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C 738563

AGREEMENT

This Master Services AGREEMENT (hereinafter the "Agreement") is made at KSITIL Thiruvananthapuram, Kerala, on this day of 20<sup>th</sup> December 2019

BETWEEN

Kerala State Information Technology Infrastructure Ltd., Thiruvananthapuram, Kerala 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

Telecommunications Consultants India Limited (TCIL), a company registered under the Companies Act, 1956, having its registered office at TCIL Bhawan, Greater Kailash -1, New Delhi -110048, hereinafter referred to as "Project Monitoring Agency" or "PMA", (which expression unless repugnant to the context therein, shall include its successors, administrators, executors and permitted assignees), of the SECOND PART,

Hereinafter individually referred to as "Party" and collectively as "Parties",

**WHEREAS:**

- Authority is desirous to select reputed consultancy firm having experience of providing consultancy / monitoring / testing services for Optical Fiber Cable (OFC) implementation projects.



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No. 8320

TELE COMMUNICATIONS CONSULTANTS  
INDIA LIMITED



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In furtherance of the same, Authority undertook the selection of a reputed consulting firm to provide monitoring & testing for implementation of Kerala Fibre Optic Network and Reliable Communication & Data Acquisition Network vide Request for Proposal (RFP) KSITIL/KFON/2019-20/12 dated September 2019.

C 738561

- iii. Authority has accepted the Proposal of TCIL for the provision and execution of the said works for the sum of INR 19,98,29,483.60/- (Indian Rupees Nineteen Crores Ninety Eight Lakhs Twenty Nine Thousand Four Hundred and Eighty Three rupees and Sixty Paise only), including all levies, duties and taxes including GST upon the terms laid out in the Agreement. The Contract Value is inclusive of GST. However, GST shall be paid as per the prevailing rate as per invoice date.
- iv. Thereby, TCIL has been selected as the PMA for Kerala Fibre Optic Network and Reliable Communication & Data Acquisition Network, vide LOI reference Number No 38/KSITIL/KFON/PMA/2019/2907 dated 13/11/2019.

Now it is hereby agreed to by and between the parties as under:

#### 1. Terms and Conditions to this Agreement

##### 1.1 Definitions

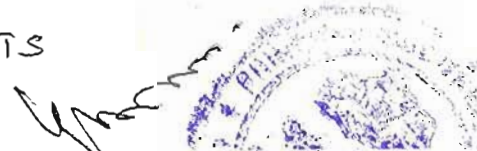
In this Contract, the following terms shall be interpreted as indicated:

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No. 8318

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- i. "Applicable Laws" includes all applicable statutes, enactments, acts of legislature or laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives, requirement or other governmental restriction and orders or judgments of any Governmental authority, tribunal, board, court or other quasi-judicial authority or other governmental restriction or any similar form of decision applicable to the relevant Party and as may be in effect on the date of execution of Agreement and during the subsistence thereof, applicable to the Project;
- ii. "Contract / Agreement" means the Agreement entered into between the PMA and the Authority as recorded in the Contract form signed by the Authority and the PMA including all attachments and Annexes thereto, the RFP and all Annexes thereto and the agreed terms as set out in the bid, all documents incorporated by reference therein and amendments and modifications to the above from time to time;
- iii. "Total Contract Value" means the price payable to the PMA under this Contract for the full and proper performance of its contractual obligations;

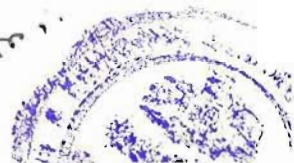
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No. 8317

TELECOMMUNICATIONS CONSULTANTS  
INDIA LIMITED



भारतीय गैर न्यायिक INDIA NON JUDICIAL

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पच्चीस हजार रुपये



Rs.  
25000

TWENTY FIVE THOUSAND RUPEES

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- iv. "Deliverables" means the products, infrastructure, licenses and services agreed to be delivered by the PMA in pursuance of the Contract as elaborated in the RFP and includes all documents related to the user manual, technical manual, designs, process documentations, the artefacts, the training materials, process and operating manuals, service mechanisms, policies and guidelines, inter alia payment and/or process related etc. and all their respective modifications;
- v. "Effective Date" means the date on which the Contract is executed by both the Parties
- vi. "End-to-End Connectivity" means complete Design, Supply, Installation, Integration, Commissioning and Testing of the created network (duly approved by the agency appointed by Authority) which shall include OTDR link test, Power On & Self-Testing, IP-MPLS/DWDM ring fail over testing for both cases i.e. in case of path/equipment failure, As Build Diagram (ABD reports), GPON equipment at end institutions with NOC and Final acceptance certificate;
- vii. "OEM" or "Original Equipment Manufacturer" means the original manufacturer and owner of the Intellectual Property Rights of any Software or Equipment to be used in the Project and to which

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- viii. "Performance Bank Guarantee" or "Contract Performance Guarantee" shall mean the guarantee provided by a Scheduled Commercial Bank/ Nationalized Bank to Authority by the Successful Bidder.
- ix. "Project" means Project for Design, Supply, Installation, Integration, Testing, Commissioning of OFC, IP-MPLS Network, GPON Network and Network Operations Centre (NOC) including Operations & Maintenance and facilitating service provisioning of the created network for the period of 7 years on turnkey basis as per the terms and conditions laid in the SI RFP and provision of Services in conformance to SLA;
- x. "Project Go-Live" means the date when all the systems covered under this Project are installed, integrated, commissioned, discovered in NMS at NOC, end-to-end Acceptance Test certificate has been issued for OFC infrastructure and electronics and all end offices are able to access the e- governance applications hosted on State Data Centre;
- xi. "Authority" means Kerala State Information Technology Infrastructure Limited represented by its Managing Director;
- xii. "PMA's Team" means the Successful Bidder selected through this tender along with all of its partners, who have to provide goods & services to the Authority under the scope of this RFP / Contract. This definition shall also include any authorized service providers/partners/agents and representatives or other personnel employed or engaged either directly or indirectly by the PMA for the purposes of this PMA / Contract;
- xiii. "Project Store" locations as provided by the SI to store the material as required in the State;
- xiv. "Request for Proposal/ (RFP)" means the documents containing the general, technical, functional, commercial and legal specifications for the implementation of the Project including different Annexures and includes the clarifications, explanations, minutes of the meetings, corrigendum(s) and amendment(s) issued from time to time during the bidding process and on the basis of which bidder has submitted its Proposal
- xv. "Tender" or "Tender Document" means PMA RFP;
- xvi. "Timelines" means the duration of the contract as described in the RFP;



## 2. Interpretations

In this Agreement, unless otherwise specified:

- i. A reference to clauses, sub-clauses, or Section is a reference to clauses, sub-clauses, or Section of this Agreement including any amendments or modifications to the same from time to time.
- ii. Words denoting the singular include the plural and vice versa and use of any gender includes the other genders.
- iii. References to a “company” shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established
- iv. Words denoting to a “person” shall be construed to include any individual, partnerships, firms, companies, public sector units, corporations, joint ventures, trusts, associations, organizations, executors, administrators, successors, agents, substitutes and any permitted assignees or other entities (whether or not having a separate legal entity). A reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually
- v. A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted
- vi. Any reference to a “day” (including within the phrase “working day”) shall mean a period of 24 hours running from midnight to midnight
- vii. References to a “working day” shall be construed as a reference to a day (other than a Sunday) on which Authority office is generally open for business
- viii. References to times are to Indian Standard Time.
- ix. Reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time.
- x. All headings and titles are inserted for convenience only, they are to be ignored in the interpretation of this Contract.



- xii. Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Section or Annexure and the words "include" and "including" shall not be construed as terms of limitation.
- xiii. The words "in writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated.
- xiv. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference.
- xv. Unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include either such days or date

### 3. Documents forming part of Agreement

The following documents shall be deemed to form and be read and constructed as part of the Agreement viz.:

- i. This Agreement;
- ii. The Letter of Intent (Annexure A);
- iii. The RFP (Annexure B);
- iv. The clarifications/corrigendum issued by KSITIL in addition to RFP (Annexure C);
- v. The Proposal and any other documents submitted by the PMA to the extent accepted by the Authority;
- vi. Email communication between KSITIL and TCIL dated 14th November 2019 regarding change in number of resources and duration of project post negotiation by KSITIL in Lol and subsequent KSITIL confirmation by return email regarding payment to TCIL based on actual deployment.
- vii. All communication between KSITIL and TCIL via email post declaration of successful bidder.

viii. However, in the event of any conflicting provision between the



RFP and this Agreement, the provisions of this Agreement shall prevail.

**4. Scope of Work variation**

Both the parties agree that the magnitude of work has reduced from 53,000 Km of OFC to approximately 35,000 Km of OFC laying post survey and hence the effort of monitoring the same.

**5. Tentative cost of the Project**

The Tentative cost on the basis of revised time schedule is as follows:

TENTATIVE COST			
A. Deliverable			
Deliverable	Qty	Unit Cost (excl. of taxes)	Total Cost (excl. of taxes)
NOC	1	25352560	25352560
PoP	378	174166	65834748
Total A			91187308
B. Manpower			
Manpower Description	Qty	Per Month Cost (excl. of Tax)	Total Cost (excl. of tax) for 16 months
Project Manager	1	549242	8787872
OFC Engineers	24	135000	51840000
Warehouse-In-Charge	4	199828	12788992
GIS Expert	1	296428	4742848
Total B			78159712
C. Total			
Total PMA Cost (excl. of taxes) (A+B)			169347020
Taxes (@18%)		18%	30482463.6
Grand Total (incl. of taxes)			199829483.6

**Notes:**

1. The quantity mentioned in (B) above is tentative and resources shall be increased on the basis of actual requirement in field after mutual discussion by PMA and KSITIL.
2. The number of months (16 Months) for Manpower is indicative and shall increase as per the duration of project.
3. The above costs are valid for the duration of this agreement.
4. Hence, the total project value will increase based on above points.

**6. SLA & Damages**


- i. Service Level Agreement (SLA) is the contract between the Authority and the PMA. SLA defines the terms of the PMA's responsibility in ensuring the timely delivery of the deliverables





and the correctness of the same based on the agreed Performance Indicators as detailed in the Agreement. This section defines various Service Level Indicators which will be considered by the Department in the Service Level Agreement with PMA. The PMA has to comply with all Service Level Agreements (SLAs) defined below to ensure adherence to project timelines, quality and availability of services. Noncompliance with the SLA attracts damages.

S. No.	Service	Expected Service level	Damages level in case of breach of the expected service level
1.	Deployment of the PMA team during the contract period after signing the contract with the Authority.	<ul style="list-style-type: none"> <li>• full time during the contract period - Project Manager</li> <li>• Full time during the contract period - Warehouse In-Charge</li> <li>• Full time during the contract period - GIS Expert</li> <li>• For NOC team experts &amp; PoP team experts during the contract period as &amp; when required</li> <li>• For OFC engineers full time during the contract period</li> </ul>	<ul style="list-style-type: none"> <li>• INR 10,000 per day to be made in case the Project Manager, Warehouse In-Charge, GIS Expert, experts for PoP team and NOC team are not made available onsite as per the expected service level.</li> <li>• INR 5,000 per day to be made in case the OFC engineers are not made available onsite as per the expected service level.</li> </ul>
2.	Completion of Field Acceptance Testing of OFC laid	Perform the Acceptance Testing within one week of SI's 'offer for commissioning'	INR 1,000 per day to be made in case expected service level is not met.
3.	Completion of Acceptance Testing of NOC	Perform the End to End Testing and fail over within four weeks of SI's 'offer for commissioning'	INR 1,000 per day to be made in case expected service level is not met.
4.	Completion of Acceptance Testing of PoP	Perform the End to End Testing and fail over within one week of SI's 'offer for commissioning'	INR 1,000 per day to be made in case expected service level is not met.
5.	Completion of Acceptance Testing of Core Ring	Perform the End to End Testing and fail over within four weeks of SI's 'offer for commissioning'	INR 1,000 per day to be made in case expected service level is not met.



S. No.	Service	Expected Service level	Damages level in case of breach of the expected service level
6.	Completion of Acceptance Testing of Aggregation Ring	Perform the End to End Testing and fail over within two weeks of SI's 'offer for commissioning'	INR 1,000 per day to be made in case expected service level is not met.
7.	Completion of Acceptance Testing of Pre-Aggregation Ring	Perform the End to End Testing and fail over within two weeks of SI's 'offer for commissioning'	INR 1,000 per day to be made in case expected service level is not met.
8.	Completion of Acceptance Testing of Spur	Perform the End to End Testing and fail over within two weeks of SI's 'offer for commissioning'	INR 1,000 per day to be made in case expected service level is not met.
9.	Daily activity and status report	Provide daily activities report and the status in 2 days	INR 1,000 per day from 3rd day to be made in case expected service level is not met.

ii. In case the PMA

- a. verifies and certifies the mistakes/poor workmanship committed by SI or
- b. commits incorrect validations/testing/acceptance of SI deliverables

Penalty of minimum INR 10,000 and maximum of actual loss or damage suffered by Authority shall be levied from the PMA. The team/manpower involved in the incident from the PMA side shall be replaced from the project. Manpower deployment SLA shall be applicable. However, PMA shall ensure minimum one week's handover time between the replaced resource and the replacing resource.

- iii. The PMA shall perform its obligations under the agreement entered into with the Authority, in a professional manner. In the event of failure of maintaining the SLA, damages shall be imposed on basis of the cost of concerned services as mentioned in SLA and would be levied subject to a maximum of 10% of the total contract value. Authority may recover such amount of damages from any payment being released to the PMA, irrespective of the fact whether such payment is relating to this contract or otherwise. Beyond 10% of the total contract value, the Authority has the right to terminate the contract or a portion or part of the work thereof.


- iv. If any act or failure by the PMA under the agreement results in failure or inoperability of systems and if the Authority has to take corrective actions to ensure functionality of its property, the Authority reserves the right to impose damages, which may be equal to the cost it incurs or the loss it suffers for such failures.
- v. Authority may impose damages to the extent of damage to its any equipment, if the damage was due to the actions directly attributable to the staff of PMA.
- vi. The Authority shall implement all damage clauses after giving due notice to the PMA.
- vii. If the PMA fails to complete the due performance of the contract in accordance with the specification and conditions of the offer document, the Authority reserves the right either to cancel the order or to recover a suitable amount as deemed reasonable as Liquidated Damage for non- performance.

Note: Damages shall not be levied on the PMA in the event of force Majeure effecting the SLA which is beyond the control of the PMA.

#### 7. Representations & warranties

In order to induce the Authority to enter into this Contract, the PMA hereby represents and warrants as of the date hereof, which representations and warranties shall survive the term and termination hereof, the following:

- i. That the PMA is not involved in any major litigation or legal proceedings, pending, existing, and potential or threatened, that may have an impact of affecting or compromising the performance or delivery of Services under this Contract.
- ii. That the representations and warranties made by the PMA in the proposal or made in this contract are and shall continue to remain true and fulfill all the requirements as are necessary for executing the obligations and responsibilities as laid down in the Contract and the Tender and unless the Authority specifies to the contrary, the PMA shall be bound by all the terms of the Proposal and the contract through the term of the contract.
- iii. That the PMA has the professional skills, personnel and resources/authorizations that are necessary for providing all such services as are necessary to fulfill the Scope of Work stipulated in the Tender and this Contract.



- iv. That there shall not be any privilege, claim or assertion made by a third party with respect to right or interest in, ownership, mortgage or disposal of any asset, property, movable or immovable as mentioned in any Intellectual Property Rights, licenses and permits.
- v. That the PMA shall use such assets of the Authority as the Authority may permit for the sole purpose of execution of its obligations under the terms of the Proposal, Tender or this Contract. The PMA shall however, have no claim to any right, title, lien or other interest in any such property, and any possession of property for any duration whatsoever shall not create any right in equity or otherwise, merely by fact of such use or possession during or after the term hereof.
- vi. That the PMA shall procure all the necessary permissions and adequate approvals and licenses for use of various software and any copyrighted process/product free from all claims, titles, interests and liens thereon and shall keep the Authority indemnified in relation thereto.
- vii. That the execution of the Services and the Scope of work herein are and shall be in accordance and in compliance with all applicable laws.
- viii. That all conditions precedent under the Contract has been satisfied.
- ix. That neither the execution and delivery by the PMA of the Contract nor the its compliance with or performance of the terms and provisions of the Contract (i) will contravene any provision of any Applicable Law or any order, writ, injunction or decree of any court or Governmental Authority binding on the PMA, (ii) will conflict or be inconsistent with or result in any breach of any or the terms, covenants, conditions or provisions of, or constitute a default under any Contract, Contract or instrument to which the PMA is a party or by which it or any of its property or assets is bound or to which it may be subject or (iii) will violate any provision of the Memorandum and Articles of Association of the PMA.
- x. That the PMA certifies that all registrations, recordings, filings and notarizations of the Contract and all payments of any tax or duty, including without limitation stamp duty, registration charges or

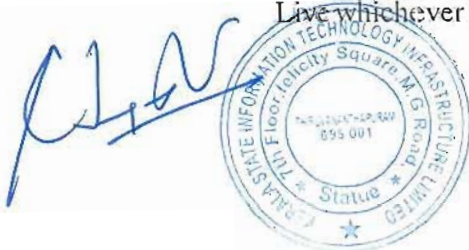


similar amounts which are required to be effected or made by the PMA which is necessary to ensure the legality, validity, enforceability or admissibility in evidence of the Contract have been made.

- xi. That the PMA owns, has license to use or otherwise has the right to use, free of any pending or threatened liens or other security or other interests all its Intellectual Property Rights, which are required or desirable for performance of its services under this contract and regarding the same the PMA does not, so far as the PMA is aware, in carrying on its business and operations, infringe any Intellectual Property Rights of any person. So far as the PMA is aware, none of the Intellectual Property Rights, owned or enjoyed by the PMA or which the PMA is licensed to use, which are material in the context of PMA's business and operations for the performance of this contract are being infringed nor, so far as the PMA is aware, is there any infringement or threatened infringement of those Intellectual Property Rights licensed or provided to the PMA by any person. All Intellectual Property Rights (owned by the PMA or which the PMA is licensed to use) required by the PMA for the performance of the contract are valid and subsisting. All actions (including registration, payment of all registration and renewal fees) required to maintain the same in full force and effect have been taken thereon and shall keep the Authority and KSEBL indemnified in relation thereto.
- xii. That time is the essence of the Contract and hence the PMA shall at all times maintain sufficient manpower, resources, and facilities, to provide the Services in a workman like manner on a timely basis.
- xiii. That its security measures, policies and procedures are adequate to protect and maintain the confidentiality of the Confidential Information.
- xiv. That in providing the Services or deliverables or materials, neither PMA nor its agent, nor any of its employees, shall utilize information which may be considered confidential information of, or proprietary to, any prior employer or any other person or entity;

#### 8. Duration of the contract

The Contract shall be valid for a period of 24 months or Project Go-Live whichever is latest subject to maximum period of 30 months from



the date of signing of contract.

The Authority shall reserve the sole right to grant any extension to the term above mentioned and shall notify in writing to the PMA, at least 3 months before the expiration of the term thereof, whether it shall grant the PMA an extension of the term. The decision to grant or refuse the extension shall be at the Authority's discretion. Accordingly, the Performance Bank Guarantee shall be extended up to extended period of the Contract.

Where the Authority is of the view that no further extension of the term be granted to the PMA, the Authority shall notify the PMA of its decision at least 3 (three) months prior to the expiry of the Term. Upon receipt of such notice, the PMA shall continue to perform all its obligations here under, until such reasonable time beyond the Term of the Contract within which, the Authority shall either appoint an alternative PMA or create its own infrastructure to operate such Services as are provided under this Contract. However, the Authority shall make payment for work executed for the extended period post contract expiry.

#### 9. Damage to property and injury to personnel

The PMA shall indemnify and keep indemnified the Authority against all losses and claims for injuries or damage to any person or any property whatsoever which may arise out of or in consequence of the breach of terms and conditions of this Agreement and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto.

The Authority shall not be liable for damage or compensation payable as per provision of any law/act in respect or consequence of any accident or injury to any workmen or other person in the employment of the PMA. The PMA shall have to pay all claims, demands, proceedings costs, charges and expenses whatsoever in respect there of or in relation there to.

In the event of any accident and/or injury, in respect of which compensation may become payable under the Workman's Compensation Act-VIII of 1923 including all amendments thereof, Authorized officer of the Authority shall have full powers to retain out of any sums payable/becoming payable to the PMA, any sum as may be deemed sufficient to meet such liability on receipt of



award of compensation from the competent authority under the said act, and the same shall be adjusted from this amount. Any shortfall shall be recovered and any excesses shall be refunded. The opinion of the authorized officer of the Authority shall be final in regard to all matters arising under this clause.

In case it is found that any theft or damage has occurred to the property or premises of the Authority due to negligence of personnel in performing their duty and/or absence from the place of duty and/or not providing substitute by the PMA or any other reason, the cost of all such losses or damages as assessed by the Authority shall be recovered from the PMA's bill or from their Security Deposit/ Contract Performance Guarantee or in any other manner, as may deemed fit.

In case any personnel of the PMA is implicated in any law suit or is injured by any person or group of persons, agitating mob, etc. during the course of performing his/her duty/their duties for the Authority, it shall be the sole responsibility of the PMA to defend its personnel in the court of law or to extend all medical and financial help, etc. without charging any cost to the Authority.

The Authority shall be indemnified by the PMA for lapses or other mischief's etc. by its personnel.

Claims arising due to "any activity" mentioned above shall be liable for adjustment from amount payable to PMA from its bills.

#### 10. Necessary Compliances

The PMA shall provide and be responsible for payment of wages, salaries, and other statutory privileges and facilities as applicable to its personnel as per relevant and applicable labour law/rules/regulations and orders of the Central/State Government or local authorities or other authorities as are in force from time to time.

The PMA shall ensure all its employees are covered under national Accidental Insurance and National Life Insurance (Govt. of India Schemes).

Project Manager and OFC engineers should be on the pay roll of the PMA. The Authority shall not have any liability/responsibility to absorb the persons engaged by the PMA and/or extend any type of recommendation, etc. for obtaining any job with the Authority or elsewhere.

The PMA shall at the time of execution of the Contract have PF



code number obtained from authorities concerned under the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 and remit contributions in respect of the employees employed by him to the PF office concerned every month or obtain the same within a month after the agreement for the concerned employees.

The PMA shall maintain all records/registers as required to be maintained under various applicable labour laws and other statutory laws in force and as amended from time to time, mentioned above and produce the same before the Statutory Authorities as well as the Authority as per the time period defined by the Authority.

The PMA shall also submit periodical reports on various labour laws such as Contract labour (Registration & Abolition) Act-1970, Employees Provident Fund Act etc., under intimation to maintain the designation of the principal employer.

The PMA shall be responsible for payment of overtime wages to his workmen, if any, in case they are required to work beyond the prescribed hours under laws. PMA shall deploy adequate number of persons for execution of the Contract regulating their working hours and weekly off within the statutory limit.

The PMA shall in the event of his workman / employees sustain any injury or disablement due to an accident or any other cause arising out of and in the course of his employment, provide necessary medical treatment and pay compensation, if any, required under the Workmen's Compensation Act, 1923 and other applicable laws.

If any of the persons engaged by the PMA misbehaves with any officials of the Authority/SI or commits any misconduct in connection with the property of the Authority or suffers from any serious communicable diseases, the PMA shall be liable to replace them immediately.

The PMA should comply with all the applicable laws in force and effect for the time being, including being, registered under the various applicable labour laws.

#### 11. Events of Default by the PMA

The failure on the part of the PMA to perform any of its obligations or comply with any of the terms of this contract shall constitute an Event of Default on the part of the PMA. The events of default as mentioned above may include inter-alia the following:

- i. The PMA commits a breach of any of the terms and conditions of the bid.





- ii. The PMA has failed to perform any instructions or directives issued by the Authority, which it deems proper and necessary to execute the scope of work under the Contract.
- iii. The PMA has failed to adhere to any of the SLAs and such SLA has not been complied with even after a period of 30 days from the date by which such SLA was to be complied with.
- iv. The PMA has failed to adhere to any of the milestones as laid down in the Contract, or if the PMA has fallen short of matching such standards/targets as Authority may have designated with respect to any task necessary for the execution of the scope of work under this Contract. The above mentioned failure on the part of the PMA may be in terms of failure to adhere to timelines, specifications, requirements or any other criteria as defined by Authority;
- v. The PMA has failed to remedy a failure to perform its obligations in accordance with the specifications issued by the Authority, despite being served with a default notice which laid down the specific deviance on the part of the PMA to comply with any stipulations or standards as laid down by the Authority;
- vi. The PMA has failed to conform to any of the Service/Facility Specifications/standards as set out in the scope of work of this Tender document or has failed to adhere to any amended direction, modification or clarification as issued by the Authority during the term of this Contract and which the Authority deems proper and necessary for the execution of the scope of work under this Contract;
- vii. The PMA has failed to demonstrate or sustain any representation or warranty made by it in this Contract, with respect to any of the terms of its Proposal, the Tender and this Contract
- viii. There is a proceeding for bankruptcy, insolvency, winding up, liquidation, voluntarily or otherwise or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to the PMA.
- ix. The PMA has failed to comply with or is in breach or contravention of any applicable laws.

## 12. Termination Clause

### 12.1 Right to Terminate the Process



Authority reserves the right to terminate the contract placed on the PMA and recover expenditure incurred by Authority in case of any of the events mentioned in Clause 12 above.

- i. Authority reserves its right to terminate the Contract in the event of delay and forfeit the Performance Security as liquidated damages for the delay if deductions on account of liquidated damages exceed more than 10% of the total contract price.
- ii. In case the PMA fails to deliver the services as stipulated in the delivery schedule, Authority reserves the right to procure the same or similar services from alternate sources at the risk, cost and responsibility of the PMA.
- iii. After award of the contract, if the PMA does not perform satisfactorily or delays execution of the contract, Authority reserves the right to get the balance contract executed by another party of its choice by giving one-month notice for the same. In this event, the PMA is bound to make good the additional expenditure, which Authority may have to incur in executing the balance contract. This clause is applicable, if for any reason, the contract is cancelled.
- iv. Where there has been an occurrence of such defaults inter alia as stated above, the Authority shall issue a notice of default to the PMA, setting out specific defaults / deviances / omissions and providing a notice of Thirty (30) days to enable such defaulting party to remedy the default committed.
- v. In the event of Authority shall give 30 days' notice to the PMA of its intention to terminate the Contract and shall so terminate the Contract unless the PMA initiates remedial action acceptable to the Authority during the 30 days' notice period.
- vi. Where despite the issuance of a default notice to the PMA by the Authority and the PMA fails to remedy the default to the satisfaction of the Authority, the Authority may, where it deems fit, issue to the defaulting party another default notice or proceed to adopt such remedies as may be available to the Authority.
- vii. Authority reserves the right to recover any dues payable by the PMA from any amount outstanding to the credit of the PMA, including the pending bills and/or invoking the bank guarantee under this contract.



### 13. Consequences of Termination

- i. In the event of termination of the Contract due to any cause whatsoever, [whether consequent to the stipulated term of the Contract or otherwise], Authority shall be entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective business continuity of the Service(s) which the Vendor shall be obliged to comply with and take all available steps to minimize loss resulting from the termination/breach, and further allow the next successor Vendor to take over the obligations of the erstwhile Vendor in relation to the execution/continued execution of the scope of the Contract.
- ii. Nothing herein shall restrict the right of Authority to invoke the Performance Guarantee and other guarantees, securities furnished, enforce the Deed of Indemnity and pursue such other rights and/or remedies that may be available to Authority under law or otherwise.
- iii. The PMA shall not be entitled for compensation to any loss which they may incur due to their own default.
- iv. In case any loss or damage occurs to the property/ items/ materials/ equipment etc. of the Authority/SI, due to any act of PMA or its personnel, the Authority shall have the right to recover from the PMA the value of all such property/ items/ materials/ equipment etc.
- v. The termination here of shall not affect any accrued right or liability of either Party nor affect the operation of the provisions of the Contract that are expressly or by implication intended to come into or continue in force on or after such termination.

### 14. Liquidated Damages

- i. Notwithstanding Authority right to cancel the order, liquidated damages for any delay in execution at 1% (One percent) of the incomplete portion of order value per week will be charged for every week's delay in the specified delivery schedule subject to a maximum of 10% of the value of the order value.
- ii. Damages shall be capped to maximum of 10% of total Contract Value. Beyond 10% of total Contract Value, the Authority has the right to terminate the contract or a portion or part of the work



thereof. The Authority shall give 30 days' notice to the PMA of its intention to terminate the Contract and shall so terminate the Contract unless the bidder initiates remedial action acceptable to the Authority during the 30 days' notice period.

- iii. Authority reserve its right to recover these amounts by any mode such as adjusting from any payments to be made by Authority to the PMA. Liquidated damages will be calculated on milestone basis.
- iv. Subject to clause for Force Majeure, if the PMA fails to complete the services under Project scope of work before the scheduled completion date or the extended date or if the PMA repudiates the contract before completion of the work, the Authority, at its discretion, may without prejudice to any other right or remedy available to it under the contract, recover a maximum of 10 percent of the total Contract Value from the PMA, as Liquidated Damages (LD). In case it leads to termination, Authority shall give thirty days' notice to the PMA of its intention to terminate the contract and shall so terminate the contract unless during the thirty days' notice period, the PMA initiates remedial action acceptable to the Authority.
- v. Authority may without prejudice to its right to affect recovery by any other method, deduct the amount of liquidated damages from any money belonging to the PMA in its hands (which includes the Authority right to claim such amount against PMA's Bank Guarantee) or which may become due to the PMA. Any such recovery or liquidated damages shall not in any way relieve the PMA from any of its obligations to complete the work or from any other obligations and liabilities under the Contract.

## 15. Dispute Resolution Mechanism

The Bidder and the Authority shall endeavor their best to amicably settle all disputes arising out of or in connection with the Contract in the following manner:

- i. The Party raising a dispute shall address to the other Party a notice requesting an amicable settlement of the dispute within seven (7) days of receipt of the notice.
- ii. Matter will be referred for negotiation between Officer nominated by Authority and the Authorized Official of the PMA. The matter



shall then be resolved between them and the agreed course of action documented within a further period of 15 days. However, if the dispute is not resolved then it shall be resolved as per following provision:

- iii. "In the event of any dispute or difference relating to the interpretation and application of the provisions of this contract, such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE 0M No 4(1)/2013-DPE(GMI/FTS'1835 dated 22 05-2018".
- iv. Both the parties shall not be entitled to suspend the Service/s or the completion of the job or making payment, pending resolution of any dispute between the Parties and shall continue to render the Service/s in accordance with the provisions of the Contract/Agreement notwithstanding the existence of any dispute between the Parties or the subsistence of any arbitration or other proceedings.

#### 16. Force Majeure

Force Majeure is herein defined as any cause, which is beyond the control of the PMA or Authority as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affect the performance of the contract, such as:

- i. Natural phenomenon, including but not limited to floods, droughts, earthquakes and epidemics.
- ii. Acts of any government, including but not limited to war, declared or undeclared priorities, quarantines and embargos.
- iii. Terrorist attack, public unrest in work area provided either party shall within 10 days from occurrence of such a cause, notifies the other in writing of such causes. The bidder or Authority shall not be liable for delay in performing his/her obligations resulting from any force majeure cause as referred to and/or defined above. Any delay beyond 30 days shall lead to termination of contract by parties and all obligations expressed quantitatively shall be calculated as on date of termination. Notwithstanding this, provisions relating to indemnity, confidentiality survive termination of the contract.

The Parties shall bear any cost incurred due to Force Majeure



Event on their own and shall have no claim on account of such event against the other party.

- v. The obligations of the Party claiming to face Force Majeure Event shall remain suspended till such Force Majeure event persists, and the contract term shall be extended by a period for which such Party was not able to perform/discharge its obligations due to a Force Majeure event; provided that immediate due notice of occurrence of such Force Majeure Event has been given by the Party to the other; provided further that the Authority shall be entitled to terminate this Agreement if a Force Majeure Event subsists for a period of 3 months continuously.

### 17. Right of Monitoring, Inspection and Periodic Audit

Authority reserves the right to inspect and monitor / assess the progress / performance at any time during the course of the Contract, after providing due notice to the PMA. The Authority may demand, and upon such demand being made, the PMA shall provide with any document, data, material or any other information required to assess the progress of the project.

Authority shall also have the right to conduct, either itself or through any another agency as it may deem fit, an audit to monitor the performance by the PMA of its obligations/functions in accordance with the standards committed to or required by the Authority and the PMA undertakes to cooperate with and provide to the Authority/ any other Consultant/ Agency appointed by the Authority, all documents and other details as may be required by them for this purpose. Any deviations or contravention identified as a result of such audit/assessment would need to be rectified by the PMA failing which the Authority may, without prejudice to any other rights that it may have, issue a notice of default.

### 18. Information Security

The PMA shall not carry and/or transmit any material, information, layouts, diagrams, storage media or any other goods/material in physical or electronic form, which are proprietary to or owned by the Authority, out of premises, without prior written permission from the Authority.

The PMA shall, upon termination of this agreement for any reason, or upon demand by Authority, whichever is earliest, return any and all information provided to the PMA by Authority, including any copies or reproductions, both hard copy and electronic.



## 19. Authority's Obligations

Authority representative shall interface with the PMA, to provide the required information, clarifications, and to resolve any issues as may arise during the execution of the Contract.

Authority shall ensure that timely approval is provided to the PMA, where deemed necessary, which should include diagram / plans and all specifications related to services required to be provided as part of the Scope of Work.

## 20. Confidentiality

- i. As used herein, the term —Confidential Information means any information, including information created by or for the other party, whether written or oral, which relates to internal controls, computer or data processing programs, algorithms, electronic data processing applications, routines, subroutines, techniques or systems, or information concerning the business or financial affairs and methods of operation or proposed methods of operation, accounts, transactions, proposed transactions or security procedures of either party or any of its affiliates, or any client of either party, except such information which is in the public domain at the time of its disclosure or thereafter enters the public domain other than as a result of a breach of duty on the part of the party receiving such information. It is the express intent of the parties that all the business process and methods used by the Bidder in rendering the services hereunder are the Confidential Information of the Bidder.
- ii. The PMA must maintain absolute confidentiality of the documents/ maps/ tools collected in any form including electronic media and any other data/information provided to him for the execution of the work. The PMA should not use the Project data for any purpose other than the scope of work specified in the document and added/ amended before signing the contract. The PMA must remove/ destroy the entire data from his custody after completion of the contract period. If at any stage it is found that the bidder is using the data provided by the client any time during the contract execution or after completion of the contract for any other purposes, stringent legal action will be initiated as per applicable law of land and the contract will be terminated without assigning any reasons.
- iii. The PMA shall not disclose to any one, any information marked as confidential and communicated or made available or accessible by the firm during execution of the work. The PMA s shall note that the confidential information will be used only for the purposes of this tender and shall not be disclosed to any third party for any reason what so ever.
- iv. At all-time of the performance of the services, the PMA shall abide by all applicable security rules, policies, standards, guidelines and procedures. The PMA should note that before any of its employees or assignees is given access to the Confidential Information, each such employee and assignees shall agree to be bound by the term of this tender and such rules, policies, standards, guidelines and procedures by



- its employees or agents.
- v. The PMA should not disclose to any other party and keep confidential the terms and conditions of this Contract agreement, any amendment hereof, and any Attachment or Annexure hereof.
  - vi. The PMA shall not, without prior written consent from Authority, disclose/share/use the bid document, contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Authority, in connection therewith, to any person other than a person employed by the bidder in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
  - vii. The PMA shall not, without prior written consent of Authority, make use of any document or information made available for the project, except for purposes of performing the Contract.
  - viii. The PMA shall be obliged to implement any proposed changes once approval in accordance with Article above has been given, with effect from the date agreed for implementation
  - ix. The PMA shall, upon termination of this agreement for any reason, or upon demand by Authority, whichever is earliest, return any and all information provided to the PMA by Authority, including any copies or reproductions, both hard copy and electronic.
  - x. The obligations of confidentiality under this section shall survive rejection of the contract

## 21. Indemnity

The PMA shall execute and furnish to the Authority, a Deed of Indemnity in favor of the Authority, his successors or assignees, its employees and officers in a form and manner acceptable to Authority, indemnifying Authority from and against any costs, losses, damages, expenses, claims including those from third parties owing infringement or misappropriation of a patent, copyright, trademark and trade secret, arising or incurred inter- alia during the project period arising out of:

- i. Negligence or wrongful act or omission in connection with or incidental to this Contract; or
- ii. Any breach of any of the terms the Successful Bidder's Proposal as agreed, the Tender and this Contract by the PMA or its team.
- iii. The indemnity shall be to the extent of 100% of total contract value in favour of Authority.

## 22. Continuance of the Contract

Notwithstanding the fact that settlement of dispute(s) (if any) under arbitration may be pending, the parties hereto shall continue to be governed by and perform the work in accordance with the provisions under the Scope of Work to ensure continuity of operations.





## 23. Limitation of the Bidder's (PMA) Liability towards Authority

- i. Except in case of gross negligence, willful misconduct, breach of Application Laws, breach of representations & warranties and breach of indemnity provisions on the part of the PMA or on the part of any person or company acting on behalf of the PMA in carrying out the Services, the PMA, with respect to damage caused by the PMA to Authority's property, shall not be liable to Authority
  - a) For any indirect or consequential loss or damage; and
  - b) For any direct loss or damage that exceeds the total payments payable under this contract to the PMA hereunder.
- ii. This limitation of liability shall not affect the PMA's liability, if any, for direct damage to Third Parties resulting in bodily injury, death or damage to physical property caused by the PMA or any person or firm/company acting on behalf of the PMA in carrying out the Services. Notwithstanding anything stated to the contrary in the RFP, limitation of liability, including for direct damage to Third Parties, shall be to the extent of 100% of the total contract value of the project calculated up to and as on the date when such section / clause is required to be invoked.

## 24. Conflict of interest

The Bidder shall disclose to Authority in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the Vendor or Bidder's team) in the course of performing the Service(s) as soon as practical after it becomes aware of that conflict.

Lead/Sole bidder or any of the consortium members must not directly/indirectly involve/participate with SI in implementation of the Project in any form.

## 25. Severance

In the event any provision of the Contract is held to be invalid or unenforceable under the applicable law, the remaining provisions of this Contract shall remain in full force and effect.

## 26. Governing Language

The Agreement shall be written in English language. Subject to below Clause, such language versions of the Agreement shall govern its interpretation. All correspondence and other documents pertaining to the Contract that are exchanged by parties shall be written in English



language only.

#### 27. "No Claim" Certificate

The PMA shall not be entitled to make any claim, whatsoever against Authority, under or by virtue of or arising out of, the contract, nor shall Authority entertain or consider any such claim, if made by the PMA after it has signed a —No claim certificate in favour of Authority in such form as shall be required by it after the work is finally accepted.

#### 28. Publicity

The PMA shall not make or permit to be made a public announcement or media release about any aspect of this Contract unless the Authority first gives its written consent to the PMA.

#### 29. Waiver

- i. Any waiver of any provision of this Contract is ineffective unless it is in writing and signed by the Party waiving its rights.
- ii. A waiver by either Party in respect of a breach of a provision of this Contract by the other Party is not a waiver in respect of any other breach of that or any other provision.
- iii. The failure of either Party to enforce at any time any of the provisions of this Contract shall not be interpreted as a waiver of such provision.

#### 30. Modification

Any modification of the Contract shall be in writing and signed by an authorized representative of each Party.

#### 31. Taxes

- i. The PMA shall be responsible for payment of all taxes, duties, statutory/local levies arising as a result of commercial transactions under this Contract. Authority shall not be responsible for any tax related liability.
- ii. Any upward/downward revision of GST only shall be applicable at the time of invoicing.
- iii. GST, as applicable, shall be paid by Authority to the PMA.

#### 32. Application

These General Conditions shall apply to the extent that provisions in other parts of the Contract do not supersede them.

#### 33. Relationship Between the Parties



- i. Nothing in the Contract constitutes any fiduciary relationship between the Authority and PMA or any relationship of employer employee, principal and agent, or partnership, between the Authority and PMA.
- ii. No Party has any authority to bind the other Party in any manner whatsoever except as agreed under the terms of the Contract.
- iii. Authority will not be under any obligation to the PMA's Team except as agreed under the terms of the Contract.

#### 34. No Assignment

The PMA shall not transfer any interest, right, benefit or obligation under the contract without the prior written consent of Authority.

#### 35. Survival

The provisions of the clauses of the Contract in relation to documents, data, processes, property, Intellectual Property Rights, indemnity, publicity and confidentiality and ownership survive the expiry or termination of this Contract and in relation to confidentiality, the obligations continue to apply unless Authority notifies the PMA of its release from those obligations.

#### 36. Entire Contract

The terms and conditions laid down in the Tender and all annexures thereto as also the Proposal and any attachments/annexes thereto shall be read in consonance with and form an integral part of the Contract. The Contract supersedes any prior contract, understanding or representation of the Parties on the subject matter.

#### 37. Governing Law

This contract shall be governed in accordance with the laws of India.

#### 38. Jurisdiction of Courts

The District court at Thiruvananthapuram has exclusive jurisdiction to determine any proceeding in relation to the Contract.

#### 39. Compliance with Laws

The PMA shall comply with the laws in force in India in the course of performing the Contract.

#### 40. Notices

A notice means:

to a notice; or



ii. A consent, approval or other communication required to be in writing under the Contract. All notices, requests or consent provided for or permitted to be given under this Contract shall be in writing and shall be deemed effectively given when personally delivered or mailed by pre-paid certified/registered mail, return receipt requested, addressed as follows and shall be deemed received two days after mailing or on the date of delivery if personally delivered:

To  
The Managing Director,  
Kerala State Information Technology Infrastructure Ltd.  
7th Floor, Felicity Square, M.G. Road, Palayam, Statute,  
Thiruvananthapuram – 695001

To PMA at:  
Executive Director (Technical)  
Telecommunications Consultants India Limited  
TCIL Bhawan, Greater Kailash -I  
New Delhi - 110048

Any Party may change the address to which notices are to be directed, by giving a notice to the other party in the manner specified above. A notice served on a Representative is taken to be notice to that Representative's Party.

IN WITNESS WHEREOF the parties have duly executed this Contract as of the day and year first above written.

For and on behalf of Kerala State IT Infrastructure Ltd.

For and on behalf of PMA



  
20/12/19  
Dr. Jayasankar Prasad.c  
Managing Director  
Managing Director, Kerala State  
Information Technology Infrastructure Ltd.

  
20.12.19  
Executive Director (Technical)  
Telecommunications Consultants  
India Limited



Witness

Witness

1.   
Remya R.S  
Company Secretary & Finance Manager  
Kerala State IT Infrastructure Ltd.

1.   
20.12.19

2.   
MOHANA KUMAR. N  
General Manager  
Kerala State IT Infrastructure Limited

2.