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Agreement/ KFON/2018-2019/001

Master Service Agreement (MSA)

This Master Services AGREEMENT (hereinafter the "Agreement") is made at Thiruvananthapuram, Kerala, on 9th day of March 2019.

BETWEEN

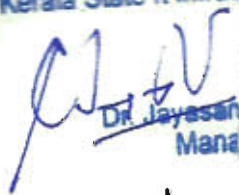
Kerala State Information Technology Infrastructure Limited(KSITIL) on behalf of M/s Kerala Fibre Optic Network Ltd., a company registered under the Companies Act, 2013, having its registered office at TC 14/196/2, Chandrasekharan Nair Stadium, Palayam, Vikas Bhavan P.O., Thiruvananthapuram, Kerala -695033 hereinafter referred to as "Authority" (which expression unless repugnant to the context therein shall include its administrator and permitted assignees) of the FIRST PART;

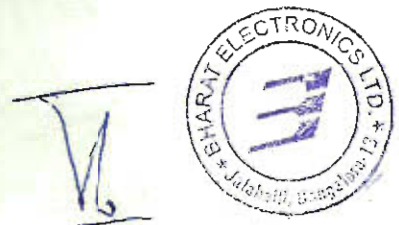
AND

Bharat Electronics Limited a company registered under the Companies Act, 1956, having its registered office at Nagavara, Outer Ring Road, Bengaluru 560045, hereinafter referred to as "System Integrator" or "SI", (which expression unless repugnant to the context therein, shall include its successors, administrators, executors and permitted assignees), of the SECOND PART.

And whereas Authority published the Tender vide e-tender id 2018_KSITI_209610_1 to seek services of a reputed firm as a System Integrator for Implementation of Kerala Fibre Optic Network and Reliable Communication & Data Acquisition Network.

For Kerala State It Inirasturcture Ltd.


Dr. Jayasankar Prasad.c
Managing Director



G.S.N. MURTHY
AGM (MKTG & D&E)
HLS & SCB BEL

NO: 1215/6.3.2019
Value Rs. 25000/- issued to
Bharat Electronics Ltd
Jalahalli, P.O
Bengaluru - 560045


K. SATHEESAN NAIR





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And whereas M/s. Bharat Electronics limited has submitted its proposal to Implementation of Kerala Fibre Optic Network and Reliable Communication & Data Acquisition Network;

AND whereas Authority has selected M/s Bharat Electronics Limited as Successful Bidder on the basis of the proposal submitted in response to the Tender and issued Letter of Intent vide Letter No. KSITIL/KFON/MD/19/2242 dated 18th Feb 2019 to the Successful Bidder who in turn signed and returned the acceptance of Letter of Intent vide Letter No. 1142/Mktg./HLS&SCB/KFON dated 23rd February 2019.

And whereas Authority and M/s. Bharat Electronics Limited have decided to enter into this Agreement to govern their mutual rights and obligations with respect to provision of goods and services and implementation of the Project on the terms and conditions stipulated hereinafter.

NOW, THEREFORE, in consideration of the premises covenants and promises contained herein and other good and valuable considerations, the receipt and adequacy of which is hereby acknowledged, the parties intending to be bound legally, IT IS HEREBY AGREED between the Parties as follows:

1. Definitions

Terms and expressions used in this Agreement shall have the meanings set out herein below. Other terms used in this Agreement are defined where they are used and have the meanings there indicated. Unless otherwise specifically defined, those terms, acronyms and phrases in this Agreement that are utilized in the information technology services industry or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context.

- a. "Authority" means Kerala State Information Technology Infrastructure Limited(KSITIL) on behalf of M/s Kerala Fibre Optic Network Ltd represented by the Managing Director, Kerala State Information Technology Infrastructure Limited;

For Kerala State It Infrastructure Ltd.

[Signature]
Dr. Jayasankar Prasad.c.
Managing Director



[Signature]

G.S.N. MURTHY
AGM (MKTG & Dev
HLS & SCB BEI



No: 1218/6.3.2019
Value Rs. 25000/- issued to
Bharat Electronics Ltd
Jalahalli P. O
Bangalore - 56004

[Signature]
PORT VENDOR
K. RATHEESAN NAIR






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- b. "Contract" or "Agreement" means this Master Services Agreement entered into between Authority and the System Integrator including all attachments, schedules, annexure thereto and all documents incorporated by reference therein and all amendments, corrigendum /corrigenda, changes thereto;
- c. "System Integrator" means M/s Bharat Electronics Limited interchangeably referred to as "SI" in the contract; and "Tender" or "RFP" means the Tender or RFP published by Managing Director, Kerala State IT Infrastructure Ltd., on behalf of Kerala Fibre Optic Network Ltd. (e-tender id 2018_KSITI_209610_1 dated: 14/06/2018) and the subsequent Corrigenda/Clarifications issued.
- d. "Go Live" date means the day after the date on which the proposed solution becomes operational after successful conclusion of all acceptance tests to the satisfaction of Authority and the Authority has issued a Go -Live certificate.
- e. "Deliverable" means goods, services, software, applications, feeds, analytics, information and all other products, infrastructure and services etc. to be delivered by the System Integrator in pursuance of the Agreement as defined more elaborately in the RFP and includes any action/ output generated by the SI while discharging its contractual obligations.
- f. "As sets" refer to all the hardware/software/network or any other information technology infrastructure components/data/documentations/manuals/catalogues/brochures/Deliverables used for the Project and or any other facilities leased/owned/operated by the System Integrator or by the Authority, exclusively in terms of ensuring their usability for the delivery of the Deliverables/Services as per this Agreement;
- g. Control means the terms control as defined in section 2 (27) of the Companies Act, 2013
- h. Effective Date shall have the same meaning ascribed to it in Clause 4;
- i. Force Majeure shall have the same meaning ascribed to it in Clause 21;

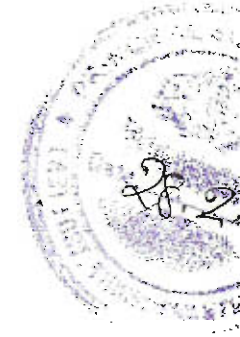
For Kerala State It Infrastructure Ltd.

 Dr. Jayasankar Prasad.c
 Managing Director




 G.S.N. MURTHY
 AGM (MKTG & D&E
 HILS & SCB BEI.

NO: 1218/6.3.2019
 Value Rs. 25000/- Issued to
 Bharat Electronics Ltd
 Talahalli, P.O.
 Bangalore. 560013


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 K RATHEESAN NAIR





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Intellectual Property Rights means all copyright, patent, trademarks, trade secrets and all other intellectual property rights including all rights in written designs, rights in databases and bespoke software/pre-existing work including its up-gradation and compilation rights (whether or not any of these are registered and including application for registration);

- k. Parties means Authority and the System Integrator (and consortium members, if any) for the purposes of this Agreement and "Party" shall be interpreted accordingly;
- l. Performance Security means the performance bank guarantee provided by SI from any Scheduled Commercial Bank/Nationalized Bank in favor of the Authority.
- m. Timelines means the timelines for performance of scope of work as described in the Agreement and the RFP;
- n. Services means the services delivered or to be delivered by the System Integrator under this Agreement using the tangible and intangible assets created, procured, installed, managed and operated by the System Integrator including the tools of information and communications technology and includes but is not limited to the list of services specified in the RFP;
- o. Service Level means the level of service and other performance criteria which will apply to the Services delivered by the System Integrator and as described in the Agreement and the RFP;
- p. SLA means the Performance and Maintenance SLA mentioned in the Agreement and the RFP;
- q. Term shall have the same meaning ascribed to it in Clause 4;
- r. Goods means to include all hardware, equipment, instruments, machinery, material, electronic items, networking equipment, switches, routers, cables and other tangible goods/items etc., and includes their user manuals, technical manuals, operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related) and all its modifications, provided or to be provided by System Integrator to Authority under this Agreement;
- s. COTS means Commercial off-the-shelf product(s).

For Kerala State It Infrastructure Ltd.

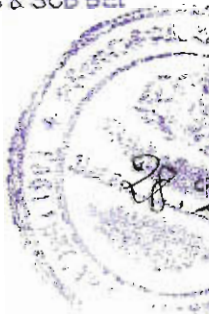
Dr. Jayankar Prasad.c
Managing Director



G.S.N. MURTHY
AGM (MKTG & O&F)
HLS & SCB BEI

NO: 1217/6.3.2019
Value Rs. 25000/- issued to
Bharat Electronics Ltd
Jalahalli - P.O
Bangalore - 560013

[Signature]
PORT TENDER
K. RATHEESAN NAIR



- iv) System Integrator's "Pre-Qualification Bid", "Technical Bid" and "Commercial Bid" and all subsequent clarifications submitted in response to the Tender (hereby annexed as Annexure III).
- v) Payment Terms as per RFP (hereby annexed as Annexure IV)
- vi) Service Level Agreement (hereby annexed as Annexure V)
- vii) Format of Change Control Notice (hereby annexed as Annexure VI)
- viii) Schedule for Audit, Access and Reporting (hereby annexed as Schedule I)
- ix) Exit Management Schedule (hereby annexed as Schedule II)
- x) Minutes of the Expert Technical Committee Meeting dated 8th March 2019 (hereby annexed as Annexure VII)

4. Term of the Agreement

This Agreement is executed on 9th March 2019 .The effective date of this Agreement will be the date of signing of the Agreement or handing over of the site for Network Operations Centre (NOC) by the Authority, whichever is later (insert the same date as 'T' in timelines) (hereinafter the 'Effective Date') and shall continue for a period of implementation time of 24 months and a period of 7 years post implementation ('Term').

In the event of implementation period getting extended beyond the above, for reasons not attributable to the System Integrator, Authority may at its sole discretion extend the term of the Agreement, on same terms and conditions. Authority also reserves the right to extend the Term for a period of two years, at its sole discretion, on same terms and conditions. Any extension beyond these two years shall be on mutually agreed terms and conditions.

5. Conditions Precedent

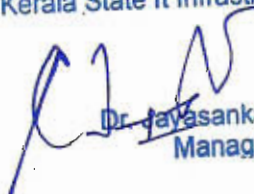
5.1 Provisions to take effect upon fulfilment of Conditions Precedent

Subject to express terms to the contrary, the rights of System Integrator to receive payments, and obligation of Authority to make payments under this Agreement, shall take effect only upon fulfilment of all the Conditions Precedent set out below. However, Authority may, at any time at its sole discretion, waive fully or partially any of the Conditions Precedent for the System Integrator.


5.2 Conditions Precedent for the System Integrator

- a) The System Integrator shall be required to fulfil the Conditions Precedent which are as follows:
 - i. to provide an unconditional, irrevocable and continuing Performance Security/Guarantee/Indemnity Bond for an amount equal to 10% of the Total CAPEX value of the Project from any Nationalized/Scheduled Commercial bank/Corporate Indemnity Bond in the format as provided in the RFP (BG Amount: Rs. 32,09,76,056 and Indemnity Bond : Rs. 92,69,51,198); and
 - ii. The System Integrator to provide Authority certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the System Integrator.
- b) Conditions precedent shall refer to Minutes of the Expert Technical Committee Meeting dated 8th March 2019.

For Kerala State It Infrastructure Ltd.


Dr. Jayasankar Prasad.c
Managing Director




G.S.N. MURTHY
AGM (MKTG & D&E
HLS & SCB REF



6. Obligations of the System Integrator

6.1 Under the Agreement

In addition to the other obligations of the System Integrator stated in the Agreement elsewhere and in the RFP, the System Integrator shall:

- a) Maintain minimum spare inventory at all times adequate to meet the service level shall be maintained.
- b) Ensure the integration of fibre and equipment and the software with hardware to be installed and the current Assets in order to ensure the smooth operations of the entire solution architecture to provide efficient services to Authority of this Project in an efficient and speedy manner;
- c) System Integrator shall not use Authority's data to provide services for the benefit of any third party without prior permission of the Authority.

6.2 Under the Service Level Agreements (SLAs)

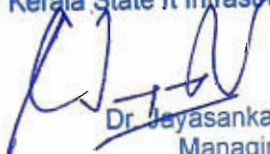
The System Integrator shall accomplish the scope of work under this Agreement as per the Timelines and as per the Service Level Agreements. If the System Integrator fails to achieve the Timelines due to reasons attributable to it, or if it fails to achieve the Service Levels (in the SLAs) for any reason whatsoever, the System Integrator shall be liable to pay penalty/liquidated damages as mentioned in the RFP. In case the System Integrator is not solely liable for the breach of Timelines, amount of liquidated damages shall be deducted on proportionate/pro rata basis depending upon the System Integrator's extent of fault in such breach of Timelines. Authority shall have the right to determine such extent of fault and liquidated damages in consultation with System Integrator. Payment of liquidated damages shall not be the sole and exclusive remedies available to Authority and the System Integrator shall not be relieved from any obligations by virtue of payment of such liquidated damages. The liquidated damages will be capped as mentioned in RFP. If the liquidated damages cross the cap on liquidated damages mentioned in the RFP, Authority shall have the right to terminate the Agreement for breach and consequences for such termination as provided in this Agreement shall be applicable.

6.3 Change of Control


- i. In the event of a Change of Control of the System Integrator, the System Integrator shall promptly notify Authority of the same in the format set out as Annexure VI of this Agreement.
- ii. In the event that the net worth of the surviving entity is less than that of the System Integrator prior to the Change of Control, the Authority may within 30 (thirty) days of becoming aware of such change in control, require a replacement of existing Performance Security (with same or higher value) furnished by the System Integrator from a guarantor acceptable to Authority (which may or may not be the System Integrator or any of its associated entities).
- iii. If such a guarantee is not furnished within 30 days of Authority requiring the replacement, Authority may exercise its right to terminate this Agreement within a further 30 (thirty) days by written notice, to become effective as specified in such notice.
- iv. Pursuant to termination, the consequences of termination asset out in this Agreement shall follow.

For the avoidance of doubt, it is expressly clarified that the internal reorganization of the System Integrator 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.

For Kerala State It Infrastructure Ltd.


Dr. Jayasankar Prasad.c
Managing Director




G.S.N. MURTHY
AGM (MKTG & D&E)
HLS & SCB BEL



6.4 Final testing and certification

Except as otherwise provided in the RFP, the Project shall be governed by the mechanism of final acceptance testing and certification to be put into place by the Parties as under:

- i. 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 implementation covering fibre, software, hardware and networking including the processes relating to the installation, commissioning, running of the equipment, design of systems and sub- systems , 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;
- ii. Final testing and certification criteria will consider conducting specific tests on the fibre, software, hardware, networking, security and all other aspects;
- iii. Final testing and certification criteria will establish appropriate processes for notifying the System Integrator of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the System Integrator to take corrective action; etc. Final acceptance test criteria will also adhere to the requirements as detailed in the RFP.

7. Obligations of the Authority

Without prejudice to any other undertakings or obligations of Authority under this Agreement or Tender, Authority shall perform the following:

- a) To provide any reasonable support through personnel to test the system during the Term;

To provide any reasonable 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, provided that any enhancement/changes etc. to the system shall always be subject to prior written approval of Authority;

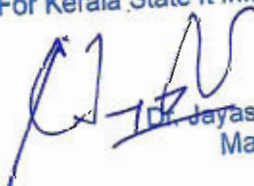
- b) To authorize the System Integrator to interact for implementation of the Project with external entities to the extent deemed necessary by Authority.

8. Acceptance of Deliverables and Testing


8.1 Acceptance of Deliverables

The successful completion of the Project requires the acceptance by Authority of all Deliverables prepared and delivered pursuant to the Project, including the System. The acceptance procedure described in this Clause is in addition to, and not in derogation of, the acceptance procedure laid down in the RFP and the two are to be read harmoniously. Upon completion of a Deliverable, System Integrator will notify Authority in writing that the Deliverable has been completed and, in the case of Deliverables constituted of fibre, equipment and/or software ("Operational Deliverables"), tested and/or certified as being ready for acceptance ("Ready for Acceptance") by Authority. Promptly after receiving such notice, Authority will evaluate the Deliverable for acceptance in accordance with this Clause 8 or specific provisions provided in the RFP. The acceptance process outlined below shall not be deemed to extend the Timelines / scheduled completion date for any Deliverable specified in the RFP.

For Kerala State It Infrastructure Ltd.


Jayasankar Prasad C
Managing Director




G.S.N. MURTHY
AGM (MKTG & D&I)
HLS & SCB BEL



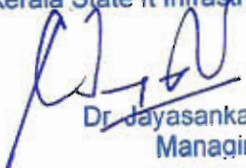
8.2 Acceptance Procedure

Acceptance by Authority ("Acceptance") requires that the Deliverables be confirmed in writing by Authority to meet applicable acceptance criteria ("Acceptance Criteria") which, in the case of Operational Deliverables, will include the successful completion of agreed acceptance and performance testing and, in the case of the system as a whole, will include meeting the specifications, performance standards and functional requirements set out in the RFP. In the case of Deliverables that are component parts of the system, in addition to acceptance of the component Deliverables, the system will also be subject to Acceptance in its entirety. System Integrator shall prepare and propose the test procedures, which shall be described in the Acceptance Criteria for each Deliverable and shall be subject to agreement by Authority. While designing the acceptance test procedures the requirements as mentioned in the RFP need to be adhered. The Acceptance tests and test procedures shall be sufficiently broad in scope and rigorous so as to verify that the system and all other Deliverables meet all applicable specifications, acceptance criteria and performance requirements, including assurance that the Deliverables and the system meet such tests of operational integrity as may be reasonably required by Authority. In the case of the system, the Acceptance tests shall consist of unit tests and/or a system test. Acceptance procedures for written Deliverables (which are all Deliverables other than Operational Deliverables) and Operational Deliverables are as follows:

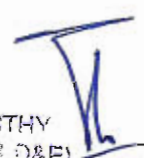
(a) Written Deliverables:

- (i) The System Integrator may submit interim drafts of written Deliverables (e.g., system designs and documentation) to Authority for review. Authority agrees to review each interim draft within a reasonable period of time after receiving it from the System Integrator. When the System Integrator delivers a final written Deliverable to Authority, Authority will have the opportunity to review such written Deliverable for an acceptance period of fifteen (15) working days or such other period as is stated in the RFP or the agreed Project Plan (the "Acceptance Period"). In all cases, Authority's obligation to review a written Deliverable within the applicable Acceptance Period will be contingent on such written Deliverable being delivered to Authority as scheduled. If and to the extent any written Deliverable is delivered earlier or later than scheduled, the Acceptance Period for such written Deliverable shall be extended as reasonably necessary to accommodate the availability of Authority personnel responsible for reviewing such Deliverable. Similarly, if and to the extent multiple written Deliverables are delivered to Authority within an Acceptance Period, the Acceptance Period for all such written Deliverables shall be extended as reasonably necessary to accommodate the availability of Authority personnel responsible for reviewing them.
- (ii) Authority agrees to notify the System Integrator in writing by the end of the Acceptance Period either stating that the applicable written Deliverable is accepted/rejected in the form delivered by the System Integrator or describing with reasonable particularity any deficiencies that must be corrected prior to acceptance of such written Deliverable. If the System Integrator does not receive any such notice from Authority by the end of the Acceptance Period, the System Integrator shall promptly notify Authority in writing that no such notice has been received. Acceptance shall not be unreasonably withheld by Authority.
- (iii) If Authority delivers to the System Integrator a timely notice of rejection/deficiencies, the System Integrator will correct the described deficiencies as quickly as possible and, in any event, within fifteen (15) days after Authority notifies the System Integrator of the rejection/deficiencies (unless otherwise specified in the agreed Project Plan). Upon receipt of a corrected written Deliverable from the System Integrator, Authority will have a period of twenty (20) working days to review the corrected written Deliverable.

For Kerala State It Infrastructure Ltd.


Dr. Jayasankar Prasad.c
Managing Director





G.S.N. MURTHY
AGM (MKTG & O&E)
HLS & SCB BEI




(b) Operational Deliverables:

- (i) To the extent not already specified in the RFP or agreed Project Plan, prior to the date on which the System Integrator is scheduled to deliver each Operational Deliverable to Authority, both the System Integrator and Authority will agree upon the testing procedures for the Operational Deliverable, including without limitation detailed test cases and expected results (the "Acceptance Tests"). The Acceptance Tests will be designed to determine whether the Operational Deliverable contains any defects. Authority will have the opportunity during the Acceptance Period to evaluate and test each Operational Deliverable in accordance with the following procedures by executing the Acceptance Tests.
- (ii) When the System Integrator has completed an Operational Deliverable, it will deliver the Operational Deliverable at the Installation Site (if not already there), install such Deliverable (if not already installed), and perform an installation test reasonably acceptable to Authority to verify that the Deliverable has been properly delivered and installed. The System Integrator shall notify Authority when the Operational Deliverable is 'Ready for Acceptance', provided that, unless otherwise agreed, such notice shall not occur prior to the successful completion by the System Integrator of any installation tests. Such notice will start the Acceptance Period, which will be fifteen (15) working days or such other period as is stated in the RFP or agreed Project Plan. As was the case with written Deliverables, Authority's obligation to review any Operational Deliverable within the applicable Acceptance Period will be contingent on such Operational Deliverable being delivered to Authority as scheduled. If and to the extent any Operational Deliverable is delivered earlier or later than scheduled, the Acceptance Period for such Operational Deliverable shall be extended as reasonably necessary to accommodate the availability of the Authority personnel responsible for reviewing such Operational Deliverable. Similarly, if and to the extent multiple Operational Deliverables are delivered to Authority within an Acceptance Period, the Acceptance Period for all Operational Deliverables shall be extended as reasonably necessary to accommodate the availability of the Authority personnel responsible for reviewing them.
- (iii) Authority shall notify the System Integrator in writing by the end of the Acceptance Period stating that the Operational Deliverable is accepted/rejected in the form delivered by the System Integrator or describing the defects as provided in sub clause 8.2 (b) (iv) below. If the System Integrator does not receive any notice of defects from Authority by the end of the Acceptance Period, the System Integrator shall promptly notify Authority in writing that no such notice was received.
- (iv) If Authority determines during the Acceptance Period that the Operational Deliverable as delivered by the System Integrator deviates from its approved specifications or otherwise fails to successfully complete applicable Acceptance Tests (or a defect), Authority will inform the System Integrator in writing, describing the defect(s) in sufficient detail to allow the System Integrator to recreate/rectify them. The System Integrator will correct any defects in an Operational Deliverable as quickly as possible after receiving Authority's notice of the defects and, in any event, within ten (10) days after receiving such notice (unless otherwise specified in the Project Plan/RFP), and provide the corrected Operational Deliverable to Authority for re-testing within such ten (10) day period.
- (v) Authority will have a reasonable additional period of time after receipt of the corrected Operational Deliverable to re-test it so as to confirm its proper functioning. The System Integrator will correct any further defects identified by Authority during the re-test as quickly as possible, but in no event more than ten (10) days after Authority notifies the System Integrator of the further defects, unless otherwise specified in the agreed Project Plan or RFP or agreed by Authority.

For Kerala State It Infrastructure Ltd.


Dr. Jayasankar Prasad.c
Managing Director




G.S.N. MURTHY
AGM (MKTG & D&E)
HLS & SCB REI



(c) Correction of Deficiencies in Deliverables

(i) If the System Integrator is unable to correct all deficiencies preventing Acceptance of a Deliverable for which it is responsible after a reasonable number of repeated efforts (but not more than three (3)), Authority may at its election:

- allow the System Integrator to continue its efforts to make corrections; or
- accept the Deliverable with its Deficiencies and deduct such proportionate amounts from the System Integrator's fees as deemed appropriate by Authority; or
- terminate this Agreement for cause in accordance with the procedures set forth in Clause 28 (except that Authority is under no obligation to provide the System Integrator any further opportunity to cure) and recover its damages subject to the limitations set forth in this Agreement.

9. Schedule of Payment / Payment Terms

Total payment to the System Integrator for the execution of this Contract is INR Rs.16,11,35,32,548.96 (Rupees One Thousand Six Hundred and Eleven Crores Thirty Five Lakh Thirty Two Thousand Five Hundred Forty Eight and Paise Ninety Six) exclusive of all taxes, levies, fees, etc. Authority shall make the payment to the SI as per the schedule given in the Tender document

The quarterly payment shall be due at the end of every three months starting from the date of successful Go Live and shall be subject to strict adherence of the respective SLAs. If the System Integrator is liable for any penalty/liquidated damages as per the SLAs (refer to the clause no. 6 of this Agreement), the same shall be adjusted from quarterly payments due to the System Integrator.

The payment shall be made for Total Project Value and applicable GST. Should there be a change in applicable taxes / levies, the actual taxes/levies on the date of billing would prevail.

Authority will release the payment within 30 days of submission of valid, correct, undisputed invoice subject to the condition that invoice and all supporting documents produced are in order and work is performed to the satisfaction of Authority. Authority shall be entitled to delay or withhold the payment of any invoice or part of it delivered by SI, where Authority disputes such invoice or part of it provided that such a dispute is bonafide. The disputed amount shall be settled in Resolution of dispute.

Payments will be subject to deduction of taxes as per applicable laws. Payments shall be subject to deduction of liquidated damages as per the SLAs.

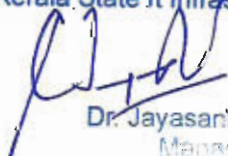
10. Scope Extension

Authority reserves the right to extend the scope of services for the price & timelines as provided in this Agreement. The SLAs applicable to this Agreement shall be liable for the additional items on mutual agreement.


10.1. Work Completion Timelines

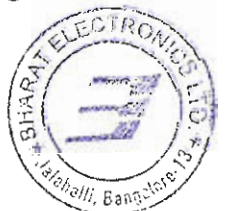
The Services are to be completed in accordance with the agreed timelines. Delay in meeting the timelines shall attract levying of Liquidated Damages as provided in the RFP.

For Kerala State It Infrastructure Ltd.


Dr. Jayasankar Prasad.c
Managing Director




G.S.N. MURTHY
AGM (MKTC & O&E)
HLS & SCB DEI



10.2. Service Level Agreement (SLA)

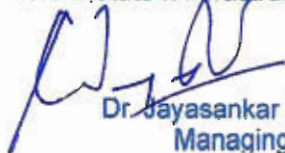
Authority is looking at a very professional approach in the Project implementation and its operations. System Integrator is expected to match these expectations of the service levels given in this Agreement. Any non-adherence to the SLAs would lead to the penalty, to be calculated as per the details given in Annexure V to this Agreement.

11. Use of Assets during the term

During the Term of the Agreement System Integrator shall

- a) take all reasonable & proper care of the Assets which includes the entire hardware & software, network or any other information technology infrastructure components, Deliverables used for the Project & other facilities leased/owned by the System Integrator (for itself or for Authority or on behalf of Authority) exclusively in terms of their usability for the delivery of the Deliverables/Services as per this Agreement.
- b) keep all the tangible Assets in good & serviceable condition (reasonable wear & tear excepted) &/or the intangible Assets suitably upgraded subject to the relevant standards as stated in of the Tender to meet the SLA s mentioned in the contract as on the date the System Integrator takes control of and/or first uses the Assets & during the entire term of the Agreement.
- c) ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of Assets & which are provided to the System Integrator will be followed by the System Integrator & any person who will be responsible for the use of the Asset;
- d) take such steps as may be recommended by the manufacturer of the Assets & notified to the System Integrator or as may, in the reasonable opinion of the System Integrator, be necessary to use the Assets in a safe manner;
- e) provide a well-prepared documentation for users in the manual, a clear plan for training, education & hand holding the users & shall form part of hand holding phase until bringing up the users to use software solution with speed& efficiency;
- f) To the extent that the Assets are under the control of the System Integrator, keep the Assets suitably housed & inconformity with the Applicable Law from time to time applicable to them,
- g) Provide and facilitate access to Authority or its nominated agencies & any persons duly authorized by Authority 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;
- h) 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 the Applicable Law;
- i) Use the Assets exclusively for the purpose of providing the Services as defined in the Agreement;
- j) Not to sell, offer for sales, as sign, mortgage, encumbrance, pledge, sub -let or lent out any of the Assets. System Integrator agrees that System Integrator will inform Authority immediately if System Integrator feels or comes to know that a charge may be/has been created over any Asset(s). In the event a charge is created over any of the Assets/Goods which are owned by Authority, Authority shall have the right to get the charge removed at the risk, cost, expense of the System Integrator and System Integrator shall make good all losses, damages, costs, fees, cess, duties, etc. borne or suffered by Authority due to creation of such charge and/or in removal of such charge and/or in discharging the obligations for removal of such charge.

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at the System Integrator's expense, provided that Authority shall have no obligation to do so and if Authority shall do so, the System Integrator shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such reasonable costs incurred by Authority shall be promptly reimbursed by the System Integrator and/or may be withheld from any payment due to System Integrator. None of the requirements contained herein as to types, limits or Authority's approval of insurance coverage to be maintained by the System Integrator are intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by the System Integrator under this Agreement, or otherwise provided by law.

13.2. Certificates of currency

The System Integrator must, on request by the Authority, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause. The System Integrator agrees to replace any coverage prior to the date of expiry/cancellation.

13.3. Non-compliance

Authority or its nominated agencies may, at its election, terminate this Agreement upon the failure of the System Integrator, or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve the System Integrator of its obligations under this Agreement.

14. Ownership and IPRs

14.1. Products and fixes

All COTS 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. Such licenses shall be bought on behalf of and in the name of Authority or mentioning Authority as the end user of such licenses. The System Integrator 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 Authority 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. All intellectual property rights in any development/enhancement/customization etc. done on the COTS products pursuant to this Agreement shall be owned by Authority.

14.2. Bespoke development

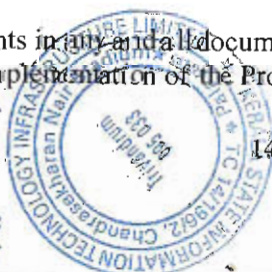
Upon acceptance of any bespoke development as per this Agreement or RFP, the ownership of all IPR rights in any and all bespoke development done during the Term for implementation of the Project under this Agreement will lie with Authority. The System Integrator shall provide source code, object code and all other relevant materials, artefacts etc. of all bespoke development to Authority and Authority shall own all IPRs in them. All material related to such bespoke development shall be treated as confidential information by the System Integrator. This will also include any developments on COTS.

14.3. Deliverables and Pre-existing work of the System Integrator

The ownership of all IPR rights in any and all documents, artefacts, etc. (including all training material) made during the Term for implementation of the Project under this Agreement will lie with Authority.

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Deliverables provided to Authority by System Integrator during the course of its performance under this Agreement, in which subject to the foregoing provisions of this Article, all right, title and interest in and to such Deliverables, shall, as between System Integrator and Authority, immediately upon creation, vest in Authority. To the extent that the System Integrator Proprietary Information is incorporated within the Deliverables, System Integrator and its employees engaged hereby grant to Authority a worldwide, perpetual, irrevocable, non-exclusive, transferable, paid-up right and license to use, copy, modify (or have modified), transport to Authority facilities, and prepare from them, use and copy derivative works for the benefit of and internal use of Authority, of such System Integrator Proprietary Information, Authority rights pursuant to the preceding sentence include the right to disclose such System Integrator Proprietary Information to third party SIs solely for use on the Project provided that all such third party SIs execute, deliver and comply with any customary confidentiality and non-disclosure agreements reasonably required by Authority.

14.4. Third Party Products

If license agreements are necessary or appropriate between the System Integrator and third parties for purposes of enabling/enforcing/implementing the provisions hereinabove, the System Integrator shall enter into such agreements at its own sole cost, expense and risk.

The SI shall execute all such agreements/documents and assist the Authority in filing all relevant applications, effect transfers and obtain all permits and approvals that may be necessary to effectively transfer and conserve the Intellectual Property Rights of the Authority at the cost of the Authority

15. Transfer of risk and ownership in goods

- a) Subject to the terms of this Agreement, System Integrator shall sell, assign, convey, transfer and deliver to Authority, and Authority shall purchase, receive and accept from the System Integrator, all right, title and interest in and to the Goods required to be provided by the System Integrator as per the RFP. The System Integrator shall not make any substitute for the Goods of any other model, capacity, or manufacturer without the prior written consent of Authority which consent shall not be unreasonably delayed or withheld.
- b) The System Integrator shall arrange for delivery of the Goods to the delivery site identified by Authority (the "Delivery Site") as per the Timelines provided in the RFP unless Otherwise notified by Authority. In addition to paying all transportation charges for the Goods, the System Integrator shall insure, and pay all insurance charges for the Goods.
- c) Title to and Ownership of the Goods designated as being purchased by Authority hereunder shall remain vested in System Integrator until written Acceptance and on Go Live of the Project by Authority under the terms hereof, at which time title and ownership of such Goods shall transfer to the Authority. Upon transfer of ownership of the Goods to Authority, the System Integrator shall treat such Goods as Assets as detailed above in this Agreement. SI shall execute all such documents as may be necessary to give effect to such transfer of title and ownership at SI's own cost and expense.
- d) Notwithstanding the transfer ownership of the Goods to Authority, the risk of loss in Goods shall remain with the System Integrator during the Term of the Agreement or till effective date of earlier termination of this Agreement.


16. Security and safety

- a) The System Integrator will comply with the directions is sued from time to time by Implementation of Kerala Fibre Optic Network and Reliable Communication & Data Acquisition Network and follow the industry standards related to the security and safety

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(including those as specified by Authority from time to time) in so far as it applies to the provision of the Services.

- b) System Integrator shall also comply with the Authority's information technology security and standard policies in force from time to time as applicable.
- c) System Integrator shall use reasonable endeavors to report forthwith in writing to the Authority all identified attempts (whether successful or not) by unauthorised persons either to gain access to or interfere with Authority's data, facilities or Confidential Information.
- d) The System Integrator shall upon reasonable request by Authority or its nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- e) As per the provisions of this Agreement, System Integrator shall promptly report in writing to each the Authority 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 Authority's facilities.

17. Indemnity

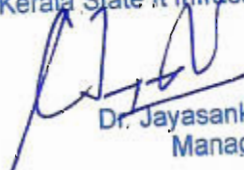
17.1. The System Integrator undertakes to indemnify and hold harmless and defend the Authority, Kerala State Electricity Board Limited(KSEBL) and Kerala State Information Technology Infrastructure Ltd.(KSITIL), at its expense and its officers, employees and agents promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorney's fees and disbursements) and expenses (collectively, "Losses") to which the Authority may become subject, in so far as such Losses arise out of, in any way relate to, or result from

- (i) claims by third Parties that any Deliverable (or the access, use or other rights thereto) or any equipment, software, information, methods of operation or other intellectual property used, created, submitted etc. by System Integrator or sub-contractors pursuant to this Agreement infringes any intellectual property right (including, without limitation, a copyright, patent, trade mark, trade name, trade design etc.) of any third party provided the System Integrator will not indemnify the Authority or KSEBL or KSITIL, if such claim is caused by (a) the Authority's mis use or modification of the Deliverables ; (b) the Authority's failure to use corrections or enhancements made available by the System Integrator; (c) the Authority's use of the Deliverables in combination with any product or information not owned or developed or supplied by the System Integrator or its sub-contractors. In addition to the foregoing indemnity obligations, if any of the Deliverables is or likely to be held to be infringing, the System Integrator shall at its expense and option either (i) procure the right for the Authority to continue using it, (ii) replace it with a non -infringing equivalent, (iii) modify it to make it non-infringing.
- (ii) any compensation/claim or proceeding by any third party against Authority or KSEBL or KSITIL arising out of any act, deed or omission by the System Integrator; or
- (iii) claim filed by a workman or employee engaged by the System Integrator for carrying out work related to this Agreement.

17.2. General Indemnity

Subject to Sub-clause 17.3 below, the System Integrator shall keep the Authority, indemnified from and against all losses, claims , damages, compensation, litigation etc. including attorney's fees and damages on account of bodily injury, death or damage to tangible personal property arising in favor or any person, corporation or other entity (including the Authority) attributable to the Indemnifying Party's performance or non -performance under this Agreement or System Integrator's negligence, willful default, lack of due care or breach of terms of this Agreement.

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Managing Director




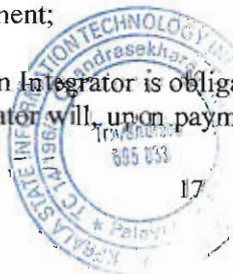
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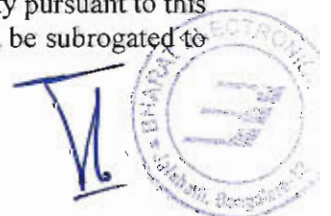
17.3. Conditions for Indemnity

- a) Without prejudice to the rights of the Authority in respect of indemnification for any claim, the indemnities set out in Sub-clause 17.1 and 17.2 above shall be subject to the following conditions:
- (i) The Authority, as promptly as practicable, shall inform the System Integrator in writing upon receipt of any notice of claim or proceedings setting out in reasonable particulars, the details of such notice of claim;
 - (ii) Immediately upon receipt of notification of any claim from the Authority, the System Integrator within a period of 5 (five) days from date of receipt of such notice from the Authority, notify the Authority whether the System Integrator wish to assume the defense in relation to such claim (including settlement or resolution thereof). Thereafter, the System Integrator shall be entitled in consultation with the Authority, and only to the extent such action does not in any manner compromise, prejudice or adversely affect the interests of the Authority, to take such action as mutually agreed upon by System Integrator and the Authority to avoid, dispute, deny, resist, appeal, compromise or consent such claim, within a period of 30 (thirty) days from the date of receipt of such claim notification;
 - (iii) Notwithstanding anything contained herein, the System Integrator and the Authority agrees and covenant that a notice by the Authority to the System Integrator in relation to the claim as aforesaid shall amount to express acceptance and consent by the System Integrator to indemnify the Authority for all losses in relation to such claim. Upon notice by the System Integrator, the Authority shall reasonably co-operate with the System Integrator at the sole costs of the System Integrator, only to the extent the same does not in any manner compromise, prejudice or adversely affect the rights of the Authority. The Authority shall have the right, at its option, to participate in the defense of such claim;
 - (iv) The Authority shall, at the cost and expenses of the System Integrator, give the System Integrator reasonable assistance in the defense of such claim including reasonable access to all relevant information, documentation and personnel. The System Integrator shall bear cost and expenses and fees of the Attorney on behalf of the Authority in the litigation, claim.
- b) If the System Integrator fails to take any action as per the above clause within the time period as specified therein, the Authority shall have the right, in its absolute discretion, to take such action as it may deem necessary to avoid, dispute, deny, resist, appeal, compromise or contest or settle any claim (including without limitation, making claims or counterclaims against third parties). If the System Integrator does not assume full control over the defense of a claim as provided in this Clause, the entire defense, negotiation or settlement of such claim by the Authority shall be deemed to have been consented to by, and shall be binding upon, System Integrator as fully as though the System Integrator alone had assumed the defense thereof and a judgement had been entered into by the System Integrator, for such claim in respect of the settlement or judgement.
- c) All settlements of claims subject to indemnification under this Article will: (a) be entered into only with the consent of the Authority, which consent will not be unreasonably withheld & include an unconditional release to the Authority from the claimant for all liability in respect of such claim; & (b) include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
- d) In the event that the System Integrator is obligated to indemnify the Authority pursuant to this Article, the System Integrator will, upon payment of such indemnity in full, be subrogated to


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all rights & defenses of the Authority with respect to the claims to which such indemnification relates;

- e) In the event that the System Integrator is obligated to indemnify the Authority pursuant to this Article, the Authority will be entitled to invoke the Performance Security, if such indemnity is not paid, either in full or in part, & on the invocation of the Security, the System Integrator shall be subrogated to all rights & defenses of the Authority with respect to the claims to which such indemnification relates.

18. Publicity

Except as required by law, System Integrator shall publish or permit to be published either alone 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 without the explicit written permission of the Authority.

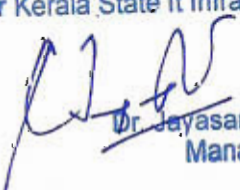
19. Representations

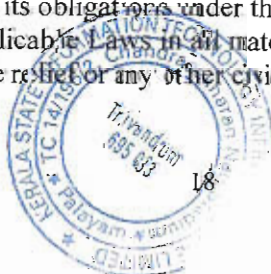
19.1. Representations of the System Integrator

The System Integrator warrants and represents to the Authority that:

- a) it is duly organized and validly existing under the laws of India and it has full capacity and authority and all necessary approvals to enter into and to perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b) 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;
- c) it has the financial standing and capacity to undertake the Project and obligations in accordance with the terms of this Agreement;
- d) in providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to Authority's normal business operations;
- e) This Agreement is executed by a duly authorized representative of the System Integrator 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;
- f) the information furnished in the Proposal is to the best of its knowledge and belief true and accurate in all respects as at the date of this Agreement;
- g) 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;
- h) 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;
- i) 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;
- j) 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

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have or may have an adverse effect on its ability to perform its obligations under this Agreement;

- k) 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 Authority in connection therewith.
- l) The System Integrator is experienced in managing and providing works similar to the Services and that it will perform the Services with all due skill, care and diligence so as to comply with service level agreement;
- m) The Services will be provided and rendered by appropriately qualified, trained and experienced personnel as mentioned in the Tender;
- n) System Integrator has and will have all necessary licenses, approvals, consents of third Parties free from any encumbrances and all necessary technology, hardware and software to enable it to provide the Services;

20. Warranty

20.1. General

The System Integrator represents, warrants and covenants that:

- a) the System Integrator is the lawful owner of the Goods (including those Goods and Deliverables that are to be transferred to Authority as per the RFP) and the lawful owner or licensee of the materials used in the performance of the Services and delivery of Deliverables,
- b) the bespoke development and such materials have been lawfully developed or acquired by the SystemsIntegrator, and
- c) the System Integrator has the right to sell the Goods to Authority and to grant Authority the rights to the bespoke development and such materials, including the rights of access to and use of the bespoke development, which it grants under this Agreement, without the consent of any other person or entity. The System Integrator represents warrants and covenants that during the Warranty Period it will promptly provide Authority with any and all maintenance modifications, enhancements, and related documentation which the System Integrator or its OEM makes available to any other person or entity.

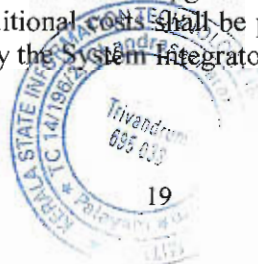
20.2. Warranty for Goods

- a) System Integrator warrants that the Goods supplied under the Agreement and all of its parts and components are new, unused, of the most recent higher version/models and incorporate all recent improvements in design and materials unless provided Otherwise in the Agreement.
- b) The System Integrator further warrants that the Goods supplied under this Agreement shall have no defects arising from design, materials or workmanship under normal use and that the Goods shall remain in good working order during the Warranty Period.
- c) The System Integrator shall provide a warranty as mentioned in this RFP (Warranty Period), for all the components, equipment, software and hardware manufactured, developed or supplied by it or any third party for the purpose of providing Services under "Service Level Agreement" as per the Agreement. The System Integrator shall ensure defect free operation of the entire solution and shall replace any such components, equipment, software and hardware which are found defective and during the entire Warranty Period the System Integrator shall apply all the latest upgrades/patches/releases for the software after appropriate testing. No additional costs shall be paid separately for the warranty other than what are the costs quoted by the System Integrator and as specified in the contract.

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- d) That the Goods are and shall remain throughout the Warranty Period eligible for maintenance under the OEM's standard maintenance agreement.
- e) If the System Integrator uses in the course of the provision of the Services, components, equipment, software and hardware manufactured by any third party and which are embedded in the Deliverables or are essential for the successful use of the Deliverables, it will pass through third party manufacturer's Warranties relating to those components, equipment, software and hardware to the extent possible.
- f) The overall system design shall be such that there is no choking point/bottleneck anywhere in the system(end-to-end) which can affect the performance / SLAs.
- g) That System Integrator shall acquire good and clear title on the Goods, free and clear of any and all charges and encumbrances and shall have right to uninterrupted use of such Goods;


20.3. Warranties for Software

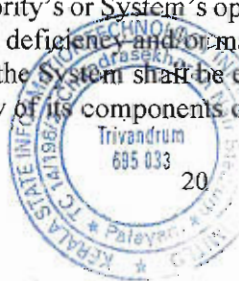
- a) The System Integrator represents warrants and covenants that on the acceptance date and for the Warranty Period, the Software will be free of material programming errors and will operate and conform to the respective Software's Documentation including, inter alia, SRS (System Requirement Specification) and other manuals. The System Integrator also represents warrants and covenants that the medium on which the Software is contained when delivered to Authority will be free from defects in material or workmanship and shall be free from any viruses, bugs etc.
- b) The System Integrator represents warrants and covenants that the technical Documentation delivered to Authority for the system will be sufficient to allow a reasonably knowledgeable information technology professional to maintain and support such Software. The System Integrator represents warrants and covenants that the user Documentation for the System will accurately describe in terms understandable by a typical end user the functions and features of the System and the procedures for exercising such functions and features.

20.4. Warranty for Services

The System Integrator represents, warrants and covenants that all services under this Agreement will be performed with promptness and diligence and will be executed in a workmanlike and professional manner, in accordance with the practices and high professional standards used in well-managed operations performing services similar to the services under this Agreement. The System Integrator represents, warrants and covenants that it shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services hereunder.

- 20.5. If during the Warranty Period of any component mentioned above, any of the warranties are found breached, the System Integrator shall promptly (but in no event more than 7(seven) days, in consultation and agreement with Authority, and at the System Integrator's sole cost repair, replace, or Otherwise make good such default, defect or deficiency as well as any damage to the Project caused by such default, defect or deficiency. Any component that has been repaired or replaced by the System Integrator shall be delivered at the Authority's designated place without any additional costs to the Authority. Any component that has been replaced under this clause by the System Integrator shall remain the property of the System Integrator. The System Integrator shall use best efforts to ensure that such repair, replacement etc. shall be accomplished through a "hot" swap without any loss of production time or adverse impact on Authority's or System's operations. If the System 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 System shall be extended by a period equal to the period during which the System or any of its components could not be used by Authority because of such

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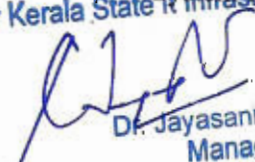

defect and/or making good of such default, defect or deficiency. Notwithstanding the foregoing, these are not the sole and exclusive remedies available to Authority in case of breach of any warranty and are also not the sole and exclusive obligations on the System Integrator in case of breach of any warranty.

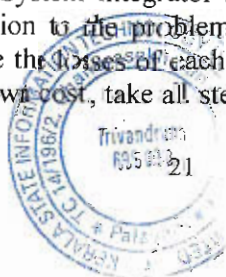
Further, subject to the fulfilment of the obligations of the System Integrator as provided hereinabove, in the event that such warranties cannot be enforced by Authority, the System Integrator will enforce such warranties on behalf of Authority and pass on to Authority, the benefit of any other remedy received in relation to such warranties.


- 20.6.** Notwithstanding what has been stated elsewhere in this Agreement and the Schedules attached herein, in the event the System Integrator is unable to meet the obligations pursuant to the implementation of the Project, Operations and Maintenance Services and any related scope of work as stated in this Agreement and the Schedules attached herein, Authority will have the option to invoke the Performance Security after serving a written notice of thirty (30) days on the System Integrator.

21. Force Majeure

- 21.1.** The System Integrator shall not be liable for forfeiture of its Performance Security, imposition of liquidated damages or termination for default, if and to the extent that its delay in performance or other failure to perform its obligations under the contract is the result of an event of Force Majeure. For purposes of this Clause, "Force Majeure" means an event beyond the "reasonable" control of the System Integrator, not involving the System Integrator's fault or failure to perform its obligations under the Agreement or negligence and not foreseeable or an event which the System Integrator could not have prevented or reasonably overcome with the exercise of reasonable skill and care. Such events may include Acts of God & acts of Government of India in their sovereign capacity that directly and adversely affect the performance of services by the System Integrator under this Agreement
- 21.2.** For the System Integrator to take benefit of this clause it is a condition precedent that the System Integrator must notify the Authority, in writing of such conditions and the cause thereof within seven (7) calendar days of the Force Majeure event arising. Authority, or the consultant / committee appointed by the Authority shall study the submission of the System Integrator and inform whether the situation can be qualified one of Force Majeure. If the other Party disputes the claim for relief under Force Majeure it shall give the claiming Party written notice of such dispute within 30 (thirty) days of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in accordance with Clause. Unless Otherwise directed by the Authority in writing, the System Integrator shall continue to perform its obligations under the resultant Agreement as far as it is reasonably practical and shall seek all reasonable alternative means for performance of services not prevented by the existence of a Force Majeure event.
- 21.3.** Upon cessation of the situation which led the System Integrator claiming Force Majeure, the System Integrator shall within 2 (two) days thereof notify Authority in writing of the cessation and the Parties shall as soon as practicable thereafter continue performance of all obligations under this Agreement.
- 21.4.** In the event of delay in performance attributable to the presence of a Force Majeure event, Authority reserves the right to extend the time for performance shall by a period(s) equivalent to the duration of such delay. If the duration of delay continues beyond a period of 30 (thirty) days, Authority and the System Integrator shall hold consultations with each other in an endeavor to find a solution to the problem to determine the reasonable measures to be implemented to minimize the losses of each Party resulting from the Force Majeure event. System Integrator shall at its own cost, take all steps reasonably required to remedy and mitigate

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the effects of the Force Majeure event and restore its ability to perform its obligations under this Agreement as soon as reasonably practicable.

21.5. Notwithstanding anything to the contrary mentioned above, the decision of the Authority shall be final and binding on the System Integrator.

22. Resolution of Disputes

22.1. The Authority and the System Integrator shall make every effort to resolve amicably, by direct informal negotiation, any disagreement or dispute arising between them under or in connection with the Agreement. If after 30 (thirty) days from the commencement of such informal negotiations, the Authority and the System Integrator are unable to resolve amicably such dispute, the matter will be referred to the Chief Secretary, Government of Kerala, and his / her opinion shall be taken.

22.2. If the System Integrator doesn't agree with the opinion of the Chief Secretary, Government of Kerala, the matter shall be referred to a panel of three Arbitrators: one Arbitrator to be nominated by Authority, the other one to be nominated by the System Integrator and a third arbitrator to be appointed by the two arbitrators jointly. The award of the majority of the Arbitrators shall be final and binding on the parties. Proceedings under this clause shall be subject to applicable law of the Arbitration and Reconciliation Act, 1996 and the venue of such arbitration shall be Thiruvananthapuram. Cost of arbitration shall be borne by each party proportionately. However, expenses incurred by each party in connection with the preparation, presentation shall be borne by the party itself. The provisions of this clause shall survive termination of this Agreement.

23. Risk Purchase Clause


In the event System Integrator fails to execute the Project as stipulated in the delivery schedule, or to the satisfaction of the Authority or fails to perform its obligations (or any part thereof) under this Agreement or if the Agreement is terminated by the Authority due to breach of any obligations of the System Integrator under this Agreement, Authority reserves the right to procure similar or equivalent services/Deliverables from the next eligible Bidder or from another alternate source at the risk, cost and responsibility of the System Integrator. Any incremental cost borne by the Authority in procuring such services/ Deliverables shall be borne by the System Integrator. Any such incremental cost incurred in the procurement of the such services/ Deliverables from alternative source will be recovered from the undisputed pending due and payable payments /Security Deposit provided by the System Integrator under this Agreement and if the value of the services/Deliverables under risk purchase exceeds the amount of Security Deposit, the same may be recovered if necessary by due legal process. Before taking such a decision under this Clause, Authority shall serve a notice period of 1(one) month to the System Integrator.

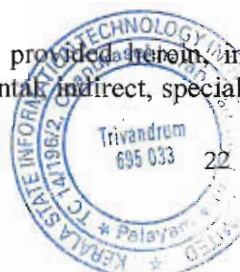
24. Limitation of Liability towards Authority

24.1. The System Integrator's liability under the Agreement shall be determined as per the Applicable Law in force for the time being. The System Integrator shall be liable to the Authority for loss or damage occurred or caused or likely to occur on account of any act of omission on the part of the System Integrator and its employees, including loss caused to Authority on account of defect in Goods or deficiency in Services on the part of System Integrator or its agents or any person / persons claiming through or under said Systems Integrator. However, such liability of System Integrator shall not exceed 100% of the total value of the Agreement.

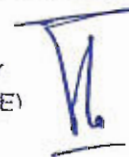
24.2. Except as otherwise provided herein, in no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including

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Managing Director



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but not limited to business interruption, lost business, lost profits, or lost savings) nor for any third-party claims, even if it has been advised of their possible existence.

24.3. This limitation of liability provided in Clause 24.1 and Clause 24.2 shall not limit the System Integrator's liability for the indemnity obligations of the System Integrator as agreed in this Agreement.

25. Data Ownership

All the data created as the part of the project shall be owned by Authority. The System Integrator shall take utmost care in maintaining security, confidentiality, integrity and backup of this data. Access to the data/systems shall be given by the System Integrator strictly only to the personnel working on the projects who have a need to know such data for accomplishing the Project and who are bound by obligations of confidentiality no less restrictive as provided in this Agreement and their names & contact details shall be shared with Authority in advance. Authority / its authorized representative(s) shall conduct periodic/surprise security reviews and audits, to ensure the compliance by the System Integrator to data/system security.

26. Conflict of Interest

- 26.1. A conflict of interest is any situation that might cause an impartial observer to reasonably question whether System Integrator actions are influenced by considerations of your firm's interest at the cost of Government.
- 26.2. The System Integrator shall disclose to the Authority in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the System Integrator or its team) in the course of performing the Services as soon as it becomes aware of such a conflict. However, the System Integrator shall hold Authority's interest paramount, without any consideration for future work, and strictly avoid conflict of interest with other assignments


27. Fraud and Corruption

Authority requires that SI must observe the highest standards of ethics during the execution of the contract. In pursuance of this policy, Authority defines, for the purpose of this provision, the terms set forth as follows:


- a) "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of Authority in contract executions.
- b) "Fraudulent practice" means a mis -presentation of facts, in order to influence a procurement process or the execution of a contract Authority and includes collusive practice among bidders (prior to or after Proposal submission) designed to establish Proposal prices at artificially high or non -competitive levels and to deprive Authority of the benefits of free and open competition.
- c) "Unfair trade practices" means supply of services different from what is ordered on or change in the Scope of Work which is given by the Authority in Volume II.
- d) "Coercive Practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the execution of contract.

If it is noticed that the SI has indulged into the Corrupt/Fraudulent/Unfair/Coercive practices, it will be a sufficient ground for Government for termination of the contract and initiate black-listing of the SI.

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28. Exit Management

28.1. Exit Management Purpose

This clause sets out the provisions, which will apply during Exit Management period. The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Clause.

The exit management period starts, in case of expiry of contract, at least 6(six) months prior to the expiry of the Term of the Agreement or in case of termination of Agreement, on the effective date of termination of the Agreement. In the case of termination of any part of the Agreement or Services, the provisions of this Clause shall, mutatis mutandis, apply to the part of Agreement or Services terminated. The exit management period ends on the date agreed upon by the Authority or Six months after the beginning of the exit management period, whichever is earlier.

28.2. Confidential Information, Security and Data

System Integrator will promptly on the commencement of the exit management period, supply to the Authority or its nominated agencies the following:

- a) Information relating to the current services rendered and performance data relating to the performance of the services; Documentation relating to Project, Project's Intellectual Property Rights; any other data and confidential information related to the Project including but not limited to documentation relating to sub- contractors;
- b) All current and updated Project data as is reasonably required for purposes of the Project or for transitioning of the services to its Replacing System Integrator in a readily available format.
- c) All other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable the Authority and its nominated agencies, or its Replacing System Integrator to carry out due diligence in order to transition the provision of the Services to Authority, or its Replacing System Integrator (as the case may be).
- d) Before the expiry of the exit management period, the System Integrator shall deliver to the Authority or its nominated agency all new or up-dated materials from the categories set out above (or any other information and data requested by the Authority) and shall not retain any copies thereof, except that the System Integrator may be permitted to retain one copy of such materials for archival purposes only as approved by the Authority.
- e) On completion of the exit management period, the System Integrator shall delete all confidential information and data from the System Integrator's system and provide a certificate to the Authority stating the completion of deletion of all such data and information.

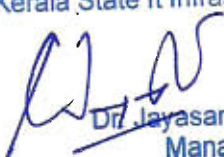
28.3. Employees

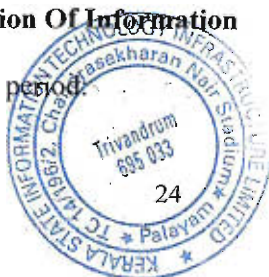
Promptly on reasonable request at any time during the exit management period, the System Integrator shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the Authority a list of all employees (with job titles and communication address) of the System Integrator, dedicated to providing the services at the commencement of the exit management period; To the extent that any Transfer Regulation does not apply to any employee of the System Integrator, Authority or Replacing System Integrator may make an offer of contract for services to such employee of the System Integrator and the System Integrator shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the Authority or any Replacing System Integrator.


28.4. Cooperation and Provision Of Information

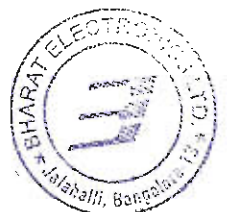
- (i) During the exit management period.

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Managing Director




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- a) The System Integrator will allow the Authority 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 Authority to assess the existing services being delivered;
- b) The System Integrator, on reasonable request by the Authority, shall promptly provide access to and copies (hard and soft copies as deemed necessary by the Authority) of all information held or controlled by the System Integrator which it has prepared or maintained in accordance with this Agreement relating to any material aspect of the Services (whether provided by the previous System Integrator, the System Integrator or sub-contractors appointed by the System Integrator). The Authority shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The System Integrator shall permit the Authority and/or its nominated agencies to have reasonable access to the employees engaged for providing services and facilities as reasonably required by the Authority to understand the methods of delivery of the services employed by the System Integrator and to assist appropriate knowledge transfer.
- c) During the exit management period, the Replacing System Integrator shall submit periodic reports on the progress of the transition with the Authority and the System Integrator. The System Integrator shall ensure that any issues and gaps highlighted in such reports shall be resolved to the satisfaction of the Authority.

(ii) Transfer of Certain Agreements

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

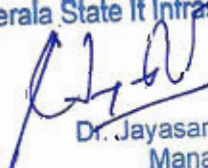
(iii) Rights of Access to Information

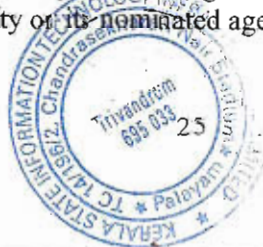
At any time during the exit management period, the System Integrator will be obliged to provide an access of information to Authority and/or any Replacing System Integrator in order to make an inventory of the Assets (including hardware /Software/Active/passive), documentations, manuals, catalogues, archive data, Live data, policy documents or any other material related to the Project.

(iv) Rights of Access to Premises

- a). At any time during the exit management period, where Assets are located at the System Integrator's premises, the System Integrator 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 Authority or its nominated agency and/or any Replacing System Integrator in order to make an inventory of the Assets.
- b). The System Integrator shall also give the Authority or its nominated agency or its nominated agencies, or any Replacing System Integrator right of reasonable access to the System Integrator's premises and shall procure the Authority or its nominated agency or its nominated agencies and any Replacing System Integrator 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 Agreement as is reasonably necessary to migrate the services to the Authority or its nominated agency, or a Replacing System Integrator.

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Managing Director



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(v) General Obligations of the SI

- a). The System Integrator shall provide all such information as may reasonably be necessary to effect as seamless handover as practicable in the circumstances to the Authority or its nominated agency or its Replacing System Integrator and which the System Integrator has in its possession or control at any time during the exit management period.
- b). For the purposes of this Schedule, anything in the possession or control of any System Integrator, associated entity, or sub-contractor is deemed to be in the possession or control of the System Integrator.
- c). The System Integrator shall commit adequate resources to comply with its obligations under the Exit Management Schedule.

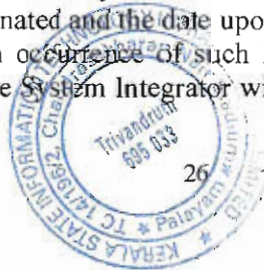
29. Termination of Contract

29.1. Events of Default by the System Integrator

- a) The failure of the System Integrator to perform any of the obligations or comply with any terms of this Agreement shall constitute an Event of Default on the part of the System Integrator. The events of default as mentioned above may include, inter-alia, the following:
 - If the System Integrator fails to deliver any or all of the project requirements/operationalization/go-live of the project within the time frame specified in the contract; or
 - If the System Integrator fails to perform any other obligation(s) under the Agreement fails to perform any instructions or directives is sued by the Authority which it deems proper and necessary to execute the scope of work under the Agreement.
 - the System Integrator has failed to remedy a failure to perform its obligations in accordance with the specifications is sued by the Authority, despite being served with a default notice which laid down the specific deviance on the part of the System Integrator to comply with any stipulations or standards as laid down by the Authority; or
 - the System Integrator or its team has failed to conform with any of the service specifications as set out in the RFP or this Agreement or has failed to adhere to any amended direction, modification or clarification as issued by the Authority during the term of this Agreement and which the Authority deems proper and necessary for the execution of the scope of work under this Agreement;
 - The System Integrator has failed to demonstrate or sustain any representation or warranty made by it in this Agreement, with respect to any of the terms of its Proposal, the RFP and this Agreement;
 - There is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, as signee, or similar official against or in relation to the System Integrator;
 - The System Integrator or its team has failed to comply with or is in breach or contravention of any Applicable Laws;
 - The System Integrator has failed to comply with any terms and conditions of this Agreement;
 - Undue delay in achieving the agreed timelines for delivering the services under this Agreement;
 - Quality of Deliverables and services consistently not being to the satisfaction of the Authority.
- b) The Authority shall have the right to terminate the contract in whole or in part at any time for its convenience by giving 30 days prior written notice. The notice of termination shall specify that termination is for the Authority's convenience, the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.
- c) Where there has been an occurrence of such Event of Default, inter alia as stated above, Authority shall provide the System Integrator with a written notice of 30 (thirty) days setting

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- out specific defaults / deviances/ omissions and instructing the System Integrator to cure any breach/ default of the Contract, if Authority is of the view that the breach may be rectified
- d) Where despite the issuance of a default notice to the System Integrator by the Authority the System Integrator fails to remedy the default to the satisfaction of the Authority, the Authority may, where it deems fit, issue to the System Integrator another default notice or proceed to adopt such remedies as may be available to the Authority including but not limited to the remedies provided herein below.

29.2. Consequences for Events of Default

Where an Event of Default sub-contractors or remains uncured, the Authority shall be entitled to:

- a) Impose any such obligations and conditions and is sue any clarifications as may be necessary to, inter alia, ensure smooth continuation of the Services and the project which the System Integrator shall be obliged to comply with, which may include unilateral re-determination of the consideration payable to the System Integrator under this Agreement. The System Integrator shall in addition take all available steps to minimize losses resulting from such event of default.
- b) Suspend all payments to the System Integrator under the Agreement by written notice of suspension to the System Integrator provided that such notice of suspension shall (a) specify the nature of failure; and (b) request the System Integrator to remedy such failure within a specified period from the date of receipt of such notice of suspension by the System Integrator
- c) Where the Authority deems it necessary, it shall have the right to require replacement of any of the sub- contractors with another suitable sub-contractor. The sub-contractor/ System Integrator shall in such case terminate forthwith all their agreements/contracts, other arrangements with such sub -contractor and find out the suitable replacement for such outgoing sub-contractor with another sub-contractor to the satisfaction of the Authority, who shall execute such contracts with the Authority as the Authority may require. Failure on the part of the System Integrator to find a suitable replacement and/or terminate all agreements/contracts with such member, shall amount to a breach of the terms hereof and the Authority in addition to all other rights, have the right to claim damages and recover from the System Integrator all losses/ or other damages that may have resulted from such failure.
- d) Terminate this Agreement in full or in part.
- e) Retain such amounts from the payment due and payable by the Authority to the System Integrator as may be required to offset any losses caused to the Authority as a result of such event of default and the System Integrator shall compensate the Authority for any such loss, damages or other costs, incurred by the Authority in this regard. Nothing herein shall effect the continued obligation of the sub-contractor/other members of its Team to perform all their obligations and responsibilities under this Agreement in an identical manner as were being performed before the occurrence of the default.
- f) Invoke the Security Deposit and other Guarantees furnished hereunder, enforce indemnity provisions, recover such other costs/losses and other amounts from the System Integrator may have resulted from such default and pursue such other rights and/or remedies that may be available to the Authority under law.

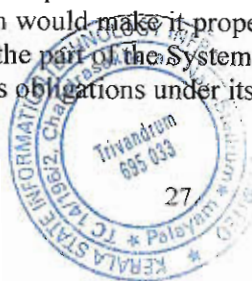
29.3. Termination for Breach

The Authority may, terminate this Agreement by giving the System Integrator a prior and written notice of up to 30 days indicating its intention to terminate the Agreement under the following circumstances:

- a) Where the Authority is of the opinion that there has been such Event of Default on the part of the System Integrator which would make it proper and necessary to terminate this Agreement and may include failure on the part of the System Integrator to respect any of its commitments with regard to any part of its obligations under its Proposal, the RFP or under this Agreement.

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Managing Director



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- b) Where it comes to the Authority's attention that the System Integrator (or the System Integrator's Team) is in a position of actual conflict of interest with the interests of the Authority, in relation to any of terms of the System Integrator's Proposal, the RFP or this Agreement.
- c) Authority may terminate this Agreement due to reason specified in clause 6.3
- d) Authority may terminate the Agreement if it comes to knowledge of the Authority that the System Integrator or any of the System Integrator's personnel or the System Integrator's sub-contractors or such sub-contractor's personnel have been involved in any fraudulent or corrupt practices or any other practice of similar nature.

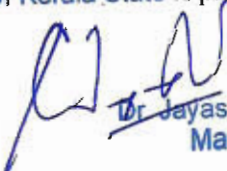
29.4. Termination for Convenience

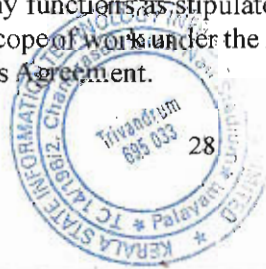
The Authority, may, by written notice of 60 (sixty) days sent to the Vendor, terminate the Agreement, in whole or in part at any time for its convenience. The notice of termination shall specify that termination is for the Authority's convenience, the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective.

29.5. Consequences of Termination

- a) In the event of termination of this contract, Authority is entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective continuity of the services which the SI shall be obliged to comply with and take all available steps to minimize the loss resulting from that termination/ breach, and further allow and provide all such assistance Authority and/ or succeeding SI, as may be required, to take over the obligations of the SI in relation to the execution /continued execution of the requirements of this Agreement.
- b) In the event that the termination of this Agreement is due to the expiry of the Term of this Agreement / a decision not to grant any (further) extension by the Authority, or where the termination is prior to the expiry of the stipulated term due to the occurrence of any Event of Default on the part of the System Integrator, the System Integrator herein shall be obliged to provide all such assistance to the successor System Integrator or any other person as may be required and as the Authority may specify including training, where the successor(s) is a representative/personnel of the Authority to enable the successor to adequately provide the Services hereunder, even where such assistance is required to be rendered for a reasonable period that may extend beyond the Term/earlier termination hereof. Without prejudice to the foregoing, upon termination (or upon expiry of the Term) of this Agreement, the Parties will comply with the Exit Management Schedule/ Plan.
- c) Where the termination of the Agreement is prior to its stipulated term on account of an Event of Default on the part of the System Integrator or due to the fact that the survival of the System Integrator as an independent corporate entity is threatened/has ceased, the Authority shall pay the System Integrator for that part of the Services which have been authorized by the Authority and satisfactorily performed by the System Integrator up to the date of termination. Without prejudice any other rights, the Authority may retain such amounts from the payment due and payable by the Authority to the System Integrator as may be required to offset any losses caused to the Authority as a result of any act/omissions of the System Integrator. In case of any loss or damage due to default on the part of the System Integrator in performing any of its obligations with regard to executing the scope of work under this Agreement, the System Integrator shall compensate the Authority for any such loss, damages or other costs, incurred by the Authority. Additionally, the sub-contractor / other members of its team shall perform all its obligations and responsibilities under this Agreement in an identical manner as were being performed before the collapse of the System Integrator as described above in order to execute an effective transition and to maintain business continuity. All third parties shall continue to perform all/any functions as stipulated by the Authority and as may be proper and necessary to execute the scope of work under the Agreement in terms of the System Integrator's Proposal, the RFP and this Agreement.

For Kerala State


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 Managing Director




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 AGM (MKTG & DVE)
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- d) Nothing herein shall restrict the right of the Authority to invoke the Performance Security and other Guarantees furnished hereunder and pursue such other rights and/or remedies that may be available to the Authority under law.
- e) Any and all payments under this clause shall be payable only after the System Integrator has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Authority. In case of expiry of the Agreement, the last due payment shall be payable to the System Integrator after the System Integrator has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Authority.
- f) All plans, drawings, specifications, designs, reports and other documents prepared by the SI in the execution of the Agreement shall become and remain the property of Authority and before termination or expiration of this Agreement the System Integrator shall deliver all such documents, prepared under this Agreement along with a detailed inventory thereof, to Authority. All rights, title, interest and ownership of all Goods and Deliverables provided by the SI to the Authority shall be deemed to be transferred to the Authority without any further action required for such transfer.

29.6. Termination of Agreement due to bankruptcy of the System Integrator

Where the System Integrator’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 the System Integrator, any failure by the System Integrator to pay any of its dues to its creditors, the institution of any winding up proceedings against the System Integrator or the happening of any such events that are adverse to the commercial viability of the System Integrator, the Authority shall reserve the right to take any steps as may be necessary, to ensure the effective transition of the project to a successor System Integrator, and to ensure business continuity provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Authority.

29.7. Rights other than Termination

The termination hereof shall not affect any accrued right or liability of either Party nor affect the operation of the provisions of this Agreement that are expressly or by implication intended to come into or continue in force on or after such termination. The termination provisions set out in this Clause are in addition to any termination rights that the Authority may have under this Agreement/RFP and are in addition to, and without prejudice to, other rights that the Authority may have under law and this Agreement.

30. ACCESS AND REPORTING


The System Integrator shall allow access to Authority or its nominated agencies to all information which is in the possession or control of the System Integrator or its sub-contractors, agents, suppliers etc. and which relates to the provision of the Services/Deliverables as set out in the Audit, Access and Reporting Schedule and which is reasonably required by Authority to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule I of this Agreement.

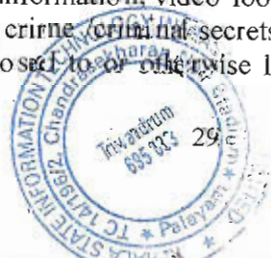
31. Miscellaneous

31.1. Confidentiality

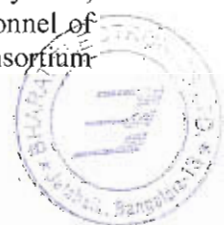
- i. “Confidential Information” means all information including Project Data (whether in written, oral, electronic or other format) which relates to the technical, financial and operational affairs, business rules, citizen information, video footages, alert information, any Authority data, products, processes, data, crime or internal secrets, design rights, know-how and personnel of the Authority or its constituent bodies which is disclosed to or otherwise learned by the other Party or its consortium.

For Kerala State Information Commission


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 Managing Director




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partners or sub-contractors (whether a Party to the contract or to the SLA) in the course of or in connection with the Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with the Agreement or to the SLA) or pursuant to the contract to be signed subsequently.


- ii. The System Integrator recognizes that during the Term of the Agreement, Confidential Information and sensitive data will be procured & made available to it, its sub-contractors & agents & others working for or under the System Integrator. Additionally, the System Integrator shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities. The System Integrator shall use the information only to execute the Project. Disclosure or usage of such data by any such recipient may constitute a breach of law applicable causing harm not only to the Authority whose data is used but also to its stakeholders. The function of Authority requires the System Integrator, its sub-contractors & agents to demonstrate utmost care, sensitivity & strict confidentiality. The Authority shall retain all rights to prevent, stop and if required take the necessary punitive action against the System Integrator regarding any forbidden disclosure. Any breach of this Clause will result in irreparable losses to the Authority and the Authority reserves the right to seek injunctive relief & damages from the System Integrator. Such remedies shall not be deemed to be the exclusive remedies for a breach by a Party of this clause but shall be in addition to all other remedies available at law or equity to the damaged Party.
- iii. The System Integrator shall execute a corporate non-disclosure agreement with Authority in the format provided by the Authority and shall ensure that all its employees, agents and sub-contractors execute individual non-disclosure agreements, which have been duly approved by the Authority with respect to this Project.
- iv. System Integrator agrees as to any Confidential Information disclosed by Authority (the "Discloser") to the System Integrator under this Agreement (the "Recipient")
 - a. to take such steps necessary to protect the Discloser's Confidential information from unauthorized use, reproduction & disclosure, as the Recipient takes in relation to its own Confidential Information of the same type, but in no event less than reasonable care;
 - b. not to disclose such Confidential Information to any person except who have a need to know such Confidential Information to carry out the Services under this Agreement and who are bound by obligations of confidentiality no less restrictive as provided in this Agreement;
 - c. to use such Confidential Information only for the purposes of this Agreement or as otherwise expressly permitted or expressly required by this Agreement or as Otherwise permitted by the Discloser in writing;
 - d. Not, without the Discloser's prior written consent, to copy the Confidential Information cause or allow it to be copied, directly or indirectly, in whole or in part, except as otherwise expressly provided in this Agreement, or as required in connection with Recipient's use as permitted under this Article, or as needed for the purposes of this Agreement, or as needed for the purposes of this Agreement, provided that any proprietary legends & notices (whether of the Discloser or of a Third Party) are not removed or obscured;
 - e. Not, to disclose, transfer, publish or communicate the Confidential Information in any manner, without the Discloser's prior written consent, to any person except as permitted under this Agreement.

v. The restrictions of this section shall not apply to confidential Information that:

For Kerala State Infrastructure Ltd.


Dr. Jayasankar Prasad
Managing Director



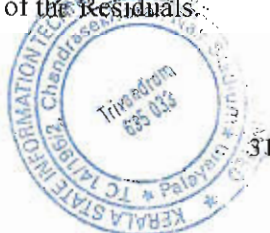

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HLS & SOB BEL



- a. Is or becomes generally available to the public through no breach of this Article by the Recipient;
 - b. Was in the lawfully and demonstrably in Recipient's possession free of any obligation of confidence prior to the time of receipt of it by the Recipient hereunder;
 - c. Is developed by the Recipient independently of any of discloser's Confidential Information;
 - d. Is rightfully obtained by the Recipient from third Parties authorized at that time to make such disclosure without restriction;
 - e. Is identified in writing by the Discloser as no longer proprietary or confidential;
 - f. Is required to be dis closed by law, regulation or Court Order, provided that the Recipient gives prompt written notice to the Discloser of such legal & regulatory requirement to dis close so as to allow the Discloser reasonable opportunity to contest such disclosure
- vi. To the extent that such dis closure is required for the purposes of this Agreement, Recipient may disclose Confidential Information to:
- a. Its employees, agents & independent SIs & to any of its affiliates & their respective independent SIs or employees in order to carry out the Services under this Agreement;
 - b. Its professional advisors & auditors, who require access for the purposes of this Agreement, whom the Recipient has informed of its obligations under this Clause& Recipient has used commercially reasonable efforts to ensure that they are contractually obliged to keep such Confidential Information confidential on terms substantially the same as set forth in this Article. Either Party may also disclose confidential Information or any entity with the other Party's prior written consent.
- vii. The provisions of this Clauseshall survive the expiration or any earlier termination of this Agreement.
- viii. Confidential Information shall be & remain the property of the Discloser & nothing in this Clause shall be construed to grant either Party any right or license with respect to the other Party's confidential Information Otherwise than as is expressly set out in this Agreement,
- ix. Subject as otherwise expressly provided in this Agreement all Confidential information intangible or electronic form under the control of the Recipient shall either be destroyed, erased or returned to the Discloser promptly upon the earlier of: (i) the written request of the Dis closer, or, (ii) termination or expiry of this Agreement and the Recipient shall provide a signed declaration by its authorized representative in this regard confirming compliance with this Clause. Notwithstanding the forgoing, both Parties may retain, subject to the terms of this Article, reasonable number of copies of the other Party's Confidential Information solely for confirmation of compliance with the confidentiality obligations of this Agreement.
- x. Neither Party is restricted by the provisions of this Clause from using (including using to provide products or perform services on behalf of third Parties) any ideas, concepts, know-how & techniques that are related to the Recipient's employees or agents (and not intentionally memorized for the purpose of later recording or use) (collectively, the "Residuals"). This Clauseshall not permit the disclosure or use by either Party or any financial (including business plans), statistical, product, personnel or customer data or the other Party. Each party agrees not to disclose the source of the Residuals.

For Kerala State Infrastructure Ltd.

Dr. Jayasankar Prasad.c
Managing Director



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31.2. Delegation of Authority

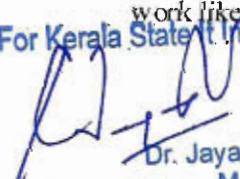
The Authority may delegate any office functions/authority to any other competent person or his subordinate official or supervision consultant as the Authority think appropriate for effective administration of the Agreement. However these delegations will not diminish the overall authority of the Authority. The Authority can review the delegations so made at any time. The delegation of function/authority by the Authority shall be intimated to the Applicant in writing.

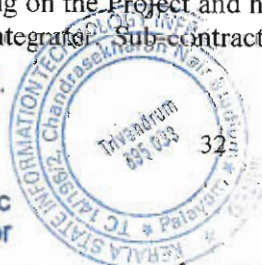
The SI shall designate and authorize a representative to deal with the Authority, Engineer and Engineer's Representative. The name of the Applicant's representative shall be notified by the Applicant to the Authority in writing.


31.3. Sub Contracts

Constitution of consortium

- i. For the purposes of fulfilment of its obligations as laid down under the Agreement, unless the context requires Otherwise, SI shall be the sole point of interface between the Authority and the SI and the SI would be absolutely accountable for the performance of its own, the other members of Consortium and/or its Team's functions and obligations.
- ii. The Consortium Members agree that the SI shall be the prime point of contact between the Consortium Members and the Authority and shall be primarily responsible for the discharge and administration of all the obligations contained herein and, the Authority, unless it deems necessary shall deal only with the SI.
- iii. SI shall not, except with the prior approval of the Authority, have any provision in the consortium agreement or make any amendments to the said consortium agreement which adversely affects the rights and/or obligations of SI and Consortium Members under this Agreement or any amendment which is contrary to the provisions of this Agreement.
- iv. The SI shall be liable for all obligations under this Agreement. The Lead Bidder shall ensure that at all times during the Term of this Agreement, Consortium Member and the Consortium Member's Team complies with all the terms and conditions of this Agreement.
- v. The SI and the Consortium Member shall be bound by all undertakings and representations made by their authorized representative and any covenants stipulated hereunder with respect to this Agreement, for and their behalf. The terms and conditions of this Agreement shall mutatis mutandis apply to all Consortium Members.
- vi. The SI shall not change any Consortium Member without the prior written approval of the Authority. The approval of the Authority may be subject to certain conditions in terms of credentials and qualifications of the new Consortium Member which the SI shall be liable to meet. The SI shall give a notice of at least 4 months in advance to the Authority if during the term of this Agreement the SI desires to terminate any contract/arrangement relating to the performance of Services hereunder with the Consortium Member. Where, during the term of this Agreement, the SI terminates any contract/arrangement or agreement relating to the performance of the Services hereunder with any Consortium Member (subject to approval by the Authority), the SI shall be liable for any consequences resulting from such termination. The SI shall in such case ensure the smooth continuation of Services by providing a suitable replacement subject to approval and to the satisfaction of the Authority at no additional charge and at the earliest opportunity.
- vii. All the personnel working on the Project and having access to the Servers / data should be on payroll of the System Integrator. Sub-contracting / out sourcing would be allowed only for work like

For Kerala State Infrastructure Ltd.

Dr. Jayasankar Prasad C.
Managing Director




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- xvi. All rights of use of any process, service or facility developed or any other task performed by the sub-contractor for the System Integrator for the purposes of this Agreement, under a subcontract/agreement would lie exclusively with the Authority in perpetuity free from all liens, encumbrances and other third-party rights and the System Integrator shall, wherever required take all steps that may be necessary to ensure the use of such rights by the Authority. Ownership and all rights of use of all deliverables / documents/ reports etc. supplied by the System Integrator and/or by authorized sub-contractor for the System Integrator for the purposes of this Agreement, under a subcontract/agreement would lie exclusively with the Authority in perpetuity free from all liens , encumbrances and other third party rights and the System Integrator shall, wherever required take all steps that may be necessary to ensure the ownership and use of such rights by the Authority. Authority shall own and have a right in perpetuity to use all newly created Intellectual Property Rights which have been developed by the sub-contractor solely during execution of this Agreement. The System Integrator will provide the undertakings given by the sub-contractor within 30(thirty) days from the date of appointment of sub- contractor to dis close all such Intellectual Property Rights arising in performance of the Services to the Authority and execute all such agreements/documents and file all relevant applications, effect transfers and obtain all permits and approvals that may be necessary in this regard to effectively transfer and conserve the Intellectual Property Rights of the Authority.
- xvii. Nothing in this Agreement or any delegation/subcontract agreement hereunder shall relieve the System Integrator from its liabilities or obligations under this Agreement to provide the Services in accordance with this Agreement.
- xviii. Where the Authority deems necessary, it shall have the right to require replacement of any sub-contractor with another sub-contractor and the System Integrator shall in such case terminate forthwith all agreements/contracts other arrangements with such delegate/ sub-contractor and find of the suitable replacement for such delegate/ sub-contractor to the satisfaction of the Authority at no additional charge. Failure on the part of the System Integrator to find a suitable replacement and/or terminate all agreements/contracts with such sub-contractor, shall amount to a breach of the terms hereof and the Authority in addition to all other rights, have the right to claim damages and recover from the System Integrator all losses/ or other damages that may have resulted from such failure. Further, in case the System Integrator terminates any contract/arrangement or agreement with a sub-contractor for any reason whatsoever, the System Integrator shall ensure the smooth continuation of Services by providing forthwith, a suitable replacement which is acceptable to the Authority at no additional charge. In case of a replacement of the sub-contractor, the new sub- contractor shall meet the technical and financial qualifications

31.4. Care to be taken while working at Public Place


System Integrator should follow instructions is sued by Authority or its nominated Agency from time to time for carrying out work at public places. System Integrator should ensure that there is no damage caused to any private or public property. In casesuch damage is caused, System Integrator shall immediately bring it to the notice of concerned organization and the Authority in writing and pay necessary charges towards fixing of the damage. System Integrator should also ensure that no traffic congestion/public inconvenience is caused while carrying out work at public places.

System Integrator shall ensure that its employees/representatives don't breach privacy of any citizen or establishment during the course of execution or maintenance of the project.

For Kerala State It Infrastructure Ltd.


Dr. Jayasankar Prasad.c
Managing Director




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31.5. Compliance with Laws

The System Integrator shall provide the Services and carry out their obligations under the Agreement with due diligence, efficiency and professionalism/ethics in accordance with generally accepted professional standards and practices. The System Integrator shall always act as faithful advisors in respect of any matter relating to this Agreement. The System Integrator shall abide by all the provisions/Acts/Rules/Regulations, Standing orders, etc. of Information Technology as prevalent in the country. The System Integrator shall also conform to the standards laid down by Authority or Government of India as notified from time to time. The System Integrator shall pay fair and reasonable wages to the workmen employed by them, for carrying out the Services and providing the Deliverables under the Agreement undertaken by them and comply with the provisions set forth under the Minimum wages Act and the Contract Labour Act 1970.

31.6. Independent SI

Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture or employment relationship or joint venture between the Parties to this Agreement. Except as expressly stated in this Agreement nothing in this Agreement shall be deemed to constitute any Party as the agent of any other Party or authorizes either Party

- i. To incur any expenses on behalf of the other Party,
- ii. To enter into any engagement or make any representation or warranty on behalf of the other Party,
- iii. To pledge the credit of or Otherwise bind or oblige the other Party,
- iv. To commit the other Party in any manner whatsoever in each case without obtaining the other Party's prior written consent.

31.7. Waiver

A waiver of any provision or breach of this Agreement must be in writing and signed by an authorized official of the Party executing the same. No such waiver shall be construed to affect or imply a subsequent waiver of the same provision or subsequent breach of this Agreement.

31.8. Notices

Any notice or other document, which may be given by either Party under this Agreement, shall be given in writing in person or by pre-paid recorded delivery post.

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

Authority:

Managing Director, Kerala State Information Technology Infrastructure Ltd.,
For and on behalf of **Kerala Fibre Optic Network Ltd.** .
TC 14/196/2, Chandrasekharan Nair Stadium,
Palayam, Vikas Bhavan P.O.,
Thiruvananthapuram, Kerala -695033


System Integrator:

Dinesh Kumar S.
Additional General Manager, Missile Systems
Bharat Electronics Limited
Jalahalli Post, Bengaluru 560013

For Kerala State It Infrastructure Ltd.


D. Jayasankar Prasad.c
Managing Director




G.S.N. MURTHY
AGM (MKTG & D&E)
MIS & SCB BEL



Any notice or other document shall be deemed to have been given to the other Party when delivered (if delivered in person) if delivered between the hours of 9.30 am and 5.30 pm at the address of the other Party set forth above or on the next working day thereafter if delivered outside such hours, and 7 calendar days from the date of posting (if by letter).

Either Party to this Agreement may change its address and contact details by giving the other reasonable prior written notice of the new information and its effective date.

31.9. Performance Security

- i. The System Integrator shall submit within 15 days from the receipt of Letter of Intent, performance security in the form of a bank guarantee which is unconditional & irrevocable equal to 10% of the Total CAPEX value in the format prescribed in the Tender. The performance security shall be valid for the entire Term of the Agreement (including any extension) and 3 months thereafter. If the Performance Security is liquidated/encashed, in whole or in part, during the currency of the Performance Security, the System Integrator shall top up the Performance Security with the same amount as has been encashed within 15 days of such encashment without demur.
- ii. The Performance Security shall be forfeited/ invoked by the Authority in the event of failure to complete obligations or breach of any of the obligations, warranties or representations by the System Integrator. Notwithstanding and without prejudice to any rights whatsoever of the Authority under the Agreement in the matter, the proceeds of the Performance Security shall be payable to the Authority as compensation for any loss resulting from the System Integrator's failure to perform/comply its obligations under the Agreement. The Authority shall notify the System Integrator in writing of the exercise of its right to receive such compensation within 30(thirty) days, indicating the contractual obligation(s) for which the System Integrator is in default.
- iii. The Authority shall also be entitled to make recoveries from the System Integrator's bills, Performance security, or from any other amount due to him, an equivalent value of any payment made to him due to inadvertence, error, collusion, mis construction or misstatement.
- iv. In case the Project is delayed beyond the Timelines, the Performance security shall be accordingly extended by the System Integrator till completion of scope of work as mentioned in the Agreement and the Tender.
- v. The above shall be in accordance with Annexure VII


31.10. Personnel/Employees

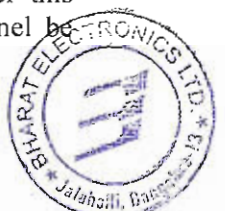
- i. Personnel/employees as signed by System Integrator to perform the services shall be employees of System Integrator or its sub-contractors, & under no circumstances will such personnel be considered as employees of Authority. System Integrator shall have the sole responsibility for supervision & control of its personnel & for payment of such personnel's employee's entire compensation, including salary, legal deductions withholding of income taxes & social security taxes, worker's compensation, employee & disability benefits & the like & shall be responsible for all employer obligations under all laws as applicable from time to time. The Authority shall not be responsible for the above issues concerning to personnel of System Integrator.
- ii. System Integrator shall use its best efforts to ensure that sufficient System Integrator personnel are employed to perform the Services, & that, such personnel have appropriate qualifications to perform the Services. Authority or its nominated agencies shall have the right to require the removal or replacement of any System Integrator personnel performing work under this Agreement. In the event that Authority requests that any System Integrator personnel be

For Kerala State Infrastructure Ltd

Dr. Jayasankar Prasad.c
Managing Director



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replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule & upon clearance of the personnel based on profile review & upon schedule & upon clearance of the personnel based on profile review & personal interview by Authority or its nominated agencies, within not later than 30 working days. System Integrator shall depute quality team for the project & as per requirements; Authority shall have the right to ask System Integrator to change the team.

- iii. Management (Regional Head/VP level officer) of System Integrator needs to be involved in the project monitoring & should attend the review meeting at least once in a month.
- iv. The profiles of resources proposed by System Integrator in the technical proposal, which are considered for Technical Bid evaluation, shall be construed as 'Key Personnel' & the System Integrator shall not remove such personnel without the prior written consent of Authority. For any changes to the proposed resources, System Integrator shall provide equivalent or more experienced resources in consultation with Authority.
- v. Except as stated in this clause, nothing in this Agreement will limit the ability of System Integrator freely to assign or reassign its employees; provided that System Integrator shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. Authority shall have the right to review & approve System Integrator's plan for any such knowledge transfer. System Integrator shall maintain the same standards for skills & professionalism among replacement personnel as in personnel being replaced.
- vi. Each Party shall be responsible for the performance of all its obligations under this Agreement & shall be liable for the acts & omissions of its employees & agents in connection therewith.

31.11. Variations & Further Assurance

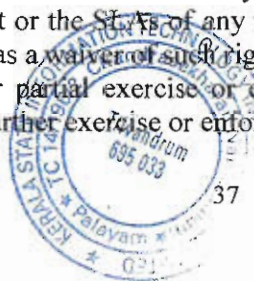
- i. No amendment, variation or other change to this Agreement or the SLAs shall be valid unless made in writing & signed by the duly authorized representatives of the Parties to this Agreement.
- ii. Each Party to this Agreement or the SLAs agree to enter into or execute, without limitation, whatever other agreement, document, consent & waiver & to do all other things which shall or may be reasonably required to complete & deliver the obligations set out in the Agreement or the SLAs.

31.12. Severability & Waiver

- i. If any provision of this Agreement or the SLAs, 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 SLAs or the remainder of the provisions in question which shall remain in full force & effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid & enforceable provision which achieves to the greatest extent possible the economic, legal & commercial objectives of the illegal, invalid or unenforceable provision or part provision within 7(seven) working days.
- ii. No failure to exercise or enforce & no delay in exercising or enforcing on the part of either Party to this Agreement or the SLAs of any right, remedy or provision of this Agreement or the SLAs 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 any other right, remedy or provision.

For Kerala State Infrastructure Ltd.

Dr. Jayasankar Prasad.c
Managing Director



G.S.N. MURTHY
AGM (MKTG & D&E
HLS & SCB BEI



31.13. Entire Agreement

This Agreement, the SLAs & all schedules appended thereto & the contents & specifications of the Volumes I & II of the Tender, subsequent corrigenda is sued thereon & clarification (undertakings) accepted by the Authority constitute the entire agreement between the Parties with respect to their subject matter.

31.14. Survivability

The termination or expiry of this Agreement or the SLAs for any reason shall not affect or prejudice any terms of this Agreement, or the rights of the Parties under them which are either expressly of by implication intended to come into effect or continue in effect after such expiry or termination.

31.15. The stamp duty payable for the contract shall be borne by the System Integrator.

1. Applicable Law

The Agreement shall be governed by the laws and procedures prescribed by the laws prevailing and in force in India (the "Applicable Law"), within the framework of applicable legislation and enactment made from timeto timeconcerningsuchcommercial dealings/processing. Subject to Arbitration clause of this Agreement, all legal disputes are subject to the jurisdiction of Thiruvananthapuram courts only. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement and the performance of the parties contemplated under this Agreement, to the extent that such convention might Otherwise be applicable.

IN WITNESS whereof the parties hereto have signed this on the day, month and year first herein above written.

Signed, sealed and delivered

By Dr. C. Jayasankar Prasad
Managing Director
Kerala State Information Technology Infrastructure Ltd.
For and on behalf of the "**Kerala Fibre Optic Network Ltd**".

For Kerala State Infrastructure Ltd.



Dr. Jayasankar Prasad.c
Managing Director

In Witnesses of:

(1) Mohana Kumar N, General Manager(T), KSITIL

(2) Remya R S, CS&FM, KSITIL








Signed, sealed and delivered.

By G. S.N Murthy
Additional General Manager (Marketing/D&E).
For and on behalf of the "**Bharat Electronics Limited**",


G.S.N. MURTHY
AGM (MKTG & D&E)
HLS & SCB BEI.



In Witnesses of:

(1) Subrata Kumar Das, Sr. DGM (Finance/HLS&SCB)

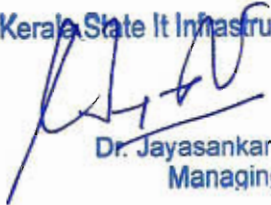
(2) Mini Bijoy, Sr. DGM (HLS&SCB)

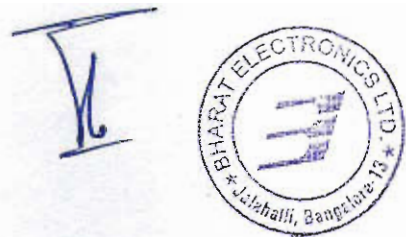
Attachments to the Agreement:




- i) Tender Document issued by the Authority together with the Clarification & Corrigendum Documents published by the Authority subsequent to the Tender for this work (hereby annexed as Annexure I)
- ii) LOI issued by the Authority to the System Integrator (hereby annexed as Annexure II); and
- iii) System Integrator's "Pre-Qualification Bid", "Technical Bid" and "Commercial Bid" and all subsequent clarifications submitted in response to the Tender (hereby annexed as Annexure III).
- iv) Payment Terms as per RFP (hereby annexed as Annexure IV)
- v) Service Level Agreement (hereby annexed as Annexure V)
- vi) Format of Change Control Notice (hereby annexed as Annexure VI)
- vii) Schedule for Audit, Access and Reporting (hereby annexed as Schedule I)
- viii) Exit Management Schedule (hereby annexed as Schedule II)
- ix) Minutes of Expert Technical Committee Meeting dated 8th March 2019 (hereby annexed as Annexure VII)

For Kerala State It Infrastructure Ltd.


Dr. Jayasankar Prasad.c
Managing Director



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MIS & SCB BEL