



**SURAT SMART CITY DEVELOPMENT LIMITED (SSCDL)**

## **Request for Proposal**

**for**

**SELECTION OF SERVICE PROVIDER FOR PROCUREMENT, SUPPLY, INTEGRATION AND MAINTENANCE OF VARIOUS HARDWARE COMPONENTS FOR INTELLIGENT TRANSIT MANAGEMENT SYSTEM (ITMS) FOR BUS RAPID TRANSIT SYSTEM (BRTS) AND CITY BUS OPERATION FOR SURAT CITY FOR SURAT MUNICIPAL CORPORATION SURAT (FOURTH ATTEMPT)**

**APPENDIX 6:DRAFT SERVICE PROVIDER AGREEMENT**

**Tender No (On line): GM(IT)/BRTS/ITMS/03/2017  
2018**

**Issued on 05.01.2018**

**Issued by**

**Surat Smart City Development Limited (SSCDL)**



## APPENDIX-6 : DRAFT SERVICE PROVIDER AGREEMENT

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SHORT TENDER FOR SELECTION OF SERVICE PROVIDER  
FOR PROCUREMENT, SUPPLY, INTEGRATION AND  
MAINTENANCE OF VARIOUS HARDWARE COMPONENTS  
FOR INTELLIGENT TRANSIT MANAGEMENT SYSTEM (ITMS)  
FOR BUS RAPID TRANSIT SYSTEM (BRTS) AND CITY BUS  
OPERATION FOR SURAT CITY FOR SURAT SMART CITY  
DEVELOPMENT LTD SURAT (FOURTH ATTEMPT)

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JANUARY 2018

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## PRELIMINARY

THIS AGREEMENT is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, **2018**.

## BETWEEN

**Surat Smart City Development Ltd** (the "Authority"/"SSCDL"), a company incorporated under the Companies Act, 2013 with CIN : U74999GJ2016PLC091579 and having its Registered Office at Smart City Cell Room No. 115, 3<sup>rd</sup> Floor, Surat Municipal Corporation, Surat – 395003, which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors and assigns; of **ONE PART**.

## AND

\_\_\_\_\_, a company incorporated under the provisions of Indian Companies act, 1956/2013, having its registered office at \_\_\_\_\_, hereunder referred to as the "Service Provider" which expression shall unless repugnant to the context include its successors and permitted assigns, of the **OTHER PART**.

The Authority and the Service Provider are hereinafter individually referred to as "Party" and collectively as "Parties".

## WHEREAS:

- A. Surat Municipal Corporation has been implementing common mobility management platform through Intelligent Transit Management System (ITMS) for Bus Rapid Transit Services, City Bus Services, Emergency vehicles and its other SMC vehicles. The ITMS Project is intended to enhance commuter satisfaction by improving reliability, safety and punctuality of bus operations. The ITMS project is being implemented presently by SSCDL/SMC appointed ITMS Service Provider which includes Automated Vehicle Locating System (AVLS), Passenger Information System (PIS), Vehicle Scheduling and Dispatch System, Incident Management System (IMS), Enterprise Management System (EMS), Business Intelligent System (BI) etc. SSCDL intends to expand ITMS Services to additional Fleet of Buses, Bus Stations and SMC vehicles. In this regard, additional quantities of Hardware items for ITMS project are required. .
- B. Authority had accordingly invited proposals/bids by its Tender Notice No. **Online GM(IT)/SSCDL/BRTS/ITMS/03/2017-18**, dated **January, 2018** (the "Tender Notice") to shortlist and select suitable Applicants through open global competitive bidding process for procurement, supply, installation, integration and thereafter maintenance of various Hardware components of ITMS Project (the "Project"). The Authority had prescribed the detailed technical specifications, functionalities, qualifications and commercial terms and conditions in its Request for Proposal Document dated **January, 2018** for selection of the Service Provider for the Project.
- C. After evaluation of the bids received, Surat Smart City Development Ltd has accepted the bid of \_\_\_\_\_ vide Resolution No. \_\_\_\_\_ dated \_\_\_\_\_ as per the terms and conditions specified in RFP documents, terms specified in this Agreement.

- D. Subsequently the Authority issued a Letter of Award (LOA) specifying intentions to accept the Bid of \_\_\_\_\_ through LOA dated \_\_\_\_\_.
- E. \_\_\_\_\_, has accepted the Letter of Acceptance hereunder called the “Service Provider”) by its letter dated\_\_\_\_\_.
- F. The Authority and the Service Provider are hereby entering into this Service Provider Agreement to implement the Project of procurement, supply, installation, integration and thereafter maintenance of various Hardware components of ITMS Project in Surat City.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, **the Parties agree as follows:**

## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them hereunder and any other term(s), not defined herein but defined elsewhere in this Agreement shall have the meaning(s) ascribed to such term(s) therein and shall be deemed to have been included in this Section.

**“Authority”** or **“SSCDL”** means Surat Smart City Development Limited (SSCDL) , a company incorporated under the Companies Act, 2013 with CIN : U74999GJ2016PLC091579 and having its Registered Office at Smart City Cell Room No. 115, 3rd Floor, Surat Municipal Corporation, Surat – 395003.

**“Agreement/ Meaning of the Agreement”** shall have a meaning specified in clause 2 of this Agreement.

**‘Arbitration’** means a process of an odd number of persons known as arbitrators, who decide on the solution to a dispute between the signatories to this Agreement.

**‘Applicable Laws’** means all statutes and laws promulgated or brought into force and effect by the Central Government of India or any State Government(s) or Local Government(s), including regulations and rules made by them, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

**‘Applicable Permits’** means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the supply, installation and maintenance of the Project during the subsistence of this Agreement.

**‘Arbitration Act’** means the Arbitration and Conciliation Act, 1996 as in force today and shall include any and all modifications/ amendments thereto or any re-enactment thereof as in force from time to time.

**“Affected Parties”** means parties claiming benefits of Force Majeure and shall have the meaning set forth in Clause 23 of this Agreement.

**“Authority Event of Default”** shall have a meaning specified in clause 22.2 of this Agreement

**‘Cure Period/Remedial Period’** means the period specified in this Agreement for curing and remedy of any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- a. Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice.
- b. Not relieve any Party from liability to pay damages, penalty and/or compensation under the provisions of this Agreement and
- c. Not in any way be extended by any period of suspension under this Agreement.

Provided that if the cure of any breach requires any reasonable action by the Service Provider, then it must be approved by the Authority hereunder, and the applicable Cure Period shall be extended by such period.

**“Contract Period”/“ Terms or Agreement”/Agreement Period”** shall have a meaning specified in clause 4 of this Agreement.

**“Confidential Information”** shall have a meaning specified in clause 15.3.1 of this Agreement.

**“Complainant”** means any persons including Authority who shall have grievance arose from the development of Project.

**“Dispute”** shall have the meaning set forth in Clause 24.1

**“Dispute Resolution”** means procedure set forth in Clause 24 for resolution of Disputes.

**“Default Notice/Notice”** means written communication issued by the Party to other party to specifying the breach or default of Service Provider.

**Expiry Date** shall mean the date on which Agreement expires in normal course with the efflux of time or prior Termination.

**‘Force Majeure Event’** shall have the meaning set forth in Clause 23

**‘Good Industry Practice’** shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.

**Project** “ refers to the procurement, supply, installation, integration and maintenance of various Hardware item specified in Schedul1 and 2 of this Agreement and scope of services specified in clause 5 and as defined Technical Specifications Document or any of its part/subpart as the context may require or admit.

**“ITMS Project/ Existing ITMS Project/ITMS System”** refers to the design, development, procurement, supply, integration, implementation, operation, maintenance and management of Intelligent Transit Management System comprising of Automated Vehicle Locating System (AVLS), Passenger Information System (PIS) , Vehicle Scheduling and Dispatch System, Incident Management System (IMS), Enterprise Management System (EMS), Business Intelligent System (BI). This is being implemented by SSCDL appointed ITMS Service Provider presently.

**Authority appointed Existing ITMS Service Provider/Existing ITMS Service Provider** refers to the entity already appointed by SSCDL/SMC for implementation of ITMS Project .

**“ITMS Service Provider/ Service Provider”** refers to the entity selected by SSCDL for implementation, operation and maintenance of ITMS Project pursuant competitive bidding process. SSCDL has already appointed ITMS Service Provider.

**“Insurance”** shall have a meaning specified in clause 21.1 of this Agreement.

**“Liquidated Damages”** shall have a meaning specified in clause 8.4 of this Agreement.

**“Lead Time”** shall mean the time available for successful implementation and commissioning of the Project as per Clause 8.2 of this Agreement.

**‘Material Adverse Effect’** means any act or event of either Party which causes a material financial burden or loss to the counter party.

**‘Material Breach’** means breach serious enough to destroy the value of this Agreement and to give a basis for an action for breach of Agreement.

**Maintenance Period** mean period post Warranty Period.

**“Obligations of the Service Provider”** shall mean Service Provider’s responsibilities specified in this Service Provider Agreement with respect to Project unless such responsibilities/obligations are waived by the Authority.

**“Obligations of the Authority”** shall mean Authority’s responsibilities specified in this Service Provider Agreement with respect to Project unless such responsibilities/obligations are waived by the Service Provider.

**“Maintenance Inspection Report”** shall have a meaning specified 12.4 of this Agreement.

**“Project Acceptance Certificate”/“ Go Live Certificate”** means the certificate issued by the Authority upon successful procurement, supply ,installation and integration of Various Hardware of Project specified in Request Order and demonstration of all functionalities of such Hardware as specified in Technical Specification and as per the provision set forth in clause 8.3 of this Agreement. The Authority shall issue Go Live Certificate separately for each Request Order.

**“Project Site”** shall mean the BRT Bus Stations, Depot, City Buses, Depot, Terminals , SMC Vehicles where the Project is to be implemented.

**Performance Security** shall have a meaning specified in clause 6.1 of this Agreement

**Parties’** shall mean the parties to this Agreement and “Party” shall mean either of them, as the context may admit or require.

**‘Project Implementation Plan ’** shall mean the plan with specific reference to this Project, which the Service Provider is required to furnish as part of this Agreement.

**“Request Order”** shall have a meaning specified in the clause 8.2 of this Agreement.

**“Rate Validity ”** shall have a meaning specified in clause 10 of this Agreement.

**“Representation and Warranties of Service Provider”** shall have a meaning specified in clause 19.1 of this Agreement.

**“Representation and Warranties of Authority”** shall have a meaning specified in clause 19.2 of this Agreement.

**“Service Provider”** shall mean the person selected pursuant to this RFP for with whom the Authority signs Agreement.

**“Service Provider’s Event of Default”** shall have a meaning specified in clause 22.1 of this Agreement.

**“Scope of the Project”** shall have a meaning specified in clause 5 of this Agreement.

**“Sub-Contractor”** is a person or corporate body who has a Contract with the Service Provider to carry out a part of the work in the Contract, which includes work on the Project Site.

**‘Surat Municipal Corporation** Municipal Body incorporated under the Bombay Provincial Corporation Act, 1949, responsible for the civic infrastructure and administration of Surat city and having its office at Muglisara, Surat-395 003, Gujarat State, India.

**‘Termination’** shall mean early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

**‘Termination Date’** shall mean the date specified in the Termination Notice or Notice of Termination as the date on which Termination occurs.

**‘Termination Notice’** means communication issued in accordance with this Agreement by one Party to the other Party specifying intention of terminating this Agreement.

**‘Termination Payment’** means the amount payable by the Authority to the Service Provider upon early Termination.

**‘Test’** means the Tests carried out by the Service Provider to determine the conformity of the Project and Maintenance procedures to the requirements set in this Agreement.

**‘Taxes and Duties’** shall mean all taxes, duties, fees etc. payable as per applicable laws in India in connection with the procurement, development, installation, operation, maintenance and management of Project.

**“Vandalism“** shall mean destroying or damaging project property, deliberately and for no good reason by the persons other than the employee or sub contractor of the Service Provider.

**“Warranty Period “** shall have a meaning specified in clause 11 of this Agreement.

**“Warranty”/“Warranty Terms”** shall mean written assurance provided by the Service provider to the Authority promising to repair, modification, changing spare of hardware, software, firmware etc or software upgradation to cure the faults/defects/deficiency in order to raise speed, efficiency and/or effectiveness of the sub system and achieve a higher performance level of Project within the Remedial Period specified at not lower terms than specified in clause 11(b).

## **1.2 Interpretation**

In the interpretation of this Agreement , unless the context otherwise requires:

The singular of any defined term includes the plural and vice versa, and any word or expression defined in the singular has the corresponding meaning used in the plural and vice versa;

A reference to any gender includes the other gender;

Unless otherwise stated, a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Annexure, Appendix , Exhibit, Attachment, Schedule, Bid Summary or Recital is a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Appendix , Exhibit, Attachment, Schedule, Bid Summary or Recital of this Tender.

A reference to any agreement is a reference to that agreement and all annexes, attachments, exhibits, schedules, appendices and the like incorporated therein, as the same may be amended, modified, supplemented, waived, varied, added to, substituted, replaced, renewed or extended, from time to time, in accordance with the terms thereof;

The terms “include” and “including” shall be deemed to be followed by the words “without limitation”, whether or not so followed;

Any reference to a person shall include such person’s successors and permitted assignees;

A reference to a “writing” or “written” includes printing, typing, lithography and other means of reproducing words in a visible form;

Any date or period set forth in this Agreement shall be such date or period as may be extended pursuant to the terms of this Tender ;

A reference to “month” shall mean a calendar month, and a reference to “day” shall mean a calendar day, unless otherwise specified.

The terms "hereof", "herein", "hereto", "hereunder" or similar expressions used in this Tender mean and refer to this Tender and not to any particular Article.

The terms "Article", "Clause", “Paragraph” and “Schedule” mean and refer to the Article, Clause, Section, Paragraph and Schedule of this Agreement so specified;

## **2. MEANING OF THIS AGREEMENT**

This Service Provider Agreement (“the Agreement”) constitutes a Contract between the Authority and the Service Provider under the Indian Contracts Act, 1872. The Agreement shall clearly and expressly constitute the following:

- (1) The Main Body of this Agreement followed by Schedule.
- (2) Performance Security in terms of Bank Guarantee no\_\_\_\_\_ from \_\_\_\_Bank and dated \_\_\_\_\_ and valid till \_\_\_\_\_provided by the Service Provider.
- (3) Bank Guarantee for Mobilization Advance subsequently furnished by the Service Provider for each Request Order for availing the Advance Payment from the Authority in accordance with the payment terms specified in this Agreement.
- (4) Request orders issued by the Authority.
- (5) Authority’s Letter of Award Dated\_\_\_\_\_ addressed to Service Provider..

- (6) RFP document dated\_\_\_\_ along with all Appendix ,clarifications and corrigendum documents.
- (7) Any relevant correspondence between the two parties that the signatories have agreed to include as part of the Agreement for validating and clarifying any points in the Agreement, or by way of revised or improved understanding of any terms of the Agreement.

Above documents are deemed to be part of the Agreement. In the event of any discrepancy / conflict in the terms of the above referred documents or interpretation thereof, the provisions of the more recent document, date wise, shall prevail over the older document.

### **3. APPOINTMENT OF SERVICE PROVIDER**

#### **3.1 Appointment of the Service Provider**

Subject to and in accordance with the provisions of this Agreement, the Authority hereby appoints, on a non-exclusive and non transferable basis, the Service Provider, and the Service Provider hereby accepts its appointment to procurement , supply, installation ,integration and thereafter maintenance of various Hardware components of ITMS Project (the "Project") in Surat City in accordance with the terms of this Agreement and subject to the Applicable Laws.

#### **3.2 Undertaking**

In consideration of the rights, privileges and benefits conferred upon the Service Provider, and other good and valuable consideration expressed herein, the Service Provider hereby accepts this Agreement and agrees and undertakes to perform/discharge all of its obligations and conditions in accordance with the this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Service Provider under this Agreement, and bear and pay all costs, expenses and charges in connection with, or incidental to the performance of its obligations in accordance with the terms contained herein.

### **4. TERMS OF AGREEMENT/CONTRACT PERIOD**

- (a) The Contract Period shall be the period between the Date of Signing of the Agreement and the Expiry Date.
- (b) The Agreement shall remain in force for a period of Seven Years (7 years) from the date of completion of installation and implementation of first Request Order , provided however that in the event of earlier termination of the Service Provider Agreement/Contract, this period shall ending with the date of termination of the Service Provider Agreement (the "**Contract Period**"). Completion of first Request Order shall be considered from the date of issuance of the Project Acceptance/ Go Live for quantities specified in First Request Order. Extension of the services beyond this period can be done upon mutual consent at terms which may be discussed and fixed thereupon.
- (c) The first Request Order shall be issued within two (2) weeks from the date of LOA.

## **5. SCOPE OF WORK**

The scope of the project (the "Scope of the Project") is specified hereunder.

### **(a) Procurement, Supply, Installation ,Integration and commissioning of additional Hardware items for ITMS Project**

Service Provider shall procure, supply and install the hardware items as per quality, standards and technical specifications and functionalities as specified in Technical Specification of RFP and items as specified in Price Bid Appendix-2.

The detailed Scope of Work and Technical Specifications of each component of Project are provided in Technical Specification Section of this RFP document. The Bills of Quantities (BOQs) of each item of the Project is specified in Appendix -2 Price Bid of this RFP.

Service Provider shall also be responsible for replenishment/restoration of Project Site or any of the components of Project Site to its original conditions at its own cost if such Project Site or component so damaged during the installation and maintenance by Service Provider's staff.

Ducting at standard location at the Station/Terminal/Depot shall be as per the Station design shall be provided by the Authority. Any additional ducting required by the Service Provider shall have to be installed/arranged by it at its own cost. All wiring to be done by the Service Provider at its own cost. Authority shall provide required power supply at one point and recurring electricity bills shall be bourn by the Authority.

### **(b) Integration with existing ITMS Project**

Service Provider shall be responsible for integration of Hardware items specified in this RFP with existing ITMS Software system/ITMS Project. The Integration requirements are elaborated in Technical Specification . Service Provider shall have to ensure compatibility of Hardware items with existing ITMS Software Systems. Authority shall provide necessary interfacing protocol and Active Programming Interfaces (APIs) to Service Provider.

### **(c) Maintenance of Hardware items during Contract Period**

- (i) The Service Provider shall maintain all Hardware items under this RFP during the Contract Period (i.e Warranty Period and Maintenance Period) to ensure the availability of the Hardware items in accordance with the provisions of the Technical Specification Appendix-8 and Service Levels specified in Schedule 3 and guidelines and specifications as may be stipulated therein.
- (ii) The Service Provider shall be abided by the other maintenance terms specified in the tender during the Warranty Period and Annual Maintenance Period
- (iii) Service Provider shall ensure continuity of the Project in case of any stoppages of failure as per the scope, Technical Specifications and Functionalities specified in Technical Specification of this RFP.

**(d) Training and handholding support to Authority's Staff.**

The Service Provider shall train the staff of the Authority and drivers with regards to operational use and functionalities of Hardware items.

**(e) Insurance**

Service Provider shall procure insurance cover and maintaining the same during the Contract Period as per provisions set forth in clause 25 of this Agreement.

**(f) Performance and fulfillment of all other obligations and responsibilities** of the Service Provider and conditions in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Service Provider under this Agreement.

## **6. PERFORMANCE SECURITY**

### **6.1 Performance Security**

The Service Provider hereby assures, entrusts and covenants unto the Authority that:

- (a) Service Provider had furnished Performance Security to Authority for securing the due and faithful performance of its obligations under the Service Provider Agreement before the date of signing of Agreement (the "**Execution Date**") , an unconditional and irrevocable bank guarantee dated\_\_\_\_\_ for amount **Rs.\_\_\_\_\_ (i.e 5% of Total Bid Value)** in favour of the "**Surat Smart City Development Ltd**" , from \_\_\_\_\_Bank (from Approved Bank to SSCDL Only) and payable and enchale at Surat ("**Performance Security**"). The Performance Security in the form of a Bank Guarantee is irrevocable and valid upto \_\_\_\_\_(date). Such Performance Security shall be renewed on time to time basis to coincide its validity period with Contract Period and 90 days thereafter. The copy of Performance Security furnished by the Service Provider is specified in Schedule 5.
- (b) Provided that if the contract is terminated for reasons other than which can be attributable to the Service Provider , the Performance Security, shall, subject to the Authority's right to receive amounts, if any, due from the Service Provider under this contract, be duly discharged and released to the Service Provider.

### **6.2 Encashment of Performance Guarantee**

- (a) The Authority shall be entitled to encash the Performance Security fully or partially as the case may be, through a notice of 30 days ("**Encashment Notice**") under the following circumstances:
- (i) Non payment of any dues by the Service Provider to the Authority as required to be paid under Service Provider Agreement including damages as provided.
  - (ii) An Event of Default not being remedied in Remedial Period by the Service Provider despite notice as provided in this Agreement.

- (iii) Non removal of deficiencies during the Handover period as specified in the Service Provider Agreement.
- (b) Provided the extend of such encashment shall be no greater in amount than that required to remedy the circumstances warranting encashment stipulated above and provided further that in case of any encashment of the Performance Security pursuant to the Encashment Notice, the Authority may return the amount so encashed if the circumstances requiring the encashment have been remedied to the full satisfaction of the Authority.
- (c) The provision under this Sub-Clause authorizing the Authority to encash the Performance Security shall be exercisable in addition to and without prejudice to the Authority's right to do so under any other similar provision in this Agreement permitting encashment.

### **6.3 Fresh Performance Security**

In the event of the encashment of the Performance Security by the Authority pursuant to Encashment Notice issued, the Service Provider shall within 20 (twenty) days of the Encashment Notice, furnish fresh Performance Security to the Authority of the amount that deducted to remedy damages, failing which the Authority shall be entitled to terminate Service Provider Agreement by giving 30 days notice in accordance with the provisions herein.

## **7. GENERAL OBLIGATIONS**

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement , the Parties shall agree and undertake as under;

### **7.1 General Obligations of Service Provider**

The Roles and Responsibilities specified hereunder and elsewhere in the Agreement shall constitute the Roles and Responsibilities /Obligations of Service Provider with respect to Project (the "General Obligations of Service Provider" ) unless such obligations are waived by Authority.

The Service Provider shall at its own cost and expense;

- (a) Procure, supply, install and integrate Hardware items specified Request order at Project site indicated and Lead Time provided in Request Order in accordance with the provisions of this RFP , Good Industry Practice and Applicable Laws.
- (b) Integrate Hardware items specified in Request Order with existing ITMS Project which is being implemented by Authority/SMC in accordance with the provision of RFP.
- (c) Repair and maintain the Hardware in full operational condition as per the maintenance specified in RFP and maintain the Hardware availability as per the Service Levels specified in Schedule 3 during the Warranty and Annual Maintenance Contract Period as per the terms of the Service Level Conditions included in Schedule 3 during the Warranty and Annual Maintenance Contract Period, if required, through changing the Spare Parts.

- (d) Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance with thereof at all times for execution of its obligations.
- (e) Ensure compatibility of the Hardware items with present ITMS Project implemented in BRTS, City Bus Services and SMC Vehicles by Authority appointed Existing ITMS Service Provider.
- (f) Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project.
- (g) Provide all assistance to the Authority or its representative as they may reasonably require for the Performance of their duties and services under this RFP.
- (h) Provide to the Authority reports on a regular basis during the Implementation on the progress of the project as may be demanded by the Authority
- (i) Provide to the Authority reports on a regular basis during the Warranty Period and Maintenance period on the compliance with SLA as may be demanded by the Authority.
- (j) Ensure and provide full cooperation, assistance and share protocols, APIs so required to the Authority appointed existing ITMS Service provider to ensure that the Hardware items being supplied are compatible with other exiting components of the existing ITMS Project.
- (k) Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Service Provider's obligations under this Agreement.
- (l) Develop, implement and administer a Surveillance and Safety Program for the Project and the users thereof and the Service Provider's personnel engaged in the provision of any services including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (m) Take all reasonable precautions for the prevention of accidents on or about the Project Site / Facility.
- (n) Not to place or create nor to permit any Contractor or other person claiming through or under the Service Provider to create or place any Encumbrance over all or any part of the Project or Project Site , or on any rights of the Supplier therein, save and except as expressly set forth in this Agreement.
- (o) Be responsible for safety, soundness and durability of the Project components and their compliance with the Specifications and standards set forth in this Technical Specification throughout the warranty period and Contract period.
- (p) Remove promptly upon installation and according to Good Industry Practice, from the Project Site, all surplus installation machinery and materials, waste materials, rubbish and

other debris and keep the site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.

- (q) Have requisite organization and designate and appoint suitably qualified officers/representatives as it may deem appropriate to supervise the implementation of its obligations under this Agreement and to deal with the Authority or its representative and to be responsible for all necessary exchange of information required pursuant to this RFP.
- (r) Undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to Project Completion under and in accordance with this RFP.
- (s) Furnish the copies of hardware design manuals, protocols, Maintenance Manual, the Maintenance Program and copies of all documents relating to safety and its safety standards to Authority.
- (t) Ensure smooth transfer of all hardware, protocols, APIs forming part of the Project except proprietary Software to Authority upon Termination or at any period during the Contract Period as and when demanded by Authority.
- (u) Abide by all Applicable Laws including labour laws, minimum wages, PF, ESIC and Applicable Taxes including GST, etc.
- (v) Co-operate with all other Service Providers and Vendors of Authority and facilitate their operations in the BRT System and City Bus operations.
- (w) Service Provider shall be responsible for conducts and functioning of their employees and staff employed on the Project. The Service Provider shall ensure efficient services, polite and courteous behavior and conduct towards end users and to the staff and representative of Authority. In case of any of its employee or staff members being found guilty of any unreasonable offenses, the Service Provider shall be liable for any misconduct of its staff and upon request from the Authority, the Service Provider shall take appropriate actions. It shall be clarified that any such actions towards staff members shall not absolve the Service Provider from its obligations.
- (x) The Supplier shall have to make his own arrangement for the storage of the materials required for this work. The Authority shall have no responsibility to provide for any such storage facility to the Service Provider
- (y) Performance of each activity, responsibilities and obligations specified elsewhere in Service Provider Agreement and Technical Specification Document of RFP during the Contract Period.

## **7.2 General Obligations of Authority**

The Roles and Responsibilities specified hereunder and elsewhere in the Agreement shall constitute the Roles and Responsibilities /Obligations of Authority with respect to Project (the “General Obligations of Authority” ) unless such obligations are waived by Service Provider.

- (a) Provide necessary interfacing protocol and Active Programming Interfaces (APIs) to the Service Provider for facilitating integration and compatibility with existing ITMS Project. Based on which Service Provider shall undertake integration with existing ITMS System. Upon integration information control of the Hardware items shall be passed on to the existing ITMS Project sub systems for effective functioning and operation.
- (b) Provide to the Service Provider necessary Project Site comprising of BRT Bus Stations, City Buses, City Bus Shelters , SMC Vehicles for due and punctual performance of its obligations.
- (c) Approve the Project Implementation Plan or any other submittal submitted by the Service Provider, provided Service Provider incorporated suggestions made by the Authority or its representative. Any approvals herein above by the Authority shall not absolve the Service Provider from its obligations and responsibilities under this Agreement.
- (d) Bear the electricity expense at Bus Stations, Control Center and Disaster Recovery Center.
- (e) Bear the regular recurring communication charges for operation of Hardware items installed as part of this Project.
- (f) Make regular payment to Service Provider in conformity with the payment terms specified in clause 20 of this Agreement.
- (g) Attempt to grant in a timely manner all such approvals, permissions and authorizations which the Service Provider may require or is obliged to seek from the Authority in connection with implementation of the Project and the performance of the Service Provider's obligations under this Agreement;

## **8. PROJECT IMPLEMENTATION**

### **8.1 Submission of Documents**

- (a) The Service Provider shall provide to the Authority clear project implementation, user acceptance Test Plan /Quality Check and Test Plan and operational manual of each component of the Project as per relevant provisions of Technical Specification within the 4 weeks of LOA. The Service Provider shall also provide maintenance manual during the warranty period.
- (b) Each submittal specified in sub clause (a) above, should contain sufficient information to determine that each component of Project complies with the Technical Specifications and requirement of the Authority.
- (c) Service Provider shall incorporate inputs and suggestions received from Authority or Authority appointed supervision consultant in all submittals. Upon approval by the Authority and after finalization the same shall form an integral part of the Service Provider

Agreement. Approval of any such submittals shall not absolve the Service Provider from its responsibilities and obligations specified in this Agreement.

## 8.2 Request Order and Phasing

- (a) The Authority shall issue an Order in writing, indicating the number of units of Hardware to be supplied along with the location (Project Site) where these are to be installed. The Authority shall continue to issue such request until the full quantities specified in this Agreement is exhausted (the "Request Order") during the Rate Validity period. The first Request Order shall be issued within two (2) weeks from the date of LOA.
- (b) Upon getting the Request Order, the Service Provider shall promptly and as soon as possible within the Lead Time specified in the Request Order , procure, supply and install specified numbers of hardware items at stated Project Site and integrate the same with existing ITMS Project.
- (c) The Authority shall specify the Lead Time in Request Order. The Lead Time of Request Order shall be decided in discussion with the Service Provider before the Request Order is placed. Authority's decision in this regard shall be final but reasonable time shall be provided to the Service Provider. Delay or non performance will form the basis for application of Liquidated Damages. Tentative Number of Request Orders and Lead Time as envisaged at this point of time are specified in sub clause (d) hereunder.
- (d) Tentative Phasing for implementation for guidance of the Service Provider is as follows. It may be emphasized that this phasing is indicative and not binding.

Request Order No.	Approximate Time for Request Order from LOA	Scope/ Approximate Sizing	Tentative Lead Time .
1*	0-2 weeks	RO1 for In Bus PIS Units and GPS Modules for 300 Midi Buses **  (The Service Provider shall have to provide wiring harness at the earliest to Authority appointed Bus Operators on receipt of the Request Order)	6 weeks
Multiple Request Orders	Remaining Request Orders shall be placed during Rate Validity Period	Remaining Quantities	

\* The Lead Time for Request Order 1 shall remain unchanged. It has been kept to align with Bus Deployment Plan. However Authority shall take into account the concerns of the Service Provider while deciding the Lead Time of subsequent Request Orders.

\*Quantities specified in RO1 are promised quantities. Remaining quantities may be ordered through separate Request Orders within Rate validity Period at sole discretion of Authority.

The above is a tentative schedule as envisaged at this point of time and the Authority retains the full right to make changes / additions to this schedule.

- (e) Authority may in sole discretion ask Service Provider to undertake Pilot Demo of sample hardware quantities (in a One or Two Buses) before initiating Installation , commissioning of quantities specified in Request Order.

### **8.3 Testing and System Audit during Implementation of Project**

- (a) Upon completing the procurement, supply, installation and integration of the hardware quantities specified in Request Order, the service provider shall do a test run in coordination with Authority appointed existing ITMS Service Provider for the quantities specified in Request Order, remove any shortcomings and resolve any bugs in hardware and or in integration.
- (b) After successful test run as specified hereinabove (a), the Service Provider shall inform the Authority/ its authorized representative who shall conduct demonstration / testing of the Project installed to test their conformity to Technical Specifications and functional requirements as per the Tests specified in Technical Specifications, user acceptance test manual/ Quality Check and Test Plan and Good Industry Practice.
- (c) The system shall be checked for full functionality in an integrated environment through test run and tests specified in (b) above. Upon successful outcome of the same , Authority/ its authorized representative (i.e independent consultant or third party system auditor) shall issue a Project Acceptance Certificate/Go Live Certificate (the “Project Acceptance Certificate/Go Live Certificate”). No certificate shall be issued against only delivery, partial installation or incomplete commissioning for quantities specified in Request Order. Authority shall issue Request Order wise Project Acceptance Certificate/Go Live Certificate upon successful test outcome as specified in (a) and (b) hereinabove. The Authority shall issue Project Acceptance / Go Live Certificate separately for each Request Order.
- (d) The Authority shall appoint an independent consultant or third party auditor capable of auditing IT systems envisaged as part of Project implementation. The Service Provider shall be required to provide necessary information to the third party auditor to facilitate testing and audit of hardware, software and processes related to Project during the Project Implementation.

### **8.4 Liquidated Damages**

- (a) The Service Provider agrees that Liquidated Damages specified in sub clause (b) hereunder are fair and genuine pre-estimate of damages and not by way of penalty and agree to not to dispute the same in future in any manner.
- (b) In the event of delay by Service Provider to comply with the Lead Time requirements as stipulated in clause 8.2 (d) of this Agreement or mutually extended Lead Time ,then the Liquidated damages shall apply @0.071% of value of the per day delay of Hardware to be supplied, installed and integrated specified in Request Order (the “**Liquidated Damages**”). Total Liquidated Damages applicable under this clause shall be limited to 10% of the value of the hardware to be supplied, installed and integrated for which Request Order is placed.

- (c) Liquidated Damages shall not be applicable in case delay caused due to Force Majeure events or reasons attributable due to delay in part of the Authority for handover of project site or providing necessary interfacing protocols and Active Programming Interfaces (APIs) of existing ITMS Project.

## **9. QUANTITY VARIATION**

- (a) The Variation in individual Hardware items of quantities is permitted provided it shall not exceed upper limits of 30% (i.e increase of 30%) in quantity of each individual item subject to sub clause (b) hereunder.
- (b) The Authority reserves the right to not to order quantities of hardware units beyond the quantities specified in first Request Order or not to place the subsequent Request order after the issuance of first Request Order as per clause 8.2(d) (i.e beyond quantities of 300 City Buses) .Subsequent Request Orders shall be issued based on completion level and degree of success achieved in previous Request Orders issued or any other reason. Authority reserves the rights not to issue further Request Order if it envisages other implementation challenges or difficulties or other reasons or it decides not to proceed further with implementation.
- (c) The Service Provider shall have to execute additional quantities Hardware item at RFP rates provided (1) such quantity variation is within the quantity variation limit as specified in sub clause (i) herein above and (2) Request Order is placed within the Rate Validity Period as specified in clause 10.
- (d) The rates for the Hardware items exceeding the variation limit for Hardware items shall be as per mutually agreed terms and conditions based on market prices.
- (e) The commercial terms for the quantities of Hardware items exceeding the variation limit (upper limit) shall be agreed in advance by both Parties and decided based on negotiations. The following principles shall be used for such negotiations.
- (i) Base Rates and prices specified in Contract plus reasonable 10% escalation plus prevailing applicable taxes.
- (ii) Prevailing Market rates charged to other parties by the Service Provider or prevailing market rates for similar items available in the market plus reasonable 10% escalation for overheads and profits of contractor.
- (f) Extra Items : It is possible that there may be items required which are not envisaged in the RFP. If any such additions /alterations in items are required for which no rate is specified in the Contract, such items shall supplied and paid for at a rate of Prevailing Market rates charged to other parties by the Service Provider or prevailing market rates for similar items available in the market plus reasonable 10% for overheads and profits of contractor.

## **10. RATE VALIDITY PERIOD**

- (a) The base prices/rates of hardware items (base rate without tax as per Appendix 2A) quoted by the Service Provider shall remain valid for 24 months from the Due Date of Submission (the "Rate Validity Period"). The Due Date of Bid Submission was \_\_\_\_\_.

The Service Provider shall be required to install and implement hardware forming part of Project at same rate that it has quoted within Rate Validity Period.

- (b) Rates beyond Rate Validity Period for Hardware items specified in (a) above shall be negotiated and agreed upon at mutual consent of Authority and the Service Provider.
- (c) The Annual maintenance Rates (without tax) of Hardware components/additional Hardware components shall be as per RFP rates quoted by the Service Provider irrespective of whether Request Order is placed within the Rate Validity period or beyond the Rate Validity Period.

## **11. WARRANTY PERIOD AND WARRANTY TERMS**

- (a) The Service Provider agrees to provide the warranty to Hardware items forming part of Project and supplied, installed and integrated by the Service Provider for a period of 1 (one) year from the date of issuance of Project Acceptance/Go Live Certificate (the **“Warranty Period”**). The Warranty Period of different Request Order items shall end at different dates. The Service Provider shall not dispute the same in future in any manner.
- (b) In addition to the Terms of Warranty specified hereunder, the Service Provider shall provide standard warranty terms of OEMs, provided such terms shall not conflict with the terms specified hereunder.
  - (i) The Service Provider shall maintain the Project and its components, modify, repair or otherwise make improvements in hardware to comply with Technical Specifications, Service Level Agreement, Good Industry Practice, Applicable Laws and Applicable Permits, and manufacturer's guidelines and instructions.
  - (ii) The Service Provider shall undertake routine and periodic maintenance in order to maintain the Minimum Service Levels.
  - (iii) The Service Provider shall be responsible for any defect or failure of Project Components comprising of Hardware items due to defective design, material or workmanship, manufacturing or development defects or latent defect or due to normal wear and tear within the design limit, during the Warranty period. The rectification, change of spare of hardware units shall have to be undertaken by the Service Provider free of charges/cost to cure the faults/defects/deficiency in order to raise speed, efficiency and/or effectiveness of the Hardware items within the Remedial Period specified by the Authority.
  - (iv) The Service Provider shall be required to station required number of competent technical manpower /engineers/ supervisors along with necessary spare parts during the entire warranty period at its own cost for evaluation of performance of the Project and its components. Necessary technical personnel shall also be deputed by the Service Provider at its own cost for investigating defects and failures and carrying out modifications as and when required during the Warranty Period.
  - (v) Ensure uptime and availability of Project components all time during the Warranty Period by resolving any bug and technical problems as soon as possible.
  - (vi) Warranty Terms shall not be applicable in the event of damages due to Vandalism,

tempering of hardware or Project components by passengers, Authority's staff or any external party. In such an event, the Authority shall request the Service Provider to repair/replace the damaged component of Project and reinstall the same. Reasonable repair/replacement costs towards the same shall be reimbursed by the Authority to the Service Provider less of insurance proceeds.

## **12. OPERATION, MAINTENANCE AND MANAGEMENT OF PROJECT**

### **12.1 Terms of Maintenance and Obligations during Maintenance**

Maintenance Terms and O&M obligations are inclusive of spares during Contract period and followings shall constitute the Maintenance Terms, obligations and responsibilities of the Service Provider during Operation and Maintenance (the "Maintenance Terms");

- (a) maintain the Project all time during the Contract Period as per Good Industry Practice, provisions of this Agreement and specification provided in Technical Specification section and ensure smooth operations and functioning of all Hardware items during all time of Contract Period by employing adequate maintenance measure as per Good Industry Practices.
- (b) Ensure smooth operation and uptime of the Project components during the Contract Period by undertaking routine and periodic maintenance of the Project components and carry out rectification, modification change of spare if need so arise in order to maintain the Minimum Service Levels all time during the Contract Period.
- (c) Take responsibility for any defect or failure of Project Components due to defective design, material or workmanship, manufacturing or development defects or latent defect or normal wear and tear within the design limit, during the Contract Period and immediately cure such defects or replace the item.
- (d) The rectification, repair, change of spare of hardware units, shall have to be undertaken by the Service Provider to cure the faults/defects/deficiency in order to raise efficiency of the items. Liability of the damages due to Vandalism as per clause 14(b) shall remain with the Authority.
- (e) Deploy required number of competent technical manpower /engineers/ supervisors along with necessary spare parts, standby items and inventories of Project components during the Contract period at its own cost in order to maintain the Service Levels.
- (f) Prepare a Maintenance Manual in consultation with Authority or its Supervision Consultant specifying the detailed operation plan, methodology and time period of regular and preventive maintenance, comprehensive information of equipment
- (g) Take all precautions to ensure that the Hardware items remains safe and secure in general and free from attacks arising from attempted manipulation, fraud, break down, compromising of data security, malware and virus attacks, physical attacks or damage due to neglect or omission.

- (h) Ensure that any premises/Project Site provided by Authority to the Service Provider for the purpose of carrying out its obligations shall be used solely for the purpose of carrying out the functions intended and obligations placed under this Service Provider Agreement and not for any other purposes.
- (i) The Service Provider shall not permit anti social activities/illegal activities on Project Site during the Contract Period. Any liabilities arise as consequences of such event shall be borne by the Service Provider. On occurrence of such event, the Service Provider shall solely responsible for legal remedies and Authority may consider Termination on occurrence of such event.
- (j) take prompt and reasonable action for redressal of each complaint received from Authority related to Project.
- (k) Obtain and keep valid all applicable permits required by it under applicable laws for carrying out its scope of work during the Contract Period.

## **12.2 Payment of Damages due to breach in Service Levels during Maintenance of Project**

- (a) The Service Provider agrees that Damages specified in sub clause (b) hereunder is fair and genuine pre-estimate of damages and not by way of penalty and agree to not to dispute the same in future in any manner.
- (b) The Service Provider shall require to pay damages for non adherence to Minimum Service Levels (SLA) as specified in Schedule 3 of this Agreement.
- (c) The payment of damages shall not absolve the Service Provider from performing its obligations as specified under this Agreement.
- (d) Damages under this clause shall not be applicable in case breaches caused due to Force Majeure events , Vandalism or reasons attributable due to the Authority .

## **12.3 Monthly Status Report**

- (a) Service Provider will put in place a monitoring mechanism and also undertake inspection to monitor functioning and performance of all components of the Project and furnish the data of performance as per the different types of MIS reports and information requirement regularly on monthly basis to the Authority.
- (b) The Service Provider shall take prompt actions necessary to rectify the fault, defect or malfunctions found in hardware items during such inspections and provide progress report of all such actions to Authority.
- (c) The Service Provider shall provide quarterly reports at regular interval during the Contract Period stating in reasonable detail the compliance of functionality, performance and standard of each Hardware items Technical Specifications, functionalities and Service

Levels. Such report shall also provide details of regular maintenance and up gradation undertaken, actions taken to maintain and improve availability and performance, action taken progress report on removal of bugs, deficiency, fault and defect in functioning of Project components and shall promptly give such other relevant information as may be required by the Authority.

#### **12.4 Inspection during Maintenance Period**

- (a) The Authority may appoint an independent consultant/Supervision Consultant or third party auditor capable of auditing and testing IT systems envisaged as part of Project. The Service Provider shall be required to provide necessary information to the third party auditor to facilitate testing and audit of hardware related to the Project during the Contract Period.
- (b) The Supervision Consultant /independent consultant/Supervision Consultant or third party auditor appointed by the Authority or authorized representative of the Authority shall inspect the compliance of functionality of Project at every six (6) months during the Contract period and can cause the Service Provider to carry out Tests as specified in Testing Plan. It shall make a report of such inspection (the " Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Technical Specifications, Functionalities, Service Levels and other requirements and send a copy thereof to the Authority and the Service Provider within 7 (seven) days of such inspection.
- (c) Upon receiving such Report, the Service Provider shall be entitled to take appropriate and prompt actions to cure the defects or deficiency including software upgrades, hardware replacement found during such inspection in Inspection Report within the remedy period specified in Inspection Report, if not so specified, shall be specified by the Authority.

#### **12.5 Authority's right for remedial measure**

In the event that the Service Provider fails to repair or rectify any defect or deficiency or bugs in the Project so found during inspection within the Remedial Period specified in Inspection Report and over and above of repetitive notices and repetitive failure of system, then the Authority shall carry out such repairs or rectifications at cost of Service Provider. The Authority shall be entitled to recover such costs from the Service Provider. Recovery of such cost shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

### **13. TRAINING AND HUMAN RESOURCE DEPLOYMENT**

#### **13.1 Training**

- (a) The Service Provider shall be responsible for the selection, engagement and training of personnel in all work with regard to the performance of this Agreement.
- (b) The Service Provider shall develop and conduct training program to train all staff members

of the Service Provider, deployed in the Project throughout the Contract Period.

- (c) The Service Provider shall also offer training program at its own costs to train the staff of the Authority and drivers with regards to operational use and functionalities of Hardware items. Such training program shall be held three to four times a year as per direction of Authority. The Authority shall provide basic infrastructure such space for conducting such training program. The cost towards consumable such as papers, training material, Projector etc shall be borne by the Service Provider.

### **13.2 Human Resource Deployment**

- (a) The Service Provider shall be responsible for deployment of trained and qualified staff members during Project Implementation and Maintenance Period.
- (b) The Service Provider shall appoint a Project Manager who acts as a single point of contact and shall be responsible for all deliverable of this Agreement. The Project Manager shall also act as representative of the Service Provider.
- (c) The Service Provider shall also deploy the adequate numbers of qualified and trained technical personnel to carry out maintenance of the Hardware items installed by the Service Provider.
- (d) If the Authority asks the Service Provider to remove a person who is a member of the Service Provider's staff or work force, stating the valid reasons, the Service Provider shall ensure that the person leaves the Project Site within seven days and has no further connection with the Project in the Contract.
- (e) The Service Provider shall abide by all Applicable Laws including labour laws, minimum wages, PF , ESIC and Applicable Taxes including Service Tax, GST etc. for the Human Resource deployed by them. There shall not be employee and employer relationship between the manpower deployed by the Service Provider (either permanent or contractual employee) and the Authority through this Contract. The Service Provider shall solely liable for any liabilities arising due to breach in labour laws including minimum wages, PF , ESIC and Applicable Taxes. The Service Provider shall be solely responsible for any liabilities arising to act or death, injuries of employee deployed by Service Provider or its sub contractor or any third party damages due to act of omission of Service provider or its employee.

### **14. DAMAGE TO HARDWARE/ PROJECT COMPONENTS**

- (a) Hardware items delivered and installed by the Service Provider shall be deployed in heavy public use environment and is required to last rough usage in outdoor conditions. All such Hardware shall be designed to be vandal proof/vandal resistance. Damage to Hardware due to regular wear and tear under field conditions, damage or failure due to exposure to outdoor conditions such a moisture and heat, faulty manufacture, latent manufacturing defects within design limit ,mechanical, electrical or electronic failure, shall be the liability of the Service Provider during the Contract Period. In such case, Service Provider shall repair, change the spare of the unit such that the repaired unit has full functionality during

the period of the Service Provider agreement. It is responsibility of the Service Provider to ensure that all equipment/hardware/software continues to function as per functionality specified in Technical Specification and maintain the Service Levels during the Contract Period. All costs towards repair/modification/changing spare shall be borne by the Service Provider in natural course.

- (b) Damages due to Vandalism, tampering of equipment by Authority staff or Bus Service provider staff and damage due to accidents of any kind shall be the liability of the Authority. In such case, Authority shall request the Service Provider to repair/replace the damaged unit and reinstall the same. All costs towards the same shall be reimbursed by the Authority to the Service Provider less of insurance proceeds.

## **15. OWNERSHIP OF PROJECT AND INTELLECTUAL PROPERTY RIGHTS**

### **15.1 Ownership of the Project**

- (a) With exceptions of proprietary hardware or software required for functioning of such Hardware, the ownership of all Hardware and or such Software forming part of the Project shall be transferred to the Authority at the time of delivery and installation.
- (b) In cases where the customized hardware/software is developed and installed exclusively for the Authority, the ownership of all such shall rest exclusively with Authority upon delivery and installation.
- (c) The Software Licenses and Licenses for other proprietary, all third party software license and standard Hardware shall be transferred to the Authority upon delivery and installation. The License Period of proprietary software of the Service provider shall be similar to the Contract Period.

### **15.2 Intellectual Property Rights**

- (a) The Intellectual Property Rights in all Standard and Proprietary Hardware and or software required for operation of Hardware shall remain vested in the owner of such rights. The Authority shall have rights to possess and use the same during the Contract Period exclusively for the purposes of effective implementation, operation and maintenance of the Project. The Authority shall not assign license, or otherwise voluntarily transfer its contractual rights to any other third party without approval from the Service Provider unless such assignment is required for performance of the Project.
- (b) The Intellectual Property Rights of customized hardware/software which is developed and installed exclusively for the Authority shall remain vested with Authority. The Service Provider shall handover the source code for all customized software correspond 100% to the operational module to the Authority and shall be verified and certified by an independent agency as identified by the Authority. The Service Provider shall have the right to possess and use the same during the Contract Period exclusively for purposes of effective implementation, operation and maintenance of the Project and shall not assign license, or otherwise voluntarily transfer its contractual rights to any other third party without approval from the Authority.

- (c) After the expiry or termination of the Service Provider Agreement, the Service Provider shall have no right, title or interest in or to any work including without limitation the designs, software, programs, modifications or derivative works developed and customized for the Authority by Service Provider for the Project for any purpose whatsoever.
- (d) The Software License for the Service Provider's Proprietary Software shall end after the expiry or termination of the Service Provider Agreement. The Software Licenses for Standard Software procured from third party shall end not earlier than Contract Period.
- (e) In case where pre existing software or hardware are customized/modified for Authority use by the Service Provider, the IPR for the same shall rest with the Service Provider only. In such cases Service Provider agrees to provide Authority the rights to use this product even beyond the Service Provider Agreement at terms no costlier than those at which such products are available to similar customers in the market. Authority may demand evidence of pre-existence of any such product.
- (f) For purposes of this Agreement and the Service Provider Agreement the terms "software", and "software programs/ Software License " shall include without limitation the source code, object code, any and all related design concepts and ideas, specifications, documentation, technical information, and all corrections, modifications, additions, improvements and enhancements to any of the foregoing provided to Authority by the Service Provider in relation to the Project pursuant to the Service Provider Agreement. The terms "firmware" and "hardware" shall include without limitation the designs, drawings, specifications, custom designed electronic devices, documentation, technical information and all corrections, modifications, additions, improvements and enhancements to any of the foregoing provided to Authority by Service Provider in relation to the Project pursuant to the Service Provider Agreement.

### **15.3 Confidentiality**

#### **16.3.1. Confidential Information**

- (a) the "Receiving Party" (either the Authority or the Service Provider) shall keep confidential and shall not, without the written consent of the other party to this Contract ("the Disclosing Party"), divulge to any third party any documents, data, or other information of a confidential nature ("Confidential Information") connected with this Contract, and furnished directly or indirectly by the Disclosing Party prior to or during performance, or following termination, of this Contract. Notwithstanding the generality of the foregoing, Confidential Information shall include any proprietary or confidential information of Authority relating to the Project or services provided under the Service Provider Agreement in relation thereto and information relating to Authority's business or operations.
- (b) Disclosing Parties shall not without Receiving Parties' prior written consent use, copy or remove any Confidential Information ,except to the extent necessary to carry out Disclosing Parties obligations hereunder. Upon expiry or termination of the Service Provider Agreement, Parties shall return materials containing Receiving Parties Confidential Information .

### **16.3.2. Confidentiality Exceptions**

The Obligations of Parties pursuant to clause 16.3.1 above, however shall not apply to the information which;

- (a) now or hereafter enters the public domain through no fault of the Receiving Party;
- (b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party;
- (c) Otherwise lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality.

## **16. SHARING OF PROTOCOL**

- (a) The service provider shall be required to furnish all Interfacing protocols related to hardware being implemented within scope of Project to Authority before getting the final sign-off on the deliverables. The documentation shall be provided in a way that allows Authority to enable any other service provider/supplier to integrate their services if needed during the Contract Period and thereafter. The protocol documentation shall clearly state all interface requirements including APIs and such documentation shall be provided and expected as part of installation and commissioning requirements. The installation and commissioning of the Project shall not be deemed to be complete until such Protocols, API Document is shared by the Service Provider with the Authority to the satisfaction of the Authority.
- (d) Breach in sharing of program protocols by the Service Provider as specified in sub clauses (a) above shall be considered Event of Default with all due consequences of such Event as per the Agreement including forfeiture of Performance Security Withholding of Payment and also consider Termination.

## **17. OUTSOURCING /SUB CONTRACTING**

- (a) Service Provider is permitted to outsource the installation work only after approval from the Authority.
- (b) In the event of failure or breach of any sub-contractor or vendor of the Service Provider in performance of its tasks and functions, the Authority shall have the right to have the services of such sub-contractor or vendor terminated and the Service Provider shall forthwith and at no extra cost to the Authority, replace such sub-contractor or vendor or may even undertake to execute the task by itself.
- (c) Outsourcing or Subcontracting does not absolve the Service Provider from its obligations.

## **18. OWNERSHIP OF PROJECT SITE**

- (a) Subject to the terms and conditions as contained in this Contract, Authority/SSCDL hereby grants to the Service Provider only the right to access and use Project Site only and exclusively for the purpose of fulfillment of its obligations specified in this Agreement during Contract Period.
- (b) Nothing contained herein shall confer or be deemed to confer any right to possession or any other right, upon the Service Provider, with respect to the Project Site during the Contract Period. Nothing contained herein shall confer or be deemed to confer any right for the Service Provider to sub-contract, sub-license, lease and sub-lease or make available in any other form the Project Asset /Facilities provided by the Authority to any Third Party, except as expressly permitted in writing by Authority during Contract Period.
- (c) The Service Provider hereby guarantee that it shall use the Project Site only and exclusively for the purpose of providing timely services and discharge of its obligation and should not do nor cause any damage or waste in the Project Site or do any act which will in any way be prejudicial to the rights of the Authority during Contract Period.
- (d) It is agreed and understood by the Service Provider that the rights granted under this Clause to the Service Provider by Authority as part of the Project shall be co-terminus with the Contract Period of this Agreement. Upon early Termination of the Agreement prior to expiry of Contract Period, the Service Provider will leave the Project Site.
- (e) Authority shall retain the title and ownership of any site allotted by the Authority to Service Provider for purposes of carrying out Service Provider's obligations in relation to the Project. Such title and ownership of the Authority in any such site shall not pass to Service Provider.

## **19. REPRESENTATION AND WARRANTIES**

### **19.1 Representations and Warranties of Service Provider**

Service Provider hereby represents and warrants that (the "Representation and Warranties of Service Provider"):

- (a) the Project as well products and services implemented under the Project shall be:
  - (i) Compliant with the Technical Specifications and functionalities set forth in RFP
  - (ii) fit and sufficient for the purpose(s) for which they are procured, supplied, installed and integrated .
  - (iii) be largely free from defects in design, material and workmanship, manufacturing defect, whether latent or otherwise .
  - (iv) neither the Project including its components nor any use thereof by the Authority will infringe any patent, trademark, copyright, trade secret, or other proprietary right of a third party.

- (b) Service Provider hereby further represents and warrants that any services provided hereunder shall be performed in a competent manner and be for any purpose for which Service Provider knows or has reason to know the Authority intends to use such service.
- (c) Service Provider hereby agrees that the above stated Representations and Warranties
  - (i) shall survive the inspection, acceptance and use of the Project by the Authority;
  - (ii) are for the benefit of Authority and general Public; and
  - (iii) are in addition to any warranties and remedies to which Authority may otherwise agree or which are provided by law.
- (d) it is duly organized, validly existing and in good standing under the laws of India.
- (e) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (f) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of the its scope and obligations;
- (g) it has the financial standing and technical capacity to undertake the Project;
- (h) the Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (i) it is subject to civil and commercial laws of India with respect to the RFP and Service Provider Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (j) the execution, delivery and performance of the this RFP and Service Provider Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Service Provider's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (k) there are no actions, suits, proceedings, or investigations pending or, to the Service Provider's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Service Provider under the Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- (l) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in any material adverse effect or impairment of the Service Provider's ability to perform its obligations and duties under the RFP and Service Provider Agreement;

- (m) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (n) no representation or warranty by the Service Provider contained herein or in any other document furnished by it to Authority or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (o) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Service Provider, to any person by way of fees, commission or otherwise for securing the Tender or entering into of the Agreement or for influencing or attempting to influence any officer or employee of Authority in connection therewith.

## **19.2 Representations and Warranties of Authority**

Authority hereby represents and warrants that (the "Representation and Warranties of Authority"):

- (a) Authority has full power and authority to grant the RFP and enter into Agreement with Service Provider.
- (b) Authority has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (c) The Service Provider Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

## **20. PRICES AND PAYMENT TERMS**

### **20.1 Prices of Hardware to be procure, supplied, installed and integrated and Payment Terms**

- (a) Authority hereby covenants to pay the Service Provider for hardware items procured, supplied, installed and integrated as per the scope of the work and payment terms specified in clause 20.1(b) of this Agreement at agreed price for hardware specified in **Schedule 1**.

The agreed terms of prices of hardware and software are stipulated below.

- (i) The prices of hardware units to be procured, supplied, installed and integrated and are inclusive of all taxes, duties, Goods and Service Tax (GST) and any other taxes so applicable.
- (ii) The prices of hardware are inclusive of Supply, Installation, Integration and warranty and maintenance costs for one year of operation. The operation shall be considered to start from the date of issuance of Project Acceptance /Go Live Certificate for

Request Order issued. The Prices of Hardware are inclusive of installation and commissioning charges.

(iii) The Payment shall be made in local currency only i.e in INR.

(b) Authority shall make Request Order wise payment to the Service Provider, the, invoiced amount, subject to recoveries if any by way of Liquidated Damages or any other charges, deductions or adjustments as per terms & conditions of contract in following manner:

Sr. No	Payment Milestone	Payment Amount and Time line	Submission and Approval required for the Payment
1	Mobilization Advance	10% of the value of Request Order within 15 days from the date of issuance of Request Order	Submission of Bank Guarantee equal to 100% of Mobilization Advance from any of Approved Banks to the Authority and encashable at Surat and Performa Invoice.
2	Delivery and Installation of Hardware units	40% of the value of Request Order within 30 days from the delivery and installation of Hardware specified in Request Order.	Submission of required documents (Such as Challan etc) and Invoice by the Service Provider.
3	Successful Commissioning (after integration with existing ITMS Project)	40% of the value of Request Order within 30 days from the date of issuance of issue of Project Acceptance/ GO Live Project Certificate for Request Order.	Issuance of Project Acceptance /Go Live Certificate and Invoice
4	Three months of successful operation and Maintenance	10% of the value of Request Order within 30 days from the end of three months of successful Operation, Maintenance and Management.	Submission of Invoice

Agreed terms of above payment milestones are specified below.

- (i) Payment shall be made as per Request Orders/batch wise orders placed.
- (ii) Service Provider shall raise the invoice as per the Payment Milestone specified above.
- (iii) The payments shall be made, subject to the Authority's right to deduct payments if any, towards Liquidated Damages, as per the provisions of the Contract.

- (iv) If the successful installation and commissioning of the Project is delayed as per Scope of Work and Technical Specifications, the Authority shall be entitled, by reasonable notice, to charge Liquidated Damages and in case of unreasonable delay without any valid reason the Authority may forfeit the Performance Security.
- (v) The Mobilization Advance shall be considered as non interest bearing advance and the Bank Guarantee submitted by the Service Provider against mobilization advance shall remain valid for 30 days from the end of the Lead Time specified in the Request Order. Authority shall return the Bank Guarantee for Mobilization Advance to the Service only after the payment of 4th Milestone specified in table placed hereinabove.

## **20.2 Prices for Annual Maintenance of Project components and Payment Terms**

- (a) Authority hereby covenants to pay Annual Maintenance Charges to the Service Provider for maintenance of Hardware Project as per the scope of the work and payments terms specified in clause 20.2(b) of this Agreement at agreed price for Annual Maintenance charges are specified in **Schedule 2**.

The agreed terms of prices are stipulated below.

- (i) Annual Maintenance Charges for Hardware items specified in Schedule-2 are for the full quantities of each hardware items. Payment will be based on actual deployment of operational units. The payment shall be made on monthly basis by dividing the Annual Maintenance charge of each operational item by Twelve (12).
- (ii) Annual Maintenance Charges for above Hardware Items specified in Request Order shall start from end of Warranty Period of 1st Year (i.e. from 13<sup>th</sup> month.). The Warranty Period shall be considered started only after date of issuance of GO Live Certificate.
- (iii) Service Charges Payment for Operation, Maintenance and Management of item (1) and (2) shall start from end of Warranty and Maintenance period of 1st year (i.e from 13th month of operation) on monthly basis. The Warranty and Maintenance period shall start from the date of issuance of Project Acceptance/ Go Live Certificate as per Agreement provisions.
- (iv) The Payment shall be made in local currency only i.e in INR.
- (v) The Maintenance Charges during the Warranty Period shall not be paid.
- (b) Upon Project Acceptance or part thereof depending on the Request Order , Authority shall make monthly payment to the Service Provider for maintenance of Hardware items , subject to recoveries if any by way of Damages towards the breach in Service Levels or any other charges, deductions or adjustments as per terms & conditions of contract in following manner:
  - (a) The Service Provider shall raise regular monthly invoice for payment of Service Charges as specified in table in sub clause 20.2 (a) above for operational items and submit it to Authority.

- (b) Upon receipt of the invoice, the Authority will verify the invoice against the records that has on operations of such units at BRT Bus Stations, City Buses, BRT Buses, Depot , Terminals, SMC Vehicles and make payments for operational items .Payment towards Annual Maintenance Charges for only operational items shall be made.
- (c) All payments shall be made by the Authority to the Service Provider within 30 days from receipt of the invoice after making any tax deductions at source as applicable under Income Tax law governing in India. Monthly Service Charge payment shall be made up to end of Contract Period.
- (d) Authority shall reimburse service tax and GST to Service Provider in addition to annuity/monthly payment.

### **20.3 Tax Liabilities**

- (a) The Prices mentioned in the clause 20.1 (a) are inclusive of all taxes applicable as on the date of submission of the Bid but taxes are specified separately. Taxes shall be payable by Service Provider and reimbursed by the Authority as per quoted rate, subject to changes in the Applicable Rate and Any deviations due to change in the rate of directly applicable taxes and duties only or any introduction of new taxes and duties would be adjusted at actual and reimbursed by the Authority if such changes happened post Bid Due Date. Service Provider shall have to produce the evidences such as Government Notification etc specifying the changes in rates of taxes at the time of invoicing. Any corresponding changes in rates of Applicable Taxes from taxes quoted in Bid shall be permitted only if it is backed by the evidences such as Government Notification etc changes in rates of taxes at the time of invoicing. Authority shall admit and make payment for such claim upon receipt of evidences.
- (b) The prices for O&M specified in clause 20.2 (a) are inclusive of all taxes including Goods and Service Tax (GST). Goods and Service Taxes shall be payable by Service Provider and reimbursed by the Authority as per quoted rate, subject to changes in the Applicable Rate and Any deviations due to change in the rate of GST or any introduction new taxes and duties would be adjusted at actual and reimbursed by the Authority if such changes happened post Bid Due Date.
- (c) GST (Goods & Service Tax) has come in existence from 1st July, 2017. Service Provider is bound to pay any amount of GST prescribed by the Govt. of India as per the terms of the Contract agreed upon during the course of execution of this Contract.

During the course of the execution of Contract, if there is any change in rate of GST (Goods & Service Tax) by the Government, the same shall be reimbursed /recovered separately by Authority, subject to the submission of original receipt/proof for the amounts actually remitted by the Service Provider to the Competent Authority along with a certificate from Chartered Accountant of Service Provider certifying that the amount of GST paid to the Government and same shall be intimated/submitted/claimed within 30 (Thirty) days from the date of payment. Remittance of GST within stipulated period shall

be sole responsibility of the Service Provider, failing which the Authority may recover the amount due, from any other payable dues with the Authority and decision of the chairman of Authority shall be final and binding on Service Provider in this regard. Non payment of GST to the Government may lead to the termination of Contract and forfeiture of security Performance Security amount.

If imposition of any other new Taxes / Duties / Levies / Cess or any other incidentals or any increase in the existing taxes/duties/levies/cess or any other incidentals etc (excluding GST) are imposed during course of the Contract, the same shall be borne by the Service Provider only, in no case the Authority shall be liable for the same.

- (d) The Authority shall be entitled to deduct tax at source as may be applicable. The TDS certificate(s) shall be submitted as per the due date specified in the Income Tax Act.

## **21. INSURANCE**

### **21.1 Insurance during the Contract Period**

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

- (a) Hardware delivered and installed to the extent possible at the replacement value with Authority as beneficiary.
- (b) Service provider's all risk insurance with the Authority as co-beneficiary;
- (c) Comprehensive third party liability insurance with the SSCDL as co-beneficiary;
- (d) Workmen's compensation insurance with the SSCDL as co-beneficiary;
- (e) Any other insurance that may be necessary to protect the Service Provider, its employees and the Project against loss, damage or destruction at replacement value including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d) with the Authority as beneficiary/co-beneficiary;

### **21.2 Evidence of Insurance Cover**

- (a) The Service Provider shall, from time to time, provide to the Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by it in accordance with Service Provider Agreement.
- (b) If Service Provider shall fail to effect and keep in force the insurance for which it is responsible pursuant hereto, Authority shall have the option to take or keep in force any such insurance, and pay such premium and recover all costs thereof from Service Provider or to forfeit deposit/ Performance guarantee from the service provider and pay or restoration for the same.

### **21.3 Application of Insurance Proceeds**

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

- (b) The Service Provider shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project , or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.
- (c) For insurance policies where the Authority is the beneficiary and where it received the insurance proceeds, only such sums as are required from the insurance proceeds for restoration, repair and renovation of the Project .

#### **21.4 Validity of Insurance Cover**

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

### **22. EVENT OF DEFAULT**

#### **22.1 Service Provider Event of Default**

Following events shall constitute an Event of Default by Service Provider (the "Service Provider's Event of Default") unless such event has occurred as a result of a Force Majeure Event:

- (a) If Service Provider repeatedly fails to procure, supply ,install, integrate and implement the Project or items specified in Request Order within the Lead Time specified in Request Order and/or any repeated extension granted thereof , without any valid response or any reasons attributed to breach on part of Authority.
- (b) The Service Provider repeatedly fails to achieve Completion for Request orders beyond permitted time.
- (c) If Service Provider fails to furnish Performance Security to the Authority as per the terms of the agreement.
- (d) The Performance Security has been encased and appropriated in accordance with clause 6 and Supplier fails to replenish or provide fresh Performance Security within Cure Period of 15 (fifteen) days.
- (e) The Service Provider creates any Encumbrance on the Project site, saves and except as otherwise expressly permitted under this Contract.
- (f) Any representation made or warranties given by the Service Provider under this Agreement is found to be false or misleading;
- (g) The Service Provider submits to the Authority any statement which is false in material particulars and which has a material effect on Authority's right, obligations or interests.

- (h) If Service Provider fails to integrate with existing ITMS Project.
- (i) If Service Provider fails to share program protocol, interfacing protocol or API if any as specified in this Agreement
- (j) In the event of repetitive occurrence of offences with respect to breach of any of the Service Level , Warranty Terms, Maintenance Terms and its obligations specified in this Agreement.
- (k) In case of pre-decided Liquidated Damages or Damages due to Service Levels altogether exceeds the limit of 10% of the Total Bid Value.
- (l) if Service Provider fails to submit documentation and manuals and system protocols, API ,interfaces as specified in RFP.
- (m) Service Provider suspends or abandons the work as per scope (i.e implementation and or Maintenance) of the Project without the prior consent of Authority, provided that the Service Provider shall be deemed not to have suspended/ abandoned work if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under this Agreement by Authority or (iii) suspension on account of failure of the component and systems provided by other supplier or service providers of Authority.
- (n) Service Provider repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- (o) If Service Provider or any of its staff member are found to be involved in fraudulent and corrupt practices specified in clause 8 of Instruction to Bidder Section.
- (p) If Service Provider fails to make any payments/damages/penalties due to Authority within the period specified in Service Provider Agreement without any valid reason.
- (q) Service Provider is in Material Breach of this Agreement or by its own creates circumstances that have Material Adverse Effect on the performance of Authority's obligation with respect to Project and has failed to cure same within 60 days of notice thereof by the Authority/SSCDL.
- (r) The transfer, pursuant to law of either (a) the rights and/or obligations of the Service Provider under any of the Project Agreements, or (b) all or material part of the Service Provider except where such transfer in the reasonable opinion of Authority does not affect the ability of the Supplier to perform, and the Supplier has the financial and technical capability to perform, its material obligations under the project agreements.
- (s) A resolution is passed by the shareholders of the Service Provider Company for the voluntary winding up of the Service Provider Company.
- (t) Any petition for winding up of the Service Provider firm/company is admitted by a court of competent jurisdiction or the Service Provider is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Service Provider are transferred to the amalgamated or reconstructed entity and that the

amalgamated or reconstructed entity has unconditionally assumed the obligations of the Supplier under this Contract, and provided that:

- (i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Contract.
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Service Provider and has a credit worthiness at least as good as that of the Service Provider as at date of LOA; and
- (iii) Each of the Contracts remains in full force and effect.
- (iv) The Service Provider does not purchase insurance as mentioned in the agreement.

## **22.2 Authority Event of Default**

Following events shall constitute an Event of Default by Authority (the "Authority Event of Default") unless such event has occurred as a result of a Force Majeure Event:

- (a) If Authority fails to provide Project Site for implementation of items specified in Request Order for a considerably longer period.
- (b) Authority fails to share Interfacing protocols and APIs necessary for facilitating integration of Project with existing ITMS Project.
- (c) Authority repeatedly fails to make any payments due to the Service Provider within period specified in Service Provider Agreement without any valid reason.
- (d) The Authority repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- (e) Authority or any Governmental Agency is in Material Breach of this Agreement or has by an act of commission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Service Provider and has failed to cure the same within 60 days of notice thereof by the Service Provider.
- (f) Any representation made or warranties given by the Authority under this Agreement is found to be false or misleading.
- (u) If Authority fails to perform repetitively any other responsibilities and obligation(s) specified in this Agreement.

## **22.3 Termination due to Event of Default**

- (a) Without prejudice to any other right or remedies which the Authority may have under this Contract, upon occurrence of Service Provider Event of Default, the Authority shall be entitled to terminate this Contract by issuing a Termination Notice to the Service Provider; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Service Provider of its intention to issue such Termination Notice and grant 20 (twenty) days or reasonable period to the Service Provider to remedy the default

("Remedial Period/Cure Period") and/or make representations, and may after the expiry of such Remedial Period on non remedy of breach/default at the satisfaction of the Authority, whether or not it is in receipt of such representation, or repeated failure to remedy the default/breach , the Authority issue Termination Notice providing 15 days time stating the intention of the termination (the "Termination Notice") and then terminate the Contract.

- (b) In the event of termination due to Service Provider Event of Default, Authority shall have the right to;
  - (i) Invoke/encash and retain the Performance Guarantee amount in full.
  - (ii) Invoke/encash and retain the amount of remaining Bank Guarantee against Mobilization Advance in full.
  - (iii) Take possession of the entirety of the infrastructure of the Project including all project site and Hardware forming part of the Project except the proprietary Hardware. Authority shall have rights to transfer the entire infrastructure or part of the infrastructure to any replacement Service Provider selected by the Authority in its sole discretion.
  - (iv) Authority shall not be liable to pay any termination payment to the Service Provider in respect of such termination.
- (c) Without prejudice to any other right or remedies which the Service Provider may have under this Contract, upon occurrence of Authority Event of Default, the Service Provider shall be entitled to terminate this Contract by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Authority of its intention to issue such Termination Notice and grant 20 (twenty) days or reasonable period to the Authority to remedy the default ("Remedial Period") and/or make representations, and may after the expiry of such Remedial Period on non remedy of breach/default at the satisfaction of the Service Provider , whether or not it is in receipt of such representation, or repeated failure to remedy the default/breach , the Service Provider issue Termination Notice providing 15 days time stating the intention of the termination (the "Termination Notice") and then terminate the Contract.
- (d) In the event of termination due to Authority Event of Default, Authority shall
  - (i) return the Performance Security to the Service Provider in full after deduction of any due payable by the Service Provider under this Agreement.
  - (ii) return the Bank Guarantee against Mobilisation Advance in full against receipt of balance amount of mobilisation advance.
  - (iii) Authority shall not be liable to pay any termination payment to the Service Provider in respect of such termination, except the payment to be made for the Request Order delivered by the Service Provider and to which the Project Acceptance /Go Live Certificate has been issued to Service Provider AND all Maintenance services rendered by the Service Provider till date. Authority shall make payment pursuant to all services rendered after adjusting against any payment/damages due and as the case may be.
  - (iv) Service Provider shall handover the Project Site with all Hardware except its proprietary hardware to Authority.

## **22.4 Termination for Insolvency, Dissolution etc.**

- (a) Authority may at any time terminate the Agreement by giving written notice to Service Provider without any compensation to Service Provider, if Service Provider becomes bankrupt or otherwise insolvent or in case of dissolution of firm or winding up of the company, provided that such termination will not prejudice any other rights of the Authority . Notwithstanding the generality of the foregoing,
- (b) Authority reserves the right to invoke the Performance Security, Bank Guarantee for Mobilization Advance and / or take over the entire infrastructure designed and developed by Service Provider for the Project and / or negotiates with Service Provider to transfer the said infrastructure or part thereof to a replacement of Service Provider selected by the Authority in Authority's sole discretion.

## **23. FORCE MAJEURE**

Force Majeure Event means occurrence of any act, event or circumstance or a combination of events and circumstances which affects the Party claiming such Force Majeure Event from performing its obligations under this Agreement ("Affected Party"), which act or event satisfies all the following conditions:

- (i) are beyond the reasonable control of the Affected Party and materially and adversely affects the performance of an obligation by a Party;
- (ii) the Affected Party could not have prevented or reasonably overcome the event or circumstance with the exercise of Good Industry Practices or reasonable skill and care;
- (iii) does not result from the negligence or misconduct of the Affected Party or the failure of such Party to perform its obligations hereunder; and
- (iv) any consequences of which, prevent, hinder or delay in whole or in part the performance by such Party of its obligations under this Agreement.

Force Majeure includes the following events and/ or circumstances to the extent that they or their consequences satisfy each of the requirements set forth in this Clause.

- (v) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion, or politically motivated sabotage, act of terrorism, Industry wide or state wide or India wide strikes or industrial action which prevents the operation of the Project, Facilities and Facilities sites for a period exceeding a continuous period of 15 (Fifteen) days in an accounting year.
- (vi) The occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, fire or explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Project, unless the source or cause of the explosion, contamination, radiation or hazardous substance is brought to or near the Project Site by the Service Provider or any affiliate of the Service Provider or any Contractor or any such affiliate or any of their respective employees, servants or agents;

- (vii) strikes, go-slows and/or lockouts or other industrial action or labour dispute which are in each case widespread, nationwide or political and other than those involving the Service Provider, Contractors or their respective employees/representatives or attributable to any act or omission of any of them.
- (viii) Any effect of the natural elements, including lightning, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, and other unusual or extreme adverse weather or environmental conditions or actions of the elements within India;
- (ix) Epidemic or plague within India;
- (x) Compliance with a request from the Authority pursuant to the directions of any Government decree, the effect of which is to close all or any part of the Project Site.
- (xi) any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Service Provider in any proceedings for reasons other than failure of the Service Provider to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, or enforcement of Service Provider Agreement or exercise of any of its rights under of Service Provider Agreement by the Authority;
- (xii) any public agitation which prevents the operation of the Facility for a continuous period exceeding 15 (Fifteen) days in an accounting year.
- (xiii) change in Law, only when provisions pertaining to the Clause on Change in Law cannot be applied; expropriation or compulsory acquisition by any Government Agency of Project site or rights of Service Provider.
- (xiv) any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Service Provider.
- (xv) any event or circumstances of a nature analogous to any events set forth above within India.

### **23.1 Procedure in case of Force Majeure Event**

- (a) If a Party (Affected Party) claims relief on account of a Force Majeure Event, then the Party claiming to be affected by the Force Majeure event shall, immediately on becoming aware of the Force Majeure Event, give notice of and describe in detail:
  - (i) the Force Majeure Event(s) that has occurred;
  - (ii) the date of commencement, nature and estimated duration of such event of Force Majeure Event and
  - (iii) the manner in which the Force Majeure event affects the Affected Party's

- obligation(s) under this Agreement.
  - (iv) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event
  - (v) any other relevant information.
- (b) Within a reasonable time following the date of such notice of such event of Force Majeure Event, the Affected Party having invoked such Force Majeure Event as a cause for such delay shall submit to the other Party sufficient proof of the nature of such delay or failure and its anticipated effect upon the time for performance.
- (c) No Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given the notice specified above.

### **23.2 Excuse from performance of obligations by Party affected by Force Majeure**

- (a) If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations, upon delivery of the notice of the occurrence of a Force Majeure Event to the other Party to the extent it is unable to perform on account of such Force Majeure Event provided that:
- (b) the Suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (c) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event [and to cure the same with due diligence.
- (d) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.
- (i) Where the Affected Party is the Service Provider and the Force Majeure Event has the reduced the Service Provider incapable /unable to perform the Scope of work, then in such an event the Service Charges for Operation, Maintenance and Management shall stand suspended until such time as the Service Provider resumes activities in terms of the Service Provider Agreement.
  - (ii) Authority shall not forfeit Service Provider's Performance Security or charge liquidated damages or terminate the Service Provider Agreement for default, if and to the extent that delay in performance or failure to perform Service Provider's obligations under the Service Provider Agreement is the result of an event of Force Majeure.

### **23.3 Termination in case of Force Majeure Event**

If Force Majeure event continues for more than 180 (one hundred and eighty) days then either Party shall have the right to terminate this Agreement by giving a notice of 30 days in respect thereof ("Termination Notice") and the date of which Termination shall become effective will be called the "Termination Date".

#### **23.4 Termination Payment in case of Force Majeure Event**

In the event of Termination due to force Majeure;

- (a) Authority shall return the Performance Security to the Service Provider in full after deduction of any due payable by the Service Provider under this Agreement.
- (b) Authority shall return the Bank Guarantee against Mobilisation Advance in full against receipt of balance amount of mobilisation advance.
- (c) Authority shall not be liable to pay any termination payment to the Service Provider in respect of such termination, except the payment to be made for the Request Order delivered by the Service Provider and to which the Project Acceptance /Go Live Certificate has been issued to Service Provider AND all Maintenance services rendered by the Service Provider. Authority shall make payment pursuant to all services rendered after adjusting against any payment/damages due and as the case may be.
- (d) Service Provider shall handover the Project Site with all Hardware, Software except its proprietary software to Authority.

#### **23.5 Allocation of Cost in case of Force Majeure Event not leading to Termination**

Upon occurrence of a Force Majeure Event and both the Parties shall be agreed to not to Terminate the Agreement, then both the parties shall bear their respective cost arising out of such event. The amount of Insurance Proceeds if any shall be applied toward project.

### **24. DISPUTE RESOLUTION**

#### **24.1 Amicable Solution**

- (a) Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to the Service Provider Agreement including incompleteness of the Project between the Parties and so notified in writing by either Party to the other (the "**Dispute**") in the first instance shall be attempted to be resolved amicably by the Authority and Service Provider in accordance with the procedure set forth in sub-article (b) below.
- (b) Either Party may require the Dispute to be referred to the Chairman of Smart City Development Limited & Municipal Commissioner, Surat Municipal Corporation and the Chairman of the Board of Directors of the Service Provider, for the time being for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to Arbitration in accordance with the provisions of Article on Arbitration below.

## **24.2 Arbitration**

### **(a) Arbitrators**

Any Dispute which is not resolved amicably as provided in Clause 20.1 shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a Board of Arbitration. This Board shall be constituted prior to commencement of Arbitrators and shall comprise two arbitrators and an umpire. Service Provider and Authority shall appoint each an arbitrator and an umpire to be appointed by the two arbitrators appointed by the Parties. A Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator, if the other Party fails to appoint its arbitrator, the Party appointing arbitrator shall take steps in accordance with Arbitration and Conciliation Act, 1996.

### **(b) Place of Arbitration**

The place of arbitration shall be Surat .

### **(c) English Language**

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

### **(d) Procedure**

The procedure to be followed within the arbitration, including appointment of arbitrator / arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

### **(e) Enforcement of Award**

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction in Surat only.

### **(f) Fees and Expenses**

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by Party.

### **(g) Performance during Arbitration**

Pending the submission of and/or decision on a Dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

## **24.3 Performance during Dispute Resolution**

Pending the submission of and/or decision on a Dispute, difference or claim or until the

amicable solution or arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such solution or award.

## **25. SEVERABILITY AND WAIVER**

- (a) If any provision of this Agreement, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this Agreement or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision. No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement of any right, remedy or provision of this Agreement shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision.
- (b) In the event of failure or breach of any sub-contractor or vendor of the Service Provider in performance of its tasks and functions, the Authority shall have the right to have the services of such sub-contractor or vendor terminated and the Service Provider shall forthwith and at no extra cost to the Authority, replace such sub-contractor or vendor or may even undertake to execute the task by itself.

## **26. INDEMNITY**

Each party to the Agreement shall at all times, i.e. during the subsistence of the Service Provider Agreement/Contract and any time thereafter, defend, indemnify and hold each other harmless from and against all claims (including without limitation claims for infringement of intellectual property, breach of contract, death or injury to a person or injury to property, or other tort claims) and expenses (including court costs) arising out of or relating to the breach by the other party of any covenant, representation or warranty or from any act or omission of the other party or his agents, employees or sub contractors. Each party will notify the other of any such claim, suit or proceedings and will assist the other (at the other party's expense) in the defense of the same.

## **27. ASSIGNMENT**

Service Provider shall not assign, in whole or in part, any right or delegate any duty under the Service Provider Agreement to any third party, except with Authority's prior written consent in this behalf. Neither party shall assign or transfer all or any of its obligations under this arrangement including any Statement of Work to any person without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

## **28. LIMITATION OF LIABILITY**

The aggregate liability of the Service Provider to the Authority, whether under the Contract, in tort or otherwise, shall not exceed of Total Bid Value, provided that this limitation shall not apply to any obligation of the Service Provider to indemnify the Authority with respect to intellectual property rights infringement claims.

## **29. PROJECT HANDOVER**

### **29.1 Handing Over of Project**

Upon the expiry of the Agreement Period by efflux of time and in the normal course or prior termination of this Agreement, the Service Provider shall at the end of the Agreement Period or prior termination of this Agreement, as the case may be, hand over free from Encumbrances the peaceful possession of the Project Site, if any provided to the Service Provider under administration or otherwise besides any other assets including all Hardware, Customized hardware and software (for integration) and all third party software licenses procured (if so required) during the subsistence of this Agreement at no cost to Authority.

### **29.2 Inspection and Removal of Bugs and Deficiency**

- (a) The handing over process shall be initiated at least 6 months before the actual date of expiry of the Agreement Period by a joint inspection by the Authority and the Service Provider.
- (b) The joint inspection shall be initiated by way of Test run of the Project.
- (c) The Service Provider shall be entitled to remove promptly, any bugs or defects observed during the Test run in the Project. Such bugs and deficiencies shall be removed and cured respectively in a time period commensurate with type of bugs and defects
- (d) In case the Service Provider fails to carry out the above works, within the stipulated time period, the Authority shall be at liberty to have these works executed by another agency or on its own at the risk and cost of the Service provider. This stipulated time period shall be mutually decided by Authority and the Service Provider. Any cost incurred by Authority in this regard shall be reimbursed by the Service Provider to Authority within mutually agreed days of receipt of demand. For this purpose, Authority shall without prejudice to any other right/remedy available to it, under this Agreement, have the right to appropriate the Performance Guarantee and / or to set off any amounts due, if any and payable by Authority to the Service Provider to the extent required / available and to recover deficit amount, if any, from the Service provider.

### **29.3 Recovery of Balance due of Authority from Service Provider**

The dues payable to Authority by the Service Provider on any account, if any, at the end of the Service Provider shall be recovered Authority from the Performance Guarantee.

## **30. POST TERMINATION SUPPORT**

In case Authority Intends to proceed for Termination on account of Service Provider Event of Default then the Service Provider shall be severally liable for maintenance of the Project at

Agreed prices and payment terms specified in this Agreement till Authority handover the Project to new Service Provider/Vendor.

## **31. MISCELLANEOUS**

### **31.1 Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of India. The Courts of Surat ,Gujarat, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **31.2 Survival**

Termination of this Agreement (a) shall not relieve the Service Provider or Authority of any obligations hereunder which expressly or by implication survives Termination hereof, and (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

### **31.3 Amendments**

This Agreement, together with the terms of the RFP and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

### **31.4 No Partnership**

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

### **31.5 Notices**

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

If to **Authority**:

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If to the **Service Provider**

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Or such address, facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered:

- i. In the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested ) at the address, and
- ii. In the case of any communication made by facsimile, when transmitted properly addressed to such facsimile number.

### **31.6 Language**

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

### **COUNTERPARTS**

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

IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN. SIGNED SEALED AND DELIVERED:

SIGNED, SEALED AND DELIVERED

For and on behalf of Authority OF by:

(Signature)

(Name)

(Designation)

(Address)

(Phone No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of Service Provider by:

(Signature)

(Name)

(Designation)

(Address)

(Phone No.)

**SCHEDULE 1: PRICES OF HARDWARE TO BE PROCURED,SUPPLIED ,  
INTALLED AND INTEGRATED**

**SCHEDULE 2: PRICES OF ANNUAL MAINTENANCE CHARGES**

**SCHEDULE 3: SERVICE LEVELS**

**SCHEDULE 4: PROJECT IMPLEMENTATION AND TESTING PLAN**

**SCHEDULE 5: PERFORMANCE SECURITY**

**SCHEDULE 6: LETTER OF AWARD**

**SCHEDULE 7: REQUEST ORDER**

**SCHEDULE 8: RFP DOCUMENT**

**SCHEDULE 9: CORRESPONDANCE BETWEEN AUTHORITY AND SERVICE  
PROVIDER**