

Aarogyasri Health Care Trust

SBD for IT

Volume III – The Contract

Department: Administration (Legal)



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Aarogyasri Health Care Trust Procurement guidelines

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PREFACE

All the standard bidding documents of the Purchaser consist of three volumes. Volume I 'The Work' contains a description of the back ground, the requirements of the particular bid. Volume II 'The Bid' consists of the Standard bid document indicating the process of bidding. This is divided into two parts one the Instructions to Bidders (ITB), and the second Bid Data Sheet (BDS). The ITB contains the standard provisions for any bidding process and cannot be changed without the approval of the CEO. The BDS consists of the data relating to that particular bid which needs to be filled by the respective department preparing the bid. Volume III 'The Contract' consists of the Standard Contract. This is divided into two parts, one the General Conditions of Contract (GCC) which cannot be changed without the approval of the CEO and the second Special Conditions of Contract (SCC) which needs to be modified as per the needs of the particular contract.

The current volume is 'The Contract' part of IT Bidding Documents. This gives the details of various heads under which IT bidding process is conducted in the Purchaser based on the experience of the Purchaser in handling health insurance schemes since 2007.

CONTRACT FOR PROVISION OF SERVICES
[INSERT: THE NAME OF THE SERVICES]

Between

Aarogyasri Health Care Trust

And

[Insert: name of the Service Provider]

Dated: _____

CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT is made

the *[insert: ordinal]* day of *[insert: month]*, *[insert: year]*.

BETWEEN

- (1) *[insert: Name of Trust]*, a *[insert: description of type of legal entity, for example, a Trust of the Department of Medical and Health. . .]* of the Government of *Andhra Pradesh*, and having its principal place of business at *[insert: address of Trust]* (hereinafter called “the Trust”), and

- (2) *[insert: name of Service Provider]*, an insurance company incorporated under the laws of *[insert: country of Service Provider]* and having its principal place of business at *[insert: address of Service Provider]* (hereinafter called “the Service Provider” which expression shall include their respective successors and permitted assignees).

WHEREAS

(A) The Trust vide its Bid Notification No.

_____ invited Competitive Bids for providing insurance cover for the implementation of Rajiv Aarogyasri Health Care Scheme that enables cash less hospitalization for its beneficiaries, as defined in the Scheme (hereinafter referred to as the “**Scheme**”), through competitive bidding in Andhra Pradesh;

(B) The Service Provider submitted their Competitive Bid for the aforesaid work,

whereby the Service Provider represented to the Trust that they had the required professional skills, and in the said Bid the Service Provider also agreed to implement the Scheme and provide the Services to the Trust on the terms and conditions as set forth in the Bidding Document and this Agreement (“the Scheme”); and

(C)The Trust, on acceptance of the aforesaid Bid of the Service Provider, awarded the Contract to the Service Provider vide its Letter of Award dated ----- (hereinafter referred to as the “**LOA**”);

NOW IT IS HEREBY AGREED as follow:

Article 1. Contract Documents

1.1 Contract Documents (Reference GCC Clause 1.1 (a) (ii))

The following documents shall constitute the Contract between the Purchaser and the Service Provider, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement and the Appendices attached to the Contract Agreement and the Service Providers’ proposal.
- (b) General Conditions of Contract
- (c) Special Conditions of Contract

1.2 Order of Precedence (Reference GCC Clause 2.1)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above, provided that Appendix 7 shall prevail over all provisions of the Contract Agreement and the other Appendices attached to the Contract Agreement and all the other Contract Documents listed in Article 1.1 above.

1.3 Definitions (Reference GCC Clause 1)

Capitalized words and phrases used in this Contract Agreement shall have the same meanings as are ascribed to them in the General Conditions of Contract.

Article 2. Contract Price and Payment Terms

2.1 Contract Price (Reference GCC Clause 1.1(a)(xi) and GCC Clause “Price”)

The Purchaser hereby agrees to pay to the Supplier the Contract Price in consideration of the performance by the Supplier of its obligations under the Contract. The Contract Price shall be *[insert: amount in words], [insert: amount in figures],* as specified in the Price Schedule.

The Contract Price shall be understood to reflect the terms and

conditions used in the specification of prices in the detailed price schedules, including the taxes, duties and related levies if and as identified.

Article 3. Effective Date

3.1 Effective Date (Reference GCC Clause 1.1 (e) (vi))

The time allowed for delivery of the Service shall be determined from the date when all or any of the following conditions have been fulfilled:

- (a) This Contract Agreement has been duly executed for and on behalf of the Purchaser and the Service Provider;
- (b) The Service Provider has submitted to the Purchaser the performance security and the advance payment security, in accordance with GCC Clause 25.2 and GCC Clause 25.3;
- (c) The Purchaser has paid the Service Provider the advance payment, in accordance with GCC Clause 24;
- (d) The commencement of the services from the Service Provider upon Purchaser's request.

The effective date of this contract shall be from December, 2011 and will be for a period of one calendar year.

However, each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

- 3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract Agreement because of reasons not attributable to the Service Provider, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time and/or other relevant conditions of the Contract.

Article 4. Appendixes

- 4.1 The Appendixes listed below shall be deemed to form an integral part of this Contract Agreement.

- 4.2 Reference in the Contract to any Appendix shall mean the Appendixes listed below and attached to this Contract Agreement, and the Contract shall be read and construed accordingly.

APPENDIXES

- Appendix 1. Technical Requirements including implementation schedule
- Appendix 2. Project Plan (Delivery and installation plan, delivery schedule of Documents and Reports etc. to be included)
- Appendix 3. Personnel
- Appendix 4. Working Hours and SLA
- Appendix 5A Lists (Manufacturer's Authorization, List of Approved Subcontractors, Categories of Software, and Custom Materials)
- Appendix 5B Forms (Change Request forms, performance/advance security forms, and installation and acceptance forms.)
- Appendix 6. Revised Price Schedules (if any)
- Appendix 7 Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

IN WITNESS WHEREOF the Purchaser and the Service Provider have caused this Contract Agreement to be duly executed by their authorized representatives on the day and year first above written.

For and on behalf of the Purchaser

Signed:

in the capacity of *[insert: title or other appropriate designation]*

in the presence of

For and on behalf of the Insurer

Signed:

in the capacity of *[insert: title or other appropriate designation]*

in the presence of

CONTRACT AGREEMENT

dated the *[insert: number]* day of *[insert: month], [insert: year]*

BETWEEN

[insert: name of Trust], “the Trust”

AND

[insert: name of Service Provider], “the Service Provider”

General Conditions of Contract

A. GENERAL PROVISIONS AND INTERPRETATION

Clause No.	1
Clause Heading	Definitions
Sub-Clause No.	
.1	<p>In this Contract, the following terms shall be interpreted as indicated below.</p> <p style="margin-left: 40px;">(a) General Definitions</p> <p style="margin-left: 80px;">(i) “Applicable Law” means the laws and other instruments having the force of law in India.</p> <p style="margin-left: 80px;">(ii) “Contract” means the Contract Agreement entered into between the Purchaser and the Service Provider, together with the Contract Documents referred to therein. The Contract Agreement and the Contract Documents shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly</p> <p style="margin-left: 80px;">(iii) “Contract Documents” means the documents specified in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments to these Documents).</p> <p style="margin-left: 80px;">(iv) “Contract Agreement” means the agreement entered into between the Purchaser and the Service Provider using the form of Contract Agreement contained in the Bidding Documents or that provided by the Trust, and any modifications to this form agreed to by the Purchaser and the Service Provider. The date of the Contract Agreement shall be recorded in the signed form.</p> <p style="margin-left: 80px;">(v) Escrow arrangements: An arrangement with reference to this contract, through a written instrument with a stranger or third person that is a person not a party to the instrument to be kept by the depository until the performance of a condition or the happening of a certain event and then to be delivered to take effect.</p>

- (v) “GCC” means the General Conditions of Contract.
 - (vii) “SCC” means the Special Conditions of Contract.
 - (viii) “Technical Requirements” means the Technical Requirements Section of the Bidding Documents.
 - (ix) “Implementation Schedule” means the Implementation Schedule Sub-section of the Technical Requirements.
 - (x) “IRDA” means the Insurance Regulatory And Development Authority of India.
 - (xi) “Contract Price” means the price or prices defined in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
 - (xii) “Bidding Documents” refers to the collection of documents issued by the Purchaser to instruct and inform potential Service Providers of the processes for bidding, selection of the winning bid, and Contract formation, as well as the contractual conditions governing the relationship between the Purchaser and the Service Provider. The General and Special Conditions of Contract, the Technical Requirements, and all other documents included in the Bidding Documents reflect the Procurement Guidelines that the Purchaser is obligated to follow during procurement and administration of this Contract.
 - (xiii) “Government” means the Government of Andhra Pradesh or the Government of India.
 - (ix) “Procurement Guidelines” refer to those issued by Government of Andhra Pradesh.
- (b) Entities
- (i) “Purchaser” means the entity purchasing the Information System, as **specified in the SCC**.
 - (ii) “Project Manager” means the person **named as such in the SCC** or otherwise appointed by the Purchaser in the manner provided in GCC Clause 3.2 (Project Manager) to perform the duties delegated by the Purchaser.
 - (iii) “Service Provider” means the firm or Joint Venture whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the

Contract Agreement.

- (iv) “Service Provider’s Representative” means any person nominated by the Service Provider and named as such in the SCC or otherwise approved by the Purchaser in the manner provided in GCC Clause 3.3 (Service Provider’s Representative) to perform the duties delegated by the Service Provider.
 - (v) “Subcontractor” means any firm to whom any of the obligations of the Service Provider, including preparation of any design or supply of any Information Technologies or other Goods or Services, is subcontracted directly or indirectly by the Service Provider.
 - (vi) “Trust” means Aarogyasri Health Care Trust of Government of Andhra Pradesh.
- (c) scope
- (i) “Information System,” also called “the System,” means all the Information Technologies, Materials, and other Goods to be supplied, installed, integrated, and made operational (exclusive of the Service Provider’s Equipment), together with the Services to be carried out by the Service Provider under the Contract.
 - (ii) “Subsystem” means any subset of the System identified as such in the Contract that may be supplied, installed, tested, and commissioned individually before Commissioning of the entire System.
 - (iii) “Information Technologies” means all information processing and communications-related hardware, Software, supplies, and consumable items that the Service Provider is required to supply and install under the Contract.
 - (iv) “Goods” means all equipment, machinery, furnishings, Materials, and other tangible items that the Service Provider is required to supply or supply and install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Service Provider’s Equipment.
 - (v) “Services” means all technical, logistical, management, and any other Services to be provided by the Service Provider under the Contract to supply, install, customize, integrate, and make

operational the System. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, installation, integration, training, data migration, Pre-commissioning, Commissioning, maintenance, and technical support.

- (vi) “The Project Plan” means the document to be developed by the Service Provider and approved by the Purchaser, pursuant to GCC Clause 24.1, based on the requirements of the Contract and the Preliminary Project Plan included in the Service Provider’s bid. The “Agreed and Finalized Project Plan” is the version of the Project Plan approved by the Purchaser, in accordance with GCC Clause 24.2. Should the Project Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail.
- (vii) “Software” means that part of the System which are instructions that cause information processing Subsystems to perform in a specific manner or execute specific operations.
- (viii) “System Software” means Software that provides the operating and management instructions for the underlying hardware and other components, and is identified as such in Appendix 5A of the Contract Agreement and such other Software as the parties may agree in writing to be Systems Software. Such System Software includes, but is not restricted to, micro-code embedded in hardware (i.e., “firmware”), operating systems, communications, system and network management, and utility software.
- (ix) “General-Purpose Software” means Software that supports general-purpose office and software development activities and is identified as such in Appendix 5A of the Contract Agreement and such other Software as the parties may agree in writing to be General- Purpose Software. Such General-Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software.
- (x) “Application Software” means Software formulated to perform specific business or technical functions

and interface with the business or technical users of the System and is identified as such in Appendix 5A of the Contract Agreement and such other Software as the parties may agree in writing to be Application Software.

- (xi) “Standard Software” means Software identified as such in Appendix 5A of the Contract Agreement and such other Software as the parties may agree in writing to be Standard Software.
- (xii) “Custom Software” means Software identified as such in Appendix 5A of the Contract Agreement and such other Software as the parties may agree in writing to be Custom Software.
- (xiii) “Source Code” means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software).
- (xiv) “Materials” means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Purchaser under the Contract.
- (xv) “Standard Materials” means all Materials not specified as Custom Materials.
- (xvi) “Custom Materials” means Materials specifically developed by the Service Provider at the Purchaser’s expense under the Contract for Purchaser and identified as such in Appendix 5 of the Contract Agreement and such other Materials as the parties may agree in writing to be Custom Materials. .
- (xvii) “Intellectual Property Rights” means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extract or re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter into computer memory, or otherwise use any portion or copy, in whole or in part, in any form,

directly or indirectly, or to authorize or assign others to do so.

(xviii) “Service Provider’s Equipment” means all equipment, tools, apparatus, or things of every kind including any modifications made to them required in or for installation, completion and maintenance of the System that are to be provided by the Service Provider whether pre existing or developed during the term of this Contract,

(d) Activities

- (i) “Deliverables” means the transfer of the Goods from the Service Provider to the Purchaser in accordance with the current edition Incoterms specified in the Contract.
- (ii) “Installation” means that the System or a Subsystem as specified in the Contract is ready for Commissioning as provided in GCC Clause 31 (Installation).
- (iii) “Pre-commissioning” means the testing, checking, and any other required activity that may be specified in the Technical Requirements that are to be carried out by the Service Provider in preparation for Commissioning of the System as provided in GCC Clause 31(Installation).
- (iv) “Commissioning” means operation of the System or any Subsystem by the Service Provider following Installation, which operation is to be carried out by the Service Provider as provided in GCC Clause 32.1 (Commissioning), for the purpose of carrying out Operational Acceptance Test(s).
- (v) “Operational Acceptance Tests” means the tests specified in the Technical Requirements and Agreed and Finalized Project Plan to be carried out to ascertain whether the System, or a specified Subsystem, is able to attain the functional and performance requirements specified in the Technical Requirements and Agreed and Finalized Project Plan, in accordance with the provisions of GCC Clause 32.2 (Operational Acceptance Test).
- (vi) “Operational Acceptance” means the acceptance by the Purchaser of the System (or any Subsystem(s) where the Contract provides for acceptance of the System in parts), in accordance with GCC Clause 32.3 (Operational Acceptance).

- (e) place and time
- (i) “Project Site(s)” means the place(s) **specified in the SCC** for the supply and installation of the System.
 - (ii) “Day” means calendar day of the English Calendar.
 - (iii) “Week” means seven (7) consecutive Days, beginning Monday.
 - (iv) “Month” means calendar month of the English Calendar.
 - (v) “Year” means twelve (12) consecutive Months.
 - (vi) Hour: Means the hour as understood in 24 hour format (hh:mm).
 - (vi) “Effective Date” means the date of fulfillment of all conditions specified in Article 3 (Effective Date for Determining Time for Achieving Operational Acceptance) of the Contract Agreement, for the purpose of determining the Delivery, Installation, and Operational Acceptance dates for the System or Subsystem(s).
 - (vii) “Contract Period” is the time period during which this Contract governs the relations and obligations of the Purchaser and Service Provider in relation to the System, as **specified in the SCC**.
 - (viii) “Defect Liability Period” (also referred to as the “Warranty Period”) means the period of validity of the warranties given by the Service Provider commencing at date of the Operational Acceptance Certificate of the System or Subsystem(s), during which the Service Provider is responsible for defects with respect to the System (or the relevant Subsystem[s]) as provided in GCC Clause 8 (Defect Liability).
 - (ix) “The Post-Warranty Services Period” means the number of years **defined in the SCC** (if any), following the expiration of the Warranty Period during which the Service Provider may be obligated to provide Software licenses, maintenance, and/or technical support services for the System, either under this Contract or under separate contract(s).
 - (x) “The Coverage Period” means the Days of the Week and the hours of those Days during which maintenance, operational, and/or technical support services (if any) must be available.

Clause No.	2
Clause Heading	Interpretation
Sub-Clause No.	
.1	Contract Documents: Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts of these documents) are intended to be correlative, complementary, and mutually explanatory. The Contract shall be read as a whole.
.2	Governing Law: The Contract shall be governed by and interpreted in accordance with the Applicable Law.
.3	Governing Language: All Contract Documents and related correspondence exchanged between Purchaser and Service Provider shall be written in English, and the Contract shall be construed and interpreted accordingly.
.4	Relation between the parties: Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent as between the Purchaser and the Service Provider. The Service Provider, subject to this contract, has complete charge of personnel and Subcontractors, if any performing the services and shall be fully responsible for the Service performed by them or on their behalf hereunder.
.5	Singular and Plural: The singular shall include the plural and the plural the singular, except where the context otherwise requires.
.6	Headings: The headings and marginal notes in the GCC are included for ease of reference and shall neither constitute a part of the Contract nor affect its interpretation.
.7	Persons: Words importing persons or parties shall include firms, corporations, and government entities.
.8	Entire Agreement: The Contract constitutes the entire agreement between the Purchaser and Service Provider with respect to the subject matter of Contract and supersedes all communications, negotiations, and agreements (whether written or oral) of parties with respect to the subject matter of the Contract made prior to the date of Contract. To the extent permitted by Applicable Law, a party is not liable to another party in contract or tort or in any other way for a representation or warranty that is not set out in this Contract.
.9	Amendment: No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party to the Contract.

- .10 Independent Service Provider:** The Service Provider shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties to the Contract. Subject to the provisions of the Contract, the Service Provider shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Subcontractors engaged by the Service Provider in connection with the performance of the Contract shall be under the complete control of the Service Provider and shall not be deemed to be employees of the Purchaser, and nothing contained in the Contract or in any subcontract awarded by the Service Provider shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Purchaser.
- .11 Joint Venture:** If the Service Provider is a Joint Venture of two or more firms, all such firms shall be jointly and severally bound to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one of such firms to act as a leader with authority to bind the Joint Venture. The composition or constitution of the Joint Venture shall not be altered without the prior consent of the Purchaser.
- .12 Location:** The service shall be performed at such locations as are specified in Appendix 1 hereto and, where the location of a particular task is not so specified, at such locations, as the Purchaser may approve.
- .13 Non waiver:**
- (a) Subject to GCC Sub-Clause .13(b) of this Clause 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, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
 - (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, must be 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.

.14 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.

.15 Fairness And Good Faith

(a) Good Faith

The parties undertake to act in good faith with respect to each other's rights under this contract and to adopt all reasonable measures to ensure the realization of the objectives of this contract.

(b) Operation of the contract

The parties recognize that it is impractical in this contract to provide for every contingency which may arise during the life of the contract, and the parties hereby agree that it is their intention that this contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this contract either party believes that this contract is operating unfairly, the parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this clause shall give rise to a dispute subject to arbitration in accordance with "Dispute Settlement" clause 5 of GCC hereof.

.16 Incoterms

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by the current Incoterms ("Incoterms 2000" or a more recent version if and as published). Incoterms are the international rules for interpreting trade terms published by the International Chamber of Commerce, 38 Cours Albert 1er, 75008 Paris, France.

Clause No.	3
Clause Heading	Representatives
Sub-Clause No.	
.1	<p>(a) Authorized Representatives: Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Purchaser or the Service Provider may be taken or executed by the persons specified at 1.1(b)(iv) and 1.1(b)(vi) Clauses SCC to GCC.</p> <p>(b) Trust of Member in charge: In case the Service Provider consists, of a joint venture of more than one entity, the members hereby authorize the entity specified in the SCC to act on their behalf in exercising all the Service Provider's rights and obligations towards the Purchaser under this Contract, including without limitation the receiving of instructions and payments from the Purchaser.</p>
.2	<p>Project Manager</p> <p>If the Project Manager is not named in the Contract, then within fourteen (14) days from the Effective Date, the Purchaser shall appoint and notify the Service Provider in writing of the name of the Project Manager. The Purchaser may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Service Provider without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work. Such appointment shall take effect only upon receipt of such notice by the Service Provider. Subject to the extensions and/or limitations specified in the SCC (if any), the Project Manager shall have the authority to represent the Purchaser on all day-to-day matters relating to the Contract, and shall normally be the person giving or receiving notices on behalf of the Purchaser pursuant to "Notices" Clause 4 of GCC.</p>

.3

Service Provider's Representative:

- (a) If the Service Provider's Representative is not named in the Contract, then within fourteen (14) days from the Effective Date, the Service Provider shall appoint the Service Provider's Representative and shall request the Purchaser in writing to approve the person so appointed. The request must be accompanied by a detailed curriculum vitae for the nominee, as well as a description of any other responsibilities the nominee would retain while performing the duties of the Service Provider's Representative. If the Purchaser does not object to the appointment within fourteen (14) days, the Service Provider's Representative shall be deemed to have been approved. If the Purchaser objects to the appointment within fourteen (14) days giving the reason there for , then the Service Provider shall appoint a replacement within fourteen (14) days of such objection in accordance with the Sub-Clause .3(a) of this Clause GCC.

.3

- (b) Subject to the extensions and/or limitations specified in the SCC (if any), the Service Provider's Representative shall have the authority to represent the Service Provider on all day-to-day matters relating to the Contract, and shall normally be the person giving or receiving notices on behalf of the Service Provider pursuant to "Notices" Clause 4 of GCC.
- (c) The Service Provider shall not revoke the appointment of the Service Provider's Representative without the Purchaser's prior written consent, which shall not be unreasonably withheld. However this restriction shall not apply in case of death, resignation, termination, disability, retirement of Service Provider Representative. If the Purchaser consents to such an action, the Service Provider shall appoint another person of equal or superior qualifications as the Service Provider's Representative, pursuant to the procedure set out in Sub-Clause .3(a) of this Clause GCC.
- (d) The Service Provider's Representative and staff need to work closely with the Purchaser's Project Manager and staff, act within their own authority and abide by directives issued by the purchaser that are consistent with the terms of the Contract. The Service Provider's Representative is responsible for managing the activities of its personnel and any subcontracted personnel.
- (e) The Service Provider's Representative may, subject to the approval of the purchaser (which shall not be unreasonably withheld) at any time delegate to any person any of the powers, functions, and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Service Provider's Representative and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until the notice of it has been delivered.
- (f) Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with Sub-Clause .3(e) of this Clause GCC shall be deemed to be an act or exercise by the Service Provider's Representative.

.4**Objections and Removals:**

- (a) The Purchaser may by notice to the Service Provider object to any representative or person employed by the Service Provider in the execution of the Contract who, in the reasonable opinion of the Purchaser, may have behaved inappropriately, be incompetent, or be negligent. The Purchaser shall provide evidence of the same, whereupon the Service Provider shall remove such person.
- (b) If any representative or person employed by the Service Provider is removed in accordance with Sub-Clause .4(a) of this Clause GCC, the Service Provider shall, where required, promptly appoint a replacement.

Clause No.	4
Clause Heading	Notices
Sub-Clause No.	
.1	<p>Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing and shall be sent, pursuant to Sub-Clause .3 of this Clause GCC below, by personal delivery, registered post, special courier, cable, telegraph, telex, facsimile, electronic mail, or Electronic Data Interchange (EDI), with the following provisions.</p> <ul style="list-style-type: none"> a) Any notice sent by cable, telegraph, telex, facsimile, electronic mail, or EDI shall be confirmed within two (2) days after dispatch by notice sent by registered post or special courier, except as otherwise specified in the Contract. b) Any notice sent by registered post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped, and conveyed to the postal authorities or courier service for transmission by mail or special courier. c) Any notice delivered personally or sent by cable, telegraph, telex, facsimile, electronic mail, or EDI shall be deemed to have been delivered on the date of its dispatch. d) Either party may change its postal, cable, telex, facsimile, electronic mail, or EDI addresses for receipt of such notices by ten (10) days' notice to the other party in writing.
.2	Notices shall be deemed to include any approvals, consents, instructions, orders, certificates, information and other communication to be given under the Contract.
.3	Pursuant to "Representatives" Clause 3 of GCC, notices from/to the Purchaser are normally given by, or addressed to, the Project Manager, while notices from/to the Service Provider are normally given by, or addressed to, the Service Provider's Representative, or in its absence its deputy if any. If there is no appointed Project Manager or Service Provider's Representative (or deputy), or if their related authority is limited by the sub-clause .2 or .3(b) of "Representatives" Clause of SCC for GCC, or for any other reason, the Purchaser or Service Provider may give and receive notices at their fallback addresses. The address of

the Project Manager and the fallback address of the Purchaser are as **specified in the SCC** or as subsequently established/amended. The address of the Service Provider's Representative and the fallback address of the Service Provider are as specified in **SCC** of the Contract Agreement or as subsequently established/amended.

Clause No
Clause Heading
Sub-Clause No.

5
Dispute Settlement

.1

Dispute and Mutual Consultation: If any dispute of any kind whatsoever shall arise between the Purchaser and the Service Provider in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, or termination, or the operation of the contract (whether during the progress of implementation or after its completion and whether before or after the termination, abandonment, or breach of the Contract), the parties shall seek to resolve any such dispute by mutual consultation. If the parties fail to resolve such a dispute by mutual consultation within twenty-eight (28) days after one party has notified the other in writing of the dispute, then upon expiry of notice, either party may proceed to the notification of arbitration pursuant to Sub-Clause .1 of this Clause GCC.

.2

Arbitration:

- (a) If the mutual consultation pursuant to Sub-clause .1 of this clause GCC expires without resolution of the dispute and the Purchaser or the Service Provider acts within the following twenty eight (28) days, then either the Purchaser or the Service Provider may act to give notice to the other party, of its intention to commence arbitration, as provided below, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- (b) Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with Sub-clause .2(a) of this clause GCC, shall be finally settled by arbitration. Arbitration may be commenced prior to or after the termination of contract.
- (c) Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC.**

.3

Notwithstanding any reference to arbitration in this clause,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree;
- (b) the Purchaser shall pay the Service Provider any monies due to the Service Provider.

Clause No
Clause Heading

6
**Copyright, Licenses, Confidential Information, and
Ownership**

Sub-Clause No.
.1

Copyright

- (a) The Intellectual Property Rights in all Standard Software and Standard Materials shall remain vested in the owner of such rights.
- (b) The Purchaser agrees to restrict use, copying, or duplication of the Standard Software and Standard Materials in accordance with GCC Clause 6, except that additional copies of Standard Materials may be made by the Purchaser for use within the scope of the project of which the System is a part, in the event that the Service Provider does not deliver copies within thirty (30) days from receipt of a request for such Standard Materials.
- (c) The Purchaser's contractual rights to use the Standard Software or elements of the Standard Software may not be assigned, licensed, or otherwise transferred voluntarily except in accordance with the relevant license agreement or as may be otherwise **specified in the SCC**.
- (d) As applicable, the Purchaser's and Service Provider's rights and obligations with respect to Custom Software or elements of the Custom Software, including any license agreements, and with respect to Custom Materials or elements of the Custom Materials, are specified in the SCC. **Subject to the SCC**, the Intellectual Property Rights in all Custom Software and Custom Materials specified in Appendix 5A of the Contract Agreement (if any) shall, at the date of this Contract or on creation of the rights (if later than the date of this Contract), vest in the Purchaser. The Service Provider shall do and execute or arrange for the doing and executing of each necessary act, document, and thing at the cost of the Purchaser, that the Purchaser may consider necessary or desirable to perfect the right, title, and interest of the Purchaser in and to those rights. In respect of such Custom Software and Custom Materials, the Service Provider shall ensure that the holder of a moral right in such an item does not assert it, and the Service Provider shall, if requested to do so by the Purchaser and where permitted by applicable law, ensure that the holder of such a moral right waives it.
- (e) The parties shall enter into such (if any) escrow arrangements in relation to the Source Code to some or all of the Software as are **specified in the SCC** and in **accordance with the SCC**.

.2

Software License Agreements

- (i) Except to the extent that the Intellectual Property Rights in the Software vest in the Purchaser, the Service Provider hereby grants to the Purchaser license to access and use the Software, including all inventions, designs, and marks embodied in the Software.

Such license to access and use the Software shall:

- (a) be:
- (i) nonexclusive;
 - (ii) fully paid up and irrevocable (except that it shall terminate if the Contract terminates under GCC Clauses 16.2 or 16.3);
 - (iii) valid throughout the territory of the Country (or such other territory as **specified in the SCC**); and
 - (iv) subject to additional restrictions (if any) as **specified in the SCC**.

- (b) permit the Software to be:
- (i) used or copied for use on or with the computer(s) for which it was acquired (if specified in the Technical Requirements and/or the Service Provider's bid/proposal), plus a backup computer(s) of the same or similar capacity, if the primary is(are) inoperative, and during a reasonable transitional period when use is being transferred between primary and backup;
 - (ii) as **specified in the SCC**, used or copied for use on or transferred to a replacement computer(s), (and use on the original and replacement computer(s) may be simultaneous during a reasonable transitional period) provided that, if the Technical Requirements and/or the Service Provider's bid specifies a class of computer to which the license is restricted and unless the Service Provider agrees otherwise in writing, the replacement computer(s) is(are) within that class;
 - (iii) if the nature of the System is such as to permit such access, accessed from other computers connected to the primary and/or backup computer(s) by means of a local or wide-area network or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access;
 - (iv) reproduced for safekeeping or backup purposes;
 - (v) customized, adapted, or combined with other computer software for use by the Purchaser, provided that derivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as are set forth in this Contract;

- (vi) as **specified in the SCC**, disclosed to, and reproduced for use by, support service Service Providers and their subcontractors, (and the Purchaser may sublicense such persons to use and copy for use the Software) to the extent reasonably necessary to the performance of their support service contracts, subject to the same restrictions as are set forth in this Contract; and
- (vii) disclosed to, and reproduced for use by, the Purchaser and by such other persons as are **specified in the SCC** (and the Purchaser may sublicense such persons to use and copy for use the Software), subject to the same restrictions as are set forth in this Contract.

.3 Software License Agreements (contd.)

The Standard Software may be subject to audit by the Service Provider, in accordance with the terms **specified in the SCC**, to verify compliance with the above license agreements.

.4 Confidential Information

Except if otherwise **specified in the SCC**, the " Receiving Party" (the Service Provider) shall keep confidential and shall not, without the written consent of the Purchaser ("the Disclosing Party"), divulge to any third party any documents, data, or other information of a confidential nature ("Confidential Information") connected with this Contract, and furnished directly or indirectly by the Disclosing Party prior to or during performance, or following termination, of this Contract.

.5 Confidential Information(contd.)

For the purposes of sub-clause .4 of this clause GCC, the Service Provider is also deemed to be the Receiving Party of Confidential Information generated by the Service Provider itself in the course of the performance of its obligations under the Contract and relating to the businesses, services, finances, Service Providers, employees, or other contacts of the Purchaser or the Purchaser's use of the deliverables.

- .6 Confidential Information(contd.)**
Notwithstanding sub-clauses .4 and .5 of this clause GCC the Service Provider may furnish to its Subcontractor Confidential Information of the Purchaser to the extent reasonably required for the Subcontractor to perform its work under the Contract, in which event the Receiving Party shall ensure that the person to whom it furnishes Confidential Information of the Disclosing Party is aware of and abides by the Receiving Party's obligations under this GCC Clause as if that person were party to the Contract in place of the Receiving Party.
- .7 Confidential Information(contd.)**
The Service Provider shall not, without the Purchaser's prior written consent, use any Confidential Information received from the Purchaser for any purpose other than those that are required for the performance of the Contract.
- .8 Confidential Information(contd.)**
The obligation of the Receiving Party under sub-clauses .4 through .7 of this clause GCC, however, shall not apply to that information which:
- (a) now or hereafter enters the public domain through no fault of the Receiving Party; or
 - (b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party; or
 - (c) otherwise lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality. or
 - (d) is independently developed by the receiving without use of the Confidential Information
- .7 Confidential Information(contd.)**
The above provisions of this GCC Clause shall not in any way modify any undertaking of confidentiality given by the Service Provider prior to the date of the Contract in respect of the System or any part thereof.

.8

Confidential Information(contd.)

The provisions of this GCC Clause shall survive the termination, for whatever reason, of the Contract for three (3) years or such longer period as may be specified in the SCC.

Similarly Purchaser agrees that during the course of discussions/services, Purchaser is likely to receive or come into possession of information confidential/proprietary to the Service Provider (including but not limited to information relating to software, trade secrets, know-how/technical data, research, products, software services, development, inventions, processes, engineering techniques, strategies, etc.) and that it shall not disclose or divulge such confidential/ proprietary information to any third parties or make use or allow others to make use thereof either for it's own benefit or for the benefit of others directly or indirectly and that the terms and conditions herein above set out with respect of the confidential information of the Purchaser shall apply mutatis mutandis to Service Provider confidential/proprietary information.

Further the Service Provider shall ensure that the work schedule and its implementation at the work place shall be carried by the Service Provider by maximizing the best standards of work and its application of techniques.

The purchaser shall not be held responsible if any information enters the public domain through no fault of the purchaser.

.9

Ownership

- (i) With the exception of Software and Materials and Service Provider Equipments, the ownership of the Information Technologies and other Goods shall be transferred to the Purchaser at the time of Delivery or otherwise under terms that may be agreed upon and specified in the SCC of the Contract Agreement.
- (ii) Ownership and the terms of usage of the Software and Materials supplied under the Contract shall be governed by this sub-para .1 of this clause GCC “Copyright” and any elaboration in the Technical Requirements.
- (iii) Ownership of the Service Provider’s Equipment used by the Service Provider and its Subcontractors in connection with the Contract shall remain with the Service Provider or its Subcontractors.
- (iv) All plans, drawings, specifications, designs, reports, algorithms, source code of software, any similar thing prepared utilizing the Purchaser’s domain knowledge or otherwise, and other documents and tools prepared by the Service Provider for the Purchaser under this contract shall become and remain the property of the Purchaser, and the Service Provider shall, not later than upon termination or expiration of this contract, deliver all such documents to the Purchaser together with a detailed inventory thereof. The Service Provider may retain a copy of such documents, tools and software, if any. Restriction about the future use of these documents and software, if any, shall be specified in the SCC.
- (v) Each Party shall be entitled to use in the normal course of its business and in providing same or similar services or development of similar deliverables for its other clients, the general knowledge and experience gained and retained in the unaided human memory of its personnel in the performance of the Agreement. For the purposes of clarity Service Provider shall be free to provide any services or design any deliverable(s) that perform functions same or similar to the deliverables being provided under the Agreement, for any other client or customer of Service Provider. Nothing contained in this Section shall relieve either party of its confidentiality obligations with respect to the proprietary and confidential information or material of the other party.

B. GUARANTEES, LIABILITIES, INDEMNITIES, INSURANCE AND RISKS

Clause

7

Clause Heading

Time Warranty(Operational Acceptance) and Liquidated Damages Trigger

Clause No

.1

Warranty

The Service Provider warranties that it shall complete the supply, Installation, Commissioning, and achieve Operational Acceptance of the System (or Subsystems, pursuant to the SCC for GCC Clause 32.2(i)) within the time periods specified in the Implementation Schedule in the Technical Requirements Section and/or the Agreed and Finalized Project Plan pursuant to GCC Clause 15.4, or within such extended time to which the Service Provider shall be entitled under GCC Clause (15.4) (Extension of Time for Achieving Operational Acceptance).

2.

Triggering of Liquidated Damages:

(a) If the Service Provider fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems pursuant to the SCC for GCC Clause 32.2(i)) within the time for achieving Operational Acceptance specified in the Implementation Schedule in the Technical Requirement or the Agreed and Finalized Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GCC Clause (15.4) (Extension of Time for Achieving Operational Acceptance) provided the delay is solely and entirely attributable to the Service Provider and not contributed by any acts or omissions of the Purchaser and / or its agents or is not due to any reasons of Force Majeure will be levied, otherwise no such penalties shall be applicable. The penalties shall be applicable after 4 weeks grace period from the date of schedule delivery on above, the Service Provider shall pay to the Purchaser liquidated damages at the rate **specified in the SCC** as a percentage of the Contract Price, or the relevant part of the Contract Price if a Subsystem has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount specified in the SCC (“the Maximum”). Once the Maximum is reached, the Purchaser may consider termination of the Contract, pursuant to GCC Clause 16.2(ii).(16.2)

(b) Unless otherwise **specified in the SCC**, liquidated damages

payable under sub-clause .2(a) of this clause GCC shall apply only to the failure to achieve Operational Acceptance of the System (and Subsystems) as specified in the Implementation Schedule in the Technical Requirements and/or Agreed and Finalized Project Plan. This sub-clause.2(c) shall not limit, however, any other rights or remedies the Purchaser may have under the Contract for other delays.

- (c) If liquidated damages are claimed by the Purchaser for the System (or Subsystem), the Service Provider shall have no further liability whatsoever to the Purchaser in respect to the Operational Acceptance time guarantee for the System (or Subsystem). However, the payment of liquidated damages shall not in any way relieve the Service Provider from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract.

Clause No	8
Clause Heading	Defect Liability and Cost Recovery Trigger
Sub Clause No	
.1	The Service Provider warrants that the System, including all Information Technologies, Materials, and other Goods supplied and Services provided, shall be free from defects in the design, engineering, Materials, and workmanship that prevent the System and/or any of its components from fulfilling the Technical Requirements as at the time of delivery or that limit in a material fashion the performance, reliability, or extensibility of the System and/or Subsystems. Exceptions and/or limitations, if any, to this warranty with respect to Software (or categories of Software), shall be as specified in the SCC . Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.
.2	The Service Provider also warrants that the Information Technologies, Materials, and other Goods supplied under the Contract are new, unused, and incorporate all recent improvements in design that materially affect the System's or Subsystem's ability to fulfill the Technical Requirements.
.3	In addition, the Service Provider warrants that: (i) all Goods components to be incorporated into the System form part of the Service Provider's and/or Subcontractor's current product lines, (ii) they have been previously released to the market, and (iii) those specific items identified in the SCC (if any) have been in the market for at least the minimum periods specified in the SCC .
.4	The Warranty Period shall commence from the date of Operational Acceptance of the System (or of any major component or Subsystem for which separate Operational Acceptance is provided for in the Contract) and shall extend for the length of time specified in the SCC .
.5	If during the Warranty Period any defect as described in GCC Clause 8.1 should be found in the design, engineering, Materials, and workmanship of the Information Technologies and other Goods supplied or of the Services provided by the Service Provider, the Service Provider shall promptly, in consultation and agreement with the Purchaser regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Service Provider shall, at its discretion, determine) such defect as well as any damage to the System caused by such defect. Any defective Information Technologies or other Goods that have been replaced by the Service Provider shall remain the property of the Service Provider.

- .6** The Service Provider shall not be responsible for the repair, replacement, or making good of any defect or of any damage to the System arising out of or resulting from any of the following causes:
- (a) improper operation or maintenance of the System by the Purchaser;
 - (b) normal wear and tear;
 - (c) use of the System with items not supplied by the Service Provider, unless otherwise identified in the Technical Requirements, or approved by the Service Provider; or
 - (d) Modifications made to the System by the Purchaser, or a third party, not approved by the Service Provider.
- .7** The Service Provider's obligations under this GCC Clause 8 shall not apply to:
- (a) any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or
 - (b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Purchaser or any matters for which the Service Provider has disclaimed responsibility, in accordance with GCC Clause 26.1(ii).
- .8** The Purchaser shall give the Service Provider a notice promptly following the discovery of such defect, stating the nature of any such defect together with all available evidence. The Purchaser shall afford all reasonable opportunity for the Service Provider to inspect any such defect. The Purchaser shall afford the Service Provider all necessary access to the System and the site to enable the Service Provider to perform its obligations under this GCC Clause 8.
- .9** The Service Provider may, with the consent of the Purchaser, remove from the site any Information Technologies and other Goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the Purchaser may give the Service Provider notice requiring that tests of the defective part be made by the Service Provider immediately upon completion of such remedial work, whereupon the Service Provider shall carry out such tests.
- If such part fails the tests, the Service Provider shall carry out further repair, replacement, or making good (as the case may

be) until that part of the System passes such tests. The tests shall be agreed upon by the Purchaser and the Service Provider.

- .10** If the Service Provider fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within the time period **specified in the SCC**, the Purchaser may, following notice to the Service Provider, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Purchaser which shall not in any case exceed 10% of the price quoted for the undelivered portion by the Service Provider in connection with such work shall be paid to the Purchaser by the Service Provider or may be deducted by the Purchaser from any monies due the Service Provider or claimed under the Performance Security.
- .11** Note:
It is because of Warranty that Service Provider would be remedying the defect during the warranty period and extension would mean double warranty.
- .12** Items substituted for defective parts of the System during the Warranty Period shall be covered by the Defect Liability Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.
- .13** At the request of the Purchaser and without prejudice to any other rights and remedies that the Purchaser may have against the Service Provider under the Contract, the Service Provider will offer all possible assistance to the Purchaser to seek warranty services or remedial action from any subcontracted third-party producers or licensor of Goods included in the System, including without limitation assignment or transfer in favor of the Purchaser of the benefit of any warranties given by such producers or licensors to the Service Provider.
- .14** the warranties provided herein above by service provider are in lieu of all other warranties, both express and implied, and all other warranties, including without limitation that of merchantability or fitness for intended purpose is specifically disclaimed by service provider.

Clause No.	9
Clause Heading	Functional warranty and Performance Security Trigger
Sub-Clause No.	
.1	The Service Provider warrants that, once the Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to the Purchaser's requirements set forth in the Technical Requirements and it conforms to all other aspects of the Contract. The Service Provider acknowledges that GCC Clause 32 regarding Commissioning and Operational Acceptance governs how technical conformance of the System to the Contract requirements will be determined.
.2	If, for reasons entirely attributable to the Service Provider, the System does not conform to the Technical Requirements or does not conform to all other aspects of the Contract, the Service Provider shall at its cost and expense make such changes, modifications, and/or additions to the System as may be necessary to conform to the Technical Requirements and meet all functional and performance standards. The Service Provider shall notify the Purchaser upon completion of the necessary changes, modifications, and/or additions and shall request the Purchaser to repeat the Operational Acceptance Tests until the System achieves Operational Acceptance.
.3	If the System (or Subsystem[s]) fails to achieve Operational Acceptance, the Purchaser may consider termination of the Contract, pursuant to GCC Clause 16.2(ii), and forfeiture of the Service Provider's Performance Security in accordance with GCC Clause 20.3 in compensation for the extra costs and delays likely to result from this failure.

Clause No.	10
Clause Heading	IPR Warranty and Indemnity
Sub-Clause No.	
.1	<p>IPR Warranty The Service Provider hereby represents and warrants that:</p> <ul style="list-style-type: none"> (a) the System as supplied, installed, tested, and accepted; (b) use of the System in accordance with the Contract; and (c) copying of the Software and Materials provided to the Purchaser in accordance with the Contract <p>do not and will not infringe any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Purchaser to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Service Provider shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for development of the System.</p>
.2	<p>IPR Indemnity The Service Provider shall indemnify and hold harmless the Purchaser and its employees and officers from and against any and all losses, liabilities, and costs (including reasonable attorney fees, and costs incurred in defending a claim alleging such a liability, that the Purchaser or its employees or officers may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights by reason of:</p> <ul style="list-style-type: none"> (a) installation of the System by the Service Provider or the use of the System, including the Materials, in the country where the site is located; (b) copying of the Software and Materials provided the Service Provider in accordance with the Agreement; and
.3	<p>Such indemnity shall not cover any use of the System, including the Materials, other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the System, or any products of the System produced thereby in association or combination with any other goods or services not supplied by the Service</p>

Provider, where the infringement arises because of such association or combination and not because of use of the System in its own right.

.4 Such indemnities shall also not apply if any claim of infringement:

- (a) is asserted by a parent, subsidiary, or affiliate of the Purchaser's organization;
- (b) is a direct result of a design mandated by the Purchaser's Technical Requirements and the possibility of such infringement was duly noted in the Service Provider's Bid; or
- (c) results from the alteration of the System, including the Materials, by the Purchaser or any persons other than the Service Provider or a person authorized by the Service Provider.

.5 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Clause 10.2, the Purchaser shall promptly give the Service Provider notice of such proceedings or claims, and the Service Provider 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.

If the Service Provider 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. Unless the Service Provider has so failed to notify the Purchaser within the twenty-eight (28) days, the Purchaser shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Purchaser shall, at the Service Provider's request, afford all available assistance to the Service Provider in conducting such proceedings or claim and shall be reimbursed by the Service Provider for all reasonable expenses incurred in so doing.

.6 The Purchaser shall indemnify and hold harmless the Service Provider and its employees, officers, and Subcontractors from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Service Provider or its employees, officers, or Subcontractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided to the Service Provider in connection with this Contract by the Purchaser or any persons (other than the Service Provider) contracted by the Purchaser, except to the extent that such losses, liabilities, and costs arise as a result of the Service Provider's breach of

GCC Clause 10.9.

- .7 Such indemnity shall not cover
- (a) any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract;
 - (b) any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Goods or Services not provided by the Purchaser or any other person contracted by the Purchaser, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.
- .8 Such indemnities shall also not apply:
- (a) to the extent that any claim of infringement is caused by the alteration, by the Service Provider, or any persons contracted by the Service Provider, of the design, data, drawing, specification, or other documents or materials provided to the Service Provider by the Purchaser or any persons contracted by the Purchaser except where such modification is at the request of the Purchaser.
- .9 If any proceedings are brought or any claim is made against the Service Provider arising out of the matters referred to in GCC Clause 10.6, the Service Provider shall promptly give the Purchaser notice of such proceedings or claims, and the Purchaser may at its own expense and in the Service Provider's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Purchaser fails to notify the Service Provider within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Service Provider shall be free to conduct the same on its own behalf. Unless the Purchaser has so failed to notify the Service Provider within the twenty-eight (28) days, the Service Provider shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Service Provider shall, at the Purchaser's request, afford all available assistance to the Purchaser in conducting such proceedings or claim and shall be reimbursed by the Purchaser for all reasonable expenses incurred in so doing.

Clause No. 11
Clause Heading **Limitation of Liability**
Sub-Clause No.

- .1** Provided the following does not exclude or limit any liabilities of either party in ways not permitted by applicable law:
- (a) the Service Provider shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of interest costs, provided that this exclusion shall not apply to any obligation of the Service Provider to pay liquidated damages to the Purchaser; and
 - (b) the aggregate liability of the Service Provider to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total amount received by the Service Provider during the preceding twelve months period in respect of the event that gives rise to such claims, provided that this limitation shall not apply to any obligation of the Service Provider to indemnify the Purchaser with respect to intellectual property rights infringement.

Clause No.	12
Clause Heading	Indemnity
Sub-Clause No.	
.1	The Service Provider and each and every Subcontractor shall abide by the job safety, insurance, other prevalent measures and the Applicable Law.
.2	Subject to sub-clause .3 of this Clause GCC, the Service Provider shall indemnify and hold harmless the Purchaser and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Purchaser or its employees or officers may suffer as a result of the death or injury of any person or loss of or damage to any property (other than the System, whether accepted or not) arising in connection with the supply, installation, testing, and Commissioning of the System and by reason of the negligence of the Service Provider or its Subcontractors, or their employees, officers or agents, except any injury, death, or property damage caused by the negligence of the Purchaser, its contractors, employees, officers, or agents.
.3	If any proceedings are brought or any claim is made against the Purchaser that might subject the Service Provider to liability under sub-clause .2 of this clause GCC, the Purchaser shall promptly give the Service Provider notice of such proceedings or claims, and the Service Provider 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. If the Service Provider 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. Unless the Service Provider has so failed to notify the Purchaser within the twenty-eight (28) day period, the Purchaser shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Purchaser shall, at the Service Provider's request, afford all available assistance to the Service Provider in conducting such proceedings or claim and shall be reimbursed by the Service Provider for all reasonable expenses incurred in so doing.
.4	The Purchaser shall indemnify and hold harmless the Service Provider and its employees, officers, and Subcontractors from any and all losses, liabilities, and costs (including losses, liabilities reasonable attorney fees, and costs incurred in defending a claim alleging such a liability) that the Service Provider or its employees, officers, or Subcontractors may suffer as a result of the death or personal injury of any person or loss of or damage to property of the

Purchaser, other than the System not yet achieving Operational Acceptance, that is caused by fire, explosion, or any other perils, , provided that such fire, explosion, or other perils were not caused by any act or failure of the Service Provider.

- .5 If any proceedings are brought or any claim is made against the Service Provider that might subject the Purchaser to liability under sub-clause .4 of this clause GCC, the Service Provider shall promptly give the Purchaser notice of such proceedings or claims, and the Purchaser may at its own expense and in the Service Provider's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Purchaser fails to notify the Service Provider within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Service Provider shall be free to conduct the same on its own behalf. Unless the Purchaser has so failed to notify the Service Provider within the twenty-eight (28) days, the Service Provider shall make no admission that may be prejudicial to the defence of any such proceedings or claim. The Service Provider shall, at the Purchaser's request, afford all available assistance to the Purchaser in conducting such proceedings or claim and shall be reimbursed by the Purchaser for all reasonable expenses incurred in so doing.
- .6 The party entitled to the benefit of an indemnity under this GCC Clause shall take all reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

Clause No.
Clause Heading
Sub-Clause No.
.1

13
Insurances

The Service Provider shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurance set forth below. The identity of the Service Providers and the form of the policies shall be subject to the approval of the Purchaser, who should not unreasonably withhold such approval.

(a) Cargo Insurance During Transport

as applicable, 110 percent of the price of the Information Technologies and other Goods in a freely convertible currency, covering the Goods from physical loss or damage during shipment through receipt at the Project Site.

(b) Installation “All Risks” Insurance

as applicable, 110 percent of the price of the Information Technologies and other Goods covering the Goods at the site from all risks of physical loss or damage (excluding only perils commonly excluded under “all risks” insurance policies of this type by reputable Service Providers) occurring prior to Operational Acceptance of the System.

(c) Third-Party Liability Insurance

On terms as **specified in the SCC**, covering bodily injury or death suffered by third parties (including the Purchaser’s personnel) and loss of or damage to property (including the Purchaser’s property and any Subsystems that have been accepted by the Purchaser) occurring in connection with the supply and installation of the Information System.

(d) Automobile Liability Insurance

In accordance with the statutory requirements prevailing in the Country, covering use of all vehicles used by the Service Provider or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.

(e) Other Insurance (if any), as **specified in the SCC**.

.2
.3

The Service Provider shall deliver to the Purchaser certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect.

- .4 The Service Provider shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Service Provider.
- .5 If the Service Provider fails to take out and/or maintain in effect the insurance referred to in sub-clause .1 of this clause GCC, the Purchaser may take out and maintain in effect any such insurance and may from time to time deduct from any amount due to the Service Provider under the Contract any premium that the Purchaser shall have paid to the Service Provider or may otherwise recover such amount as a debt due from the Service Provider.
- .6 Unless otherwise provided in the Contract, the Service Provider shall prepare and conduct all and any claims made under the policies affected by it pursuant to this GCC Clause and all monies payable by any Service Providers shall be paid to the Service Provider. The Purchaser shall give to the Service Provider all such reasonable assistance as may be required by the Service Provider in connection with any claim under the relevant insurance policies. With respect to insurance claims in which the Purchaser's interest is involved, the Service Provider shall not give any release or make any compromise with the Service Provider without the prior written consent of the Purchaser. With respect to insurance claims in which the Service Provider's interest is involved, the Purchaser shall not give any release or make any compromise with the Service Provider without the prior written consent of the Service Provider.

Clause No.	14
Clause Heading	Force majeure
Sub-Clause No.	
.1	<p>“Force Majeure” shall mean any event beyond the reasonable control of the Purchaser or of the Service Provider, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following:</p> <ul style="list-style-type: none"> (a) war, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war; (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts; (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of government, or any other act or failure to act of any local, state or Central government authority; (d) strike, sabotage, lockout, embargo, import restriction, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
.2	<p>If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.</p>
.3	<p>The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party’s performance is prevented, hindered, or delayed. The Time for achieving Operational Acceptance shall be extended in accordance with GCC Clause 15.5 (Extension of Time).</p>
.4	<p>The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party’s right to terminate the Contract under GCC Clause 14.6.</p>
.5	<p>No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:</p> <ul style="list-style-type: none"> (a) constitute a default or breach of the Contract; (b) (subject to GCC Clauses 33.2, 14.3, and 14.4) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance, if, and to the extent that, such delay or nonperformance is

- caused by the occurrence of an event of Force Majeure.
- .6** If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.
- .7** In the event of termination pursuant to GCC Clause 14.6, the rights and obligations of the Purchaser and the Service Provider shall be as specified in GCC Clause “Termination”.
- .8** Notwithstanding GCC Clause 14.5, Force Majeure shall not apply to any obligation of the Purchaser to make payments to the Service Provider under this Contract.

C. TERM, TERMINATION AND MODIFICATION OF CONTRACT

Clause No.	15
Clause Heading	Term
Sub-Clause No.	
.1	<p>Effectiveness of contract: This Contract shall come into force and effect on the date (the “Effective Date”) of the Purchaser’s notice to the Service Provider instructing the Service Provider to begin carrying out the services. This notice shall confirm that the effectiveness condition, if any, listed in the SCC have been met.</p>
.2	<p>Commencement of Services: The Service Provider shall begin carrying out the services at the end of such time period after the Effective Date as shall be specified in the SCC</p>
.3	<p>Time for commencement of Operational Acceptance The Service Provider shall commence work within the period specified at sub-clause .2 of this clause GCC, and the Service Provider shall thereafter proceed with the work in accordance with the time schedule specified in the Implementation Schedule in the Technical Requirements Section and any refinements made in the Agreed and Finalized Project Plan.</p>
.4	<p>The Service Provider shall achieve Operational Acceptance of the System (or Subsystem(s) where a separate time for Operational Acceptance of such Subsystem(s) is specified in the Contract) within the time specified in the SCC and in accordance with the time schedule specified in the Implementation Schedule in the Technical Requirements Section and any refinements made in the Agreed and Finalized Project Plan, or within such extended time to which the Service Provider shall be entitled under GCC Clause 15.5(Extension of Time).</p>
.5	<p>Extension of time The time(s) for achieving Operational Acceptance specified in the Schedule of Implementation shall be extended if the Service Provider is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:</p> <ul style="list-style-type: none"> (a) any Change in the System as provided in GCC Clause 17.2 (Change in the Information System); (b) any occurrence of Force Majeure as provided in GCC Clause “Force Majeure”; (c) default of the Purchaser; or

(d) any other matter specifically mentioned in the Contract;

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Service Provider.

.6 Except where otherwise specifically provided in the Contract, the Service Provider shall submit to the Project Manager a notice of a claim for an extension of the time for achieving Operational Acceptance, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Purchaser and the Service Provider shall agree upon the period of such extension. In the event that the Service Provider does not accept the Purchaser's estimate of a fair and reasonable time extension, the Service Provider shall be entitled to refer the matter under "Settlement of Disputes" Clause 5 of GCC.

.7 The Service Provider shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

Clause No.	16
Clause Heading	Termination
Sub-Clause No.	
.1	<p>Termination for Purchaser's Convenience</p> <p>(i) The Purchaser may at any time terminate the Contract for any reason by giving the Service Provider a ninety(90) days written notice of termination that refers to the sub-clause .1 of this Clause GCC.</p> <p>(ii) Upon receipt of the notice of termination under sub-clause .1(i) of this clause GCC Clause 16.1(i), the Service Provider shall either as soon as reasonably practical or upon the date specified in the notice of termination</p> <ul style="list-style-type: none"> (a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition; (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to sub-clause .1(ii) (d) (ii) of this clause GCC below; (c) remove all Service Provider's Equipment from the site, repatriate the Service Provider's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind; (d) in addition, the Service Provider, subject to the payment specified in sub-clause .1(iii) of this clause GCC, shall <ul style="list-style-type: none"> (i) deliver to the Purchaser the parts of the System executed by the Service Provider up to the date of termination; (ii) to the extent legally possible, assign to the Purchaser all right, title, and benefit of the Service Provider to the System, or Subsystem, as at the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Service Provider and its Subcontractors; (iii) deliver to the Purchaser all nonproprietary drawings, specifications, and other

documents prepared by the Service Provider or its Subcontractors as of the date of termination in connection with the System.

- (iv) carry out the reverse transition of the services to the Purchaser or a new Service Provider.

(iii) In the event of termination of the Contract under sub-clause .1(i) of this clause GCC Clause 16.1(i), the Purchaser shall pay to the Service Provider the following amounts:

- (a) the Contract Price, properly attributable to the parts of the System executed by the Service Provider as of the date of termination;
- (b) costs incurred by the Service Provider in protecting the System and leaving the site in a clean and safe condition pursuant to sub-clause .1(ii) (a) of this clause GCC Clause 16.1.2 (a); and
- (c) the cost of satisfying all other obligations, commitments, and claims that the Service Provider may in good faith have undertaken with third parties in connection with the Contract and that are not covered by sub-clause .1(iii) (a) through (c) of this clause GCC Clauses 16.1.3 (a) through (c) above.

.2

Termination for Service Provider's Default

(i) The Purchaser, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Service Provider, referring to this sub-clause .1(ii) of this clause GCC Clause 16.2:

- (a) if the Service Provider becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Service Provider is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Service Provider takes or suffers any other analogous action in consequence of debt;
- (b) if the Service Provider assigns or transfers the Contract or any right or interest therein in violation of the provision of Sub-Clause .5 (Assignment) of

“Modification” clause GCC Clause 42 (Assignment); or

(c) if the Service Provider, in the judgment of the Purchaser, has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, including but not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer, the hardware, software, or materials provided under this Contract.

For the purposes of this Clause:

- (i) “corrupt practice”¹ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “fraudulent practice”² is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) “collusive practice”³ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”⁴ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation by the Trust into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge

¹ “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes Trust staff and employees of other organizations taking or reviewing procurement decisions.

² A “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

³ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁴ A “party” refers to a participant in the procurement process or contract execution.

of matters relevant to the investigation or from pursuing the investigation; or

(bb) acts intended to materially impede the exercise of the Trust's inspection and audit rights provided for under Sub-Clause 22.16.

(ii) If the Service Provider:

- (a) has abandoned or repudiated the Contract;
- (b) has without valid reason failed to commence work on the System promptly;
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;
- (d) refuses or is unable to provide sufficient Materials, Services, or labor to execute and complete the System in the manner specified in the Agreed and Finalized Project Plan furnished under GCC Clause 24 at rates of progress that give reasonable assurance to the Purchaser that the Service Provider can attain Operational Acceptance of the System by the Time for Achieving Operational Acceptance as extended;

then the Purchaser may, without prejudice to any other rights it may possess under the Contract, give a notice to the Service Provider stating the nature of the default and requiring the Service Provider to remedy the same. If the Service Provider fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Purchaser may terminate the Contract forthwith by giving a notice of termination to the Service Provider that refers to the sub-clause .1(ii) of this clause GCC.

(iii) Upon receipt of the notice of termination under sub-clauses .2(i) and .2(ii) of this clause GCC Clauses 41.2.1 or 16.2(ii), the Service Provider shall, either immediately or upon such date as is specified in the notice of termination:

- (a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the System already executed or any work required to leave the site in a clean and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to sub-clause

.2(iii) of this clause GCC Clause 16.2.3 (d) below;

- (c) deliver to the Purchaser the parts of the System executed by the Service Provider up to the date of termination;
 - (d) to the extent legally possible, assign to the Purchaser all right, title and benefit of the Service Provider to the System or Subsystems as at the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Service Provider and its Subcontractors;
 - (e) deliver to the Purchaser all drawings, specifications, and other documents prepared by the Service Provider or its Subcontractors as at the date of termination in connection with the System.
- (iv) The Purchaser may enter upon the site, expel the Service Provider and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as the Purchaser thinks appropriate, the Purchaser shall give notice to the Service Provider that such Service Provider's Equipment will be returned to the Service Provider at or near the site and shall return such Service Provider's Equipment to the Service Provider in accordance with such notice. The Service Provider shall thereafter without delay and at its cost remove or arrange removal of the same from the site.
- (v) Subject to sub-clause .2(vi) of this clause GCC Clause 16.2.6, the Service Provider shall be entitled to be paid the Contract Price attributable to the portion of the System executed as at the date of termination and the costs, if any, incurred in protecting the System and in leaving the site in a clean and safe condition pursuant to sub-clause .2(iii)(a) of this clause GCC Clause 16.2.3 (a). Any sums due the Purchaser from the Service Provider accruing prior to the date of termination shall be deducted from the amount to be paid to the Service Provider under this Contract.
- (vi) If the Purchaser completes the System, the cost of completing the System by the Purchaser shall be determined. If the sum that the Service Provider is entitled to be paid, pursuant to sub-clause .2(v) of this clause GCC Clause 16.2.5, plus the reasonable costs incurred by the Purchaser in completing the System, exceeds the Contract Price, the Service Provider shall be liable for such excess. If such excess is greater than the sums due the Service Provider under sub-clause .2(v) of

this clause GCC Clause 16.2.5, the Service Provider shall pay the balance to the Purchaser, and if such excess is less than the sums due to the Service Provider under sub-clause .2(v) of this clause GCC Clause 16.2.5, the Purchaser shall pay the balance to the Service Provider. The Purchaser and the Service Provider shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

.3

Termination by Service Provider

(i) If:

- (a) the Purchaser has failed to pay the Service Provider any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause **pursuant to the SCC**, or delay in finalizing the requirement specifications or failure to give acceptance of Products and/or Services in mutually agreed time schedules or commits a breach of the Contract or its responsibilities under the Contract, the Service Provider may give a notice to the Purchaser that requires payment of such sum, with interest on this sum as stipulated in GCC Clause 19.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Purchaser to remedy the same, as the case may be. If the Purchaser fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Service Provider's notice; or
- (b) the Service Provider is unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser, including but not limited to the Purchaser's failure to provide possession of or access to the site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the System;

then the Service Provider may give a notice to the Purchaser of such events, and if the Purchaser has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the

breach within twenty-eight (28) days of such notice, or if the Service Provider is still unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser within twenty-eight (28) days of the said notice, the Service Provider may by a further notice to the Purchaser referring to this sub-clause .3(i) of this clause GCC Clause 16.3.1, forthwith terminate the Contract.

(ii) The Service Provider may terminate the Contract immediately by giving a notice to the Purchaser to that effect, referring to this sub-clause .3(ii) of this clause GCC Clause 41.3.2, if the Purchaser becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Purchaser takes or suffers any other analogous action in consequence of debt.

(iii) If the Contract is terminated under sub-clauses .3(i) or .3(ii) of this clause GCC Clauses 16.3.1 or 16.3.2, then the Service Provider shall immediately:

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to sub-clause .3(iii)(d)(ii) of this clause GCC Clause 16.3.3 (d) (ii);
- (c) remove all Service Provider's Equipment from the site and repatriate the Service Provider's and its Subcontractor's personnel from the site.
- (d) In addition, the Service Provider, subject to the payment specified in sub-clause .3(iv) of this clause GCC Clause 16.3.4, shall:
 - (i) deliver to the Purchaser the parts of the System executed by the Service Provider up to the date of termination;
 - (ii) to the extent legally possible, assign to the Purchaser all right, title, and benefit of the Service Provider to the System, or Subsystems, as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the

Service Provider and its Subcontractors;

- (iii) to the extent legally possible, deliver to the Purchaser all drawings, specifications, and other documents prepared by the Service Provider or its Subcontractors as of the date of termination in connection with the System.
- (iv) If the Contract is terminated under sub-clause .3(i) or .3(ii) of this clause GCC Clauses 41.3.1 or 16.3.2, the Purchaser shall pay to the Service Provider all payments specified in sub-clause .1(iii) of this clause GCC Clause 16.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Service Provider arising out of, in connection with, or in consequence of such termination.

Termination by the Service Provider pursuant to this sub-clause .1(iii) of this clause GCC Clause 16.3 is without prejudice to any other rights or remedies of the Service Provider that may be exercised in lieu of or in addition to rights conferred by sub-clause .1(iii) of this clause GCC Clause 16.3.

- .4 In this GCC Clause 16, the expression “portion of the System executed” shall include all work executed, Services provided, and all Information Technologies, or other Goods acquired (or subject to a legally binding obligation to purchase) by the Service Provider and used or intended to be used for the purpose of the System, up to and including the date of termination.
- .5 In this GCC Clause 16, in calculating any monies due from the Purchaser to the Service Provider, account shall be taken of any sum previously paid by the Purchaser to the Service Provider under the Contract, including any advance payment paid **pursuant to the SCC.**

Clause No.
Clause Heading
Sub-Clause No.

17
Modification

.1

Modification: Modification of the terms and conditions of this contract, including any modification of the scope of the service, may only be made by written agreement between the parties, pursuant to sub-clause .9 of “Interpretation” Clause GCC hereof. However, each party shall give due consideration to any proposals for modification made by the other party.

.2

Introducing a Change

(i) Subject to GCC Clauses 17.3.5 and 17.3.7, the Purchaser shall have the right to propose, and subsequently require, the Project Manager to order the Service Provider from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in, or from the System (interchangeably called “Change”), provided that such Change falls within the general scope of the System, does not constitute unrelated work, and is technically practicable, taking into account both the state of advancement of the System and the technical compatibility of the Change envisaged with the nature of the System as originally specified in the Contract.

A Change may involve, but is not restricted to, the substitution of updated Information Technologies and related Services in accordance with GCC Clause 28 (Product Upgrades).

(ii) The Service Provider may from time to time during its performance of the Contract propose to the Purchaser (with a copy to the Project Manager) any Change that the Service Provider considers necessary or desirable to improve the quality or efficiency of the System. The Purchaser may at its discretion approve or reject any Change proposed by the Service Provider.

(iii) Notwithstanding GCC Clauses 17.2.1 and 17.2.3, no change made necessary because of any default of the Service Provider in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Achieving Operational Acceptance.

(iv) The procedure on how to proceed with and execute Changes is specified in GCC Clauses 17.2 and 17.3, and further details and sample forms are provided in the Sample Forms Section in the Bidding Documents.

(v) Moreover, the Purchaser and Service Provider will agree, during development of the Project Plan, to a date prior to the scheduled date for Operational Acceptance, after which the Technical Requirements for the System shall be “frozen.” Any Change initiated after this time will be dealt with after Operational Acceptance.

Changes Originating from Purchaser

- (i) If the Purchaser proposes a Change pursuant to GCC Clauses 17.2.1, it shall send to the Service Provider a “Request for Change Proposal,” requiring the Service Provider to prepare and furnish to the Project Manager as soon as reasonably practicable a “Change Proposal,” which shall include the following:
 - (a) brief description of the Change;
 - (b) impact on the Time for Achieving Operational Acceptance;
 - (c) effect on Functional Guarantees (if any);
 - (d) effect on any other provisions of the Contract.
- (ii) The need for submission of Change Estimate Proposal shall be as **specified in SCC**.
- (iii) Upon receipt of the Purchaser’s under GCC Clause 17.3.1, the Service Provider shall, with proper expedition, proceed with the preparation of the Change Proposal. The Service Provider, at its discretion, may specify a validity period for the Change Proposal, after which if the Purchaser and Service Provider has not reached agreement in accordance with GCC Clause 17.3.6, then GCC Clause 17.3.7 shall apply.
- (iv) The pricing of change if any shall be as **specified in SCC**.
- (v) If before or during the preparation of the Change Proposal it becomes apparent that the aggregate impact of compliance with the Request for Change Proposal and with all other Change Orders that have already become binding upon the Service Provider under this GCC Clause 39 would be to increase or decrease the man-time under the Contract by more than fifteen (15) percent, the Service Provider may give a written notice of objection to this Request for Change Proposal prior to furnishing the Change Proposal. If the Purchaser accepts the Service Provider’s objection, the Purchaser shall withdraw the proposed Change and shall notify the Service Provider in writing of its acceptance.

The Service Provider’s failure to so object to a Request for Change Proposal shall neither affect its right to object to any subsequent requested Changes or Change Orders, nor affect its right to take into account, when making

such subsequent objection, the percentage increase or decrease in the man-time under the Contract that any Change not objected to by the Service Provider represents.

- (vi) Upon receipt of the Change Proposal, the Purchaser and the Service Provider shall mutually agree upon all matters contained in the Change Proposal. Within fourteen (14) days after such agreement, the Purchaser shall, if it intends to proceed with the Change, issue the Service Provider a Change Order. If the Purchaser is unable to reach a decision within fourteen (14) days, it shall notify the Service Provider with details of when the Service Provider can expect a decision. If the Purchaser decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Service Provider accordingly.
- (vii) If the Purchaser and the Service Provider cannot reach agreement on an equitable adjustment to the Time for Achieving Operational Acceptance, or any other matters identified in the Change Proposal, the Change will not be implemented. However, this provision does not limit the rights of either party under GCC Clause 6 (Settlement of Disputes).

.4 Changes Originating from Service Provider

If the Service Provider proposes a Change pursuant to GCC Clause 17.2.2, the Service Provider shall submit to the Project Manager a written “Application for Change Proposal,” giving reasons for the proposed Change and including the information specified in GCC Clause 17.3.1. Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Clauses 17.3.6 and 17.3.7

- .5 **Assignment:** Neither the Purchaser nor the Service Provider shall, without the express prior written consent of the other, assign to any third party the Contract or any part thereof, or any right, benefit, obligation, or interest therein or there under, except that the Service Provider shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

D. PAYMENT

Clause No.	18
Clause Heading	Price
Sub-Clause No.	
.1	The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
.2	The Contract Price shall be a firm lump sum not subject to any alteration, except: <ul style="list-style-type: none"> (a) in the event of a Change in the System pursuant to GCC Clause 17 or to other clauses in the Contract; (b) in accordance with the price adjustment formula (if any) specified in the SCC.
.3	The Service Provider shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

Clause No.
Clause Heading
Sub-Clause No.

19
Payment Terms

- .1** The Service Provider's request for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the System or Subsystem(s), Delivered, Pre-commissioned, Installed, and Operationally Accepted, and by documents submitted pursuant to GCC Clause 27.5 and upon fulfillment of other obligations stipulated in the Contract.
- The Contract Price shall be paid in Indian Rupees as **specified in the SCC.**
- .2** .No payment made by the Purchaser herein shall be deemed to constitute acceptance by the Purchaser of the system or any sub-system(s).
- .3** Payments shall be made promptly by the Purchaser, but in no case later than thirty (30) days after submission of a valid invoice by the Service Provider. In the event that the Purchaser fails to make any payment by its respective due date or within the period set forth in the Contract, the Purchaser shall pay to the Service Provider interest on the amount of such delayed payment at the rate(s) **specified in the SCC** for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.
- .4** **Mode of Billing and Payment:** Billings and payments in respect of the services shall be made as follows:
- (a) The Purchaser shall cause to be paid to the Service Provider an advance payment as specified in the sub-clause .2 of "Securities" Clause CCC, and as otherwise set forth below.
 - (b) The Service Provider shall submit deliverables as per the Implementation schedule in Appendix-2, and not later than fifteen (15) days after the end of each of the scheduled delivery dates, shall submit to the Purchaser in duplicate, itemized statements, accompanied by copies of receipted invoices, vouchers and other appropriate supporting materials, of the amounts payable pursuant to this Clause GCC for such payment. Each such statement shall distinguish that portion of the total eligible costs which pertains to human resource payments, showing hours/months worked by each position or as defined in the contract terms, from that portion which pertains to other payments.
 - (c) The Purchaser shall cause the payment of the Service Provider's statements within Thirty (30) days after the receipt by the Purchaser of such statements with supporting documents. Only such portion of a statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual

payment and costs authorized to be incurred by the Service Provider, the Purchaser may add or subtract the difference from any subsequent payments. Interest at annual rate specified in the SCC shall become payable as from the above due date on any amount due by, but not paid on, such due date.

- (d) The final payment under this Clause shall be made only after the final deliverables and a final statement, identified as such, shall have been submitted by the Service Provider and approved as satisfactory by the Purchaser. The Services shall be deemed completed and finally accepted by the Purchaser and the final deliverables and the final statement shall be deemed approved by the Purchaser as satisfactory ninety (90) calendar days after receipt of the final deliverables and final statement by the Purchaser unless the Purchaser within such ninety (90) days period gives written notice to the Service Provider specifying in detail deficiencies in the services and/or the final deliverables or final statement or fails to provide any such notice. The Service Provider shall thereupon promptly rectify any such deficiency, and upon completion of such rectifications, the foregoing process shall be repeated. Any amount which the Purchaser has paid or caused to be paid in accordance with this clause in excess of the amounts actually payable in accordance with the provisions of this contract shall be reimbursed by the Service Provider to the Purchaser within thirty (30) days after receipt by the Service Provider of notice thereof. Any such claim by the Purchaser for reimbursement must be made within twelve (12) calendar months after receipt by the Purchaser of the final deliverables and a final statement approved by the Purchaser in accordance with the above.
- (e) All payments under this contract shall be made to the accounts of the Service Provider specified in the SCC.
- (f) Other conditions relating to payments shall be as specified at SCC

.5

Suspension

The Purchaser may, by written notice of suspension to the Service Provider suspend all payments to the Service Provider hereunder if the Service Provider fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) direct the Service Provider to remedy such failure within a specified period, after receipt by the Service Provider of such notice of suspension. The process of suspension shall be as specified in SCC.

Clause No.	20
Clause Heading	Securities
Sub-Clause No.	
.1	<p>Issuance of Securities</p> <p>The Service Provider shall provide the securities specified below in favor of the Purchaser at the times and in the amount, manner, and form specified below.</p>
.2	<p>Advance Payment Security</p> <p>(a) As specified in the SCC, the Service Provider shall provide a security equal in amount to the advance payment, and valid until the System is Operationally Accepted.</p> <p>(b) The security shall be in the form provided in the Annexure-5B or in another form acceptable to the Purchaser. The amount of the security shall be reduced in proportion to the value of the contract executed by and paid to the Service Provider from time to time and shall automatically become null and void when the full amount of the advance payment has been recovered by the Purchaser. The way the value of the security is deemed to become reduced and, eventually, voided is as specified in the SCC. The security shall be returned to the Service Provider immediately after its expiration.</p>
.3	<p>Performance Security</p> <p>(a) The Service Provider shall, within twenty-eight (28) days of the notification of Contract award, provide a security for the due performance of the Contract in the amount and currency specified in the SCC.</p> <p>(b) The security shall be a bank guarantee in the form provided in the Appendix-5B, or it shall be in another form acceptable to the Purchaser.</p> <p>(c) The security shall automatically become null and void once all the obligations of the Service Provider under the Contract have been fulfilled, including, but not limited to, any obligations during the Warranty Period and any extensions to the period. The security shall be returned to the Service Provider no later than twenty-eight (28) days after its expiration.</p>

Clause No.
Clause Heading
Sub-Clause No.

21
Taxes and Duties

- .1** For Goods or Services supplied from outside the country, the Service Provider shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the country. Any duties, such as importation or customs duties, and taxes and other levies, payable in the country for the supply of Goods and Services from outside the Purchaser's country are the responsibility of the Purchaser unless these duties or taxes have been made part of the Contract Price in Article 2 of the Contract Agreement and the Price Schedule it refers to, in which case the duties and taxes will be the Service Provider's responsibility.
- .2** For Goods or Services supplied locally, the Service Provider shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods or Services to the Purchaser the only exceptions are taxes or duties such as value-added or sales tax or stamp duty as apply to, or are clearly identifiable, on the invoices and provided they apply in the country, and only if these taxes, levies and/or duties are also excluded from the Contract Price in Article 2 of the Contract Agreement and the Price Schedule it refers to.
- .3** If any tax exemptions, reductions, allowances, or privileges may be available to the Service Provider in the Country, the Purchaser shall use its best efforts to enable the Service Provider to benefit from any such tax savings to the maximum allowable extent.
- .4** For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies, and charges prevailing at the date thirty (30) days prior to the date of proposal submission (also called "Tax" in this GCC sub-Clause). If any Tax rates are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Service Provider, its Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment to the Contract Price shall be made to fully take into account any such change by addition to or reduction from the Contract Price, as the case may be.

E. RESPONSIBILITIES

Clause No.	22
Clause Heading	Service Provider’s Responsibilities
Sub-Clause No.	
.1	The Service Provider shall conduct all activities with due care and diligence, in accordance with the Contract and with the skill and care expected of a competent provider of information technologies, information systems, support, maintenance, training, and other related services, or in accordance with best industry practices. In particular, the Service Provider shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.
.2	The Service Provider confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by the Purchaser and on the basis of information that the Service Provider could have obtained from a visual inspection of the site (if access to the site was available) and of other data readily available to the Service Provider relating to the System as at the date twenty-eight (28) days prior to bid submission. The Service Provider acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the contract.
.3	The Service Provider shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually Agreed and Finalized Project Plan (pursuant to GCC Clause 24.2) within the time schedule specified in the Implementation Schedule in the Technical Requirements Section. Failure to provide such resources, information, and decision making may constitute grounds for termination pursuant to GCC Clause 16.2.
.4	The Service Provider shall acquire in its name all permits, approvals, and/or licenses from all local, state, or central government authorities that are necessary for the performance of the Contract, including, without limitation, entry permits for all imported Service Provider’s Equipment. The Service Provider shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Purchaser under GCC Clause 23.4 and that are necessary for the performance of the Contract.

.5 The Service Provider shall comply with the Applicable Law. The laws will include all Central and State laws that affect the performance of the Contract and are binding upon the Service Provider. The Service Provider shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Service Provider or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Clause 23.1. The Service Provider shall not indemnify the Purchaser to the extent that such liability, damage, claims, fines, penalties, and expenses were caused or contributed to by a fault of the Purchaser.

.6 The Service Provider shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all labour laws and regulations pertaining to the employment of labor.

.7 **Scope of the System**

(i) Unless otherwise expressly **limited in the SCC** or Technical Requirements, the Service Provider's obligations cover the provision of all Information Technologies, Materials and other Goods as well as the performance of all Services as are mutually agreed to be provided by the Service Provider for the design, development, and implementation (including procurement, quality assurance, assembly, associated site preparation, Delivery, Pre-commissioning, Installation, Testing, and Commissioning) of the System, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the Contract and the Agreed and Finalized Project Plan.

(ii) The Service Provider shall unless specifically excluded in the contract, perform all such work and/ or supply all such items and materials not specifically mentioned in the contract but that can be reasonably inferred from the contract has been required for attaining operational acceptance of the system as if such work and/ or items and materials were expressly mentioned in the contract.

(iii) The Service Provider's obligations (if any) to provide Goods and Services as implied by the Recurrent Cost tables of the Service Provider's bid, such as consumables, spare parts, and technical services (e.g., maintenance, technical assistance, and operational support), are as **specified in the SCC**, including the relevant terms, characteristics, and timings.

.8 The Service Provider shall permit the Purchaser and/or persons appointed by the Purchaser to inspect the Service Provider's offices and/or the accounts and records of the Service Provider and its sub-contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Purchaser if required by the Purchaser at Purchaser cost strictly and strictly adhering to the safety and security policies applicable at the workplace of Service Provider or its subcontract and after duly executing all the required documentation and such inspection need to be conducted during the regular Service Provider or its subcontractors office hours as the case may be. The Service Provider's attention is drawn to Sub-Clause 41.2.1(c), which provides, inter alia, that acts intended to materially impede the exercise of the Purchaser's inspection and audit rights provided for under Sub-Clause 9.8 constitute a prohibited practice subject to contract termination as well as to a prohibition from future contracts with the Purchaser.

.10 The Service Provider shall permit the Purchaser and/or persons appointed by the Purchaser to inspect the Service Provider's offices and/or the accounts and records of the Service Provider and its sub-contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Purchaser if required by the Purchaser. The Service Provider's attention is drawn to Sub-Clause .2.f (v) (bb) of "Termination Clause" GCC, which provides, inter alia, that acts intended to materially impede the exercise of the Purchaser's inspection and audit rights provided for under Sub-Clause .10 of this Clause GCC constitute a prohibited practice subject to contract termination as well as to a prohibition from future contracts with the Purchaser.

.11 **Right of Publicity**

Any publicity by the Service Provider in which the name of the Purchaser is to be used should be done only with the explicit written permission of the Purchaser.

.12 **Duplicate Payments**

The payments to the Service Provider pursuant to "Price" clause GCC hereof shall constitute the Service Provider's sole payment in connection with the contract or the services and, subject to sub-Clause .13 of this clause GCC hereof the Service Provider shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this contract or to the service or in the discharge of their obligation hereunder, and the Service Provider shall ensure that any subcontractors as well as the personnel and agents of either of them, similarly shall not receive any such additional remuneration.

.13

Procurement Rules of Government

If the Service Provider as part of the services, has the responsibility of advising the Purchaser on the procurement of goods, works or services, the Service Provider shall comply with any procurement guidelines of the Government and shall at all times exercise such responsibility in the best interest of the Purchaser. Any discount or commissions obtained by the Service Provider in the exercise of such procurement responsibility shall be to the account of the Purchaser.

.14

Service Provider and Affiliates not to engage in certain Activities

The Service Provider agrees that, during the term of this contract and after its termination, the Service Provider and any entity affiliated with the Service Provider, as well as any subcontractor and any entity affiliated with the subcontractor, shall be disqualified from providing goods, works or services (other than the services and any continuation thereof) for any project resulting from or closely related to the services.

.15

Prohibition of Conflicting Activities

The Service Provider shall not engage, and shall cause their Personnel as well as their subcontractors and their personnel not to engage, either directly or indirectly, in any of the following activities:

- (a) During the term of this contract, any business or professional activities which would conflict with activities assigned to them under this contract; and
- (b) After the termination of the contract, such other activities as may be specified in the SCC.

.16**Accounting, Inspecting and Auditing**

The Service Provider

- (i) shall keep accurate and systematic accounts and records in respect of service hereunder, in accordance with standard accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the bases thereof (including such bases as may be specifically referred to in the SCC), and
- (ii) shall permit the Purchaser or its designated representative periodically, and up to five years from the termination of this contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Purchaser at Purchaser cost and such representatives shall strictly adhere to the safety and security policies applicable at the workplace of Service Provider or its subcontract and after duly executing all the required documentation and such inspection need to be conducted upon prior written intimation and during the regular Service Provider or its subcontractors office hours as the case may be.

.17**Service Provider's Action requiring Purchaser's prior Approval**

The Service Provider shall obtain the Purchaser's prior approval in writing before taking any of the following actions:

- (a) Appointing such members of the personnel as are listed in Appendix 3 merely by title but not by name;
- (b) Entering into a subcontract for the performance of any part of the services, it being understood
 - (i) that the selection of the subcontractor and the terms and conditions of the subcontract shall have been approved in writing by Purchaser prior to the execution of the subcontract, and
 - (ii) That the Service Provider shall remain fully liable for the performance and the security by the subcontractors and its personnel pursuant to this contract.

.18**Equipment and materials furnished by the Purchaser**

Equipment and materials made available to the Service Provider by the Purchaser, or purchased by the Service Provider with funds provided by the Purchaser shall be the property of the Purchaser and shall be marked accordingly. Upon termination or expiration of this Contract, the Service Provider shall make available to the Purchaser an inventory of such equipment and materials with the Purchaser's instructions. While in possession of such equipment and materials, the Service Provider unless otherwise instructed by the Purchaser in writing, shall insure them at the expense of the Purchaser for an amount equal to their full replacement value

.19

Other Service Provider responsibilities, if any, are as stated in the
SCC.

Clause No.	23
Clause Heading	Purchaser's Responsibilities
Sub-Clause No.	
.1	The Purchaser shall ensure the accuracy of all information and/or data to be supplied by the Purchaser to the Service Provider, except when otherwise expressly stated in the Contract.
.2	The Purchaser shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed and Finalized Project Plan (pursuant to GCC Clause 24.3) within the time schedule specified in the Implementation Schedule in the Technical Requirements Section. Failure to provide such resources, information, and decision making may constitute grounds for Termination pursuant to 16.3.1(b) "Termination" Clause GCC.
.3	The Purchaser shall be responsible for acquiring and providing legal and physical possession of the site and access to it, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract.
.4	If requested by the Service Provider, the Purchaser shall use its best endeavors to assist the Service Provider in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or central government authorities that such authorities or require the Service Provider or Subcontractors or the personnel of the Service Provider or Subcontractors, as the case may be, to obtain.
.5	In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Service Provider, as specified in the Technical Requirements, SCC, Agreed and Finalized Project Plan, or other parts of the Contract, the Purchaser shall use its best endeavors to assist the Service Provider in obtaining such services in a timely and expeditious manner.
.6	The Purchaser shall be responsible for timely provision of all resources, access, and information necessary for the Installation and Operational Acceptance of the System (including, but not limited to, any required telecommunications or electric power services), as identified in the Agreed and Finalized Project Plan, except where provision of such items is explicitly identified in the Contract as being the responsibility of the Service Provider. Delay by the Purchaser may result in an appropriate extension of the Time for Operational Acceptance, at the Service Provider's discretion.
.7	Unless otherwise specified in the Contract or agreed upon by the Purchaser and the Service Provider, the Purchaser shall provide sufficient, properly qualified operating and technical personnel, as required by the Service Provider to properly carry out Delivery, Pre-commissioning, Installation,

- Commissioning, and Operational Acceptance, at or before the time specified in the Technical Requirements Section's Implementation Schedule and the Agreed and Finalized Project Plan.
- .8 The Purchaser will designate appropriate staff for the training courses to be given by the Service Provider and shall make all appropriate logistical arrangements for such training as specified in the Technical Requirements, SCC, the Agreed and Finalized Project Plan, or other parts of the Contract.
- .9 The Purchaser assumes primary responsibility for the Operational Acceptance Test(s) for the System, in accordance with GCC Clause 32.2, and shall be responsible for the continued operation of the System after Operational Acceptance. However, this shall not limit in any way the Service Provider's responsibilities after the date of Operational Acceptance otherwise specified in the Contract.
- .10 The Purchaser is responsible for performing and safely storing timely and regular backups of its data and Software in accordance with accepted data management principles, except where such responsibility is clearly assigned to the Service Provider elsewhere in the Contract.
- .11 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Purchaser, save those to be incurred by the Service Provider with respect to the performance of the Operational Acceptance Test(s), in accordance with GCC Clause 32.2.
- .12 Other Purchaser responsibilities, if any, are **as stated in the SCC**.

F. SUBJECT OF CONTRACT

Clause No.	24
Clause Heading	Project Plan
Sub-Clause No.	
.1	In close cooperation with the Purchaser and based on the Preliminary Project Plan included in the Service Provider's proposal/bid, the Service Provider shall develop a Project Plan encompassing the activities specified in the Contract. The contents of the Project Plan shall be as specified in the SCC and/or Technical Requirements.
.2	The Service Provider shall formally present to the Purchaser the Project Plan in accordance with the procedure specified in the SCC .
.3	If required, the impact on the Implementation Schedule of modifications agreed during finalization of the Agreed and Finalized Project Plan shall be incorporated in the Contract by amendment, in accordance with GCC Clauses 17 and 15.
.4	The Service Provider shall undertake to supply, install, test, and commission the System in accordance with the Agreed and Finalized Project Plan and the Contract.
.5	The Progress and other reports specified in the SCC shall be prepared by the Service Provider and submitted to the Purchaser in the format and frequency specified in the Technical Requirements.

Clause No. 25

Clause Heading Subcontracting

Sub-Clause No.

- .1** Appendix 5A (List of Approved Subcontractors) to the Contract Agreement specifies critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by the Purchaser. If no Subcontractors are listed for an item, the Service Provider shall prepare a list of Subcontractors it considers qualified and wishes to be added to the list for such items. The Service Provider may from time to time propose additions to or deletions from any such list. The Service Provider shall submit any such list or any modification to the list to the Purchaser for its approval in sufficient time so as not to impede the progress of work on the System. The Purchaser shall not withhold such approval unreasonably. Such approval by the Purchaser of a Subcontractor(s) shall not relieve the Service Provider from any of its obligations, duties, or responsibilities under the Contract.
- .2** The Service Provider may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to GCC Clause 25.1. If the Service Provider wishes to employ a Subcontractor not so listed, or subcontract an item not so listed, it must seek the Purchaser's prior approval under GCC Clause 25.3.
- .3** For items for which pre-approved Subcontractor lists have not been specified in Appendix 5A to the Contract Agreement, the Service Provider may employ such Subcontractors as it may select, provided: (i) the Service Provider notifies the Purchaser in writing at least twenty-eight (28) days prior to the proposed mobilization date for such Subcontractor; and (ii) by the end of this period either the Purchaser has granted its approval in writing or fails to respond. The Service Provider shall not engage any Subcontractor to which the Purchaser has objected in writing prior to the end of the notice period. The absence of a written objection by the Purchaser during the above specified period shall constitute formal acceptance of the proposed Subcontractor. Except to the extent that it permits the deemed approval of the Purchaser of Subcontractors not listed in the Contract Agreement, nothing in this Clause, however, shall limit the rights and obligations of either the Purchaser or Service Provider as they are specified in GCC Clauses 25.1 and 25.2,

in the SCC, or in Appendix 5A of the Contract Agreement.

Clause No.	26
Clause Heading	Design and Engineering
Sub-Clause No.	
.1	<p>Technical Specifications and Drawings</p> <p>(i) The Service Provider shall execute the basic and detailed design and the implementation activities necessary for successful installation of the System in compliance with the provisions of the Contract or, where not so specified, in accordance with good industry practice.</p> <p>The Service Provider shall be responsible for any discrepancies, errors or omissions in the specifications, drawings, and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Service Provider by or on behalf of the Purchaser.</p> <p>(ii) The Service Provider shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification of such design, drawings, specification, or other documents provided or designated by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Project Manager.</p>
.2	<p>Codes and Standards</p> <p>Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified in the SCC. During Contract execution, any changes in such codes and standards shall be applied after approval by the Purchaser and shall be treated in accordance with GCC Clause 17.4.</p>
.3	<p>Approval/Review of Technical Documents by the Project Manager</p> <p>(i) The Service Provider shall prepare and furnish to the Project Manager the documents as specified in the SCC for the Project Manager's approval or review.</p> <p>Any part of the System covered by or related to the documents to be approved by the Project Manager</p>

shall be executed only after the Project Manager's approval of these documents.

GCC Clauses 26.3.2 through 26.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

- (ii) Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Clause 26.3.1, the Project Manager shall either return one copy of the document to the Service Provider with its approval endorsed on the document or shall notify the Service Provider in writing of its disapproval of the document and the reasons for disapproval and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the fourteen (14) days, then the document shall be deemed to have been approved by the Project Manager.
- (iii) The Project Manager shall not disapprove any document except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good industry practice.
- (iv) If the Project Manager disapproves the document, the Service Provider shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Clause 26.3.2. If the Project Manager approves the document subject to modification(s), the Service Provider shall make the required modification(s), and the document shall then be deemed to have been approved, subject to GCC Clause 26.3.5. The procedure set out in GCC Clauses 26.3.2 through 26.3.4 shall be repeated, as appropriate, until the Project Manager approves such documents.
- (v) If any dispute occurs between the Purchaser and the Service Provider in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) to a document that cannot be settled between the parties within a reasonable period, then, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Service Provider shall proceed with the Contract in accordance with the Project Manager's instructions, provided that after the dispute resolution, the Time for Achieving Operational Acceptance shall be extended

accordingly.

- (vi) The Project Manager's approval, with or without modification of the document furnished by the Service Provider, shall not relieve the Service Provider of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the Service Provider by or on behalf of the Purchaser.
- (vii) The Service Provider shall not depart from any approved document unless the Service Provider has first submitted to the Project Manager an amended document and obtained the Project Manager's approval of the document, pursuant to the provisions of this GCC Clause 26.3. If the Project Manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GCC Clause 17 (Changes to the System) shall apply to such request.

Clause No.	27
Clause Heading	Procurement, Delivery, and Transport
Sub-Clause No.	
.1	Subject to related Purchaser's responsibilities pursuant to GCC Clauses 23 and 21, the Service Provider shall manufacture or procure and transport all the Information Technologies, Materials, and other Goods in an expeditious and orderly manner to the Project Site.
.2	Delivery of the Information Technologies, Materials, and other Goods shall be made by the Service Provider in accordance with the Technical Requirements.
.3	Early or partial deliveries require the explicit written consent of the Purchaser, which consent shall not be unreasonably withheld.
.4	<p>Transportation</p> <p>(i)The Service Provider shall provide such packing of the Goods as is required to prevent their damage or deterioration during shipment. The packing, marking, and documentation within and outside the packages shall comply strictly with the Purchaser's instructions to the Service Provider.</p> <p>(ii)The Service Provider will bear responsibility for and cost of transport to the Project Sites in accordance with the terms and conditions used in the specification of prices in the Price Schedules, including the terms and conditions of the associated Incoterms.</p> <p>(iii)Unless otherwise specified in the SCC, the Service Provider shall be free to use transportation through carriers legally registered in the country and to obtain insurance from any IRDA registered Service Provider.</p>
.5	<p>Unless otherwise specified in the SCC, the Service Provider will provide the Purchaser with shipping and other documents, as specified below:</p> <p>(i)For Goods supplied from outside the Country:</p> <p style="padding-left: 40px;">Upon shipment, the Service Provider shall notify the Purchaser and the insurance company contracted by the</p>

Service Provider to provide cargo insurance by telex, cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Service Provider shall promptly send the following documents to the Purchaser by mail or courier, as appropriate, with a copy to the cargo insurance company:

- (a) two copies of the Service Provider's invoice showing the description of the Goods, quantity, unit price, and total amount;
- (b) usual transportation documents;
- (c) insurance certificate;
- (d) certificate(s) of origin; and
- (e) Estimated time and point of arrival in the Purchaser's Country and at the site.

(ii) For Goods supplied locally (i.e., from within the country):

Upon shipment, the Service Provider shall notify the Purchaser by telex, cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Service Provider shall promptly send the following documents to the Purchaser by mail or courier, as appropriate:

- (a) two copies of the Service Provider's invoice showing the Goods' description, quantity, unit price, and total amount;
- (b) delivery note, railway receipt, or truck receipt;
- (c) certificate of insurance;
- (d) certificate(s) of origin; and
- (e) estimated time of arrival at the site.

.6

Customs Clearance

- (a) The Purchaser will bear responsibility for, and cost of, customs clearance into the country in accordance with the particular Incoterm(s) used for Goods supplied from outside the country in the Price Schedules referred to by Article 2 of the Contract Agreement.
- (b) At the request of the Purchaser, the Service Provider will make available a representative or agent during the process of customs clearance in the Purchaser's country for goods supplied from outside the Purchaser's country. In the event of delays in customs clearance

that are not the fault of the Service Provider:

- (i) the Service Provider shall be entitled to an extension in the Time for Achieving Operational Acceptance, pursuant to GCC Clause 15.5;
- (ii) the Contract Price shall be adjusted to compensate the Service Provider for any additional storage charges that the Service Provider may incur as a result of the delay.

Clause No.	28
Clause Heading	Product Upgrades
Sub-Clause No.	
.1	At any point during performance of the Contract, should technological advances be introduced by the Service Provider for Information Technologies originally offered by the Service Provider in its bid and still to be delivered, the Service Provider shall be obligated to offer to the Purchaser the latest versions of the available Information Technologies having equal or better performance or functionality at the same higher unit prices, pursuant to GCC Clause 17 (Changes to the System).
.2	At any point during performance of the Contract, for Information Technologies still to be delivered, the Service Provider will also pass on to the Purchaser any cost reductions and additional and/or improved support and facilities that it offers to other clients of the similar business volume and terms and conditions of the Service Provider in the Country, pursuant to GCC Clause 17 (Changes to the System).
.3	During performance of the Contract, the Service Provider shall offer to the Purchaser all new patches, releases and updates (if any are released to the market) of Standard Software, as well as related documentation and technical support services, within thirty (30) days of their availability from the Service Provider to other clients of the Service Provider in the Country, and no later than twelve (12) months after they are released in the country of origin. In no case will the prices for these Software exceed those quoted by the Service Provider in the Recurrent Costs tables in its bid.
.4	During the Warranty Period, unless otherwise specified in the SCC , the Service Provider will provide at no additional cost to the Purchaser all updates for all Standard Software that are used in the System, within thirty (30) days of their availability from the Service Provider to other clients of the Service Provider in the country, and no later than twelve (12) months after they are released in the country of origin of the Software.
.5	The Purchaser shall introduce all releases, new updates of the Software within eighteen (18) months of receipt of a production-ready copy of the new version, release, or update, provided that the new version, release, or update does not adversely affect System operation or performance or require extensive reworking of the System. In cases where the new version, release, or update adversely affects System

operation or performance, or requires extensive reworking of the System, the Service Provider shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the Service Provider stop supporting or maintaining a version or release of the Software less than twenty four (24) months after the Purchaser receives a production-ready copy of a subsequent version, release, or update. The Purchaser shall use all reasonable endeavors to implement any new version, release, or update as soon as practicable, subject to the twenty-four-month-long stop date.

Clause No.	29
Clause Heading	Implementation, Installation, and Other Services
Sub-Clause No.	
.1	The Service Provider shall provide all Services specified in the Contract and Agreed and Finalized Project Plan in accordance with the highest standards of professional competence and integrity.
.2	Prices charged by the Service Provider for Services, if not included in the Contract, shall be agreed upon in advance by the parties (including, but not restricted to, any prices submitted by the Service Provider in the Recurrent Cost Schedules of its Bid) and shall not exceed the prevailing rates charged by the Service Provider to other purchasers in the Country for similar services of similar business volume and terms and conditions.

Clause No.	30
Clause Heading	Inspections and Tests
Sub-Clause No.	
.1	The Purchaser or its representative shall have the right to inspect and/or test any components of the System, as specified in the Technical Requirements, to confirm their good working order and/or conformity to the Contract at the point of delivery and/or at the Project Site.
.2	The Purchaser or its representative shall be entitled to attend any such inspections and/or tests of the components, provided that the Purchaser shall bear all costs and expenses incurred in connection with such attendance, including but not limited to all inspection agent fees, travel, and related expenses. Any such inspections shall be carried on by providing prior written notice to the Service Provider and pursuant to strict adherence to the safety and security policies applicable at the work place of Service Provider after duly executing all the required documentation from the Service Provider side for this endeavor. And any such inspections and audit should be conducted only during the regular business hours of the Service Provider.
.3	Should the inspected or tested components fail to conform to the Contract, the Purchaser may reject the component(s), and the Service Provider shall either replace the rejected component(s), or make alterations as necessary so that it meets the Contract requirements free of cost to the Purchaser.
.4	The Project Manager may require the Service Provider to carry out any inspection and/or test not specified in the Contract, provided that the Service Provider's reasonable costs and expenses incurred in the carrying out of such inspection and/or test shall be added to the Contract Price. Further, if such inspection and/or test impedes the progress of work on the System and/or the Service Provider's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Achieving Operational Acceptance and the other obligations so affected.
.5	If any dispute shall arise between the parties in connection with or caused by an inspection and/or with regard to any component to be incorporated in the System that cannot be settled amicably between the parties within a reasonable period of time, either party may invoke the process pursuant to GCC Clause 6 (Settlement of Disputes)

Clause No.	31
Clause Heading	Installation of the System
Sub-Clause No.	
.1	As soon as the System, or any Subsystem, has, in the opinion of the Service Provider, been delivered, Pre-commissioned, and made ready for Commissioning and Operational Acceptance Testing in accordance with the Technical Requirements, the SCC and the Agreed and Finalized Project Plan, the Service Provider shall so notify the Purchaser in writing.
.2	The Project Manager shall, within fourteen (14) days after receipt of the Service Provider's notice under GCC Clause 31.1.1, either issue an Installation Certificate in the form specified in Appendix 5B, stating that the System, or major component or Subsystem (if Acceptance by major component or Subsystem is specified pursuant to the SCC for GCC Clause 32.2(i)), has achieved Installation by the date of the Service Provider's notice under GCC Clause 31.1, or notify the Service Provider in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or Subsystems making up the System. The Service Provider shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies that the Project Manager has notified the Service Provider of. The Service Provider shall then promptly carry out retesting of the System or Subsystem and, when in the Service Provider's opinion the System or Subsystem is ready for Commissioning and Operational Acceptance Testing, notify the Purchaser in writing, in accordance with GCC Clause 31.1. The procedure set out in this GCC Clause 31.2 shall be repeated, as necessary, until an Installation Certificate is issued.
.3	If the Project Manager fails to issue the Installation Certificate and fails to inform the Service Provider of any defects and/or deficiencies within twenty one (21) days after receipt of the Service Provider's notice under GCC Clause 31.1, or if the Purchaser puts the System or a Subsystem into production operation, then the System (or Subsystem) shall be deemed to have achieved successful Installation as of the date of the Service Provider's notice or repeated notice, or when the Purchaser put the System into production operation, as the case may be.

Clause No.	32
Clause Heading	Commissioning and Operational Acceptance
Sub-Clause No.	
.1	<p>Commissioning</p> <p>(i) Commissioning of the System (or Subsystem if specified pursuant to the SCC for GCC Clause 32.2(i)) shall be commenced by the Service Provider:</p> <ul style="list-style-type: none"> (a) immediately after the Installation Certificate is issued by the Project Manager, pursuant to GCC Clause 31.2; or (b) as otherwise specified in the Technical Requirement or the Agreed and Finalized Project Plan; or (c) Immediately after Installation is deemed to have occurred, under GCC Clause 31.3. <p>(ii) The Purchaser shall supply the operating and technical personnel and all materials and information reasonably required to enable the Service Provider to carry out its obligations with respect to Commissioning.</p> <p>Production use of the System or Subsystem(s) shall not commence prior to the start of formal Operational Acceptance Testing.</p>
.2	<p>Operational Acceptance Tests</p> <p>(i) The Operational Acceptance Tests (and repeats of such tests) shall be the primary responsibility of the Purchaser (in accordance with GCC Clause 23.9), but shall be conducted with the full cooperation of the Service Provider during Commissioning of the System (or major components or Subsystem[s] if specified in the SCC and supported by the Technical Requirements), to ascertain whether the System (or major component or Subsystem[s]) conforms to the Technical Requirements and meets the standard of performance quoted in the Service Provider's bid, including, but not restricted to, the functional and technical performance requirements. The Operational Acceptance Tests during Commissioning will be conducted as specified in the SCC, the Technical Requirements and/or the Agreed and Finalized Project</p>

Plan.

At the Purchaser's discretion, Operational Acceptance Tests may also be performed on replacement Goods, upgrades and new version releases, and Goods that are added or field-modified after Operational Acceptance of the System.

- (ii) If for reasons attributable to the Purchaser, the Operational Acceptance Test of the System (or Subsystem[s] or major components, pursuant to the SCC for GCC Clause 32.2(i)) cannot be successfully completed within the period **specified in the SCC**, from the date of Installation or any other period agreed upon in writing by the Purchaser and the Service Provider, the Service Provider shall be deemed to have fulfilled its obligations with respect to the technical and functional aspects of the Technical Specifications, SCC and/or the Agreed and Finalized Project Plan, and GCC Clause 7.2 and 7.3 shall not apply.

.3

Operational Acceptance

- (i) Subject to GCC Clause 32.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the System, when
- (a) the Operational Acceptance Tests, as specified in the Technical Requirements, and/or SCC and/or the Agreed and Finalized Project Plan have been successfully completed; or
 - (b) the Operational Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Purchaser within the period from the date of Installation or any other agreed-upon period as specified in GCC Clause 32.2.2 above; or
 - (c) the Purchaser has put the System into production or use for sixty (60) consecutive days. If the System is put into production or use in this manner, the Service Provider shall notify the Purchaser and document such use.
- (ii) At any time after any of the events set out in GCC Clause 32.3.1 have occurred, the Service Provider may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate.
- (iii) After consultation with the Purchaser, and within fourteen (14)

days after receipt of the Service Provider's notice, the Project Manager shall:

- (a) issue an Operational Acceptance Certificate; or
- (b) notify the Service Provider in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or
- (c) issue the Operational Acceptance Certificate, if the situation covered by GCC Clause 32.3.1 (b) arises.

(iv) The Service Provider shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the Project Manager has notified the Service Provider of. Once such remedies have been made by the Service Provider, the Service Provider shall notify the Purchaser, and the Purchaser, with the full cooperation of the Service Provider, shall use all reasonable endeavors to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the Operational Acceptance Tests, the Service Provider shall notify the Purchaser of its request for Operational Acceptance Certification, in accordance with GCC Clause 32.3.3. The Purchaser shall then issue to the Service Provider the Operational Acceptance Certification in accordance with GCC Clause 32.3.3 (a), or shall notify the Service Provider of further defects, deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this GCC Clause 32.3.4 shall be repeated, as necessary, until an Operational Acceptance Certificate is issued.

(v) If the System or Subsystem fails to pass the Operational Acceptance Test(s) in accordance with GCC Clause 32.2, then either:

- (a) the Purchaser may consider terminating the Contract, pursuant to GCC Clause 16.2(ii);
- or
- (b) if the failure to achieve Operational Acceptance within the specified time period is a result of the failure of the Purchaser to fulfill its obligations under the Contract, then the Service Provider shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Contract,

and GCC Clauses 9.3 and 9.4 shall not apply.

- (vi) If within fourteen (14) days after receipt of the Service Provider's notice the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Service Provider in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the System or Subsystem shall be deemed to have been accepted as of the date of the Service Provider's said notice.

.4

Partial Acceptance

- (i) If so specified in the SCC for GCC Clause 32.2(i), Installation and Commissioning shall be carried out individually for each identified major component or Subsystem(s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the Operational Acceptance Test, shall apply to each such major component or Subsystem individually, and Operational Acceptance Certificate(s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in GCC Clause 32.4.2.
- (ii) The issuance of Operational Acceptance Certificates for individual major components or Subsystems pursuant to GCC Clause 32.4.1 shall not relieve the Service Provider of its obligation to obtain an Operational Acceptance Certificate for the System as an integrated whole (if so specified in the SCC for GCC Clauses 19.1 and 32.2(i)) once all major components and Subsystems have been supplied, installed, tested, and commissioned.
- (iii) In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue an Operational Acceptance Certificate within fourteen (14) days after the fittings and/or furnishings have been delivered and/or installed or the site works have been completed. The Service Provider shall, however, use all reasonable endeavors to promptly remedy any defects or deficiencies in such minor components detected by the Purchaser or Service Provider.

.5

The Purchaser shall not withhold or delay the issuance of acceptance certificate of any of the deliverables, if the deliverables substantially meet the specifications or on account of any minor defects which have no material effect

on the functionality of the deliverables.

Clause No. 33

Clause Heading Care of the System

Sub-Clause No.

.1 The Purchaser shall become responsible for the care and custody of the System or Subsystems upon their Delivery. The Purchaser shall make good at its own cost any loss or damage that may occur to the System or Subsystems from any cause from the date of Delivery until the date of Operational Acceptance of the System or Subsystems, pursuant to GCC Clause 32 (Commissioning and Operational Acceptance), excepting such loss or damage arising from acts or omissions of the Service Provider, its employees, or subcontractors.

.2 If any loss or damage occurs to the System or any part of the System by reason of:

- (a) nuclear reaction, nuclear radiation, radioactive contamination, a pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance taken out under GCC Clause 13;
- (b) any use not in accordance with the Contract, by the Purchaser or any third party;
- (c) any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Purchaser, or any such matter for which the Service Provider has disclaimed responsibility in accordance with GCC Clause 26.1.2,

the Purchaser shall pay to the Service Provider all sums payable in respect of the System or Subsystems that have achieved Operational Acceptance, notwithstanding that the same be lost, destroyed, or damaged. If the Purchaser requests the Service Provider in writing to make good any loss or damage to the System thereby occasioned, the Service Provider shall make good the same at the cost of the Purchaser in accordance with GCC Clause 17. If the Purchaser does not request the Service Provider in writing to make good any loss or damage to the System thereby occasioned, the Purchaser shall either request a change in

accordance with GCC Clause 17, excluding the performance of that part of the System thereby lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the System, the Purchaser shall terminate the Contract pursuant to GCC Clause 16.1.

.3

The Purchaser shall be liable for any loss of or damage to any Service Provider's Equipment which the Purchaser has authorized to locate within the Purchaser's premises for use in fulfillment of Service Provider's obligations under the Contract, except where such loss or damage arises from acts or omissions of the Service Provider, its employees, or subcontractors.

Special Conditions of Contract (SCC)

A. CONTRACT AND INTERPRETATION

Clause No. 1

Clause Heading Definitions

Sub-Clause No.

GCC 1.1 (b) (i) The Purchaser is: *Aarogyasri Health Care Trust*

GCC 1.1 (b) (ii) The Project Manager is:

Aarogyasri Health Care Trust.

GCC 1.1 (b) (iv) In accordance with GCC Clause 1.1 (b) (iv), the Service Provider's Representative is:

Name: *[Insert the name of the Service Provider]*

Title: *Project Manager*

GCC 1.1 (e) (i) The Project Site(s) is/are:

GCC 1.1 (e) (vii) *The Contract shall continue in force until the Information System and all the Services have been provided unless the Contract is terminated earlier in accordance with the terms set out in the Contract..*

GCC 1.1. (e) (ix) *The Services Period is ___ months starting with the service commencement date*

Clause No. 2

Clause Heading Representatives

Sub-Clause No.

- .1 (a) Authorized Representatives:
(b) Member in charge:
- .2 The Purchaser's Project Manager shall have the following additional powers and / or limitations to his or her authority to represent the Purchaser in matters relating to the
- .3 The Service Provider's Representative shall have the following additional powers and / or limitations to his or her authority to represent the Service Provider in matters relating to the Contract

Clause No. 4

Clause Heading Notices

Sub-Clause No.

GCC 4.3 Address of the Project Manager:

DR Y S R Bhavan,

Aarogyasri Health Care Trust Office Premises,

Opp Ambedkar Open University,

Road No: 46, Jubilee Hills,

Hyderabad - 500033.

Contact : 040 - 23148000.

Address of the Service Provider's Representative:

Clause No 5
Clause Heading Dispute Settlement
Sub-Clause No.

.2

Arbitration:

(c) Any dispute between the Purchaser and a Service Provider arising in connection with the present Contract shall be referred to arbitration in accordance with the Applicable law. The arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi, or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

Disputes shall be settled in accordance with the following provisions:

(i) If any dispute arises between the parties hereto during the subsistence of this Contract Agreement or thereafter, in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement, then the parties shall refer such dispute to their respective higher authorities the Chief Executive Officer, Trust and the Chief Executive Officer of the Service Provider Organization/Company or a substitute thereof for amicable settlement.

In the event that both the Chief Executive Officers or a substitute thereof are unable to resolve the dispute within {60} days of it being referred to them, then either Party may refer the dispute for resolution to a sole arbitrator who shall be jointly appointed by both parties, or, in the event that the parties are unable to agree on the person to act as the sole arbitrator within {30} days after any party has claimed for an arbitration in written form, by three arbitrators, one to be appointed by each party with power to the two arbitrators so appointed, to appoint a third arbitrator. The matter shall be referred to arbitration in accordance with the provisions of Arbitration and Conciliation Act.

(ii) Arbitration

Any Dispute which is not resolved amicably by conciliation, as provided above, shall be finally decided by reference to

arbitration by an Arbitral Tribunal appointed as stated above. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi, or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Hyderabad and the language of arbitration proceedings shall be English.

The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to the settlement of disputes shall be final and binding on the Parties as from the date it is made, and the Service Provider and the Purchaser agree and undertake to carry out such Award without delay.

The Service Provider and the Purchaser agree that an Award may be forced against the Service Provider and/or the purchaser, as the case may be, and their respective assets wherever situated.

This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

(iii) Miscellaneous

In any arbitration proceeding hereunder:

- (a) Proceedings shall, unless otherwise agreed by the Parties, be held in Hyderabad;
- (b) English language shall be the official language for all purposes; and

The decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

Clause No **6**

Clause Heading **Copyright, Licenses, Confidential Information, and Ownership**

Sub-Clause No.

- .1(c) The Purchaser may assign, license or otherwise voluntarily transfer its contractual rights to use the standard software or elements of the standard software, with prior written intimation under the following circumstances:
If the Trust is taken over by another governmental agency, then the contractual rights would be conveyed to any such agency of the government or any successor entities.
- .1(d) The Purchaser’s and Service Provider’s rights and obligations with respect to Custom Software or elements of the Custom Software are as follows

The purchaser acknowledges and agrees that this is a professional services agreement and this agreement is not intended to be used for licensing of any Service Provider’s proprietary software or tools. If Service Provider and purchaser mutually agree that the Service Provider provides to purchaser any proprietary software or tools of Service Provider or of a third party, the parties shall negotiate and set forth the applicable terms and conditions in a separate license agreement. Further, Purchaser acknowledges that in performing Services under this Agreement Service Provider may use Service Provider’s proprietary materials including without limitation any software (or any part or component thereof) ex. Framework of Digital Gov, tools, methodology, processes, ideas, know-how and technology that are or were developed or owned by Service Provider prior to or independent of the Services performed hereunder or any improvements, enhancements, modifications or customization made thereto as part of or in the course of performing the Services hereunder, (“Service Provider Pre-Existing IP”). Notwithstanding anything to the contrary contained in this Agreement, Service Provider shall continue to retain all the ownership, the rights title and interests to all Service Provider Pre-Existing IP (including Digital Gov framework) and nothing contained herein shall be construed as preventing or restricting Service Provider from using Service Provider Pre-Existing IP in any manner. To the extent that any Service Provider Pre-Existing IP or a portion thereof is incorporated or contained in a Deliverable under this Agreement, Service Provider hereby grants to purchaser a non-exclusive, non-transferable, perpetual, royalty free, fully paid up license, with the right , to use, copy, install, perform, display, modify for purchaser internal purposes only of such Service Provider Pre-Existing IP in connection with the Deliverables and only as part of the Deliverables in which they are incorporated or embedded exclusively for the purposes under this Agreement. The foregoing license does not authorizes purchaser to (a) Separate Service Provider Pre-Existing IP from the Deliverable in which they are incorporated for creating a standalone product for marketing to others;
(b) independently sell, lease, exchange, mortgage, pledge, license, sub license, assign or in any other way convey, transfer or alienate the

Service Provider Pre-Existing IP in favor of any person (either for commercial consideration or not (including by way of transmission), and/or

(c) except as specifically and to the extent permitted by the Service Provider in the Contract Agreement reverse compile or in any other way arrive at or attempt to arrive at the source code of the Service Provider Pre-Existing IP

The Purchaser's and Service Provider's rights and obligations with respect to Custom Materials or elements of the Custom Materials are as follows

“not applicable”

Note: The Purchaser retains all Intellectual Property Rights and tightly restricts what the Service Provider can do with the Custom Software, except for the Service Provider's Pre Existing IP i.e, Digital Gov and any third party Software supplied by Service Provider, and information related to it. This approach is adopted because the Purchaser has highly sensitive procedures embedded in the Custom Software, and the Purchaser is contributing valuable know-how to the development of the Custom Software and wishes to prohibit its future commercial exploitation that could result from exploitation of that know-how. The Purchaser's rights and obligations include the following: (i) duplicating and using the software on different equipment, such as back-ups, additional computers, replacements, upgraded units, etc.; (ii) licensing the software (except for the Service Provider's or its licensor's Pre Existing IP i.e, Digital Gov,), transferring the license or sublicensing the software for other entities to use, modify, develop, etc.; (iii) sharing proprietary information regarding the Custom Software (except for the Service Provider's or its licensors pre existing IP i.e, Digital Gov), with various parties (iv) full ownership of the CASE files, Source Code (except for the Service Provider's or its licensor's pre existing IP i.e, Digital Gov), and executable code of the Custom Software; (v) sharing, reselling, and otherwise providing access to the software, designs and related information; and (vi) auditing for license compliance.

The Service Provider's rights in relation to the Custom Software are: (i) limited to use in order to support the Purchaser, (ii) use under license by the Purchaser, where the Service Provider shall be required to pay royalties to the Purchaser when it licenses third parties to use the Custom Software. [Royalty arrangements will have to be backed up by obligations to report to the Purchaser regarding future sales of products to which royalties apply and audit rights so that the Purchaser can check that the Service Provider's reports are accurate. Clearly, if royalty arrangements are put in place, the value of the Custom Software to the Service Provider is reduced, so the Purchaser may not benefit from an up-front cost saving].

Ownership of Intellectual Property Rights in the Custom Software (except for the Service Provider's or its licensor's pre existing IP i.e, Digital Gov), vests with the Purchaser, with the owner of those rights granting an appropriate license to the other party. This license may be subject to various degrees of exclusivity, depending on the desired commercial outcome.

- .1(e) ***No software escrow contract is required for the execution of the Contract***
- .2(i)(a)(iii) The Standard Software license shall be valid ***throughout the territory of INDIA***
- .2 (i)(a) (iv) Use of the software shall be subject to the following additional restrictions:
None
- .2 (i)(b) (ii) The Software license shall permit the Software to be used or copied for use or transferred to a replacement computer ***provided the replacement computer falls within approximately the same class of machine and maintains approximately the same number of users, if a multi-user machine;***
- .2(i) (b) (vi) The Software license shall permit the Software to be disclosed to and reproduced for use (including a valid sublicense) by ***support Service Providers or their subcontractors, exclusively for such Service Providers or subcontractors in the performance of their support service contracts subject to the condition*** that such entities shall be not direct competitors of the Service Provider.
- .2(i) (b) (vii) _____
- .3 The Service Provider's right to audit the Standard Software will be subject to the following terms:

The Purchaser will make available to the Service Provider within seven (7) days of a written request accurate and up-to-date records of the number and location of copies, the number of authorized users, or any other relevant data required to demonstrate use of the Standard Software as per the license agreement;

or

the Purchaser will allow, under a pre-specified procedure, execution of embedded software functions under Service Provider's control, and unencumbered transmission of resulting information on software usage;

or, if on-site audits are acceptable, the Purchaser may specify conditions on the duration and number of audits per year; the hours or days during which audits may be conducted; the categories of software subject to audit; the procedures for access to Purchaser's hardware or software; the number and affiliation of individual auditors; the timing and terms of advance notice; the indemnity by Service Provider for losses, liabilities, and costs incurred by the Purchaser as a direct result

of the audit; etc.

.4 ***Persons, topics, and conditions for which the confidentiality clause does not apply.***

The Government of Andhra Pradesh shall have complete access to all types of technical it obtains or develops with respect to the Service Provider's Information Technologies.

.8 The provisions of the Clauses GCC 6.4 to 6.8 shall survive the termination, for whatever reason, of the Contract for ***the period specified in the GCC***

B. GUARANTEES, LIABILITIES, INDEMNITIES, INSURANCE AND RISKS

Clause 7
Clause Heading Time Guarantee(Operational Acceptance) and Liquidated Damages Trigger

Clause No

.2(a) Liquidated damages shall be assessed at 0.5 percent of the delayed portion of the Contract per week. The maximum liquidated damages are **5 percent** of the delayed portion of the Contract of the Contract Price, or relevant delayed part of the Contract Price if the liquidated damages apply to a Subsystem.

Note: Typical percentages are, respectively, one half of one percent (0.5%) per week and five percent (5 %) of the total. The rates specified here must be consistent with the related entries in the Bid Data Sheet especially if differing rates are used to discount prices in foreign and local currencies as a mechanism to account for high inflation in the local currency. In some instances, the Purchaser may wish to consider specifying liquidated damages on a daily basis. If so, the above text should be modified accordingly.

.2(b) Liquidated damages shall be assessed *only with respect to achieving Operational Acceptance.*

Clause 8
Clause Heading Defect Liability and Cost Recovery Trigger

Clause No

.1 For Software, exceptions or limitations to the Service Provider's warranty obligations shall be as follows:

None.

.3 (iii) The Service Provider warrants that the following items have been released to the market for the following specific minimum time periods:

All Standard Software must have been commercially available in the market for at least three months.

.4 The Warranty Period (N) shall begin from the date of Operational Acceptance of the System or Subsystem and extend for

Warranty and Indemnity for the Hardware deliverables as specified in the Scope of work (technical specification – appendix-1) will be as provided by original equipment manufacturer and the same

will be passed on to the Purchaser at the time of its delivery to the Purchaser

Service Provider shall not be responsible for any Warranty or Indemnity of any Third Party Components used or delivered in the performance of Services under this Agreement. They will be in accordance with the corresponding License, procured or signed by the Purchaser from the respective third party owners/Licensors

.10

During the Warranty Period, the Service Provider must commence the work necessary to remedy defects or damage within a working 3 days of notification.

B. GUARANTEES, LIABILITIES, INDEMNITIES, INSURANCE AND RISKS

Clause No. 13

Clause Heading Insurances

Sub-Clause No.

.1 © The Service Provider shall obtain Third-Party Liability Insurance in the amount of *[insert: monetary value]* with deductible limits of no more than *[insert: monetary value]*. The insured Parties shall be *[list insured parties]*. The Insurance shall cover the period from *[insert: beginning date, relative to the Effective Date of the Contract]* until *[insert: expiration date, relative to the Effective Date of the Contract or its completion]*.

.1 (e) *Insert: necessary and appropriate clauses, or state “There are no Special Conditions of Contract applicable to GCC Clause 13.1 (e)”.*

For example:

The Service Provider shall obtain Worker’s Compensation Insurance in accordance with the statutory requirements of India. Specifically: *[insert: requirements]*. The Insurance shall cover the period from *[insert: beginning date, relative to the Effective Date of the Contract]* until *[insert: expiration date, relative to the Effective Date of the Contract or its completion]*.

The Service Provider shall obtain Employer’s Liability Insurance in accordance with the statutory requirements in the *Country*, specifically: *[insert: requirements]*. The Insurance shall cover the period from *[insert: beginning date, relative to the Effective Date of the Contract]* until *[insert: expiration date, relative to the Effective Date of Contract or its completion]*.

C. TERM, TERMINATION AND MODIFICATION OF CONTRACT

Clause No. **15**

Clause Heading **Term**

Sub-Clause No.

.1 Effectiveness conditions:

.2 *The Service Provider shall commence work on the System within: 7 days from the Effective Date of the Contract .*

.4 Operational Acceptance will occur on or before:

The details of this are given in the *Implementation Schedule in the Technical Requirements Section.*

Clause No.

17

Clause Heading

Modification

Sub-Clause No.

.3

(ii)

(iv)

D. PAYMENT

Clause No. 18

Clause Heading Price

Sub-Clause No.

.2 (b) Adjustments to the Contract Price shall be as follows: .

Clause No. 19

Clause Heading Payment Terms

Sub-Clause No.

.1 Subject to the provisions of GCC Clause 19 (Terms of Payment), the Purchaser shall pay the Contract Price to the Service Provider according to the categories and in the manner specified below. Only the categories Advance Payment and Complete System Integration relate to the entire Contract Price. In other payment categories, the term "total Contract Price" means the total cost of goods or services under the specific payment category. Within each such category, the Contract Implementation Schedule may trigger pro-rata payments for the portion of the total Contract Price for the category corresponding to the goods or services actually Delivered, Installed, or Operationally Accepted, at unit prices specified in the Price Schedules of the Contract Agreement.

(a) Advance Payment

Five percent (___%) of the entire Contract Price, exclusive of all Recurrent Costs, shall be paid against receipt of a claim accompanied by the Advance Payment Security specified in GCC Clause 20.2.

.3 The Purchaser shall pay to the Service Provider interest on the delayed payments at a rate of: ___% above standard State Bank of India commercial lending rates *per annum*.

.5 Payment for Goods supplied from outside the Purchaser's Country shall

be in the form of:

Clause No. **20**

Clause Heading **Securities**

Sub-Clause No.

- .2.(a) The Service Provider shall provide within twenty-eight (28) days of the notification of Contract award an Advance Payment Security in the amount and currency of the Advance Payment specified in SCC for GCC Clause 12.1 above.
- .2.(b) The reduction in value and expiration of the Advance Payment Security are calculated as follows:

Half of the value of the security would be deemed as recovered when the Service Provider's team is in place, and the other half by the end of the 3 months from the commencement of the services.
- .3.(a) The Performance Security shall be for an amount equal to ____% percent of the Contract Price, excluding any Recurrent Costs.
- .3(d) During the Warranty Period (i.e., after Operational Acceptance of the System), the Performance Security shall be reduced to

E. RESPONSIBILITIES

Clause No.	22
Clause Heading	Service Provider's Responsibilities
Sub-Clause No.	
.7(i)	Limitations if any:
.7(iii)	The Service Provider's obligations under the Contract will include the following recurrent cost items, as identified in the Recurrent Cost tables in the Service Provider's Bid/Proposal: <i>The details can be found in the appendix-1, "technical specification" under the "System Inventory table(Recurrent Cost Items)"</i>
.19	Other Service Provider Responsibilities:

Clause No.	23
Clause Heading	Purchaser's Responsibilities
Sub-Clause No.	
.5	Details of the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services of the Service Provider:
.8	Arrangements for trainings:
	None
.12	Other Purchaser responsibilities:
	i)

F. SUBJECT OF CONTRACT

Clause No. **24**

Clause Heading **Project Plan**

Sub-Clause No.

.1 Refer Appendix 2

.2 *Within 7 days from the Effective Date of the Contract, the Service Provider shall present a Project Plan to the Purchaser. The Purchaser shall, within 7 days of receipt of the Project Plan, notify the Service Provider of any respects in which it considers that the Project Plan does not adequately ensure that the proposed program of work, proposed methods, and/or proposed Information Technologies will satisfy the Technical Requirements and/or the SCC (in this Clause 24.2 called “non-conformities” below). The Service Provider shall, within 3 days of receipt of such notification, correct the Project Plan and re submit to the Purchaser. The Purchaser shall, within 3 days of resubmission of the Project Plan, notify the Service Provider of any remaining non-conformities. This procedure shall be repeated as necessary until the Project Plan is free from non-conformities. When the Project Plan is free from non-conformities, the Purchaser shall provide confirmation in writing to the Service Provider. This approved Project Plan (“the Agreed and Finalized Project Plan”) shall be contractually binding on the Purchaser and the Service Provider.*

.5 Refer Appendix 2.

The Service Provider shall submit to the Purchaser the following reports:
for example:

- (a) Monthly (Quarterly) progress reports, summarizing:**
 - (i) results accomplished during the prior period;**
 - (ii) cumulative deviations to date from schedule of progress milestones as specified in the Agreed and Finalized Project Plan;**
 - (iii) corrective actions to be taken to return to planned schedule of progress; proposed revisions to planned schedule;**
 - (iv) other issues and outstanding problems; proposed**

actions to be taken;

- (v) resources that the Service Provider expects to be provided by the Purchaser and/or actions to be taken by the Purchaser in the next reporting period;*
- (vi) other issues or potential problems the Service Provider foresees that could impact on project progress and/or effectiveness.*

Note: Other reports may be needed to monitor Contract performance/progress with System implementation, for example:

- (*) inspection and quality assurance reports*
- (*) monthly log of service calls and problem resolutions*

Clause No. 26

Clause Heading Design and Engineering

Sub-Clause No.

.2 The Contract shall be executed in accordance with the edition or the revised version of all referenced codes and standards current at the date

“as specified in the GCC”

.3(i) The Service Provider shall prepare and furnish to the Project Manager the following documents for which the Service Provider must obtain the Project Manager’s approval before proceeding with work on the System or any Subsystem covered by the documents.

“The Project plan”

Clause No. 28

Clause Heading Product Upgrades

Sub-Clause No.

.4.(iii) The Service Provider *shall* be free to use transportation through carriers registered in the country and *shall* obtain insurance from source country.

.5 The Service Provider shall provide the Purchaser with shipping and other documents *as specified in the GCC*

Clause No. 28

Clause Heading Product Upgrades

Sub-Clause No.

.4 The Service Provider shall provide the Purchaser:

“with all new updates to all Standard Software during the Warranty Period, for free, as specified in the GCC,”.

Clause No. 29

Clause Heading Implementation, Installation, and Other Services

Sub-Clause No.

Clause No. 30

Clause Heading Inspections and Tests

Sub-Clause No.

Clause No. 32

Clause Heading Commissioning and Operational Acceptance

Sub-Clause No.

.2(i) Operational Acceptance Testing shall be conducted in accordance with *System or the Subsystems, the tests, the test procedures, and the required results for acceptance; The User acceptance test cases will be written by the purchaser and shared with the Service Provider for every release of the software.*

.2(ii) If the Operational Acceptance Test of the System, or Subsystem(s), cannot be successfully completed within ____ days from the date of Installation or any other period agreed upon by the Purchaser and the Service Provider, then GCC Clause 32.3(v) (a) or (b) shall apply, as the circumstances may dictate.

Appendix 5B. Forms

5B.(I). CHANGE ORDER PROCEDURES AND FORMS

Date:[*insert: date*]

Contract:[*insert: name or System or Subsystem and number of Contract*]

Subsystem:[*insert: name of module or Subsystem*]

General

This section provides samples of procedures and forms for carrying out changes to the System during the performance of the Contract in accordance with GCC Clause 39 (Changes to the System) of the Contract.

Change Order Log

The Service Provider shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Change Orders authorized or pending. Changes shall be entered regularly in the Change Order Log to ensure that the log is kept up-to-date. The Service Provider shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Purchaser.

References to Changes

- (1) Request for Change Proposals (including Application for Change Proposals) shall be serially numbered CR-nnn.
- (3) Change Proposals shall be numbered CP-nnn.
- (4) Change Orders shall be numbered CO-nnn.

On all forms, the numbering shall be determined by the original CR-nnn.

Forms:

5B.I.i	Request for Change Proposal Form
5B.I.ii	Change Proposal Response Form
5B.I.iii.	Change Order Form
5B.I.iv.	Service Provider Initiated Change Proposal Form

5B.(I).I. REQUEST FOR CHANGE PROPOSAL FORM

(Purchaser's Letterhead)

Date:[*insert: date*]Contract:[*insert: name or System or Subsystem and number of Contract*]Subsystem:[*insert: name of module or Subsystem*]To: [*insert: name of Service Provider and address*]Attention: [*insert: name and title*]

Dear Sir or Madam:

With reference to the above-referenced Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within [*insert: number*] days of the date of this letter.

1. Title of Change: [*insert: title*]
2. Request for Change No./Rev.: [*insert: number*]
3. Originator of Change: [*select Purchaser / Service Provider (by Application for Change Proposal), and add: name of originator*]
4. Brief Description of Change: [*insert: description*]
5. System (or Subsystem or major component affected by requested Change): [*insert: description*]
6. Technical documents and/or drawings for the request of Change:

Document or Drawing No.	Description
7. Detailed conditions or special requirements of the requested Change: [*insert: description*]
8. Procedures to be followed:
 - (a) Your Change Proposal will have to show what effect the requested Change will have on the Contract.
 - (b) Your Change Proposal shall explain the time it will take to complete the requested Change and the impact, if any, it will have on the date when Operational Acceptance of the entire System agreed in the Contract.
 - (c) If you believe implementation of the requested Change will have a negative impact on the quality, operability, or integrity of the System, please provide a detailed explanation, including other approaches that might achieve the same impact as the requested Change.
 - (d) You shall not proceed with the execution of work related to the requested Change until we have accepted and confirmed the impact it will have on the Implementation Schedule in writing.

9. As next step, please respond using the Change Proposal Request form, indicating the proposed approach for implementing the Change, all its elements, and will also address the points in paragraph 8 above pursuant to GCC Clause 17.3.1. Your Change Estimate Proposal should contain a first approximation of the proposed approach, and implications for schedule, of the Change.

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: [state: ***“Project Manager” or higher level authority in the Purchaser’s organization***]

5B.(I).II. CHANGE PROPOSAL RESPONSE FORM

(Service Provider's Letterhead)

Date:[*insert: date*]Contract:[*insert: name or System or Subsystem and number of Contract*]Subsystem:[*insert: name of module or Subsystem*]To: [*insert: name of Purchaser and address*]Attention: [*insert: name and title*]

Dear Sir or Madam:

In response to your Request for Change Proposal No. [*insert: number*], we hereby submit our proposal as follows:

1. Title of Change: [*insert: name*]
2. Change Proposal No./Rev.: [*insert: proposal number/revision*]
3. Originator of Change: [*select: Purchaser / Service Provider; and add: name*]
4. Brief Description of Change: [*insert: description*]
5. Reasons for Change: [*insert: reason*]
6. The System Subsystem, major component, or equipment that will be affected by the requested Change: [*insert: description*]
7. Technical documents and/or drawings for the requested Change:

Document or Drawing No.	Description
-------------------------	-------------
8. Additional Time for Achieving Operational Acceptance required due to the Change: [*insert: amount in days / weeks*]
9. Effect on the Functional Guarantees: [*insert: description*]
10. Effect on the other terms and conditions of the Contract: [*insert: description*]
11. Validity of this Proposal: for a period of [*insert: number*] days after receipt of this Proposal by the Purchaser
12. Procedure to be followed: You are requested to notify us of your acceptance, comments, or rejection of this detailed Change Proposal within [*insert: number*] days from your receipt of this Proposal.

For and on behalf of the Service Provider

Signed:

Date:

in the capacity of: [*state: “Service Provider’s Representative” or other higher level authority in the Service Provider’s organization*]

5B.(I).III. CHANGE ORDER FORM

(Purchaser's Letterhead)

Date:[*insert: date*]Contract:[*insert: name or System or Subsystem and number of Contract*]Subsystem:[*insert: name of module or Subsystem*]To: [*insert: name of Service Provider and address*]Attention: [*insert: name and title*]

Dear Sir or Madam:

We hereby approve the Change Order for the work specified in Change Proposal No. [*insert: number*], and agree to adjust the Contract Price, Time for Completion, and/or other conditions of the Contract in accordance with GCC Clause 39 of the Contract.

1. Title of Change: [*insert: name*]
2. Request for Change No./Rev.: [*insert: request number / revision*]
3. Change Order No./Rev.: [*insert: order number / revision*]
4. Originator of Change: [*select: Purchaser / Service Provider; and add: name*]
5. Adjustment of Time for Achieving Operational Acceptance: [*insert: amount and description of adjustment*]
6. Other effects, if any: [*state: "none" or insert description*]

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: [*state: "Project Manager" or higher level authority in the Purchaser's organization*]

For and on behalf of the Service Provider

Signed:

Date:

in the capacity of: [*state "Service Provider's Representative" or higher level authority in the Service Provider's organization*]

5B.(I).IV. SERVICE PROVIDER INITIATED CHANGE PROPOSAL FORM

(Service Provider's Letterhead)

Date:[*insert: date*]Contract:[*insert: name or System or Subsystem and number of Contract*]Subsystem:[*insert: name of module or Subsystem*]To: [*insert: name of Purchaser and address*]Attention: [*insert: name and title*]

Dear Sir or Madam:

We hereby propose that the below-mentioned work be treated as a Change to the System.

1. Title of Change: [*insert: name*]
2. Application for Change Proposal No./Rev.: [*insert: number / revision*] dated: [*insert: date*]
3. Brief Description of Change: [*insert: description*]
4. Reasons for Change: [*insert: description*]
5. Schedule Impact of Change: [*insert: description*]
6. Effect on Functional Guarantees, if any: [*insert: description*]
7. Appendix: [*insert: titles (if any); otherwise state "none"*]

For and on behalf of the Service Provider

Signed:

Date:

in the capacity of: [*state: "Service Provider's Representative" or higher level authority in the Service Provider's organization*]

5B(II). PERFORMANCE AND ADVANCE PAYMENT SECURITY FORMS

5B.(II)(I) PERFORMANCE SECURITY FORM (BANK GUARANTEE)

[insert: Purchaser's Name, and Address of Office]

Date: *[insert: date]*

PERFORMANCE GUARANTEE No.: *[insert: Performance Guarantee Number]*

We have been informed that on *[insert: date of award]* you awarded Contract No. *[insert: Contract number]* for *[insert: title and/or brief description of the Contract]* (hereinafter called "the Contract") to *[insert: complete name of Service Provider]* (hereinafter called "the Service Provider"). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Service Provider, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert: amount(s)⁵ in figures and words]* upon receipt by us of your first demand in writing declaring the Service Provider to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

On the date of your issuing, to the Service Provider, the Operational Acceptance Certificate for the System, the value of this guarantee will be reduced to any sum(s) not exceeding *[insert: amount(s) Fehler! Textmarke nicht definiert. in figures and words]*. This remaining guarantee shall expire no later than *[insert: number and select: of months/of years (of the Warranty Period that needs to be covered by the remaining guarantee)]* from the date of the Operational Acceptance Certificate for the System,⁶ and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Applicable Law.

Notwithstanding anything contained hereinabove:

- a) Our liability under this Bank Guarantee shall not exceed and is restricted to Rs. _____ (Rupees _____ only)
- b) This Guarantee shall remain in force up to and including Dt. _____ (including claim period of three months)
- c) Unless the demand/claim under this guarantee is served upon us in writing before Dt _____ all the rights of PURCHASER under this guarantee shall stand automatically forfeited and we shall be relieved and discharged from all liabilities mentioned hereinabove.

⁵ *The Purchaser shall insert the amount(s) specified and denominated in the SCC for GCC Clauses 20.3 (a) and 20.3 (d) respectively.*

⁶ *In this sample form, the formulation of this paragraph reflects the usual SCC provisions for GCC Clause 20.3. However, if the SCC for GCC Clauses 20.3 (a) and 20.3 (d) varies from the usual provisions, the paragraph, and possibly the previous paragraph, needs to be adjusted to precisely reflect the provisions specified in the SCC.*

[Signature(s)]

5B.(II).(II) ADVANCE PAYMENT SECURITY FORM (BANK GUARANTEE)

[insert: Purchaser's Name, and Address of or Office]

Date: *[insert: date]*

ADVANCE PAYMENT GUARANTEE No.: *[insert: Advance Payment Guarantee Number]*

We have been informed that on *[insert: date of award]* you awarded Contract No. *[insert: Contract number]* for *[insert: title and/or brief description of the Contract]* (hereinafter called "the Contract") to *[insert: complete name of Service Provider]* (hereinafter called "the Service Provider"). Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of *[insert: amount in numbers and words, for each currency of the advance payment]* is to be made to the Service Provider against an advance payment guarantee. At the request of the Service Provider, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total the amount of the advance payment referred to above, upon receipt by us of your first demand in writing declaring that the Service Provider is in breach of its obligations under the Contract because the Service Provider used the advance payment for purposes other than toward the proper execution of the Contract.

It is a condition for any claim and payment to be made under this guarantee that the advance payment referred to above must have been received by the Service Provider on its account *[insert: number and domicile of the account]*.

For each payment after the advance payment, which you will make to the Service Provider under this Contract, the maximum amount of this guarantee shall be reduced by the *[insert: ninth or appropriate figure/proportion]* part of such payment.⁷ At the time at which the amount guaranteed becomes nil, this guarantee shall become null and void, whether the original is returned to us or not.

Notwithstanding anything contained hereinabove:

- a) Our liability under this Bank Guarantee shall not exceed and is restricted to Rs. _____ (Rupees _____ only)
- b) This Guarantee shall remain in force up to and including Dt. _____ (including claim period of three months)
- c) Unless the demand/claim under this guarantee is served upon us in writing before Dt. _____ all the rights of PURCHASER under this guarantee shall stand automatically forfeited and we shall be relieved and discharged from all liabilities mentioned hereinabove.

⁷ This sample formulation assumes an Advance Payment of 10% of the Contract Price excluding Recurrent Costs, and implementation of the main option proposed by this SBD in the SCC for GCC Clause 20.2(b) for gradually reducing the value of the Advance Payment Security. If the Advance Payment is other than 10%, or if the reduction in amount of the security follows a different approach, this paragraph would need to be adjusted and edited accordingly.

5B(III). INSTALLATION AND ACCEPTANCE CERTIFICATES

5B.(III)(I) INSTALLATION CERTIFICATE

Date: *[insert: date]*
Contract: *[insert: name and number of Contract]*

To: *[insert: name and address of Service Provider]*

Dear Sir or Madam:

Pursuant to GCC Clause 31 (Installation of the System) of the Contract entered into between yourselves and the *[insert: name of Purchaser]* (hereinafter the “Purchaser”) dated *[insert: date of Contract]*, relating to the *[insert: brief description of the Information System]*, we hereby notify you that the System (or a Subsystem or major component thereof) was deemed to have been correctly installed on the date specified below.

1. Description of the System (or relevant Subsystem or major component: *[insert: description]*
2. Date of Installation: *[insert: date]*

Notwithstanding the above, you are required to complete the outstanding items listed in the attachment to this certificate as soon as practicable. This letter shall not relieve you of your obligation to achieve Operational Acceptance of the System in accordance with the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: *[state: “Project Manager” or state the title of a higher level authority in the Purchaser’s organization]*

5B.(III)(II) OPERATIONAL ACCEPTANCE CERTIFICATE

Date: *[insert: date]*
 Contract: *[insert: name of System or Subsystem and number of Contract]*

To: *[insert: name and address of Service Provider]*

Dear Sir or Madam:

Pursuant to GCC Clause 32 (Commissioning and Operational Acceptance) of the Contract entered into between yourselves and the *[insert: name of Purchaser]* (hereinafter the “Purchaser”) dated *[insert: date of Contract]*, relating to the *[insert: brief description of the Information System]*, we hereby notify you the System (or the Subsystem or major component identified below) successfully completed the Operational Acceptance Tests specified in the Contract. In accordance with the terms of the Contract, the Purchaser hereby takes over the System (or the Subsystem or major component identified below), together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the System (or Subsystem or major component): *[insert: description]*
2. Date of Operational Acceptance: *[insert: date]*

This letter shall not relieve you of your remaining performance obligations under the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: *[state: “Project Manager” or higher level authority in the Purchaser’s organization]*

APPENDIX 6

COSTING AND PAYMENT SCHEDULE

6.1 Grand Summary of the costs

The following table provides the summary of the costing towards all the cost elements as detailed above

6.2 Summary break-up of the costs

The following table provides the summary with break-up costs of the each cost element