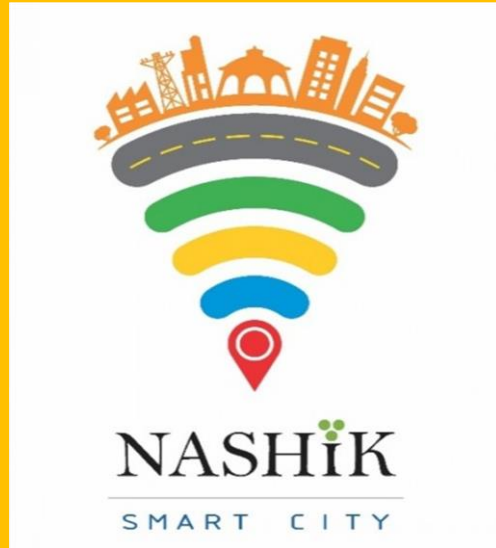




**Request for Proposal (RFP)
For
Selection of Implementation Agency
for Supply, Laying, Installation,
Testing and Commissioning of Nashik
& Trimbakeshwar City Network
Backbone along with providing
Operations & Maintenance Services**

VOLUME III - Legal Specifications

**Tender Ref Number- NMSCDCL/51/2025-26
Date: July 30, 2025**

**Nashik Municipal Smart City Development
Corporation Limited (NMSCDCL)**

Table of Contents

A.	GENERAL CONDITIONS OF CONTRACT (GCC)	7
1.	Definition of Terms	7
2.	Interpretation	9
3.	Measurements and Arithmetic Conventions	9
4.	Ambiguities within Agreement	9
5.	Priority of Documents	10
6.	Scope of work	10
7.	Term and Duration of the Agreement	10
8.	Conditions Precedent	10
9.	Commencement and Progress	11
10.	Standards of Performance	11
11.	Approvals and Required Consents	12
12.	IA's Obligations	12
13.	NMSCDCL's Obligations	21
14.	Financial Matters	21
15.	Audit, Access and Reporting	24
16.	Intellectual Property Rights	24
17.	Representations & Warranties	25
18.	Term and Extension of the Contract	27
19.	Dispute Resolution	27
20.	Time is of the essence	27
21.	Conflict of interest	28
22.	Force Majeure	28
23.	Delivery	29
24.	Warranty & Maintenance	29
25.	Insurance	31
26.	Exit Management	31
27.	Performance Security	36
28.	Liquidated Damages	36
29.	Indemnifications and Limitation of Liability:	37
30.	Ownership and Retention of Documents	39
31.	Information Security	39
32.	Records of contract documents	40
33.	Security and Safety	40
34.	Confidentiality	40
35.	Events of Default by IA	41

36.	Termination.....	42
37.	Effects of Termination	43
38.	Change Control Note (CCN)	44
39.	Project Implementation Timelines, Deliverables and Payment Terms.....	45
40.	Miscellaneous.....	45
B.	SPECIAL CONDITIONS OF CONTRACT (SCC)	50
41.	Reporting Procedures	51
42.	Issue Management Procedures	52
43.	Service Level Change Control.....	52
44.	Governance Law and Dispute Resolution	52
45.	Legal Jurisdiction.....	53
C.	SERVICE LEVELS	53
	Proforma A – Detailed Price Schedule	54
	ANNEXURES	55
A.	ANNEXURE I: CHANGE CONTROL NOTE.....	55
B.	ANNEXURE II: CHANGE CONTROL SCHEDULE.....	57
C.	ANNEX III: FORM OF AGREEMENT	59
D.	ANNEX IV: GOVERNANCE SCHEDULE	61
E.	ANNEX V: AUDIT, ACCESS AND REPORTING	61

MASTER SERVICE AGREEMENT

This Contract is made at Nashik, Maharashtra, on this _____ day of _____, 2025,

BETWEEN

Nashik Municipal Smart City Development Corporation Limited (NMSCDCL), a company incorporated under the companies act 2013, having its registered office at C/O Nashik Municipal Corporation, Rajiv Gandhi Bhavan, Purandare Colony, Sharanpur, Nashik – 422002 and having its office at Loknete Panditrao Khaire Panchavati Divisional Office 4th Floor Makhmalabad Naka Panchavati, Nashik 422003, Maharashtra and represented by the Chief Executive Officer, NMSCDCL in his/her executive capacity (hereinafter referred to as “**NMSCDCL**” or the “Authority”, which expression shall include its successors and assigns) of the **FIRST PART**;

AND

<**NAME OF IMPLEMENTATION AGENCY**>, a company organized and existing under the Section of 2(20) of Companies Act, 2013, having its registered office at <**ADDRESS OF IMPLEMENTATION AGENCY**>, India hereinafter referred to as “**Implementation Agency**” or “**IA**”, (which expression

unless repugnant to the context therein, shall include its successors, administrators, executors and permitted assignees), of the **SECOND PART**.

WHEREAS IA has the required professional skills, personnel and technical resources, and agreed to provide the Services on the terms and conditions set forth in this Contract and RFP (Volume I & II) (hereinafter called "works") mentioned, enumerated or referred to in certain Contract conditions, specification, scope of work, other Sections of the RFP, covering letter and schedule of prices which, for the purpose of identification, have been signed by the authorized representative on behalf of <NAME OF IMPLEMENTATION AGENCY> (IA) and NMSCDCL and all of which are deemed to form part of the Contract as though separately set out herein and are included in the expression "Contract" whenever herein used.

NOW, THEREFORE, IT IS HEREBY AGREED between the parties as follows:

- a. The NMSCDCL has accepted the tender of IA for the provision and execution of the said works for the sum of INR _____ (Rupees _____), including all taxes and levies upon the terms laid out in this RFP. (as per Price Schedule attached at Proforma A)
- b. IA hereby agrees to provide Services to NMSCDCL, conforming to the specified Service Levels and conditions set out hereunder.
- c. The following documents attached hereto shall be deemed to form an integral part of this Contract:

Complete Request for Proposal (RFP) document	<i>Volumes I, II and III of the RFP and corrigendum, addendum and clarifications, if any</i>
Price Schedule	<i>Detailed Price Schedule – Proforma A</i>
NMSCDCL SOP	<i>Standard Operating Procedure / Policy Guidelines issued by NMSCDCL from time to time, will have to be adhered to by the IA</i>

- d. The mutual rights and obligations of the "NMSCDCL" and IA shall be as set forth in the Contract, in particular:
 - IA shall carry out and complete the Services in accordance with the provisions of the Contract
 - The "NMSCDCL" shall make payments to IA in accordance with the provisions of the Contract

NOW THESE PRESENTS WITNESS and the parties hereto hereby agree and declare as follows, that is to say, in consideration of the payments to be made to IA by NMSCDCL as hereinafter mentioned, IA shall deliver the services for the said works and shall do and perform all other works and things in the Contract mentioned or described or which are implied there from or there in respectively or may be reasonably necessary for the completion of the said works within and at the times and in the manner and subject to the terms, conditions and stipulations mentioned in the said Contract.

AND in consideration of services and milestones, NMSCDCL shall pay to IA the said sum of INR _____ (Rupees _____), including all taxes and levies or such other sums as may become payable to IA under the provisions of this Contract, such payments to be made at such time and in such manner as is provided by the Contract.

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

Signed
Name : _____
Designation : _____

Date :

Place :

in the presence of :

Signed
Name : _____
Designation : _____
Date : _____
Place :

Signed
Name : _____
Designation : _____

Date :

Place :

in the presence of :

Signed
Name : _____
Designation : _____
Date : _____
Place :

A. GENERAL CONDITIONS OF CONTRACT (GCC)

1. Definition of Terms

- 1.1. **“Acceptance of Work/System”:** The work/system shall be accepted by NMSCDCL, subsequent to its supply, installation, commissioning of infrastructure and systems at all the project locations and successful rollout of services at all project locations, deployment of trained manpower, when all the activities as defined in RFP Volume II - Scope of Work have been successfully executed and completed to the satisfaction of NMSCDCL.

The IA shall achieve operational acceptance of the complete solutions as defined in the RFP in accordance with the time schedule specified in the implementation schedule, scope of work, technical requirements, design considerations section and any refinements made in the agreed and finalized project plan, or within the timeframe, the IA has been provided by the NMSCDCL.

As soon as the Work/System or any subsystem, has, in the opinion of IA, been delivered, commissioned, and made in accordance with the technical requirements of the RFP as per the agreed and finalized Project plan, IA shall notify NMSCDCL in writing.

NMSCDCL shall, after receipt of IA's notice, either issue an installation certificate, stating that the work/system, or major component or subsystem (if Acceptance by major component or subsystem) has achieved Installation by the date of IA's notice under or notify IA in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or subsystems making up the Work/System.

Implementation agency (IA) shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies that notified by the NMSCDCL.

IA shall then promptly carry out retesting of the work/system or subsystem and, when in IA's opinion the work/system or subsystem is ready for commissioning and operational acceptance testing, notify NMSCDCL in writing. The procedure shall be repeated, as necessary, until an Installation certificate is issued. The acceptance criteria shall inter-alia include, but not limited to:

- Installation and commissioning of all the Hardware & Software supplied as part of the Project, clearly documented and demonstrated. The documents would include but not limited to FRS, SLA etc.
- Functional Acceptance Criteria – Demonstration of tasks, business processes or functions which NMSCDCL has listed out in the RFP as Functional & Non-functional requirement design considerations
- Submission of manuals, design documents, training materials and other necessary documents
- Training to personnel identified by NMSCDCL as per the project plan & IA proposal
- Summary of test cases and execution results to prove that the acceptance criteria have been met

- 1.2. **“Applicable Law(s)”**: Any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, by law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Contract and during the subsistence thereof, applicable to the Project
- 1.3. **“NMSCDCL”** means the Nashik Municipal Smart City Development Corporation Limited
- 1.4. **“Implementation agency (IA)”** means the selected bidder i.e. <NAME OF IMPLEMENTATION AGENCY> or Substitute Implementation agency, as the case may be, who shall carry out all the services mentioned in the scope of work of the RFP
- 1.5. **“Contract”** means the agreement entered into by the parties with the entire documentation specified in the RFP
- 1.6. **“Contract Value”** means the price payable to IA under this Contract for the full and proper performance of its contractual obligations
- 1.7. **“Commercial Off-The-Shelf (COTS)”** refers to software products that are ready-made and available for sale, lease, or license to the general public.
- 1.8. **“Server Room”** means the centralized space to be used for installation and deployment of all the proposed systems and devices for centralized control, monitoring and management of all the solutions. The server room is to host city’s existing and forth coming systems for centralized management.
- 1.9. **“Document”** means any embodiment of any text or image however recorded and includes any data, text, images, sound, voice, codes, databases or any other electronic documents as per IT Act 2000
- 1.10. **“Effective Date”** shall mean the date of Work Order
- 1.11. **“GCC”** means General Conditions of Contract
- 1.12. **“Goods”** means all of the equipment, sub-systems, hardware, products accessories, software and/or other material / items which IA is required to supply, install and maintain under the contract
- 1.13. **“NMC”** means the Nashik Municipal Corporation
- 1.14. **“NMC HO”** means the Nashik Municipal Corporation Head Office (Rajiv Gandhi Bhawan)
- 1.15. **“Command Control Center”** means the center from where Police would conduct surveillance on civil issues on the entire Nashik City and other areas as per jurisdiction or as per the area mentioned under the scope of RFP
- 1.16. **“Integrated Command Control Center”** means the center from where Nashik Smart City would conduct monitoring of all the smart city elements throughout the entire Nashik City
- 1.17. **“Intellectual Property Rights”** means any patent, copyright, trademark, trade name, service marks, brands, proprietary information whether arising before or after the execution of this Contract and the right to ownership and registration of these rights
- 1.18. **“Go-Live”** means commissioning of project post design, development and implementation, including training (if any) as per scope of work mentioned in the RFP. IA shall have the approval from NMSCDCL for user acceptance testing
- 1.19. **“Notice”** means a consent, approval or other communication required to be in writing under this Contract
- 1.20. **“OEM”** means the **Original Equipment Manufacturer of any equipment / system / software / product**, which are providing such goods to the NMSCDCL under the scope of this RFP
- 1.21. **“IA’s Team”** means IA who has to provide goods & work/services to the NMSCDCL under the scope of this Contract. This definition shall also include any and/or all of the employees of

IA, authorized service providers/ partners and representatives or other personnel employed or engaged directly or indirectly by IA for the purposes of this Contract.

- 1.22. **“Substitute Implementation agency”** means the organization replacing IA in case of contract termination for any reasons
- 1.23. **“SCC”** means Special Conditions of Contract.
- 1.24. **“Services”** means the work to be performed by IA pursuant to this RFP and to the contract to be signed by the parties in pursuance of any specific assignment awarded by the NMSCDCL.

2. Interpretation

In this Agreement, unless otherwise specified:

- a) References to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- b) Use of any gender includes the other genders;
- c) References to a ‘company’ shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- d) References to a ‘person’ shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- e) A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- f) Any reference to a ‘day’ (including within the phrase ‘business day’) shall mean a period of 24 hours running from midnight to midnight;
- g) References to a ‘business day’ shall be construed as a reference to a day (other than a Sunday) on which banks in the state of Maharashtra are generally open for business;
- h) References to times are to Indian Standard Time;
- i) A reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- j) All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- k) Implementation agency (IA) has been used for the same entity i.e. Bidder selected for the project.

3. Measurements and Arithmetic Conventions

- 3.1. All measurements and calculations shall be in the metric system and calculations done to two decimal places, with the third digit of five or above being rounded up and below five being rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

4. Ambiguities within Agreement

- 4.1. In case of ambiguities or discrepancies within this Agreement, the following principles shall apply:
 - a) as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
 - b) as between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures; and
 - c) as between any value written in numerals and that in words, the value in words shall prevail.

5. Priority of Documents

This Agreement, including its Schedules and Annexures, represents the entire agreement between the Parties as noted in this Clause. If in the event of a dispute as to the interpretation or meaning of this Agreement it shall be necessary for the Parties to refer to documents forming part of the bidding process leading to this Agreement, then such documents shall be relied upon and interpreted in the following descending order of priority:

- a) This Agreement along with
- b) NDA agreement, if any
- c) Schedules and Annexures;
- d) the RFP along with subsequently issued corrigendum and addendums
- e) Technical and financial proposal submitted by the successful bidder, to the extent they along with subsequently issued clarifications furnished by the Implementation agency in response to the RFP, to the extent they are not inconsistent with any terms of the RFP.

For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures / Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexures / Schedules and Annexures / Schedules shall prevail over the contents and specifications of the RFP.

6. Scope of work

- 6.1.** Scope of the work as defined in **RFP Volume II** and Annexures thereto of the tender and subsequent pre bid clarifications, corrigendum/addendum, if any.

7. Term and Duration of the Agreement

- 7.1.** This Agreement shall come into effect on <DD/MM/YYYY> (hereinafter the 'Effective Date') and shall continue till operation and maintenance completion date, unless terminated earlier (as per clause 37),

8. Conditions Precedent

8.1. Provisions to take effect upon fulfillment of Conditions Precedent

- a) Subject to express terms to the contrary, the rights and obligations under this Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out below. However, NMSCDCL or its nominated agencies may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the Implementation agency.
- b) For the avoidance of doubt, it is expressly clarified that the obligations of the Parties (or its nominated agencies) under this Agreement shall commence from the fulfillment of the Conditions Precedent as set forth below.

8.2. Conditions Precedent of the Implementation agency

The Implementation agency shall be required to fulfill the Conditions Precedent, which is as follows:

- a) To provide a Performance Security/Guarantee and other guarantees/ payments within fifteen (15) days of the receipt of notification of award from the NMSCDCL; and

- b) To provide the NMSCDCL or its nominated agencies certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Implementation agency

8.3. Conditions Precedent of the NMSCDCL

The NMSCDCL shall be required to fulfill the Conditions Precedents, which are as follows:

- a) Necessary clearances associated with the execution of the project, unless specified to be performed by the IA
- b) Approval of the Project by a Competent Authority, etc.

8.4. Extension of time for fulfillment of Conditions Precedent

The Parties may, by mutual agreement extend the time for fulfilling the Conditions Precedent and the Term of this Agreement.

8.5. Non-fulfillment of the Implementation agency's Conditions Precedent

- a) In the event that any of the Conditions Precedent of the Implementation agency have not been fulfilled within fifteen (15) days of signing of this Agreement and the same have not been waived fully or partially by NMSCDCL or its nominated agencies, this Agreement shall cease to exist;
- b) In the event that the Agreement fails to come into effect on account of non-fulfillment of the Implementation agency's Conditions Precedent, the NMSCDCL or its nominated agencies shall not be liable in any manner whatsoever to the Implementation agency and the NMSCDCL shall forthwith forfeit the Earnest Money Deposit.
- c) In the event that possession of any of the NMSCDCL or its nominated agencies facilities has been delivered to the Implementation agency prior to the fulfillment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to NMSCDCL or its nominated agencies, free and clear from any encumbrances or claims.

9. Commencement and Progress

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

10. Standards of Performance

- 10.1.** IA shall perform the services and carry out its obligations under the Contract with due diligence, efficiency and economy, in accordance with generally accepted techniques and best practices used in the industry and with IT standards recognized by international professional bodies and shall observe sound management, engineering and security practices. It shall employ appropriate advanced technology and engineering practices and

safe and effective equipment, machinery, material and methods. IA shall always act, in respect of any matter relating to the Contract, as faithful agency to the NMSCDCL and shall, at all times, support and safeguard the NMSCDCL's legitimate interests in any dealings with Third Parties.

11. Approvals and Required Consents

- 11.1.** The Parties shall cooperate to procure, maintain and observe all relevant, regulatory and governmental licenses, clearances and applicable approvals (hereinafter the "Required Consents") necessary for the Implementation agency to provide the services. The costs of such approvals shall be borne by the Party normally responsible for such costs according to local custom and practice in the locations where the services are to be provided. The NMSCDCL shall also provide necessary support to IA in obtaining the approvals. In the event that any approval is not obtained, IA and the NMSCDCL shall co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the NMSCDCL and at the discretion of the NMSCDCL without any adverse impact on NMSCDCL's interest including but not limited to additional time/expenditure, to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such approval is obtained, provided that IA shall not be relieved of its obligations to provide the services and to achieve the service levels until the approvals are obtained if and to the extent that IA's obligations are dependent upon such approvals.
- 11.2.** The NMSCDCL or its nominated agencies shall use reasonable endeavors to assist Implementation agency to obtain the required consent. In the event that any required consent is not obtained, the Implementation agency and the NMSCDCL or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as early and as reasonably practicable for the NMSCDCL or its nominated agencies to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such required consent is obtained, provided that the Implementation agency shall not be relieved of its obligations to provide the services and to achieve the service levels until the required consents are obtained to the extent that the Implementation agency's obligations are not dependent upon such required consents.

12. IA's Obligations

- 12.1.** IA's obligations shall include all the activities as specified by the NMSCDCL in the Scope of Work and other Sections of the RFP and Contract and changes thereof to enable NMSCDCL to meet the objectives and operational requirements. It shall be IA's responsibility to ensure the proper and successful implementation, performance and continued operation of the proposed solution in accordance with and in strict adherence to the terms of his Bid, the Tender and this Contract.
- 12.2.** In addition to the aforementioned, IA shall provide services to manage and maintain the said system and infrastructure as mentioned in RFP Volume II.
- 12.3.** NMSCDCL reserves the right to interview the personnel proposed that shall be deployed as part of the project team. If found unsuitable, the NMSCDCL may reject the deployment of the personnel. But ultimate responsibility of the project implementation shall lie with IA.
- 12.4.** NMSCDCL reserves the right to require changes in personnel, which shall be communicated to IA. IA with the prior approval of the NMSCDCL may make additions to the project team. IA shall provide the NMSCDCL with the resume of Key Personnel and provide such other information as the NMSCDCL may reasonably require. The NMSCDCL also reserves the right

to interview the personnel and reject, if found unsuitable. In case of change in its team members, for any reason whatsoever, IA shall also ensure that the exiting members are replaced with at least equally qualified and professionally competent members.

- 12.5.** IA shall ensure that none of the Key Personnel, proposed, exit from the project during the project implementation Phase.
- 12.6.** IA shall submit profiles of only those resources that shall be deployed on the project. Any change of resource shall be approved by the NMSCDCL and compensated with equivalent or better resource.
- 12.7.** In case of change in its team members, IA shall ensure a reasonable amount of time overlap in activities to ensure proper knowledge transfer and handover / takeover of documents and other relevant materials between the outgoing and the new member.
- 12.8.** IA shall ensure that IA's team is competent, professional and possesses the requisite qualifications and experience appropriate to the task they are required to perform under this Contract. IA shall ensure that the services are performed through the efforts of IA's Team, in accordance with the terms hereof and to the satisfaction of the NMSCDCL. Nothing in this Contract relieves IA from its liabilities or obligations under this Contract to provide the Services in accordance with the NMSCDCL's directions and requirements and as stated in this Contract and the Bid to the extent accepted by the NMSCDCL and IA shall be liable for any non-performance, non-compliance, breach or other loss and damage resulting either directly or indirectly by or on account of the IA's Team.
- 12.9.** IA shall be fully responsible for deployment / installation / development and integration of all the software and hardware components and resolve any problems / issues that may arise due to integration of components.
- 12.10.** IA shall ensure that the OEMs supply equipment / components including associated accessories and software required and shall support IA in the installation, commissioning, integration and maintenance of these components during the entire period of contract. IA shall ensure that the COTS OEMs supply the software applications and shall support IA in the installation / deployment, integration, rollout and maintenance of these applications during the entire period of contract. It must clearly be understood by IA that warranty and AMC of the work/ system, products and services incorporated as part of system would commence from the day of Go-Live of work/ system as complete solutions including all the solutions proposed. IA would be required to explicitly display that they have a back-to-back arrangement for provisioning of warranty / AMC support till the end of contract period with the relevant OEMs. The annual maintenance support shall include patches and updates of the software, hardware components and other devices.
- 12.11.** All the software licenses that IA proposes shall be perpetual software licenses. Licenses shall be in the name of the NMSCDCL/end user. The software licenses shall not be restricted based on location and the NMSCDCL/end user shall have the flexibility to use the software licenses for other requirements if required, provided the same does not violate the usage rights agreed with the original manufacturer.
- 12.12.** All the OEMs that IA proposes shall have dealer possession licenses, if applicable.
- 12.13.** The NMSCDCL reserves the right to review the terms of the Warranty and Annual Maintenance Agreements entered into between IA and OEMs and no such agreement/contract shall be executed, amended, modified and/or terminated without the prior written consent of the NMSCDCL. An executed copy of each of such agreements/contracts shall, immediately upon execution be submitted by IA to the NMSCDCL.
- 12.14.** Alternatively, the IA can also submit an undertaking on company letterhead in this regard (specifying broadly the terms of the Warranty and Annual Maintenance Agreements entered into between the IA and OEM) signed by a competent authority of IA/OEM.

- 12.15.** IA shall ensure that none of the components and sub-components is declared end-of-sale or end-of-support by the respective OEM at the time of submission of bid. If the OEM declares any of the products/ solutions end-of-sale subsequently, the IA shall ensure that the same is supported by the respective OEM for the entire contract period. Undertaking on company letterhead in this regard signed by the Global CEO or the Country head of OEM/IA shall be submitted by IA.
- 12.16.** If a product is de-supported by the OEM for any reason whatsoever, from the date of Acceptance of the System till the end of contract, IA shall replace the products/ solutions with an alternate that is acceptable to the NMSCDCL at no additional cost to the NMSCDCL and without causing any performance degradation.
- 12.17.** All the Licenses will be in the name of NMSCDCL only.
- 12.18.** IA shall ensure that the OEMs provide the support and assistance to IA in case of any problems / issues arising due to integration of components supplied by IA with any other component(s) / product(s) under the purview of the overall solution. If the same is not resolved for any reason whatsoever, IA shall replace the required component(s) with an equivalent or better substitute that is acceptable to NMSCDCL without any additional cost to the NMSCDCL and without impacting the performance of the solution in any manner whatsoever.
- 12.19.** IA shall ensure that the OEMs for hardware servers/equipment supply and/or install all type of updates, patches, fixes and/or bug fixes for the firmware or software from time to time at no additional cost to the NMSCDCL.
- 12.20.** IA shall ensure that the OEMs for hardware servers/ equipment or IA's trained engineers conduct the preventive maintenance on a Quarterly basis and break-fix maintenance in accordance with the best practices followed in the industry. IA shall ensure that the documentation and training services associated with the components shall be provided by the OEM partner or OEM's certified training partner without any additional cost to the NMSCDCL.
- 12.21.** IA and their personnel/representative shall not alter / change / replace any hardware component proprietary to the NMSCDCL and/or under warranty or AMC of third party without prior consent of the NMSCDCL.
- 12.22.** IA representative(s) shall have all the powers requisite for the execution of scope of work and performance of services under this contract. IA representative(s) shall liaise with the NMSCDCL's representative for the proper coordination and timely completion of the works and on any other matters pertaining to the works. IA shall extend full co-operation to NMSCDCL's representative in the manner required by them for supervision/ inspection/ observation of the equipment/ goods/ material, procedures, performance, progress, reports and records pertaining to the works. He shall also have complete charge of IA's personnel engaged in the performance of the works and to ensure compliance of rules, regulations and safety practice. He shall also cooperate with the other Service Providers/Vendors of the NMSCDCL working at the NMSCDCL's office locations & field locations and ICC, CCC.
- 12.23.** IA shall be responsible on an ongoing basis for coordination with other vendors and agencies of the NMSCDCL in order to resolve issues and oversee implementation of the same. IA shall also be responsible for resolving conflicts between vendors in case of borderline integration issues.
- 12.24.** IA's shall adhere with the followings:
- 12.24.1. The work, products, solutions, goods and services etc. quoted by them, shall fulfil all the RFP requirements including but not limited to OEM compliance and technical specifications etc. In case any of the quoted products, solutions, goods and services etc. do not meet any of the RFP requirements, IA is liable to provide requisite substitution/alternate to fulfil the RFP requirements by the approval of the

NMSCDCL, without any delay in Project timelines or additional cost to the NMSCDCL.

12.24.2. IA's submitted bid is prepared in conformance of the RFP requirement in totality and any deficiency in the quoted BoM shall be fulfilled by IA without any enhancement in the quoted project cost in its financial bid or change in the project timelines & SLAs.

12.24.3. Any reference of payment to the IA on actual basis, anywhere in the RFP, only means that, for any reasons if the NMSCDCL at any stage decides to enhance or truncates the scope of work leading to increase or decrease in the no. of hardware components/devices than the one prescribed in the RFP or in the response of the IA, the payment for the same shall be made for such additional or lower number on the basis of the respective line item unit cost prescribed by the IA as part of their financial bid.

12.25. Change of Control:

- a. In the event of a change of control of the Implementation agency during the term, the Implementation agency shall promptly notify NMSCDCL and/or its nominated agencies of the same.
- b. In the event that the net worth of the surviving entity is less than that of Implementation agency prior to the change of control, the NMSCDCL or its nominated agencies may within thirty (30) days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the Implementation agency from a guarantor acceptable to the NMSCDCL or its nominated agencies (which shall not be Implementation agency or any of its associated entities).
- c. If such a guarantee is not furnished within thirty (30) days of the NMSCDCL or its nominated agencies requiring the replacement, the NMSCDCL may exercise its right to terminate the SLA and/ or this Agreement within a further thirty (30) days by written notice, to become effective as specified in such notice.
- d. Pursuant to termination, the effects of termination as set out in Clause 37 of this Agreement shall follow.
- e. For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Implementation agency shall not be deemed an event of a change of control for purposes of this Clause unless the surviving entity is of less net worth than the predecessor entity.

12.26. Final Testing and Certification

The Project shall be governed by the mechanism of final acceptance testing and certification to be put into place by the NMSCDCL and Implementation agency as under:

- a) Final testing and certification criteria will lay down a set of guidelines following internationally accepted norms and standards for testing and certification for all aspects of project development and implementation covering software, hardware and networking including the processes relating to the design of solution architecture, design of systems and sub-systems, coding, testing, business process description, documentation, version control, change management, security, service oriented architecture, performance in relation to compliance with SLA metrics, interoperability, scalability, availability and compliance with all the technical and functional requirements of the RFP and this Agreement;

- b) Final testing and certification criteria will be finalized from the development stage to ensure that the guidelines are being followed and to avoid large scale modifications pursuant to testing done after the application is fully developed;
- c) Final testing and certification criteria will consider conducting specific tests on the software, hardware, networking, security and all other aspects;
- d) Final testing and certification criteria will establish appropriate processes for notifying the Implementation agency of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the Implementation agency to take corrective action; etc.
- e) The Parties shall each ensure that the range of the Services under the SLA shall not be varied, reduced or increased except with the prior written agreement between the NMSCDCL and Implementation agency in accordance with the Change Control Schedule set out in Annex II of this Agreement.
- f) Save for the express terms of the Terms of Payment Schedule set out of this Agreement, NMSCDCL or its nominated agencies and its users may purchase any particular category of Services that may become necessary as per the Change Control Schedule set out in Annex II of this Agreement, without the need to go for a separate procurement process.

12.27. Use of Assets by the Implementation agency

During the Term, the Implementation agency shall:

- a) take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the Implementation agency exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the “Assets”) in proportion to their use and control of such Assets; and
- b) keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Implementation agency takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- c) ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Implementation agency will be followed by the Implementation agency and any person who will be responsible for the use of the Assets;
- d) take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Implementation agency or as may, in the reasonable opinion of the Implementation agency, be necessary to use the Assets in a safe manner;
- e) ensure that the Assets that are under the control of the Implementation agency, are kept suitably housed and in conformity with Applicable Law;
- f) procure permission from the NMSCDCL or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- g) not knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law

12.28. Access to Sites

- 12.28.1. For so long as the Implementation agency provides services to the NMSCDCL or its nominated agencies location, as the case may be, on a non-permanent basis and to the extent necessary, the NMSCDCL as the case may be or its nominated agencies shall, subject to compliance by the Implementation agency with any safety and security

guidelines which may be provided by the NMSCDCL as the case may be or its nominated agencies and notified to the Implementation agency in writing, provide the Implementation agency with:

- a) reasonable access, in the same manner granted to the NMSCDCL or its nominated agencies employees, to the NMSCDCL as the case may be location twenty-four hours a day, seven days a week;
 - b) reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other the NMSCDCL as the case may be location, if any, as may be reasonably necessary for the Implementation agency to perform its obligations hereunder and under the SLA
- 12.28.2. Access to locations, office equipment and services shall be made available to the Implementation agency (as per scope of work defined in the RFP) by the NMSCDCL as the case may be or its nominated agencies. The Implementation agency agrees to ensure that its employees and agents shall not use the location, services and equipment referred to in RFP for the following purposes:
- a) for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
 - b) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality)

12.29. Start of Installation

- 12.29.1. IA shall co-ordinate with the NMSCDCL and stakeholders for the complete setup of sites before commencement of installation of other areas as mentioned in Scope of Work of the RFP Volume II document.
- 12.29.2. The plan and design documents thus developed shall be submitted by IA for approval by the NMSCDCL.
- 12.29.3. After obtaining the approval from the NMSCDCL, IA shall commence the installation of the systems.

12.30. Management Phase

12.30.1. Governance

The review and management process of this Agreement shall be carried out in accordance with the Governance Schedule set out in Annex IV of this document and shall cover all the management aspects of the Project.

12.30.2. Use of Services

- a) The NMSCDCL as the case may be or its nominated agencies, will undertake and use the Services in accordance with any instructions or procedures as per the acceptance criteria as set out in the SLA or this Agreement or any agreement that may be entered into between the Parties from time to time;
- b) The NMSCDCL as the case may be or its nominated agencies shall be responsible for the operation and use of the deliverables resulting from the Services

12.30.3. Changes

Unless expressly dealt with elsewhere in this Agreement, any changes under or to this Agreement or under or to the SLA shall be dealt with in accordance with the Change Control Schedule set out in Annex II of this Agreement.

12.30.4. Security and Safety

- a) The Implementation agency shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act or Telegraph Act including the regulations issued by dept. of telecom (wherever applicable), IT Security Manual of the NMSCDCL as specifically stated in the RFP and follow the industry standards related to safety and security (including those as stated in the RFP), insofar as it applies to the provision of the Services.
- b) Party to the SLA/Agreement shall also comply with NMSCDCL or the Government of India, and the respective State's security standards and policies in force from time to time at each location of which NMSCDCL or its nominated agencies make the Implementation agency aware in writing insofar as the same apply to the provision of the Services.
- c) The Parties to the SLA/Agreement shall use reasonable endeavors to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the NMSCDCL as the case may be or any of their nominees data, facilities or Confidential Information.
- d) The Implementation agency shall upon reasonable request by the NMSCDCL as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- e) As per the provisions of the SLA or this Agreement, the Implementation agency shall promptly report in writing to the NMSCDCL or its nominated agencies, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of NMSCDCL as the case may be.

12.30.5. Co-operation

Except as otherwise provided elsewhere in this Agreement or the SLA, each Party ("Providing Party") to this Agreement or to the SLA undertakes promptly to provide the other Party ("Receiving Party") with all such information and co-operation which the Receiving Party reasonably requests, provided that such information and co-operation:

- a) does not require material expenditure by the Providing Party to provide the same;
- b) is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement or the SLA;
- c) cannot be construed to be Confidential Information; and
- d) is capable of being provided by the Providing Party

12.31. Reporting Progress

- 12.31.1. IA shall monitor progress of all the activities related to the execution of this contract and shall submit to the NMSCDCL, progress reports with reference to all related work, milestones and their progress during the implementation phase.

- 12.31.2. Formats for all above mentioned reports and their dissemination mechanism shall be discussed and finalized along with project plan. The NMSCDCL on mutual agreement between both parties may change the formats, periodicity and dissemination mechanism for such reports.
- 12.31.3. Periodic meetings shall be held between the representatives of the NMSCDCL and IA once in every fifteen (15) days during the implementation phase to discuss the progress of implementation. After the implementation phase is over, the meeting shall be held as an ongoing basis, as desired by NMSCDCL, to discuss the performance of the contract.
- 12.31.4. IA shall ensure that the respective solution teams involved in the execution of work are part of such meetings.
- 12.31.5. Several review committees involving representatives of the NMSCDCL and senior officials of IA shall be formed for the purpose of this project. These committees shall meet at intervals, as decided by the NMSCDCL later, to oversee the progress of the implementation.
- 12.31.6. All the goods, services and manpower to be provided / deployed by IA under the Contract and the manner and speed of execution and maintenance of the work and services are to be conducted in a manner to the satisfaction of NMSCDCL's representative in accordance with the Contract.
- 12.31.7. The NMSCDCL reserves the right to inspect and monitor/ assess the progress/ performance of the work / services at any time during the course of the Contract. The NMSCDCL may demand and upon such demand being made, IA shall provide documents, data, material or any other information which the NMSCDCL may require, to enable it to assess the progress/ performance of the work / service.
- 12.31.8. At any time during the course of the Contract, the NMSCDCL shall also have the right to conduct, either itself or through another agency as it may deem fit, an audit to monitor the performance by IA of its obligations/ functions in accordance with the standards committed to or required by the NMSCDCL and IA undertakes to cooperate with and provide to the NMSCDCL/ any other agency appointed by the NMSCDCL, all documents and other details as may be required by them for this purpose. NMSCDCL at its discretion may appoint third party for auditing the activities of onsite services and operations of entire services provided by the IA.
- 12.31.9. Should the rate of progress of the works or any part of them at any time fall behind the stipulated time for completion or is found to be too slow to ensure completion of the works by the stipulated time, or is in deviation to Tender requirements/ standards, the NMSCDCL's representative shall so notify IA in writing.
- 12.31.10. IA shall reply to the written notice giving details of the measures IA proposes to take to expedite the progress to complete the works by the prescribed time or to ensure compliance to RFP requirements. IA shall not be entitled to any additional payment for taking such steps. If at any time it shall appear to the NMSCDCL or NMSCDCL's representative that the actual progress of work does not conform to the approved plan IA shall produce at the request of the NMSCDCL's representative a revised plan showing the modification to the approved plan necessary to ensure completion of the works within the time for completion or steps initiated to ensure compliance to the stipulated requirements
- 12.31.11. The submission seeking approval by the NMSCDCL or NMSCDCL's representative of such plan shall not relieve IA of any of his duties or responsibilities under the Contract.
- 12.31.12. In case during execution of works, the progress falls behind schedule or does not meet the Tender requirements, IA shall deploy extra manpower / resources to make up the progress or to meet the RFP requirements. Plan for deployment of extra manpower / resources shall

be submitted to the NMSCDCL for its review and approval. All time and cost effect in this respect shall be borne, by IA within the contract value.

12.32. Project Plan

- 12.32.1. Within 15 calendar days of effective date of the contract, IA shall submit to the NMSCDCL for its approval a detailed Project Plan with details of the project showing the sequence, procedure and method in which IA proposes to carry out the works. The Plan so submitted by IA shall conform to the requirements and timelines specified in the Contract. The NMSCDCL and IA shall discuss and agree upon the work procedures to be followed for effective execution of the works, which IA intends to deploy and shall be clearly specified. The Project Plan shall include but not limited to project organization, communication structure, proposed staffing, roles and responsibilities, processes and tool sets to be used for quality assurance, security and confidentiality practices in accordance with industry best practices, project plan and delivery schedule in accordance with the Contract. Approval by the NMSCDCL's representative of the Project Plan shall not relieve IA of any of his duties or responsibilities under this Contract.
- 12.32.2. If IA's work plans necessitate a disruption/ shutdown in NMSCDCL's operation, the plan shall be mutually discussed and developed so as to keep such disruption/shutdown to the barest unavoidable minimum. Any time and cost arising due to failure of IA to develop/adhere such a work plan shall be to IA's account.

12.33. Adherence to safety procedures, rules regulations and restriction

- 12.33.1. IA's Team shall comply with the provision of all applicable laws including labor laws, rules, regulations and notifications issued there under from time to time. All applicable safety and labor laws enforced by statutory agencies and by NMSCDCL shall be applicable in the performance of this Contract and IA's Team shall abide by these laws.
- 12.33.2. Access to the Network Operations Center (NOC), Server Room, Command & Control Center (CCC) and Integrated Command & Control Center (ICCC) shall be strictly restricted. No access to any person except the essential members of IA's Team who are authorized by the NMSCDCL and are genuinely required for execution of work or for carrying out management/ maintenance shall be allowed entry. Even if allowed, access shall be restricted to the pertaining equipment of the NMSCDCL only. IA shall maintain a log of all activities carried out by each of its team personnel.
- 12.33.3. No access to any staff of IA, except the essential staff who has genuine work-related need, shall be given. All such access shall be logged in a loss free manner for permanent record with unique biometric identification of the staff to avoid misrepresentations or mistakes.
- 12.33.4. IA shall take all necessary and proper measures to protect the personnel, work and facilities and shall observe all reasonable safety rules and instructions. IA's Team shall adhere to all security requirement/ regulations of the NMSCDCL during the execution of the work. NMSCDCL's employee also shall comply with safety procedures/ policy.
- 12.33.5. IA shall report as soon as possible any evidence, which may indicate or is likely to lead to an abnormal or dangerous situation and shall take all necessary emergency control steps to avoid such abnormal situations.

12.34. Statutory Requirements

- 12.34.1. During the tenure of this Contract, nothing shall be done by IA in contravention of any law, act and/ or rules/regulations, there under or any amendment thereof governing inter-alia customs, stowaways, foreign exchange etc. and shall keep NMSCDCL indemnified in this regard.

13. NMSCDCL's Obligations

- 13.1.** NMSCDCL or his/her nominated representative shall act as the nodal point for implementation of the contract and for issuing necessary instructions, approvals, commissioning, acceptance certificates, payments etc. to IA.
- 13.2.** NMSCDCL shall ensure that timely approval is provided to IA as and when required, which may include approval of project plans, implementation methodology, design documents, specifications, or any other document necessary in fulfillment of this contract.
- 13.3.** The NMSCDCL's representative shall interface with IA, to provide the required information, clarifications, and to resolve any issues as may arise during the execution of the Contract. NMSCDCL shall provide adequate cooperation in providing details, coordinating and obtaining of approvals from various governmental agencies, in cases, where the intervention of the NMSCDCL is proper and necessary.
- 13.4.** NMSCDCL may provide on IA's request, particulars / information / documentation that may be required by IA for proper planning and execution of work and for providing services covered under this contract and for which IA may have to coordinate with respective vendors.
- 13.5.** Electrical connections and installation of sub meters shall be borne by the IA at all the site locations of the project. The NMSCDCL shall provide approval and necessary documents for electrical power connections, which is to be taken in the name of Nashik Smart City / NMSCDCL.
- 13.6. Site Not Ready:** NMSCDCL hereby agrees to make the project sites ready as per the agreed specifications, within the agreed timelines. NMSCDCL agrees that IA shall not be in any manner liable for any delay arising out of NMSCDCL's failure to make the site ready within the stipulated period.
- 13.7.** To provide any support through personnel to test the work/ system during the Term;
- 13.8.** To provide any support through personnel and/or test data during development, rollout, steady state operation, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- 13.9.** NMSCDCL shall provide the data (including in electronic form wherever available) to be migrated.
- 13.10.** NMSCDCL shall authorize the Implementation agency to interact for implementation of the Project with external entities and shall provide prompt Deliverable feedback, sign offs or its comments for changes.

14. Financial Matters

14.1. Terms of Payment

- a. In consideration of the Services and subject to the provisions of this Agreement and of the SLA, the NMSCDCL shall pay the Implementation agency for the Services rendered in pursuance of this agreement, in accordance with the Terms of Payment Schedule set out in this Agreement.
- b. Payments shall be subject to the application of liquidated damages (for period prior to "Go Live") or SLA penalties and its adjustments/corrections (for post "Go-Live") as may be provided for in the Agreement and the SLA from the relevant milestone(s).

- c. Save and except as otherwise provided for herein or as agreed between the Parties in writing, the NMSCDCL shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the Implementation agency performance of any obligations under this Agreement or the SLA) other than those covered in this Agreement. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.
- d. Notwithstanding contained herein or elsewhere, any variation in applicable taxes, whether resulting into increase in rate of taxes or levy of new taxes or reduction in rate of taxes or abolition of existing taxes, shall be borne by the NMSCDCL.

14.2. Invoicing & Settlement

- a. Subject to the specific terms of the Agreement and the SLA, the Implementation agency shall submit its invoices in accordance with the following principles:
 - (i) The NMSCDCL shall be invoiced by the Implementation agency for the Work/ Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the Implementation agency shall raise an invoice as per the Payment Schedule of this Agreement; and
 - (ii) Any invoice presented in accordance with this Clause shall be in a form agreed with the NMSCDCL.
- b. The Implementation agency alone shall invoice all payments after receiving due approval of completion of payment milestone from the competent authority. Such invoices shall be accurate with all adjustments or changes in the terms of payment as stated in Payment Schedule of this Agreement. The Implementation agency shall waive any charge for a Service that is not invoiced within six (6) months after the end of the month in which the change relating to such Service is (i) authorized or (ii) incurred, whichever is later.
- c. Payment shall be made within sixty (60) working days of the receipt of invoice along with supporting documents by the NMSCDCL subject to deduction of applicable liquidated damages (till "Go Live") or SLA penalties (post "Go Live"). The penalties are imposed on the vendor as per the SLA criteria specified in the SLA.
- d. The NMSCDCL shall be entitled to delay or withhold payment of any invoice or part of it delivered by the Implementation agency under Payment Schedule section of this Agreement where the NMSCDCL disputes/withholds such invoice or part of it provided that such dispute is bonafide. The withheld amount shall be limited to that which is in dispute. Any exercise by the NMSCDCL under this Clause shall not entitle the Implementation agency to delay or withhold provision of the Services.

14.3. Tax

- a. NMSCDCL or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the Implementation agency wherever applicable. The Implementation agency shall pay for all other taxes in connection with this Agreement, SLA, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.

- b. NMSCDCL or its nominated agencies shall provide Implementation agency with the original tax receipt of any withholding taxes paid by NMSCDCL or its nominated agencies on payments under this Agreement. The Implementation agency agrees to reimburse and hold the NMSCDCL or its nominated agencies harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among the NMSCDCL or its nominated agencies and the Implementation agency.
- c. If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by the NMSCDCL for providing the goods and services i.e. GST or any such other applicable tax from time to time, which increase or decreases the cost incurred by the Implementation agency in performing the Work / Services, then the remuneration and reimbursable expense otherwise payable to the Implementation agency under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Payment Schedule section. However, in case of any new or fresh tax or levy imposed after submission of the proposal the Implementation agency shall be entitled to reimbursement on submission of proof of payment of such tax or levy.
- d. The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with the following:
 - i. any resale certificates;
 - ii. any relevant information regarding out-of-state or use of materials, equipment or services; and
 - iii. any direct pay permits, exemption certificates or information reasonably requested by the other Party.
- e. IA shall bear all personnel taxes levied or imposed on its personnel, or any other member of IA's Team, etc. on account of payment received under this Contract. IA shall bear all corporate taxes, levied or imposed on IA on account of payments received by it from the NMSCDCL for the work done under this Contract.
- f. IA shall bear all taxes and duties etc. levied or imposed on IA under the Contract including but not limited to GST, Sales Tax, Customs duty, Excise duty, Octroi, Service Tax, VAT, Works Contracts Tax and all Income Tax levied under Indian Income Tax Act – 1961 or any amendment thereof during the entire contract period, i.e., on account of material supplied and services rendered and payments received by him from the NMSCDCL under the Contract. It shall be the responsibility of IA to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. IA shall also provide the NMSCDCL such information, as it may be required in regard to IA's details of payment made by the NMSCDCL under the Contract for proper assessment of taxes and duties. The amount of tax withheld by the NMSCDCL shall at all times be in accordance with Indian Tax Law and the NMSCDCL shall promptly furnish to IA original certificates for tax deduction at source and paid to the Tax Authorities.
- g. IA agrees that he shall comply with the Indian Income Tax Act in force from time to time and pay Indian Income Tax, as may be imposed/ levied on them by the Indian Income Tax Authorities, for the payments received by them for the works under the Contract

- h. IA shall fully familiarize themselves about the applicable domestic taxes (such as GST, value added or sales tax, service tax, income taxes, duties, fees, levies, etc.) on amounts payable by the NMSCDCL under the Contract. All such taxes must be included by IA in the financial proposal. (IA to find out applicable taxes for the components being proposed.)
- i. Should IA fail to submit returns/pay taxes in time as stipulated under applicable Indian/State Tax Laws and consequently any interest or penalty is imposed by the concerned authority, IA shall pay the same. IA shall indemnify NMSCDCL against any and all liabilities or claims arising out of this Contract for such taxes including interest and penalty by any such Tax Authority may assess or levy against the NMSCDCL/IA.
- j. NMSCDCL shall if so required by applicable laws in force, at the time of payment, deduct income tax payable by IA at the rates in force, from the amount due to IA and pay to the concerned tax authority directly.

15. Audit, Access and Reporting

The Implementation agency shall allow access to the NMSCDCL or its nominated agencies to all information which is in the possession or control of the Implementation agency and which relates to the provision of the Services as set out in the Audit, Access and Reporting Schedule and which is reasonably required by the NMSCDCL to comply with the terms of the Audit, Access and Reporting Schedule set out as in Annex V of this agreement.

16. Intellectual Property Rights

16.1. Products and fixes:

All products and related solutions and fixes provided pursuant to this Agreement shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product, the ownership of which shall continue to vest with the product owner. Implementation agency would be responsible for arranging any licenses associated with products. "Product" means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to NMSCDCL for license which is published by product owner or its affiliates, or a third party. "Fixes" means product fixes that are either released generally (such as commercial product service packs) or that are provided to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.

16.2. Bespoke development:

Subject to the provisions of Clause 16.3 and 16.4 below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie exclusively with the NMSCDCL.

16.3. Pre-existing work:

All IPR including the source code and materials developed or otherwise obtained independently of the efforts of a Party under this Agreement ("pre-existing work") including any enhancement or modification thereto shall remain the sole property of that Party. During the performance of the services for this agreement, each party grants to the other party a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the Implementation agency shall grant NMSCDCL a non-exclusive, perpetual,

fully paid-up license to use the pre-existing work in the form delivered to NMSCDCL as part of the service or deliverables only for its internal business operations. Under such license, either of parties will have no right to sell the pre-existing work of the other party to a Third Party. NMSCDCL's license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that IA leaves with NMSCDCL at the conclusion of performance of the services.

16.4. Residuals:

In no event shall Implementation agency be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables, set-out in this Agreement. In addition, subject to the confidentiality obligations, Implementation agency shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services.

17. Representations & Warranties

17.1. Representations and warranties of the Implementation agency

The Implementation agency represents and warrants to the NMSCDCL or its nominated agencies that:

- a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- b) it is a competent provider of a variety of information technology and business process management services;
- c) it has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- d) from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- e) in providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to NMSCDCL's normal business operations
- f) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- g) the information furnished in the Implementation agency's response to the RFP and any subsequent clarification pertaining to the evaluation process, furnished on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement;
- h) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, 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;
- i) there are no material actions, suits, proceedings, or investigations pending or, to its 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 this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;

- j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- k) it has complied with Applicable Laws in all material respects 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 an Adverse Effect on its ability to perform its obligations under this Agreement;
- l) no representation or warranty by it contained herein or in any other document furnished by it to NMSCDCL or its nominated agencies in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
- m) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of NMSCDCL or its nominated agencies in connection therewith.

17.2. Representations and warranties of the NMSCDCL or its nominated agencies

NMSCDCL or its nominated agencies represent and warrant to the Implementation agency that:

- a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- b) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c) it has the financial standing and capacity to perform its obligations under the Agreement;
- d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- e) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;
- f) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, 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;

- g) there are no actions, suits or proceedings pending or, to its 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 default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;
- h) 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 Instrumentality which may result in any Adverse Effect on the NMSCDCL or its nominated agencies ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- i) it has complied with Applicable Laws in all material respects;
- j) all information provided by it in the RFP in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- k) upon the Implementation agency performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Implementation agency, in accordance with this Agreement.

18. Term and Extension of the Contract

- 18.1.** The Contract period shall commence from the date of Work Order given and shall remain valid for Twenty-Four (24) months from the date of Go Live of the system.
- 18.2.** If the delay occurs due to circumstances beyond control of IA such as strikes, lockouts, fire, accident, defective materials, delay in approvals or any cause whatsoever beyond the reasonable control of IA, a reasonable extension of time shall be granted by the NMSCDCL.
- 18.3.** The NMSCDCL shall reserve the sole right to grant any extension to the term abovementioned and shall notify in writing to IA, at least thirty (30) days before the expiration of the Term hereof, whether it shall grant IA an extension of the Term. The decision to grant or refuse the extension shall be at the NMSCDCL's discretion and such extension of the contract, if any, shall be as per terms agreed mutually between the NMSCDCL and IA.
- 18.4.** Where the NMSCDCL is of the view that no further extension of the term be granted to IA, the NMSCDCL shall notify IA of its decision at least thirty (30) days prior to the expiry of the Term. Upon receipt of such notice, IA shall continue to perform all its obligations hereunder, until such reasonable time beyond the Term of the Contract within which, the NMSCDCL shall either appoint an alternative agency/IA or create its own infrastructure to operate such Services as are provided under this Contract.

19. Dispute Resolution

Refer clause No- 43

20. Time is of the essence

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

21. Conflict of interest

- 21.1.** The IA shall hold the Purchaser's interests paramount, without any consideration for future work, and strictly avoid conflict of interest with other assignments or their own corporate interests. If during the period of this contract, a conflict of interest arises for any reasons, the IA shall promptly disclose the same to the purchaser and seek its instructions.
- 21.2.** Prohibition of Conflicting Activities: The IA shall not engage, either directly or indirectly, in any business or professional activities related to NMSCDCL's ICT led smart city solutions' Operations & Management that would conflict with the activities assigned to them under this Contract.
- 21.3.** IA shall disclose to the NMSCDCL in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for IA or IA's Team) in the course of performing the Services as soon as practical after it becomes aware of that conflict.

22. Force Majeure

22.1. Definition of Force Majeure:

"Force Majeure" shall mean any event beyond the reasonable control of the NMSCDCL or of the IA, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected.

22.2. Force Majeure events

A Force Majeure shall include, without limitation, the following:

- a) War, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
- b) Strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
- c) Earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;

22.3. If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.

22.4. The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The time for achieving Final Acceptance shall be extended.

22.5. The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under Clause 37.

22.6. No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:

- a) constitute a default or breach of the Contract

- b) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance
- c) if, and to the extent that, such delay or nonperformance is caused by the occurrence of an event of Force Majeure

- 22.7.** If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.
- 22.8.** In the event of termination pursuant to this Clause 22, the rights and obligations of the NMSCDCL and the IA shall be as specified in the clause titled Termination.
- 22.9.** Notwithstanding Clause 22, Force Majeure shall not apply to any obligation of the NMSCDCL to make payments to the IA under this Contract.
- 22.10.** For the avoidance of doubt, it is expressly clarified that the failure on the part of the Implementation agency under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services, which directly causes any breach of security like hacking aren't the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure". In so far as applicable to the performance of Services, IA will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).

23. Delivery

- 23.1.** IA shall bear the cost for packing, transport, insurance, storage and delivery of all the goods for "Selection of Implementation Agency for Supply, Laying, Installation, Testing and Commissioning of Nashik & Trimbakeshwar City Network Backbone along with providing Operations & Maintenance Services" at all locations identified by the NMSCDCL .
- 23.2.** The Goods and manpower supplied under this Contract shall conform to the standards mentioned in the RFP, and, when no applicable standard is mentioned, to the authoritative standards; such standard shall be approved by NMSCDCL.
- 23.3.** IA shall only procure the hardware and software after approvals from a designated Committee/Authority.

24. Warranty & Maintenance

- 24.1. Standard:** The Implementation agency warrants that the Project, including all the system(s), materials and goods supplied pursuant to the Agreement, shall be free from any defect or deficiency in the material, design, engineering, and workmanship that prevent the system and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the system and/or any of its sub-system(s). Commercial warranty provisions of products supplied under the Agreement shall apply to the extent they do not conflict with the provisions of this Agreement.

- 24.2.** The IA also warrants that the products, materials and other goods supplied under the Agreement are new, unused and incorporate all recent improvements in design that materially affect the work's/ system's or subsystem's ability to fulfill the functional and technical requirements specified in the RFP.
- 24.3.** In addition, the IA warrants that: (i) all Goods components to be incorporated into the System form part of the IA /OEM's current product lines.
- 24.4.** The warranty period shall commence from the date of Final Acceptance of the Work / System (or of any major component or subsystem for which phased Go-Live is provided for in the Agreement) or on expiry of the products commercial warranty, whichever is earlier.
- 24.5.** If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services provided by the Implementation agency, the Implementation agency shall promptly, in consultation and agreement with NMSCDCL, and at the Implementation agency's sole cost repair, replace, or otherwise make good (as the Implementation agency shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the system caused by such default, defect or deficiency. Any defective component, excluding hard disks, that has been replaced by the Implementation agency shall remain the property of the Implementation agency.
- 24.6.** The IA may, with the consent of the NMSCDCL, remove from the site any product and other goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the NMSCDCL may give the IA notice requiring that tests of the defective part be made by the IA immediately upon completion of such remedial work, whereupon the IA shall carry out such tests. If such part fails the tests, the IA shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by the NMSCDCL and the IA.
- 24.7.** If the IA fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within a reasonable time period, the NMSCDCL may, following notice to the IA, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the NMSCDCL in connection with such work shall be paid to the NMSCDCL by the IA or may be deducted by the NMSCDCL from any amount due to the IA.
- 24.8.** If the System or any of its sub-systems cannot be used by reason of such default, defect or deficiency and/or making good of such default, defect or deficiency, the warranty period for the Project shall be extended by a period equal to the period during, which the Project or any of its system could not be used by the NMSCDCL because of such defect and/or making good of such default, defect or deficiency.
- 24.9.** Items substituted for defective parts of the System during the Warranty Period shall be covered by the Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.
- 24.10.** The Implementing Agency shall have no liability in the case of breach of this warranty due to (i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the Implementing Agency, (ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the Implementing Agency; (iii) the deliverables having been tampered with, altered or modified by NMSCDCL without the written permission of the Implementing Agency, or (iv) use of the deliverables otherwise than in terms of the relevant documentation.

24.11. Implied Warranty: The warranties provided herein are in lieu of all other warranties, both express and implied, and all other warranties, including without limitation that of merchantability or fitness for intended purpose is specifically disclaimed.

25. Insurance

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

25.2. IA shall bear all the statutory levies like customs, insurance, freight, etc. applicable on the goods and also the charges like transportation charges, Octroi, etc. that may be applicable till the goods are delivered at the respective sites of installation shall also be borne by IA.

25.3. IA shall take out and maintain at its own cost, on terms and conditions approved by the NMSCDCL, insurance against the risks, and for the coverages, as specified below:

- a. at the NMSCDCL's request, shall provide evidence to the NMSCDCL showing that such insurance has been taken out and maintained and that the current premiums therefor have been paid.
- b. Employer's liability and workers' compensation insurance in respect of the Personnel of the Company, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate

25.4. Obligation to maintain insurance in connection with the provision of the Services, the Service Provider must have and maintain:

- a. For the Agreement Period, valid and enforceable insurance coverage for:
 - i. Public liability;
 - ii. Either professional indemnity or errors and omissions;
 - iii. Product liability;
 - iv. Workers' compensation as required by law; and
 - v. Any additional types specified in Annex II
- b. For one year following the expiry or termination of the Agreement, valid and enforceable insurance policies (if relevant), in the amount not less than the Insurance Cover derived in this RFP

25.5. The Implementation agency must, on request by the NMSCDCL, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 25. The Service Provider agrees to replace any coverage prior to the date of expiry/cancellation.

25.6. Non-compliance

25.6.1. NMSCDCL or its nominated agencies may, at its election, terminate this Agreement as per Clause 36, upon the failure of Implementation agency or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve Implementation agency of its obligations under this Agreement.

26. Exit Management

26.1. Purpose

- 26.1.1. This Schedule sets out the provisions, which will apply on expiry or termination of the MSA, the Project Implementation, Operation and Management SLA.
- 26.1.2. In the case of termination of the Project Implementation and/or Operation and Management, the Parties shall agree at that time whether, and if so during what period, the provisions of this Schedule shall apply.
- 26.1.3. The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management clause.

26.2. Transfer of Assets

- 26.2.1. NMSCDCL shall be entitled to serve notice in writing on the IA at any time during the exit management period as detailed hereinabove requiring the IA to provide the NMSCDCL with a complete and up to date list of the Assets within thirty (30) days of such notice. NMSCDCL shall then be entitled to serve notice in writing on the IA at any time prior to the date that is thirty (30) days prior to the end of the exit management period requiring the IA to sell the Assets, if any, to be transferred to NMSCDCL or its nominated agencies at book value as determined as of the date of such notice in accordance with the provisions of relevant laws.
- 26.2.2. In case of contract being terminated by NMSCDCL, NMSCDCL reserves the right to ask IA to continue running the project operations for a period of six (6) months after termination orders are issued.
- 26.2.3. Upon service of a notice under this Article the following provisions shall apply:
 - i. in the event, if the Assets to be transferred are mortgaged to any financial institutions by the IA, the IA shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to the NMSCDCL.
 - ii. All risk in and title to the Assets to be transferred / to be purchased by the NMSCDCL pursuant to this Article shall be transferred to NMSCDCL, on the last day of the exit management period.
 - iii. IA on the last day of the exit management period shall transfer all the assets, related to the project scope and as applicable, to the purchaser at no cost.
 - iv. Payment to the outgoing IA shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements.
 - v. The outgoing IA will pass on to NMSCDCL and/or to the Replacement IA, the subsisting rights in any leased properties/ licensed products on terms not less favorable to NMSCDCL/ Replacement IA, than that enjoyed by the outgoing IA.

26.3. Cooperation and Provision of Information

During the exit management period:

- 26.3.1. The Implementation agency will allow the NMSCDCL or its nominated agency access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the NMSCDCL to assess the existing services being delivered;
- 26.3.2. Promptly on reasonable request by the NMSCDCL, the IA shall provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with this agreement relating to any material aspect of the

services (whether provided by the Implementation agency appointed by the Implementation agency). The NMSCDCL shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The Implementation agency shall permit the NMSCDCL or its nominated agencies to have reasonable access to its employees and facilities as reasonably required by the Chairman, PIU to understand the methods of delivery of the services employed by the Implementation agency and to assist appropriate knowledge transfer.

26.4. Confidential Information, Security and Data

- 26.4.1. The Implementation agency will promptly on the commencement of the exit management period supply to the NMSCDCL or its nominated agency the following:
- i. Information relating to the current services rendered
 - ii. Documentation relating to Computerization Project's Intellectual Property Rights;
 - iii. All current and updated data as is reasonably required for purposes of NMSCDCL or its nominated agencies transitioning the services to its Replacement Implementation agency in a readily available format nominated by the NMSCDCL, its nominated agency;
 - iv. All other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable NMSCDCL or its nominated agencies, or its Replacement Implementation agency to carry out due diligence in order to transition the provision of the Services to NMSCDCL or its nominated agencies, or its Replacement Implementation agency (as the case may be).
- 26.4.2. Before the expiry of the exit management period, the Implementation agency shall deliver to the NMSCDCL or its nominated agency all new or up-dated materials from the categories set out in this section above and shall not retain any copies thereof, except that the Implementation agency shall be permitted to retain one copy of such materials for archival purposes only.
- 26.4.3. Before the expiry of the exit management period, unless otherwise provided under the MSA, the NMSCDCL or its nominated agency shall deliver to the Implementation agency all forms of Implementation agency confidential information, which is in the possession or control of Chairperson, PIU or its users.

26.5. Employees

- 26.5.1. Promptly on reasonable request at any time during the exit management period, the Implementation agency shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the NMSCDCL or its nominated agency a list of all employees (with job titles) of the Implementation agency dedicated to providing the services at the commencement of the exit management period.
- 26.5.2. Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the Implementation agency to the NMSCDCL or its nominated agency, or a Replacement Implementation agency ("Transfer Regulation") applies to any or all of the employees of the Implementation agency, then the Parties shall comply with their respective obligations under such Transfer Regulations.

26.6. Transfer of Certain Agreements

On request by the NMSCDCL or its nominated agency, the Implementation agency shall effect such assignments, transfers, licenses and sub-licenses as the Chairperson, PIU may require in favor of the Chairperson, PIU, or its Replacement Implementation agency in relation to any equipment lease, maintenance or service provision agreement between Implementation agency and third party lessors, vendors, and which are related to the services and reasonably necessary for the carrying out of replacement services by the NMSCDCL or its nominated agency or its Replacement Implementation agency.

26.7. Rights of Access to Premises

- 26.7.1. At any time during the exit management period, where Assets are located at the Implementation agency's premises, the Implementation agency will be obliged to give reasonable rights of access to (or, in the case of Assets located on a third party's premises, procure reasonable rights of access to) the NMSCDCL or its nominated agency and/or any Replacement Implementation agency in order to make an inventory of the Assets.
- 26.7.2. The Implementation agency shall also give the NMSCDCL or its nominated agency or its nominated agencies, or any Replacement Implementation agency right of reasonable access to the Implementation agency's premises and shall procure the NMSCDCL or its nominated agency / agencies and any Replacement Implementation agency rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to the NMSCDCL or its nominated agency, or a Replacement Implementation agency.

26.8. Exit Management Plan

- 26.8.1. The Implementation agency shall provide the NMSCDCL or its nominated agency with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the MSA as a whole and in relation to the Project Implementation, and the Operation and Management SLA.
 - i. A detailed program of the transfer process that could be used in conjunction with a Replacement Implementation agency including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
 - ii. Plans for the communication with such of the Implementation agency, staff, IAs, customers and any related third party as are necessary to avoid any material detrimental impact on the NMSCDCL's operations as a result of undertaking the transfer;
 - iii. If applicable, proposed arrangements for the segregation of the Implementation agency's networks from the networks employed by NMSCDCL and identification of specific security tasks necessary at termination;
 - iv. Plans for provision of contingent support to NMSCDCL, and Replacement Implementation agency for a reasonable period after transfer.
- 26.8.2. The Implementation agency shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.

- 26.8.3. Each Exit Management Plan shall be presented by the Implementation agency to and approved by the NMSCDCL or its nominated agencies.
- 26.8.4. The terms of payment as stated in the Terms of Payment Schedule include the costs of the Implementation agency complying with its obligations under this Schedule.
- 26.8.5. In the event of termination or expiry of MSA, and Project Implementation, each Party shall comply with the Exit Management Plan.
- 26.8.6. During the exit management period, the Implementation agency shall use its best efforts to deliver the services.
- 26.8.7. Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.
- 26.8.8. This Exit Management plan shall be furnished in writing to the NMSCDCL or its nominated agencies within ninety (90) days from the Effective Date of this Agreement.

27. Performance Security

The IA shall furnish Performance Security Deposit to the NMSCDCL, in the form of Bank Guarantee (PBG), within fifteen (15) days of issuance of Letter of Intent (LoI) or Letter of Award (LoA) for a value equivalent to 5% of the contract value. This PBG shall be valid up to Sixty (60) days beyond the term of the Contract (Contract Period+60 days) including any subsequent term extension. The IA shall be responsible for extending the validity date and claim period of the PBG as and when it is due on account of extension of contract and/or warranty period.

28. Liquidated Damages

- a) Except as provided under clause "Force Majeure", if the supplier/ selected bidder fails to deliver any or all of the items/goods or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in (d) below for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the bidding document and/ or contract. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to clause "Termination".
- b) The time specified for delivery and installation of the IT/non-IT Infra and software products licenses in the bidding document shall be deemed to be the essence of the contract and the supplier/ selected bidder shall arrange items/goods supply and related services within the specified period.
- c) Delivery and installation/ completion period may be extended with or without liquidated damages, if the delay in the supply of items/goods or service is on account of hindrances beyond the control of the supplier/ selected bidder.
 - i. The supplier/ selected bidder shall request in writing to the Purchaser giving reasons for extending the delivery period of service, if he finds himself unable to complete the supply of items/goods or service within the stipulated delivery period or is unable to maintain prorate progress in the supply of items/goods or service delivery. This request shall be submitted as soon as a hindrance in delivery of items/goods and service occurs or within fifteen (15) days from such occurrence but before expiry of stipulated period of completion of delivery of items / goods and service after which such request shall not be entertained.
 - ii. The Purchaser shall examine the justification of causes of hindrance in the delivery of items/goods and service and the period of delay occurred due to that and recommend the competent authority on the period of extension which shall be granted with or without liquidated damages.
 - iii. Normally, extension in delivery period of items/goods and service in following circumstances may be considered without liquidated damages:
 - a. When delay has occurred due to delay in supply of drawings, designs, plans etc. if NMSCDCL was required to supply them to the supplier of items/goods or service provider as per terms of the contract.
 - b. When delay has occurred in supply of materials etc. if these were required to be supplied to the supplier or service provider by NMSCDCL as per terms of the contract.
 - iv. If the competent authority agrees to extend the delivery period/ schedule, an amendment to the contract with suitable denial clauses and with or without liquidated damages, as the case may be, shall be issued. The amendment letter shall mention that no extra price or additional cost for any reason, what so ever beyond the contracted cost shall be paid for the delayed supply of items/goods and service.

- v. It shall be at the discretion of the concerned authority to accept or not to accept the supply of items/goods and/ or services rendered by the contractor after the expiry of the stipulated delivery period, if no formal extension in delivery period has been applied and granted. The competent authority shall have right to cancel the contract with respect to undelivered items/goods and/ or service.
 - vi. If NMSCDCL is in need of the items/goods and/ or service rendered after expiry of the stipulated delivery period, it may accept the services and issue a letter of extension in delivery period with usual liquidated damages and denial clauses to regularize the transaction.
- d) In case of extension in the delivery and installation/completion period is granted with full liquidated damages, the recovery shall be made on the basis of following percentages of value of items/goods and/ or service which the supplier/ selected bidder has failed to supply/ install/ complete.

Liquidated Damages Calculation :

1. If MSI fails to supply, install or maintain any or all of the goods as per the contract, within the time period(s) specified in the RFP Vol II, the Authority without prejudice to its other rights and remedies under the Contract, deduct from the Contract price, as liquidated damage per day of 0.02% of the value of remaining delivery/work per day.
2. The deduction shall not in any case exceed 10 % of the contract value.
3. The Authority may without prejudice to its right to effect recovery by any other method, deduct the amount of liquidated damages from any money belonging to MSI in its hands (which includes the Authority's right to claim such amount against MSI's Bank Guarantee) or which may become due to MSI. Any such recovery or liquidated damages shall not in any way relieve MSI from any of its obligations to complete the Work or from any other obligations and liabilities under the Contract.
4. Delay not attributable to MSI shall be considered for exclusion for the purpose of computing liquidated damages.
5. Fraction of a day in reckoning period of delay in supplies, successful installation and completion of work shall be eliminated, if it is less than half a day.

29. Indemnifications and Limitation of Liability:

- 29.1.** Subject to Clause 29.5 below, Implementation agency (the "Indemnifying Party") undertakes to indemnify, hold harmless the NMSCDCL (the "Indemnified Party") from and against all claims, liabilities, losses, expenses (including reasonable attorneys' fees), fines, penalties, taxes or damages (Collectively "Loss") on account of bodily injury, death or damage to tangible personal property arising in favor of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or willful default in performance or non-performance under this Agreement.
- 29.2.** If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, Indemnifying Party

will defend such claim at its expense and will pay any costs or damages, that may be finally awarded against Indemnified Party.

29.3. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by:

- a. Indemnified Party's misuse or modification of the Service;
- b. Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party;
- c. Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party;

29.4. However, if any service, information, direction, specification or materials provided by Indemnified Party or any third party contracted to it, is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either

- a. Procure the right for Indemnified Party to continue using it
- b. Replace it with a non-infringing equivalent
- c. Modify it to make it non-infringing

The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.

29.5. The indemnities set out in Clause 29 shall be subject to the following conditions:

- 29.5.1. The Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
- 29.5.2. The Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense;
- 29.5.3. If the Indemnifying Party does not assume full control over the Defense of a claim as provided in this Article, the Indemnifying Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses;
- 29.5.4. The Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
- 29.5.5. All settlements of claims subject to indemnification under this Clause will:
 - i. Be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and
 - ii. Include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement
- 29.5.6. The Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favor of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
- 29.5.7. The Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;

- 29.5.8. In the event that the Indemnifying Party is obligated to indemnify an Indemnified Party
- 29.5.9. pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and
- 29.5.10. If a Party makes a claim under the indemnity set out under Clause 28 above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).
- 29.6.** The aggregate liability of either Party (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for all claims in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event exceed one time the total contract value payable under this Agreement.
- 29.7.** In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) nor for any third party claims (other than those set-forth in Clause 29.1) even if it has been advised of their possible existence.
- 29.8.** The allocations of liability in this Clause 29 represent the agreed and bargained-for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

30. Ownership and Retention of Documents

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

31. Information Security

- 31.1.** IA shall not carry any written/printed document, layout diagrams, CD, hard disk, storage tapes, other storage devices or any other goods /material proprietary to NMSCDCL into / out of any location without written permission from the NMSCDCL.
- 31.2.** IA shall not destroy any unwanted documents, defective tapes/media present at any location on their own. All such documents, tapes/media shall be handed over to the NMSCDCL.
- 31.3.** All documentation and media at any location shall be properly identified, labeled and numbered by IA. IA shall keep track of all such items and provide a summary report of these items to the NMSCDCL whenever asked for.
- 31.4.** Access to NMSCDCL's data and systems, Internet facility by IA at any location shall be in accordance with the written permission by the NMSCDCL. The NMSCDCL shall allow IA to use facility in a limited manner subject to availability. It is the responsibility of IA to prepare and equip himself in order to meet the requirements.

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

32. Records of contract documents

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

33. Security and Safety

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

34. Confidentiality

- 34.1.** The NMSCDCL or its nominated agencies shall allow the Implementation agency to review and utilize highly confidential public records and the Implementation agency shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- 34.2.** Additionally, the Implementation agency shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- 34.3.** The NMSCDCL or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Implementation agency regarding any forbidden disclosure.

- 34.4.** For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:
- 34.4.1. Information already available in the public domain;
 - 34.4.2. Information which has been developed independently by the Implementation agency;
 - 34.4.3. Information which has been received from a third party who had the right to disclose the aforesaid information;
 - 34.4.4. Information which has been disclosed to the public pursuant to a court order
- 34.5.** To the extent the Implementation agency shares its confidential or proprietary information with the NMSCDCL for effective performance of the Services, the provisions of the Clause 35.1 to 35.3 shall apply mutatis mutandis on the NMSCDCL or its nominated agencies
- 34.6.** Any handover of the confidential information needs to be maintained in a list, both by NMSCDCL & IA, containing at the very minimum, the name of provider, recipient, date of generation of the data, date of handing over of data, mode of information, purpose and signatures of both parties.
- 34.7.** Notwithstanding anything to the contrary mentioned hereinabove, the Implementation agency shall have the right to share the Letter of Intent / work order provided to it by the NMSCDCL in relation to this Agreement, with its prospective NMSCDCLs solely for the purpose of and with the intent to evidence and support its work experience under this Agreement.

35. Events of Default by IA

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

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

- 35.8.** Where there has been an occurrence of such defaults inter alia as stated above, the NMSCDCL shall issue a notice of default to IA, setting out specific defaults / deviances / omissions / non-compliances / non-performances and providing a notice of thirty (30) days to enable such defaulting party to remedy the default committed.
- 35.9.** Where despite the issuance of a default notice to IA by the NMSCDCL, IA fails to remedy the default to the satisfaction of the NMSCDCL, the NMSCDCL may, where it deems fit, issue to the defaulting party another default notice or proceed to contract termination.

36. Termination

The NMSCDCL may, terminate this Contract in whole or in part by giving IA a prior 30 days written notice, indicating its intention to terminate the Contract under the following circumstances:

- 36.1.** Where the NMSCDCL is of the opinion that there has been such Event of Default on the part of IA / IA's Team which would make it proper and necessary to terminate this Contract and may include failure on the part of IA to respect any of its commitments with regard to any part of its obligations under its Bid, the RFP or under this Contract.
- 36.2.** Where it comes to the NMSCDCL's attention that IA (or IA's Team) is in a position of actual conflict of interest with the interests of the NMSCDCL, in relation to any of terms of IA's Bid, the RFP or this Contract.
- 36.3.** Where IA's ability to survive as an independent corporate entity is threatened or is lost owing to any reason whatsoever, including inter-alia the filing of any bankruptcy proceedings against IA, any failure by IA to pay any of its dues to its creditors, the institution of any winding up proceedings against IA or the happening of any such events that are adverse to the commercial viability of IA. In the event of the happening of any events of the above nature, the NMSCDCL shall reserve the right to take any steps as may necessary, to ensure the effective transition of the sites, pilot site to a successor agency, and to ensure business continuity
- 36.4.** Termination for Insolvency: The NMSCDCL may at any time terminate the Contract by giving written notice to IA, without compensation to IA, if IA becomes bankrupt or otherwise insolvent, provided that such termination shall not prejudice or affect any right of action or remedy which has accrued or shall accrue thereafter to the NMSCDCL.
- 36.5.** IA may, subject to approval by the NMSCDCL, terminate this Contract before the expiry of the term by giving the NMSCDCL a prior and written notice at least three (3) months in advance indicating its intention to terminate the Contract.
- 36.6.** Termination for Material Breach
- i. In the event that either Party believes that the other Party is in Material Breach of its obligations under this Agreement, such aggrieved Party may terminate this Agreement upon giving a one month's notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, the NMSCDCL or Implementation agency, as the case may be will have the option to terminate the Agreement.
 - ii. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events and the termination will become effective:
 - a. If the Implementation agency is not able to deliver the services as per the SLAs defined in RFP which translates into Material Breach, then the NMSCDCL may serve a thirty (30) days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the NMSCDCL will have the option to terminate this Agreement. Further, the NMSCDCL may after affording a reasonable opportunity to the Implementation agency to explain the circumstances leading to such a breach.

- b. If there is a Material Breach by the NMSCDCL or its nominated agencies which results in not providing support for effecting data migration or not providing the certification of User Acceptance then the Implementation agency will give a one month's notice for curing the Material Breach to the NMSCDCL. After the expiry of such notice period, the Implementation agency will have the option to terminate the Agreement.
- iii. The NMSCDCL may by giving a one month's written notice, terminate this Agreement if a change of control of the IA has taken place. For the purposes of this Clause, in the case of the IA, change of control shall mean the events stated in Clause 12.26, and such notice shall become effective at the end of the notice period as set out in Clause 12.26.
- iv. In the event that IA undergoes such a change of control, NMSCDCL may, as an alternative to termination, require a full Performance Guarantee for the obligations of IA by a guarantor acceptable to NMSCDCL or its nominated agencies. If such a guarantee is not furnished within thirty (30) days of NMSCDCL's demand, the NMSCDCL may exercise its right to terminate this Agreement in accordance with this Clause by giving fifteen (15) days further written notice to the IA.
- v. The termination provisions set out in this Clause shall apply mutatis mutandis to the SLA

36.7. Termination for Convenience

- i. The NMSCDCL may at any time terminate the Contract for any reason by giving the IA a notice of 30 days cure period for termination that refers to this clause.
- ii. Upon receipt of the notice of termination under this clause, the IA shall either as soon as reasonably practical or upon the date specified in the notice of termination:
 - a) cease all further work, except for such work as the NMSCDCL may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
 - b) terminate all subcontracts, except those to be assigned to the NMSCDCL pursuant to Clause 37.7 (ii) (d) (ii) below;
 - c) remove all IA's Equipment from the site, repatriate the IA's personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
 - d) in addition, the IA shall:
 - i. Deliver to the NMSCDCL the parts of the System executed by the IA up to the date of termination;
 - ii. To the extent legally possible, assign to the NMSCDCL all right, title, and benefit of the IA to the System, or Subsystem, as at the date of termination, and, as may be required by the NMSCDCL,
 - iii. Deliver to the NMSCDCL all non-proprietary drawings, specifications, and other documents prepared by the IA as of the date of termination in connection with the System.

36.8. Termination of this Agreement due to bankruptcy of Implementing Agency

The NMSCDCL may serve written notice on Implementation agency at any time to terminate this Agreement with immediate effect in the event that the Implementation agency reporting an apprehension of bankruptcy to the NMSCDCL or its nominated agencies.

37. Effects of Termination

- i. In the event that NMSCDCL terminates this Agreement pursuant to failure on the part of the Implementation agency to comply with the conditions as contained in this Clause and

- depending on the event of default, Performance Guarantee furnished by Implementation agency may be forfeited.
- ii. Upon termination of this Agreement, the Parties will comply with the Exit Management section set out in Clause 26 of this Agreement.
 - iii. In the event that NMSCDCL or the Implementation agency terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as Payment Schedule section of this Agreement.
 - iv. NMSCDCL agrees to pay Implementation agency for
 - a. all charges for Services Implementation agency provides and any Deliverables and/or system (or part thereof) Implementation Agency delivers through termination and any charges at the tendered rate, for extension period beyond termination as decided by the Nodal Agency, and
 - b. reimbursable expenses Implementation agency incurs through termination.
 - v. If NMSCDCL terminates without cause, NMSCDCL also agrees to pay any applicable adjustment expenses to Implementation agency incurs as a result of such termination (which Implementation agency will take reasonable steps to mitigate).
 - vi. In the event of termination of the Contract under clause 37.7, the NMSCDCL shall pay to the IA the following amounts:
 - a. The Contract Price, properly attributable to the parts of the System executed by the IA as of the date of termination;
 - b. The costs reasonably incurred by the IA in the removal of the IA's Equipment from the Site and in the repatriation of the IA's
 - c. Costs incurred by the IA in protecting the System and leaving the site in a clean and safe condition pursuant to clause 37.7; and
 - d. The cost of satisfying all other obligations, commitments, and claims that the IA may in good faith have undertaken with third parties in connection with the Contract and that are not covered by clause 38 (iv) above.

38. Change Control Note (CCN)

- 38.1.** This applies to and describes the procedure to be followed in the event of any proposed change to contract, site Implementation, and Service levels. Such change shall include, but shall not be limited to, changes in the scope of services or products provided by IA and changes to the terms of payment.
- 38.2.** Change requests in respect of the contract, the site implementation, or the Service levels shall emanate from the Parties' representative who shall be responsible for obtaining approval for the change and who shall act as its sponsor throughout the Change Control Process and shall complete Part A of the CCN (Annex I of this Agreement). CCNs shall be presented to the other Party's representative who shall acknowledge receipt by signature of the authorized representative of the NMSCDCL.
- 38.3.** IA and the NMSCDCL while preparing the CCN, shall consider the change in the context of whether the change is beyond the scope of Services including ancillary and concomitant services required
- 38.4.** The CCN shall be applicable for the items which are beyond the stated/implied scope of work as per the RFP document.
- 38.5.** Additional payment due to change in location shall be considered only in those cases where any such change has been made after approval, by the NMSCDCL, of the detailed locations plan prepared by the IA based on actual ground survey and such change results in additional material and or efforts/labour cost.
- 38.6. Quotation**

- 38.6.1. IA shall assess the CCN and complete Part B of the CCN. In completing Part B of the CCN, IA shall provide as a minimum:
- a description of the change;
 - a list of deliverables required for implementing the change;
 - a timetable for implementation;
 - an estimate of any proposed change;
 - any relevant acceptance criteria;
 - an assessment of the value of the proposed change;
 - material evidence to prove that the proposed change is not already covered within the scope of the RFP, Contract and Service Levels.
- 38.6.2. Prior to submission of the completed CCN to the NMSCDCL or its nominated agencies, IA shall undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, IA shall consider the materiality of the proposed change in the context of the Contract, the sites, Service levels affected by the change and the total effect that may arise from implementation of the change.
- 38.6.3. Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided IA meets the obligations as set in the CCN. In the event IA is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party shall be borne by IA. Change requests and CCNs shall be reported monthly to each Party's representative who shall prioritize and review progress.

39. Project Implementation Timelines, Deliverables and Payment Terms

As per RFP Volume II or subsequent corrigendum/addendums

39.1. Project Deliverables, Milestones and Timelines

As per RFP Volume II or subsequent corrigendum/addendums

39.2. Payment Terms and Schedule

As per RFP Volume II or subsequent corrigendum/addendums

40. Miscellaneous

40.1. Personnel

- a) The personnel assigned by Implementation agency to perform the Services shall be employees of Implementation agency, and under no circumstances shall such personnel be considered employees of NMSCDCL or its nominated agencies. The Implementation agency shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.
- b) The Implementation agency shall use its best efforts to ensure that sufficient Implementation agency personnel are assigned to perform the Services and that such personnel have appropriate qualifications to perform the Services. After discussion with Implementation

agency, NMSCDCL or its nominated agencies shall have the right to require the removal or replacement of any Implementation agency personnel performing work under this Agreement based on bonafide reasons. In the event that NMSCDCL or its nominated agencies requests that any Implementation agency personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.

- c) In the event that the NMSCDCL and Implementation agency identify any personnel of Implementation agency as "Key Personnel", then the Implementation agency shall not remove such personnel from the Project without the prior written consent of NMSCDCL or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.
- d) Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of Implementation agency to freely assign or reassign its employees; provided that Implementation agency shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. NMSCDCL or its nominated agencies shall have the right to review and approve Implementation agency's plan for any such knowledge transfer. Implementation agency shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.
- e) Each Party shall be responsible for the performance of all its obligations under this Agreement or the SLA as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- f) Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.

40.2. Independent Contractor

Nothing in this Agreement or the SLA shall be construed as establishing or implying any partnership or joint venture between the Parties to this Agreement or the SLA and, except as expressly stated in this Agreement or the SLA, nothing in this Agreement or the SLA shall be deemed to constitute any Parties as the agent of any other Party or authorizes either Party to:

- a) Incur any expenses on behalf of the other Party;
- b) Enter into any engagement or make any representation or warranty on behalf of the other Party;
- c) Pledge the credit of or otherwise bind or oblige the other Party; or
- d) Commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent

40.3. Assignment

- a) All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the NMSCDCL and their respective successors and permitted assigns
- b) The Implementation agency shall not be permitted to assign its rights and obligations under this Agreement to any third party
- c) The NMSCDCL may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Implementation agency shall be a party to such novation, to any third party contracted to provide outsourced services to NMSCDCL or any of its nominees

40.4. Trademarks, Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that Implementation agency may, upon completion, use the Project as a reference for credential purpose. Except as required by law or the rules and regulations of each stock exchange upon which the securities of one of the Parties is listed, neither Party shall publish or permit to be published either along or in conjunction with any other person any press release, information, article, photograph, illustration or any other material of whatever kind relating to this Agreement, the SLA or the business of the Parties without prior reference to and approval in writing from the other Party, such approval not to be unreasonably withheld or delayed provided however that Implementation agency may include NMSCDCL or its client lists for reference to third parties subject to the prior written consent of NMSCDCL not to be unreasonably withheld or delayed. Such approval shall apply to each specific case and relate only to that case.

40.5. Notices

- a) Any notice or other document which may be given by either Party under this Agreement or under the SLA shall be given in writing in person or by pre-paid recorded delivery post, email or by facsimile transmission
- b) In relation to a notice given under this Agreement, any such notice or other document shall be addressed to the other Party's principal or registered office address as set out below:

NMSCDCL Address: *Nashik Smart City Development Corporation Limited (NMSCDCL), Loknete Panditrao Khaire Panchavati Divisional Office, 4th Floor Makhmalabad Naka, Panchavati, Nashik 422003.*

Email: ceo@nashiksmartcity.in

Implementation agency:

Tel:

Fax:

Email:

Contact:

- c) In relation to a notice given under the MSA / SLA, a Party shall specify the Parties' address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause
- d) Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above or if sent by fax or e-mail, provided the copy fax / e-mail is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and seven (7) days from the date of posting (if by letter)
- e) Either Party to this Agreement or to the SLA may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date

40.6. Variations and Further Assurance

- a) No amendment, variation or other change to this Agreement or the SLA shall be valid unless authorized in accordance with the change control procedure as set out in the Change Control

Schedule set out in Annex II of this Agreement. Such amendment shall be made in writing and signed by the duly authorized representatives of the Parties to this Agreement or the SLA.

- b) Each Party to this Agreement or the SLA agrees to enter into or execute, without limitation, whatever other agreement, document, consent and waiver and to do all other things which shall or may be reasonably required to complete and deliver the obligations set out in this Agreement or the SLA.

40.7. Severability and Waiver

- a) If any provision of this Agreement or the SLA, 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 SLA 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.
- b) No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the SLA of any right, remedy or provision of this Agreement or the SLA shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision.

40.8. Compliance with Applicable Law

Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to its business like the Implementation Agency as an information technology service provider) at all times comply with all laws, rules and regulations of government and other bodies having jurisdiction over the area in which the Services are undertaken provided that changes in such laws, rules and regulations which result in a change to the Services shall be dealt with in accordance with the Change Control Schedule set out in Annexure-II of this Agreement.

40.9. Professional Fees

All expenses incurred by or on behalf of each Party to this Agreement and the SLA, including all fees of agents, legal advisors, accountants and actuaries employed by either of the Parties in connection with the negotiation, preparation and execution of this Agreement or the SLA shall be borne solely by the Party which incurred them.

40.10. Ethics

The Implementation agency represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of NMSCDCL or its nominated agencies in connection with this agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of NMSCDCL standard policies and may result in cancellation of this Agreement, or the SLA.

40.11. Entire Agreement

This Agreement and the SLA with all schedules & annexures appended thereto and the contents and specifications of the RFP constitute the entire agreement between the Parties with respect to their subject matter, and as to all other representations, understandings or agreements which are not fully expressed herein, provided that nothing in this Clause shall be interpreted so as to exclude any liability in respect of fraudulent misrepresentation.

40.12. Amendment

Any amendment to this Agreement shall be made in accordance with the Change Control Schedule set out in Annexure-II of this Agreement by mutual written consent of all the Parties.

B. SPECIAL CONDITIONS OF CONTRACT (SCC)

- a) All material and quality testing activities shall be carried out by the Implementation Agency at no additional cost to the client, on a sample basis, as per the project requirements and directions of the client. This includes, but is not limited to, the following tests: basic tests on cement (standard consistency, fineness, specific gravity, setting time—initial and final, compressive strength, and soundness), basic tests on coarse and fine aggregates (water absorption, specific gravity, impact value, crushing value, sieve analysis, flakiness/elongation index, fineness modulus, and silt & clay content), concrete tests (compressive strength of cement concrete cubes, mix design including all tests on basic materials, and flexural strength of concrete beams), concrete paving block tests (compressive strength and water absorption for a set of 8 blocks), and bitumen-related tests (penetration, softening point, flash & fire point, specific gravity, viscosity, extraction test, sieve analysis of bituminous mix, Marshall stability and flow measurement, job mix design for BM, DBM & BC with all aggregate tests excluding bitumen, and density test of bituminous core). All testing shall be conducted through NABL-accredited laboratories or as per the instructions issued by the client.
- b) Factory Acceptance Test (FAT) shall be conducted for passive line items including, but not limited to, OFC, duct, DWC pipes, LIU, GI pipes, etc., in the presence of authorized representatives of NMSCDCL. The materials shall be dispatched to the project site only after successful verification by the designated representatives. All expenses related to the conduct of FAT—including travel, accommodation, visa/documentation fees, permissions, and any other incidental costs—shall be borne entirely by the Implementation Agency.
- c) Site Acceptance Test (SAT) shall be conducted and certified by NMSCDCL to ensure that only verified and certified materials, infrastructure, and systems are accepted at the project site.
- d) Third-Party Inspection and/or Audit may be undertaken at any stage of the project execution by an agency or committee appointed on behalf of NMSCDCL. All costs and charges associated with such inspections or audits shall be borne entirely by the Implementation Agency.
- e) Although the proposed OFC length/route have been initially finalized and confirmed by NMSCDCL, the authority reserves the right to modify the length/ route based on actual site feasibility during the contract period. The final Bill of Quantities (BOQ) shall be determined upon acceptance of the detailed site survey report by NMSCDCL.
- f) NMSCDCL reserves the right to blacklist the Bidder at any stage during the contract period in the event of non-performance, failure to fulfil contractual obligations within a reasonable timeframe or any other act deemed detrimental to the project. Such action may be taken without prejudice to other legal remedies available to NMSCDCL under the contract.
- g) Although the proposed OFC length/ route initially finalized by NMSCDCL, the authority reserves the right to revise or modify the same based on actual site conditions and feasibility during the contract period. The final Bill of Quantities (BOQ) shall be determined only after the submission and subsequent acceptance/approval of the detailed site survey report by the Implementation Agency.
- h) Implementation Agency shall be responsible for obtaining the necessary Right of Way (RoW) permissions from the Purchaser or other relevant authorities, at no additional cost, limited to the approved Network Route Plan. Prior to commencing any excavation activities—including duct laying, fiber blowing, and manhole/handhole construction—the Implementation Agency shall notify all concerned authorities and secure all required No Objection Certificates (NOCs) or permissions.

- i) Implementation Agency shall also be solely responsible for obtaining RoW permissions, including fee submissions, from external agencies such as NHAI, PWD, etc., wherever applicable. NMSCDCL shall extend necessary support in facilitating such permissions
- j) The ownership of the entire asset, system, and infrastructure established or created under this project shall rest exclusively with NMSCDCL. NMSCDCL shall retain full and sole rights over all project-related assets, infrastructure, and systems both during the contract period and thereafter, without any limitation or claim from the Implementation Agency or any third party.
- k) The Implementation Agency shall indemnify, defend, and hold harmless NMSCDCL, its officers, employees, and representatives from and against any and all claims, losses, damages, liabilities, penalties, costs, and expenses (including legal fees) arising out of or in connection with any acts of commission or omission by the Implementation Agency, its personnel, subcontractors, or agents during the execution of the project. This includes, but is not limited to, any casualty or personal injury, damage to property, environmental harm, breach of statutory or legal obligations, or violation of any applicable laws or regulations. The obligation to indemnify shall survive the expiration or termination of the contract.
- l) The Implementation Agency shall exercise utmost caution during all excavation activities to prevent any damage to existing underground utilities. This includes, but is not limited to, collecting and reviewing as-built drawings of existing utilities, analyzing survey data for utility locations, and conducting thorough visual inspections of the site prior to execution. In the event of any damage to existing utilities, the Implementation Agency shall be solely responsible for undertaking immediate repairs at its own cost and shall fully indemnify the Owner/Employer against any resulting losses, liabilities, or disruptions
- m) Kindly note that the indicative/estimated quantity provided in the RFP (if any) would be used for evaluation purposes; however the payment would be done on actual usage basis.
- n) The Implementation Agency shall provide two (2) new 7-seater air-conditioned vehicles, each with an estimated monthly running of 3,000 kilometres, including all associated costs for operation, maintenance, fuel, driver, and insurance, for the exclusive use of NMSCDCL throughout the duration of the Contract, until the completion of the Operation and Maintenance (O&M) Period. The vehicles shall be made available within one (1) month from the date of issuance of the Work Order. In the event of failure to provide the vehicles within the stipulated timeframe, a penalty of ₹2,000/- (Rupees Two Thousand only) per vehicle per day shall be imposed by NMSCDCL for each day of non-availability.
- o) The Implementation Agency shall deploy manpower with the requisite skill sets to effectively address and resolve on-site challenges within the prescribed timeframes. This shall include, but not be limited to, the restoration of mechanical damages (e.g., pipeline disruptions and related infrastructure), electrical faults, plumbing issues, and other site-related damages that may arise during the execution and O&M of the project.

41. Reporting Procedures

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

42. Issue Management Procedures

DELETED

43. Service Level Change Control

43.1. General

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

- a. A process for negotiating changes to the Service Levels
 - b. An issue management process for documenting and resolving particularly difficult issues.
 - c. NMSCDCL and IA management escalation process to be used in the event that an issue is not being resolved in a timely manner by the lowest possible level of management.
- Any changes to the levels of service provided during the term of this Contract shall be requested, documented and negotiated in good faith by both parties. Either party can request a change.

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

43.3. Version Control / Release Management: All negotiated changes shall require changing the version control number. As appropriate, minor changes may be accumulated for periodic release or for release when a critical threshold of change has occurred.

44. Governance Law and Dispute Resolution

44.1. This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules.

44.2. Mutual Settlement : If any dispute of any kind whatsoever arises between NMSCDCL and the Contractor in connection the performance of the Works under his Contract whether during the progress of Works or after its completion or whether before or after termination, abandonment or breach of the Contract, the Parties shall seek to resolve any such dispute or difference by mutual consent through amicable settlement.

44.3. Settlement by CEO, NMSCDCL :

43.3.1 If the Parties fail to resolve, such a dispute or difference by mutual consent, within 30 (Thirty) days of its arising, then the dispute in the first instance shall be referred to

the Chief Executive Officer (CEO), NMSCDCL who shall provide its written decision within a period of 30(Thirty) days of the dispute being referred to it by either Party.

- 43.3.2 In the event that the CEO, NMSCDCL fails to provide its decision within 30(Thirty) days after being requested as aforesaid, or in the event that either NMSCDCL or the Contractor is dissatisfied with any such decision, as the case may be, either Party may, within 30 (Thirty) days after the date on which such decision is required to be provided in accordance with Clause 43.3.1 above, or the date the decision is provided by the CEO, NMSCDCL, as the case may be refer the matter in dispute to Honorable civil court of Nashik in accordance with Clause 43.4 of the SCC.

44.4. Disputes Resolution

- 43.4.1 Dispute (if any) raised out of contract is subject to jurisdiction of the Courts in Nashik only.
- 43.4.2 Notwithstanding anything contained in this Clause 43 of the SCC, the Parties shall continue to perform their respective obligations under the Contract.

- 44.5.** Risk of Loss: For each hardware item, Implementation agency bears the risk of loss or damage till the contractual period.

45. Legal Jurisdiction

All legal disputes between the parties shall be subject to the exclusive jurisdiction of the Courts in Nashik only.

C. SERVICE LEVELS

As per RFP Volume II

Proforma A – Detailed Price Schedule

As per submitted and accepted BoQ (including Corrigendum)

ANNEXURES

A. Annexure I: Change Control Note

Change Control Note		CCN Number:
Part A: Initiation		
Title:		
Originator:		
Sponsor:		
Date of Initiation:		
Details of Proposed Change		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2 and A3 etc.)		
Authorized by NMSCDCL	Date:	
Name:		
Signature:		
Received by the Bidder	Date:	
Name:		
Signature:		
Change Control Note		CCN Number:
Part B : Evaluation		
(Identify any attachments as B1, B2, and B3 etc.)		
Changes to Services, payment terms, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue.		
Brief Description of Solution:		
Impact:		
Deliverables:		
Timetable:		
Charges for Implementation: (including a schedule of payments)		
Other Relevant Information: (including value-added and acceptance criteria)		
Authorized by the Bidder	Date:	

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

B. Annexure II: Change Control Schedule

This Schedule describes the procedure to be followed in the event of any proposed change to the Master Service Agreement ("MSA"), Project Implementation Phase, SLA and Scope of Work and Functional Requirement Specifications. Such change shall include, but shall not be limited to, changes in the scope of services provided by the Implementation agency and changes to the terms of payment as stated in the Terms of Payment Schedule.

The NMSCDCL and IA recognize that frequent change is an inevitable part of delivering services and that a significant element of this change can be accomplished by re-organizing processes and responsibilities without a material effect on the cost. The IA will endeavor, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and NMSCDCL or its nominated agencies will work with the Implementation agency to ensure that all changes are discussed and managed in a constructive manner. This Change Control Schedule sets out the provisions, which will apply to all the changes to this agreement and other documents except for the changes in SLAs for which a separate process has been laid out in the SLA.

This Change Control Schedule sets out the provisions, which will apply to changes to the MSA.

CHANGE MANAGEMENT PROCESS

a) CHANGE CONTROL NOTE ("CCN")

- i. Change requests in respect of the MSA, the Project Implementation, the operation, the SLA or Scope of work and Functional Requirement specifications will emanate from the Parties' respective Project Manager who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached as Annex I hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- ii. The IA and the NMSCDCL or its nominated agencies, during the Project Implementation Phase and the NMSCDCL or its nominated agencies during the Operations and Management Phase and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the RFP and is suggested and applicable only after the testing, commissioning and certification of the Pilot Phase and the Project Implementation Phase as set out in this Agreement.
- iii. It is hereby also clarified that any change of request suggested beyond 25% of the value of this Project will be beyond the scope of the change control process and will be considered as the subject matter for a separate bid process and a separate contract. It is hereby clarified that the 25% of the value of the Project as stated in herein above is calculated on the basis of bid value submitted by the Implementation agency and accepted by the NMSCDCL or its nominated agencies or as decided and approved by NMSCDCL or its Nominated Agencies. For arriving at the cost / rate for change upto 25% of the project value, the payment terms and relevant rates as specified in Annex III shall apply.

b) Quotation

- i. The IA shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN the IA shall provide as a minimum:

- a) a description of the change
 - b) a list of deliverables required for implementing the change;
 - c) a time table for implementation;
 - d) an estimate of any proposed change
 - e) any relevant acceptance criteria
 - f) an assessment of the value of the proposed change;
 - g) material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work
- ii. Prior to submission of the completed CCN to the NMSCDCL, or its nominated agencies, the Service Provider will undertake its own internal review of the proposal and obtain all necessary internal approvals.
 - iii. As a part of this internal review process, the IA shall consider the materiality of the proposed change in the context of the MSA and the Project Implementation affected by the change and the total effect that may arise from implementation of the change

c) Costs

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the IA meets the obligations as set in the CCN. In case of recertification due to proposed changes, required cost will be borne by the party that initiated the change. In the event the IA is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party will be borne by the IA.

d) Obligations

The IA shall be obliged to implement any proposed changes once approval in accordance with above provisions has been given, with effect from the date agreed for implementation and within an agreed timeframe. IA will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact. Any costs associated with changes to Software specifications which cannot be arrived at on the basis of the IA's proposal shall be mutually agreed to between the IA and the NMSCDCL.

C. Annex III: Form of Agreement

This Contract is made at Nashik, Maharashtra, on this _____ day of _____, 2025,

BETWEEN

Nashik Municipal Smart City Development Corporation Limited (NMSCDCL), a company incorporated under the companies act 2013, having its registered office at C/O Nashik Municipal Corporation, Rajiv Gandhi Bhavan, Purandare Colony, Sharanpur, Nashik – 422002 and having its office at Loknete Panditrao Khaire Panchavati Divisional Office 4th Floor Makhmalabad Naka Panchavati, Nashik 422003, Maharashtra and represented by the Chief Executive Officer, NMSCDCL in his/her executive capacity (hereinafter referred to as “**NMSCDCL**” or the “**Authority**”, which expression shall include its successors and assigns) of the **FIRST PART**;

AND

<**NAME OF IMPLEMENTATION AGENCY**>, a company organized and existing under the Section of 2(20) of Companies Act, 2013, having its registered office at <**ADDRESS OF IMPLEMENTATION AGENCY**>, India hereinafter referred to as “**Implementation Agency**” or “**IA**”, (which expression unless repugnant to the context therein, shall include its successors, administrators, executors and permitted assignees), of the **SECOND PART**.

WHEREAS IA has the required professional skills, personnel and technical resources, and agreed to provide the Services on the terms and conditions set forth in this Contract and RFP (Volume I & II) (hereinafter called “works”) mentioned, enumerated or referred to in certain Contract conditions, specification, scope of work, other Sections of the RFP, covering letter and schedule of prices which, for the purpose of identification, have been signed by the authorized representative on behalf of <**NAME OF IMPLEMENTATION AGENCY**> (IA) and NMSCDCL and all of which are deemed to form part of the Contract as though separately set out herein and are included in the expression “Contract” whenever herein used.

NOW, THEREFORE, IT IS HEREBY AGREED between the parties as follows:

- e. The NMSCDCL has accepted the tender of IA for the provision and execution of the said works for the sum of INR _____ (Rupees _____), including all taxes and levies upon the terms laid out in this RFP. (as per Price Schedule attached at Proforma A)
- f. IA hereby agrees to provide Services to NMSCDCL, conforming to the specified Service Levels and conditions set out hereunder.
- g. The following documents attached hereto shall be deemed to form an integral part of this Contract:

Complete Request for Proposal (RFP) document	<i>Volumes I, II and III of the RFP and corrigendum, addendum and clarifications, if any</i>
Price Schedule	<i>Detailed Price Schedule – Proforma A</i>
NMSCDCL SOP	<i>Standard Operating Procedure / Policy Guidelines issued by NMSCDCL from time to time, will have to be adhered to by the IA</i>

- h. The mutual rights and obligations of the “NMSCDCL” and IA shall be as set forth in the Contract, in particular:
 - IA shall carry out and complete the Services in accordance with the provisions of the Contract
 - The “NMSCDCL” shall make payments to IA in accordance with the provisions of the Contract

NOW THESE PRESENTS WITNESS and the parties hereto hereby agree and declare as follows, that is to say, in consideration of the payments to be made to IA by NMSCDCL as hereinafter mentioned, IA shall deliver the services for the said works and shall do and perform all other works and things in the Contract mentioned or described or which are implied there from or there in respectively or may be reasonably necessary for the completion of the said works within and at the times and in the manner and subject to the terms, conditions and stipulations mentioned in the said Contract.

AND in consideration of services and milestones, NMSCDCL shall pay to IA the said sum of INR ____ (Rupees _____), including all taxes and levies or such other sums as may become payable to IA under the provisions of this Contract, such payments to be made at such time and in such manner as is provided by the Contract.

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

Signed
Name : _____
Designation : _____

Date :

Place :

in the presence of :

Signed
Name : _____
Designation : _____
Date : _____
Place : _____

Signed
Name : _____
Designation : _____

Date :

Place :

in the presence of :

Signed
Name : _____
Designation : _____
Date : _____
Place : _____

D. Annex IV: Governance Schedule

DELETED

E. Annex V: Audit, Access and Reporting

1 PURPOSE

This Schedule details the audit, access and reporting rights and obligations of the NMSCDCL or its nominated agency and the Implementation agency.

2 AUDIT NOTICE AND TIMING

1. The NMSCDCL or its nominated agency and thereafter during the operation Phase, the NMSCDCL or its nominated agency shall conduct routine audits.
2. The frequency of audits shall be as and when required, provided always that the NMSCDCL or its nominated agency shall endeavor to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Implementation agency.

3 ACCESS

1. The Implementation agency shall provide to the NMSCDCL or its nominated agency reasonable access to employees, IAs, agents and third party facilities as detailed in the RFP, documents, records, project locations, sites and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The NMSCDCL or its nominated agency shall have the right to copy and retain copies of any relevant records. The Implementation agency shall make every reasonable effort to co-operate with them.

4 AUDIT RIGHTS

1. The NMSCDCL or its nominated agency shall have the right to audit and inspect IAs, agents and third party facilities (as detailed in the RFP), server room, documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:
 - 1.1. The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of NMSCDCL and documentation related thereto;
 - 1.2. That the actual level of performance of the services is the same as specified in the SLA;
 - 1.3. That the Implementation agency has complied with the relevant technical standards, and has adequate internal controls in place; and
 - 1.4. The compliance of the Implementation agency with any other obligation under the MSA and SLA.
 - 1.5. Security audit and implementation audit (if applicable) of the system shall be done, the cost of which shall be borne by the Implementation agency.
 - 1.6. For the avoidance of doubt the audit rights under this Schedule shall not include access to the Implementation agency's profit margins or overheads, any confidential information relating to the Implementation agency' employees, or (iii) minutes of its internal Board or Board committee meetings including internal audit, or (iv) such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the MSA.

5 AUDIT RIGHTS OF SUB-CONTRACTORS, IAs AND AGENTS

1. **REPORTING:** The Implementation agency will provide monthly reports to the NMSCDCL or its nominated agency regarding any specific aspects of the Project and in context of the audit and access information as required by the NMSCDCL or its nominated agency.

6 ACTION AND REVIEW

1. Any change or amendment to the systems and procedures of the Implementation agency, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
2. Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the NMSCDCL or its nominated agency and the Implementation agency Project Manager who shall determine what action shall be taken in respect of such discrepancies in accordance with the terms of the MSA.

7 RECORDS AND INFORMATION

For the purposes of audit in accordance with this Schedule, the Implementation agency shall maintain true and accurate records in connection with the provision of the services and the Implementation agency shall handover all the relevant records and documents upon the termination or expiry of the MSA.