

## **Section VII. General Conditions of Contract**

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## General Conditions of Supply

(1) Definitions                      The following words and expressions shall have the meanings hereby assigned to them:

1.1.1. **“Contract”** means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.

(b) **“Contract Documents”** shall mean the following documents listed, including any amendments thereto be read and construed as part of this Agreement, viz.:

- i. the Detailed award of contract;
- ii. the Service level agreement;
- iii. the Special Conditions of Contract;
- iv. the General Conditions of Contract;
- v. the Scope of Work;
- vi. the System Requirement Specification Document (SRS)
- vii. the Instructions to bidders;
- viii. the Purchaser’s Notification to the Supplier for Award of Contract;
- ix. Supplier’s response (proposal) to the RFP, including the Bid Submission Sheet and the Price Proposal submitted by the Supplier;
- x. Appendix A to B & E to P;
- xi. Acceptance of purchaser’s notification
- xii. RFQ document (Identification No: R-APDRP/ITIA/2008/11) along with all corrigendum, clarifications and related documents issued by the Nodal Agency

- 1.1.2. **“Contract Price”** means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.
- 1.1.3. **“Day”** means calendar day.
- 1.1.4. **“Delivery”** means the transfer of the Goods and services from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract.
- 1.1.5. **“Completion”** shall mean the completion of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- 1.1.6. **“GCC”** means the General Conditions of Contract.
- 1.1.7. **“Goods”** means all hardware, software, networking equipment and/or other equipment accessories and materials that the Supplier is required to supply to the Purchaser under the Contract.
- 1.1.8. **“Intellectual Property Rights”** means any patent, copyright, trademark, trade name, service marks, brands, propriety information, whether arising before or after the execution of this Contract and the right to ownership and registration of these rights.
- 1.1.9. **“Purchaser’s Country”** shall mean India.
- 1.1.10. **“Purchaser”** means the entities purchasing the Goods and Related Services.
- 1.1.11. **“Related Services”** means the services to be provided as per the requirements / conditions specified in the Contract. In addition to this, the definition would also include other related/ancillary services that may be required to execute this Contract.
- 1.1.12. **“SCC”** means the Special Conditions of Contract.
- 1.1.13. **“Service Level Agreement” (SLA)** shall mean the Service Level Agreement entered into between the Purchaser and

the Supplier.

1.1.14. **“Subcontractor”** means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier, as per the provisions of Clauses 19 of the GCC.

1.1.15. **“Supplier”** means the empanelled System Integrator (SI) whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier.

1.1.16. **“The MoP”** is the Ministry of Power, Government of India.

1.1.17. **“The Site,”** shall mean all identified locations within the State of Goa, where the Supplier carries out any installation of Goods or is required to provide any Related Services.

1.1.18. **“OEM”** means the Original Equipment Manufacturer of any equipment / system / software / product that are providing such goods to the Purchaser under the scope of this Tender / Contract.

1.1.19. **“Kick Off Meeting”** means a meeting convened by the Purchaser to discuss and finalize the work execution plan and procedures with the Supplier.

1.1.20. the term **“in writing”** means communicated in written form with proof of receipt

**1. Contract Documents** 1.1. Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

**2. Corrupt Practices** 2.1. The Purchaser requires bidders, suppliers, and contractors to observe the highest standard of ethics during the execution of such contracts.

2.1.1. The following definitions apply:

“corrupt practice” means the offering, giving receiving, or soliciting, directly or indirectly, of any thing of value to influence

the action of any party in the procurement process or the execution of a contract;

“fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;

“collusive practices” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Goa Electricity Department, designed to influence the action of any party in a procurement process or the execution of a contract;

“coercive practices” means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;

2.1.2. The Purchaser will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract.

2.1.3. After the award of the contract if it comes to the knowledge of the Utility that the Supplier has engaged in corrupt, fraudulent, collusive, or coercive practices at any stage, the Purchaser shall forthwith terminate the contract as per the provisions of GCC Clause 33.

### **3. Interpretation**

3.1. In this Contract unless a contrary intention is evident:

- A. In case of any conflict with any provision relating to the SRS document and the RFP document, the provisions of the RFP document shall prevail for all intents and purposes
- B. the clause headings are for convenient reference only and do not form part of this Contract;
- C. unless otherwise specified a reference to a clause number is a reference to all of its sub-clauses;
- D. unless otherwise specified a reference to a clause, sub-clause or

section is a reference to a clause, sub-clause or section of this Contract including any amendments or modifications to the same from time to time;

- E. a word in the singular includes the plural and a word in the plural includes the singular;
- F. a word importing a gender includes any other gender;
- G. a reference to a person includes a partnership and a body corporate;
- H. a reference to legislation includes legislation repealing, replacing or amending that legislation;
- I. where a word or phrase is given a particular meaning it includes the appropriate grammatical forms of that word or phrase which have corresponding meanings
- J. In the event of an inconsistency between the terms of this Contract and the Bid document and the proposal, the terms of this contract hereof shall prevail.
- K. (K) Whenever a material or article is specified or described by the name of a particular brand, manufacturer or trade mark, the specific item shall be understood as establishing type, function and quality desired. Products of other manufacturers may also be considered, provided sufficient information is furnished so as to enable the Purchaser to determine that the products are equivalent to those named

### 3.2. Incoterms

The meaning of any trade term and the rights and obligations of



parties thereunder shall be as prescribed by Incoterms.

3.2.1. EXW, CIF, CIP, and other similar terms, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Bids or as specified in the SCC.

### 3.3. Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

### 3.4. Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

### 3.5. Waiver

3.5.1. Subject to GCC Sub-Clause 3.5.2 below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract. Neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.5.2. The waiver by either party of a breach or default of any of the provisions of this contract by the other party shall not be interpreted as :

- A) A waiver of any succeeding breach of the same or other provision, nor shall any delay or omission on the part of the other party to exercise; or
- B) A way to avail itself of any right, power, or privilege that it has or may have under this contract to operate as waiver of any breach or default by the other party.

3.5.3. Any waiver of a party's rights, powers, or remedies under the

Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

**3.6. Severability**

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract or the contract as a whole and the remaining provisions of the contract shall remain in full force and effect.

**4. Language**

4.1. The official language of the Contract is English. Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in English. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the Contract, the English translation shall govern.

4.2. The Supplier shall bear all costs of translation to English and all risks of the accuracy of such translation. The Supplier shall be bound to the English translation and what has been stated therein.

**5. Consortium**

5.1. If the Supplier is a consortium, the members of such consortium shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract. Only the Lead Member (as mentioned at the Empanelment stage) shall have the authority to conduct all businesses for and on behalf of the Consortium during the bidding process and, in the event the Consortium is awarded the Contract, during contract execution The composition of the consortium cannot be altered.

5.1.1. Without prejudice to Clause 5.1 of this GCC, for the purposes of fulfillment of it's obligations as laid down under the Contract where the Purchaser deems fit and unless the context requires otherwise, Supplier shall refer to the Lead Member who shall be the sole point of interface between the Purchaser and the Consortium and would be absolutely

accountable for the performance of its own, the other members of Consortium and/or its Team's functions as also the subcontractors.

5.1.2. All payments shall be made by the Purchaser in favour of the Lead Member.

**6. Notices**

- 6.1. All notices and other communications under this contract must be in writing, and must either be mailed by registered mail with acknowledgement Due. Or hand delivered with proof of it having been received.
- 6.2. If mailed, all notices will be considered as delivered after 5 days, of the notice having been mailed. If hand delivered, all notices will be considered, when received by the party to whom the notice is meant and sent for.
- 6.3. All notices under this contract shall be sent to or delivered at the address as specified by the parties in the SCC.
- 6.4. A Notice shall be effective when delivered or on the Notice's effective date, whichever is later.

**7. Governing Law**

- 7.1. The Contract shall be governed by and interpreted in accordance with the laws of the India. The High Court of Judicature at **Hon'ble High Court of Bombay in Goa** and Courts subordinate to such High Courts shall have exclusive jurisdiction in respect of any disputes relating to the tendering process, award of Contract and execution of the Contract.
- 7.2. In all cases, this contract shall be governed by and interpreted in accordance with the Law of the Union Of India. In this context, the expression 'Law' takes within it's fold Statutory law, Judicial Decisional Law and Delegated Legislation as well

**8. Settlement of Disputes**

- 8.1. The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 8.2. If the parties fail to resolve such a dispute (The date of commencement of the dispute shall be taken from the date when this clause reference is quoted by either party in a formal

communication clearly mentioning existence of dispute or as mutually agreed) or difference by mutual consultation within twenty-eight (28) days from the commencement of such consultation, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

- 9. Scope of Work**
- 9.1. The Goods and Related Services to be supplied are specified in Appendix-L. At the time of awarding the contract, the Purchaser shall specify any change in the Scope of Work. Such changes may be due for instance, if the quantities of goods and related services are increased or decreased at the time of award.
- 9.2. Unless otherwise stipulated in the Contract, the Scope of Work shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract.
- 10. Delivery**
- 10.1. Subject to GCC Sub-Clause 32.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Implementation Schedule specified in the Appendix-N. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.
- 11. Supplier's Responsibilities**
- 11.1. The Supplier shall supply all the Goods and Related Services included in the Scope of Work and Appendix-L in accordance with GCC Clause 9, and the Implementation Schedule, as per GCC Clause 10.
- 12. Purchaser's Responsibilities**
- 12.1. Whenever the supply of Goods and Related Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities, the Purchaser shall, if so required by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.
- 12.2. The Purchaser shall bear all costs involved in the performance of its responsibilities, in accordance with GCC Sub-Clause 13.1.
- 12.3. The Chief Information Officer (CIO) of Goa Electricity Department or any other person designated by the utility shall act as the nodal point for implementation of the contract and for issuing necessary instructions, approvals, commissioning, acceptance certificates,

payments etc. to the Supplier.

- 12.4. The CIO of Goa Electricity Department or any other person designated by the utility shall approve all such documents within 15 working days.
- 12.5. Purchaser may provide on Supplier's request, particulars/ information / or documentation that may be required by the Supplier for proper planning and execution of Scope of Work under this contract.
- 12.6. Purchaser shall provide to the Supplier sitting space and infrastructure and utilities, in the Purchaser's offices at such location as may be mutually decided by the Parties.

**13. Contract Price**

- 13.1. The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions there from, as may be made pursuant to the Contract as also subject to provisions of Clause 13.2.
- 13.2. Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorized in the SCC.

**14. Terms of Payment**

- 14.1. The Contract Price shall be paid in the manner specified in the SCC. No invoice for extra work/change order on account of change order will be submitted by the Supplier unless the said extra work /change order has been authorized/approved by the Purchaser in writing.
- 14.2. The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, accompanied by the documents submitted pursuant to GCC Clause 10.
- 14.3. Payments shall be made promptly by the Purchaser, no later than forty five (45) days after submission of an invoice or request for payment by the Supplier, and the Purchaser has accepted it.
- 14.4. If any excess payment has been made by the Purchaser due to difference in quoted price in proposal and Supplier's invoice, the purchaser may without prejudice to its rights recover such amounts by other means after notifying the Supplier or deduct such excess

payment from any payment subsequently falling due to the Supplier.

14.5. The currency in which payment shall be made to the supplier under this contract is Indian Rupees (INR).

**15. Taxes and Duties**

15.1. The prices quoted by the supplier shall be inclusive of all duties/taxes/levies. Responsibility for including all applicable taxes/duties/levies in the proposal lie with the bidder and the utility shall not be responsible for any error/omission on the part of the bidder. Payment of taxes/duties/levies shall not be made separately.

15.2. For goods supplied from outside the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties, stamp duties, license fees, and other such levies imposed outside the Purchaser's country.

15.3. For goods supplied from within the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties, entry tax, license fees, other levies etc, incurred until delivery of the Goods and Related service to the Purchaser. The Purchaser will provide Central sales tax Form C, whenever applicable.

15.4. The cost of Entry Tax as applicable will be the liability of the Supplier i.e. the price quoted will be inclusive of Entry Tax. The amount of Entry Tax will be deducted from the Supplier's invoice and remittance to tax dept. will be made by the Purchaser under the TIN number of Purchaser. If any liability is raised by the commercial tax department, Govt. of Goa on account of Entry Tax at a later date, the same shall be to the Supplier's account and accordingly recovery shall be made from the supplier's pending bills/security deposit as available with the Purchaser.

**16. Performance Security**

16.1. The Supplier shall, within fourteen (14) days of the notification of Contract award, provide a Performance Security for the due performance of the Contract in the amounts and currencies specified in the SCC.

16.2. The Purchaser shall at its sole discretion invoke the Performance Security and appropriate the amount secured thereunder, in the event that the Supplier commits any delay or default in Delivery of the Goods

or Related Services or commits any other breach of the terms and conditions of the Contract.

16.3. The Performance Security shall be denominated in the currencies of the Contract, and shall be in one of the forms stipulated by the Purchaser in the SCC.

16.4. The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than fourteen (14) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

**17. Intellectual Property**

17.1. Purchaser shall own and have a right in perpetuity to use all newly created Intellectual Property Rights which have been developed solely during execution of this Contract, including but not limited to all Source code, Object code, records, reports, designs, application configurations, data and written material, products, specifications, reports, drawings and other documents which have been newly created and developed by the Supplier solely during the performance of Related Services and for the purposes of inter-alia use or sub-license of such Services under this Contract. The Supplier undertakes to disclose all such Intellectual Property Rights arising in performance of the Related Services to the Purchaser 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 Purchaser. To the extent that Intellectual Property Rights are unable by law to so vest, the Supplier assigns those Intellectual Property Rights to Purchaser on creation.

17.2. The Supplier shall be obliged to ensure that all approvals, registrations, licenses, permits and rights etc. which are inter-alia necessary for use of the goods supplied / installed by the Supplier, the same shall be acquired in the name of the Purchaser, and the same may be assigned by the Purchaser to the Supplier solely for the purpose of execution of any of its obligations under the terms of this Contract. However, subsequent to the term of this Contract, such approvals, registrations, licenses, permits and rights etc. shall endure to the exclusive benefit of the Purchaser.

- 17.3. The Supplier shall ensure that while it uses any software, hardware, processes, document or material in the course of performing the Services, it does not infringe the Intellectual Property Rights of any person and the Supplier shall keep the Purchaser indemnified against all costs, expenses and liabilities howsoever, arising out any illegal or unauthorized use (piracy) or in connection with any claim or proceedings relating to any breach or violation of any permission/license terms or infringement of any Intellectual Property Rights by the Supplier or its personnel during the course of performance of the Related Services. In case of any infringement by the Supplier, the Supplier shall have sole control of the defense and all related settlement negotiations
- 17.4. Subject to sub-clauses 17.1 to 17.3, the Supplier shall retain exclusive ownership of all methods, concepts, algorithms, trade secrets, software documentation, other intellectual property or other information belonging to the Supplier that existed before the effective date of the contract. .

**18. Confidential Information**

- 18.1. Both parties undertake to each other to keep confidential all information (written as well as oral) concerning the business and affairs of the other, which has been obtained or received as a result of the discussions leading upto or the entering of the contract
- 18.2. After the entering of the contract the Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under this Clause.
- 18.3. The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the design, procurement, or



other work and services required for the performance of the Contract.

18.4. The obligation of a party under GCC Sub-Clauses 18.1 and 18.2 above, however, shall not apply to information that:

18.4.1. the Purchaser or Supplier need to share with the institutions participating in the financing of the Contract;

18.4.2. now or hereafter enters the public domain through no fault of that party;

18.4.3. can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or

18.4.4. Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

18.5. The above provisions of GCC Clause 18 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

18.6. Each of the parties to this contract, undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of the above clauses by its employees, agents and sub-contractors.

18.7. The provisions of GCC Clause 18 shall survive completion or termination, for whatever reason, of the Contract.

## **19. Subcontracting**

19.1. Except as provided hereunder under Clause 19.2 of the GCC, the Supplier shall not be permitted to sub-contract any part of its obligations under the Contract.

19.2. Supplier shall sub-contract the Network solution provider (NSP) role and GIS solution provider (GSP) role only from the empanelled members (as per the list issued/updated by the Nodal Agency). Supplier shall have flexibility to subcontract Meter Data Acquisition Solution Provider (MDASP) role, as per his requirement. In case Supplier decides to subcontract MDASP role, the MDASP subcontractor shall only be selected from the empanelled list of MDASP (as per the list issued/updated by the Nodal Agency).

19.3. The Supplier shall select the sub-contractors from the empanelled list only. The names and roles of the same shall be clearly mentioned in the proposal/bid.

19.4. The Supplier shall ensure that the sub contractor appointed has sufficient capacity to undertake the execution of the tasks they will

perform under this Contract.

- 19.5. The Supplier indemnifies and shall keep indemnified Purchaser against any losses, damages, claims or such other implications arising from or out of the acts and omissions of such subcontractor. The Supplier shall be responsible for making all payments to the subcontractor as may be necessary, in respect of any Services performed or task executed, and the Purchaser shall not be responsible for any part or full payment which is to due to such subcontractor.
- 19.6. All rights of use of any process, product, service or facility developed or any other task performed by the subcontractor for the Supplier, under this contract would lie exclusively with the Purchaser in perpetuity free from all liens, encumbrances and other third party rights and the Supplier shall, wherever required, take all steps that may be necessary to ensure the transfer of such ownership in favor of the Purchaser.
- 19.7. Nothing in this clause 19 of the GCC shall relieve the Supplier from its any of its liabilities or obligations under this Contract. The Purchaser reserves the right to hold Supplier liable for any act/omission of any subcontractor.
- 19.8. Where the Purchaser deems necessary, it shall have the right to require replacement of any subcontractor with another subcontractor and the Supplier shall in such case terminate forthwith all agreements/contracts other arrangements with such subcontractor and find suitable replacement for such subcontractor to the satisfaction of the Purchaser at no additional charge, from the empanelled list (as per the list issued/updated by the Nodal Agency). Failure to terminate all agreements/contracts with such sub-contractors, shall amount to a breach of the terms hereof.
- 19.9. The Supplier shall be responsible for ensuring that the Subcontractor shall comply with all relevant and applicable provisions of the Contract. In default on the part of the subcontractor to comply with the terms and conditions of the Contract wherever applicable, shall amount to breach on the part of the Supplier, and the Purchaser in addition to all other rights, have the right to claim damages add recover from the Supplier all losses/ or other damages that may have resulted from such failure

**20. Specifications and Standards**

**20.1. Technical Specifications and Drawings**

20.1.1. The Supplier shall ensure that the Goods and Related Services comply with the technical specifications and other provisions of the Contract.

20.1.2. The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

20.1.3. The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in Section VI, Scope of Work and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the country of origin of the Goods.

20.2. Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Section VI, Scope of Work. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 31.

**21. Packing and Documents**

21.1. The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination of the Goods and the absence of heavy handling facilities at all points in transit. The Purchaser shall not be responsible in any manner for any loss or damage caused to the Goods during Transit.

21.2. The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as

shall be expressly provided for in the Contract and in any other instructions ordered by the Purchaser.

- 22. Insurance**            22.1. The Goods supplied under the Contract shall be fully insured by the Supplier, in INR, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.
- 23. Transportation**        23.1. Obligations for transportation of the Goods shall be borne by the Supplier and shall be in accordance with the Incoterms specified in Sections VI, Schedule of Supply.
- 24. Inspections and Tests**    24.1. The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of to ensure that the Goods and Related Services are complying with the functional parameters, codes and standards specified in the Scope of Work at Section VI, to the satisfaction of the Purchaser.
- 24.2. The inspections and tests may be conducted on the premises of the Supplier, at point of delivery, and/or at the final destination of the Goods, or in another place in the Purchaser's country as per the requirement of Section VI. Subject to GCC Sub-Clause 24.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 24.3. The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 24.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 24.4. Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser.
- 24.5. The Purchaser may require the Supplier to carry out any test and/or inspection to verify that the characteristics and performance of the Goods or Related Services comply with the technical specifications, codes and standards under the Contract.
- 24.6. The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 24.7. The Purchaser may reject any Goods / Related Services or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods/ Related Services or parts thereof or

make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 24.4.

24.8. The Supplier agrees that neither the execution of a test and/or inspection of the Goods / Related Services or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 24.6, shall release the Supplier from any warranties or other obligations under the Contract.

**25. Liquidated Damages and Penalty**

25.1. Except as provided under GCC Clause 30, if the Supplier fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to 0.5% of the value of the Goods or Related Services, supplied beyond stipulated delivery schedule for each week or part thereof of delay until actual delivery or performance, subject to a maximum of 10% of value of such goods and services.

25.2. In addition, the Supplier is liable to the Purchaser for payment penalty as specified in the SLA.

25.3. If the Goods and Related Services supplied do not meet the minimum specifications as per the Contract, and the same is not replaced/modified by the Supplier to meet the requirements within 14 days of being informed by the Utility, the Utility shall be free to impose any penalty as deemed fit. In addition, the Utility shall reserve the right to terminate the contract and recover liquidated damages by forfeiting the performance guarantee submitted by the Purchaser.

**26. Warranty**

26.1. The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

26.2. Subject to GCC Sub-Clause 20.1, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

- 26.3. The warranty shall remain valid for the period Specified in the SCC.
- 26.4. The Purchaser shall give Notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 26.5. Upon receipt of such Notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 26.6. If having been notified, the Supplier fails to remedy the defect within the period of warranty specified in the SCC; the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

**27. Liability/  
Indemnity**

- 27.1. The Supplier hereby agrees to indemnify the Purchaser, for all conditions and situations mentioned in this clause, in a form and manner acceptable to the Purchaser. The supplier agrees to indemnify the Purchaser and its officers, servants, agents ("**Purchaser Indemnified Persons**") from and against any costs, loss, damages, expense, claims including those from third parties or liabilities of any kind howsoever suffered, arising or incurred inter alia during and after the Contract period out of:
- (a) any negligence or wrongful act or omission by the Supplier or its agents or employees or any third party associated with Supplier in connection with or incidental to this Contract; or
- (b) any infringement of patent, trademark/copyright or industrial design rights arising from the use of the supplied Goods and Related Services or any part thereof.
- 27.2. The Supplier shall also indemnify the Purchaser against any privilege, claim or assertion made by 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

27.3. Without limiting the generality of the provisions of this clause 27.1 and 27.2, the Supplier shall fully indemnify, hold harmless and defend the Purchaser Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Purchaser Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any Goods, Related Services, information, design or process supplied or used by the Supplier in performing the Supplier's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Goods or Related Services, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Supplier shall promptly make every reasonable effort to secure for the Purchaser a license, at no cost to the Purchaser, authorizing continued use of the infringing work. If the Supplier is unable to secure such license within a reasonable time, the Supplier shall, at its own expense, and without impairing the specifications and standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

**Survival on Termination**

The provisions of this Clause 27 shall survive Termination.

**27.4. Defense of Claims:**

27.4.1. If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 27.1, 27.2, or 27.3 the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct

such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

27.4.2. If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf

27.4.3. The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing

**28. Limitation of Liability**

of 28.1. Except in cases of gross negligence or willful misconduct :

28.1.1. neither party shall be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and

28.1.2. the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort, or otherwise, shall not exceed the amount specified in the Contract Price. Provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

**29. Change in Laws and Regulations**

29.1. Unless otherwise specified in the Contract, if after the date of the Invitation for Bids, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date, then such Delivery Date shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. .



- 30. Force Majeure**
- 30.1. The Supplier shall not be liable for forfeiture of its Performance Security, 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.
- 30.2. For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to wars or revolutions, earthquake, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 30.3. If a Force Majeure situation arises, the Supplier shall promptly and no later than seven days from the first occurrence thereof, notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event
- 30.4. The decision of the Purchaser with regard to the occurrence, continuation, period or extent of Force Majeure shall be final and binding on the Supplier.
- 31. Change Orders and Contract Amendments**
- 31.1. The Purchaser may at any time order the Supplier through Notice in accordance GCC Clause 6, ("Change Order") to make changes within the general scope of the Contract in any one or more of the following:
- 31.1.1. drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- 31.1.2. Specifications for hardware, software and Related Services
- 31.1.3. the method of shipment or packing;
- 31.1.4. the place of delivery; and

31.1.5. the Related Services to be provided by the Supplier.

31.2. If any such Change Order causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery and Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's Change Order.

31.3. No variation or modification of the terms of the contract shall be made except by written amendment signed by the parties.

**32. Extensions of Time**

32.1. If at any time during performance of the Contract, the Supplier or its Subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 10, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

32.2. Except in case of Force Majeure, as provided under GCC Clause 30 or where the delay in delivery of the Goods or completion of Related Services is caused due to any delay or default of the Purchaser, any extension granted under clause 32.1 shall not absolve the Supplier from its liability to the pay of liquidated damages pursuant to GCC Clause 25.

**33. Termination**

33.1. Termination for Default

33.1.1. The Purchaser may, without prejudice to any other remedy for breach of Contract, by Notice of default sent to the Supplier, terminate the Contract in whole or in part:

- (i) if the Supplier fails to deliver any or all of the Goods or Related Services within the period specified in the Contract, or within any extension thereof granted by

the Purchaser pursuant to GCC Clause 32; or

- (ii) if the Supplier, in the judgment of the Purchaser has engaged in corrupt, fraudulent, collusive, or coercive practices, as defined in GCC Clause 2, in competing for or in executing the Contract; or
- (iii) Any representation made by the bidder in the proposal is found to be false or misleading
- (iv) if the Supplier commits any breach of the Contract and fails to remedy or rectify the same within the period of two weeks (or such longer period as the Purchaser in its absolute discretion decide) provided in a notice in this behalf from the Purchaser.
- (v) as specified in the SLA

33.1.2. In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 33.1.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

### 33.2. Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving Notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

### 33.3. Termination for Convenience

33.3.1. The Purchaser, by Notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for

its convenience. The Notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

33.3.2. The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of the Notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

- (i) To have any portion completed and delivered at the Contract terms and prices; and/or
- (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

#### **33.4. Consequences of Termination**

Upon Termination of the Contract, the Supplier shall:

- (i) Prepare and present a detailed exit plan within five calendar days of termination notice receipt to the CIO of Goa Electricity Department ("Exit Plan").
- (ii) The CIO and along with designated team will review the Exit plan. If approved, Supplier shall start working on the same immediately. If the plan is rejected, Supplier shall prepare alternate plan within two calendar days. If the second plan is also rejected, CIO or the authorised person will provide a plan for Supplier and it should be adhered by in totality.
- (iii) The Exit Plan should cover at least the following :-
  - a. Execute all documents that may be necessary to effectively transfer the ownership and title, including OEM warranties in respect of all equipment;
  - b. Handover all developed codes, related documentation and

other Configurable Items, if any in his possession;

c. Handover the list of all IT Assets, passwords at all locations to the Purchaser.

(iv) The supplier and CIO (or the authorised person) will sign a completion certificate at the end of successful completion (all points tracked to closure) of the Exit Plan.

**34. Assignment** 34.1. The Supplier shall not assign, in whole or in part, their obligations under this Contract.

**35. Disclaimer** 35.1. Purchaser reserves the right to share, with any consultant of its choosing, any resultant Proposals in order to secure expert opinion.

35.2. Purchaser reserves the right to accept any proposal deemed to be in the best interest of the Goa Electricity Department.

**36. Public Disclosure** 36.1. All materials provided to the Purchaser by bidder are subject to Country and Goa public disclosure laws such as RTI etc.

36.2. The Supplier's Team shall not make or permit to be made a public announcement or media release about any aspect of this Contract unless the Purchaser first gives the Supplier its written consent.

**37. SLA Audit** 37.1. A designated team / person from Goa Electricity Department will review the performance of Supplier against the SLA each month. The review / audit report will form basis of any action relating to imposing penalty on or breach of contract of the Supplier.

**38. Adherence to safety procedures, rules regulations and restriction** 38.1. Supplier shall comply with the provision of all laws including labour laws, rules, regulations and notifications issued there under from time to time. All safety and labour laws enforced by statutory agencies and by Purchaser shall be applicable in the performance of this Contract and Supplier's Team shall abide by these laws.

38.2. Access to the Datacenter Sites and Purchaser's locations shall be strictly restricted. No access to any person except the essential personnel belonging to the Supplier who are genuinely required for execution of work or for carrying out management/maintenance who have been explicitly authorised by the Purchaser shall be allowed entry to the Datacenter Sites and some Purchaser's

locations. Even if allowed, access shall be restricted to the pertaining equipment of the Purchaser only. The Supplier shall maintain a log of all activities carried out by each of its personnel.

38.3. The Supplier shall take all measures necessary or proper to protect the personnel, work and facilities and shall observe all reasonable safety rules and instructions. Supplier's Team shall adhere to all security requirement/regulations of the Purchaser during the execution of the work. Purchaser's employee also shall comply with safety procedures/policy.

38.4. The Supplier shall report as soon as possible any evidence, which may indicate or is likely to lead to an abnormal or dangerous situation and shall take all necessary emergency control steps to avoid such abnormal situations.

38.5. The Purchaser will be indemnified for all the situations mentioned in this clause in the similar way as defined in GCC clause 28.

**39. Non-Solicitation of Staff**

39.1. For the purpose of this contract, both parties to this contract agree, not to solicit either directly or indirectly with a view to provide or offer employment to, offer to contract with or entice a staff member of the other party to leave without the consent of the other during the term of this agreement and for an additional period of 180 days after termination

**40. Survival**

40.1. The clauses of this contract, which by nature are intended to survive termination of this contract, shall remain in effect after such termination