reimbursed at actual cost, unless otherwise explicitly provided in this Appendix, and in no event shall reimbursement be made in excess of the Contract amount.]*

Appendix E - Form of Performance Security

[On Appropriate Stamp Paper]

Bank Guarantee No. [●]

THIS DEED OF GUARANTEE is executed on this [*insert date*] day of [*insert month and year*] at [*insert place*] by [*insert name of bank*] with its head/registered office at [*insert address*], (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

IN FAVOUR OF:

BHUBANESWAR SMART CITY LIMITED, a company incorporated under the (Indian) Companies Act, 2013, with its registered office at [●] (hereinafter referred to as **BSCL**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors-in-title and permitted assigns);

WHEREAS:

- (A) BSCL has entered into a contract for providing consultancy services dated [*insert date*] (the **Contract**) with [*insert name of Consultant*], a company/firm [incorporated/registered] under the [*insert name of the relevant statute under which the Consultant has been incorporated or registered, as the case may be*], [with its [registered/principal] office at [●]] (hereinafter referred to as the **Consultant**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors-in-title and permitted assigns).
- (B) In terms of the Contract, the Consultant has agreed to provide the Services for designing and implementing the application of certain pan-city smart solutions, which involve the use of technology, information and data to improve infrastructure and services within the city of Bhubaneswar (the **Smart Solutions Project**), to implement the Smart Cities Mission in Bhubaneswar, pursuant to the Request for Proposal dated [___] (referred to as the **RFP**) and other related documents including without limitation the draft Contract (collectively referred to as **Bid Documents**).

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- (C) In terms of the letter of award (the **LOA**) dated [*insert date*] issued by Client to the Consultant and Clause 51 of the Contract, the Consultant is required to furnish to BSCL, an unconditional, irrevocable, on demand bank guarantee for an amount equivalent to Rs. [●] [*Insert amount equivalent to 10% of the Total Value of Contract*] (the **Guaranteed Amount**) as security for the due and punctual performance or discharge of the Consultant's obligations and liabilities under the Contract.
- (D) At the request of the Consultant and for sufficient consideration, the Guarantor has agreed to provide an unconditional, irrevocable and on-demand bank guarantee, for the due and punctual performance or discharge by the Consultant of its obligations and liabilities under the Contract.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used herein but not defined shall have the meaning ascribed to them in the Contract.
2. The Guarantor hereby irrevocably and unconditionally guarantees and secures, as primary obligor and not merely as guarantor, to BSCL the payment in full of all amounts at any time that may be due, owing or payable to BSCL from the Consultant for the failure of the Consultant to duly and punctually perform all of its obligations under the Contract during the term (**Guarantee**), without any demur, reservation, protest or recourse, immediately on receipt of a demand from BSCL.

The Guarantee is given on consideration received from the Consultant (the receipt and sufficiency of which is hereby acknowledged).

The Guarantor agrees that the value of the Guarantee shall at all times be maintained at the amount equivalent to the Guaranteed Amount.

The Guarantor further agrees that this Guarantee does not limit the number of claims that may be made by BSCL against the Guarantor. Upon a payment being made under this Guarantee, the amount of the Guarantee shall automatically be replenished to the full Guaranteed Amount.

Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future Taxes, deductions or withholdings of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any Applicable Law, the Guarantor shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that BSCL receives the full amount due hereunder as if no such withholding had occurred.

3. The Guarantor shall not go into the veracity of any breach or failure on the part of the Consultant or validity of demand so made by BSCL and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Consultant or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provision hereof.
4. The obligations of the Guarantor herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Contract or the insolvency, bankruptcy, re-organisation, dissolution or liquidation of the Consultant or any change in ownership of the Consultant or any purported assignment by the Consultant or any other circumstance whatsoever, which might otherwise constitute a discharge or defence of a guarantor or a surety.

Further, this Guarantee is in no way conditional upon any requirement that BSCL shall first attempt to procure the Guaranteed Amount from the Consultant or any other Person, or resort to any other means of obtaining payment of the Guaranteed Amount.

5. In order to give effect to this Guarantee, BSCL shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor under this Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Guarantor from any part of the Guaranteed Amount or prejudice or diminish the Guaranteed Amount in whole or in part, including, whether or not known to it, or BSCL:
 - (a) any time or waiver granted to, or composition with, the Consultant or any other Person;

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- (b) any incapacity or lack of powers, authority or legal personality of or dissolution or change in the status of the Consultant or any other Person;
 - (c) any variation of the Contract so that references to the Contract in this Guarantee shall include each variation;
 - (d) any unenforceability, illegality or invalidity of any obligation of any Person under the Contract or any unenforceability, illegality or invalidity of the obligations of the Guarantor under this Guarantee or the unenforceability, illegality or invalidity of the obligations of any Person under any other document or Guarantee, to the extent that each obligation under this Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there was no unenforceability, illegality or invalidity;
 - (e) the partial or entire release of any Guarantor or other Person primarily or secondarily liable or responsible for the performance, payment or observance of any of the Consultant's obligations during the term of the Contract; or by any extension, waiver, or amendment whatsoever which may release a guarantor or the Guarantor, other than performance or indefeasible payment of the Guaranteed Amount; or
 - (f) any part performance of the Contract by the Consultant or by any failure by BSCL to timely pay or perform any of its obligations under the Contract.
6. If, and to the extent that for any reason the Consultant enters or threatens to enter into any proceedings in bankruptcy or re-organisation or otherwise, or if, for any other reason whatsoever, the performance or payment by the Consultant of the Guaranteed Amount becomes or may reasonably be expected to become impossible, then the Guaranteed Amount shall be promptly paid by the Guarantor to BSCL on demand.
7. So long as any amount is due from the Consultant to BSCL, the Guarantor shall not exercise any right of subrogation or any other

rights of a guarantor or enforce any guarantee or other right or claim against the Consultant, whether in respect of its liability under this Guarantee or otherwise, or claim in the insolvency or liquidation of the Consultant or any such other Person in competition with BSCL. If the Guarantor receives any payment or benefit in breach of this clause 7, it shall hold the same upon trust for BSCL.

8. This Guarantee shall remain in full force and effect from the date hereof until 60 days beyond issuance of the Completion Certificate.

Notwithstanding the foregoing, this Guarantee shall continue in effect until the sums payable under this Guarantee have been indefeasibly paid in full and the Guarantor receives written notice thereof from BSCL, such notice to be issued promptly upon such occurrence.

9. The Guarantor represents and warrants to BSCL that:
- (a) it has the power to execute, deliver and perform the terms and provisions of this Guarantee and has taken all necessary action to authorise the execution, delivery and performance by it of this Guarantee;
 - (b) the Guarantor has duly executed and delivered this Guarantee, and this Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles;
 - (c) neither the execution, delivery or performance by the Guarantor of this Guarantee, nor compliance by it with the terms and provisions hereof will: (i) contravene any material provision of any Applicable Law; (ii) conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Guarantor is a party or by which it or any of its property or assets is bound; or (iii) violate any provision of the Guarantor's constituent documents;

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- (d) no order, consent, approval, license, authorisation or validation of, or filing, recording or registration with, except as have been obtained or made prior to the date hereof, or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorise, or is required in connection with: (i) the execution, delivery and performance of this Guarantee; or (ii) the legality, validity, binding effect or enforceability of this Guarantee; and
- (e) this Guarantee will be enforceable when presented for payment to the Guarantor's branch in Bhubaneswar at [●].
10. This Guarantee is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of BSCL in exercising any right, power or privilege hereunder and no course of dealing between BSCL and the Guarantor, or the Consultant, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
11. The rights, powers and remedies expressly provided in this Guarantee are cumulative and not exclusive of any rights, powers or remedies which BSCL would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of BSCL to any other or further action in any circumstances without notice or demand.
12. If any one or more of the provisions contained in this Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Guarantor shall enter into good faith negotiations with BSCL to replace the invalid, illegal or unenforceable provision.
13. The Guarantor hereby agrees to execute and deliver all such instruments and take all such actions as may be necessary to make effective fully the purposes of this Guarantee.

14. This Guarantee may be executed in one or more duplicate counterparts, and when executed and delivered by the Guarantor and BSCL shall constitute a single binding agreement.
15. BSCL may assign or transfer all or any part of its interest herein to any other person with prior written notice to the Guarantor. The Guarantor shall not assign or transfer any of its rights or obligations under this Guarantee.
16. All documents arising out of or in connection with this Guarantee shall be served:
 - (a) upon BSCL, at [***insert address***]; and
 - (b) upon the Guarantor, at [***insert address***].
17. Any demand, notice or communication would have been deemed to have been duly served:
 - (a) if delivered by hand, when left at the proper address of services; and
 - (b) if given or made by pre-paid registered post or facsimile, when received.
18. Either party may change the above address by prior written notice to the other party.
19. This Guarantee shall be governed by, and construed in accordance with, the laws of India. The Guarantor irrevocably agrees that any dispute arising out of or relating to this Guarantee may be brought in the courts in Odisha.

IN WITNESS WHEREOF the Guarantor has set its hands hereunto on the day, month and year first hereinabove written.

Signed and delivered by [***insert name of Bank***] Bank, by [***insert name of branch***] Branch by hand

Of [***insert name of signatory***]
It's [***insert designation***] and duly authorized representative

Authorized by [Power of Attorney dated [***insert date***]] OR [Board resolution dated [***insert date***]].

APPENDIX F – SERVICES SCHEDULE

APPENDIX G – SMART CITY PROPOSALS

(Attached Separately)