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**Dedicated Freight Corridor Corporation of India Ltd  
(A Government of India Enterprise)**

**Tender No. : HQ/IT/MPLS/2019\_01/23122019  
(Single Tender Mode only)**

**TENDER DOCUMENT**

Name of Work

**IT Services for 50 Mbps of Bandwidth  
MPLS Link Connectivity with protection  
from Ctrl-S Data Centre, Navi Mumbai to DFCCIL, CO, NDLS**

**Last Date & Time for receipt of Tender: 15:00 Hrs. on 23.12.2019**

**Date & Time for Opening of the Tender: 15:30 Hrs. on 23.12.2019**

**Dec.'2019**

***Corporate Office***

**Dedicated Freight Corridor Corporation of India Limited,  
5<sup>th</sup> Floor, Pragati Maidan Metro Station Building Complex,  
New Delhi - 110 001**

**GST #: 07AACCD4768M1Z7**

**Phone: +91-11-23454700, Fax: +91-11-23454701**

**Date: 19.12.2019**

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**TENDER NOTICE**  
**(Single Tender Mode)**

Tender in Single bid system is invited for providing IT Services - 50 Mbps bandwidth MPLS Connectivity with protection between Ctrl-S Data Centre, Navi Mumbai and 4<sup>th</sup> Floor Data Centre, DFCCIL Corporate Office, New Delhi.

<b>Tender No.</b>	<b>HQ/IT/MPLS/2019_01/23122019</b>
Estimated Cost of Work	Rs. 84,00,000/- excluding GST (Rs. Eighty four lakhs) excluding GST.
Completion period of Contract	Providing IT Services - 50 Mbps bandwidth MPLS Connectivity with protection between Ctrl-S Data Centre, Navi Mumbai and 4 <sup>th</sup> Floor, Data Centre, DFCCIL, Corporate Office, New Delhi – For the period of Five years.
Type of Contract	IT Services Contract.
Earnest Money Deposit	Not applicable
Cost of Document	Not applicable
Date of publication	From 11:30 Hrs. of 19.12.2019 and up to 15:00 Hrs. on 23.12.2019
Last Date & Time of submission online Bid.	Up to 15:00 Hrs. on 23.12.2019
Last Date & Time of submission of statutory documents, if any.	Up to 15:00 Hrs. on 23.12.2019
Date & Time of Opening	At 15:30 Hrs. on 23.12.2019
Mode of submission	Tender Document shall be submitted in sealed envelope and dropped in the Tender Box kept in <b>Corporate Office at Reception Area, 4<sup>th</sup> Floor, DFCCIL, Pragati Maidan Metro Station Building Complex, New Delhi - 110001.</b>

**Dedicated Freight Corridor Corporation of India Limited (DFCCIL)** reserves the right to reject any or all the tenders without assigning any reasons thereof.

### DETAILS OF TENDER

1.1	Tender No.	HQ/IT/MPLS/2019_01/23122019
1.2	Name Of Work	Providing IT Services for 50 Mbps bandwidth MPLS Connectivity with protection between Ctrl-S Data Centre, Plot No. GEN 72/1A, TTC Industrial Area, South Central Road, MIDC Industrial Area, Mahape, Thane, Navi Mumbai, Maharashtra - 400710 and DFCCIL, Corporate Office, 4 <sup>th</sup> Floor Data Centre, Pragati Maidan Metro Station Building Complex, New Delhi - 110001 for a period 05 years.
1.3	Type of Tender	Single Tender Basis
1.4	Duration of Contract	Providing IT Services - 50 Mbps bandwidth MPLS Connectivity with protection between Ctrl-S Data Centre, Navi Mumbai and 4 <sup>th</sup> Floor, Data Centre, DFCCIL, Corporate Office, New Delhi – For the period of Five years.
1.5	Estimated Cost of Work (For 5 years)	Rs. 84,00,000/- excluding GST.
1.6	Cost of Tender Document (Non- Refundable)	Not applicable.
1.7	Earnest Money Deposit (EMD) (Bid Security)	Not applicable.
1.8	Tender Validity	90 days from the Date of Opening of Tender.
1.9	Address for Communication	<b>Group General Manager/IT,</b> Dedicated Freight Corridor Corporation of India Limited (DFCCIL), 4 <sup>th</sup> Floor, Pragati Maidan Metro Station Building Complex, New Delhi - 110 001. Contact : 011-23454921, Centralized Fax 011-23454701.

## 2.0 TERMS OF REFERENCE (TOR)

### 2.1 Background

Dedicated Freight Corridor Corporation of India (hereafter referred as DFCCIL) is a Special Purpose Vehicle setup under the administrative control of Ministry of Railways to undertake planning & development, mobilization of financial resources and construction, maintenance and operation of the Dedicated Freight Corridors. DFCCIL is currently constructing Eastern and Western corridors, which are likely to be fully operational by 2020.

DFCCIL intends to upgrade its SAP-ERP System, resolve the issues, and stabilize the System with OEM, SAP's Application Management Services and Migrate to HANA on *SAP HANA Enterprise Cloud* with certain professional services to manage OS / DB / Application etc. to run SAP Suite on HANA as per current and future requirement of DFCCIL.

DFCCIL entered into a Contract with M/s SAP India Pvt. Ltd. for having SAP Services on Cloud, with Servers physically placed at **Ctrl-S Datacentre, Thane, Navi Mumbai**. The **50 Mbps bandwidth MPLS Connectivity with protection** will be required to bring all the Data from SAP Cloud Ctrl-S Datacentre to DFCCIL, Corporate Office and then further Data will flow across all the existing 14 CGM Locations of DFCCIL. SAP Migration activity, requires a 50 Mbps bandwidth MPLS connectivity between DFCCIL, Corporate Office, 4<sup>th</sup> Floor Data Centre and M/s SAP Data Centre at Mumbai.

### 2.2 Purpose of the RFP

The purpose of this RFP is to have the flawless data movement through IT Services regarding 50 Mbps bandwidth MPLS Connectivity with protection between Ctrl-S Data Centre, Plot No. GEN 72/1A, TTC Industrial Area, South Central Road, MIDC Industrial Area, Mahape, Thane, Navi Mumbai, Maharashtra - 400710 and 4th Floor Data Centre, DFCCIL, Corporate Office, Pragati Maidan Metro Station Building Complex, New Delhi – 110 001 for the period of Five years.

### 3.0 Detailed Scope of Work:

Key Deliverable (KD)	Product / Services	Activities
KD - 1	IT Services regarding 50 Mbps bandwidth MPLS Connectivity with protection	To provide IT Services regarding 50 Mbps bandwidth MPLS Connectivity with protection between Ctrl-S Data Centre, Plot No. GEN 72/1A, TTC Industrial Area, South Central Road, MIDC Industrial Area, Mahape, Thane, Navi Mumbai, Maharashtra - 400710 and 4 <sup>th</sup> Floor Data Centre, DFCCIL, Corporate Office, Pragati Maidan Metro Station Building Complex, New Delhi – 110001 for the period of Five years.

### 4.0 Terms & Conditions

#### **Price Validity**

The quoted rates shall be valid for acceptance for the period of 90 days from the date of opening commercial bid.

#### **Commissioning of Work**

The work on providing for 50 Mbps bandwidth MPLS Connectivity with protection shall be started immediately from date of receipt of Letter of Acceptance or signing of agreement whichever is earlier.

#### **Project Execution**

Supply, Installation, Configuration and Testing of 50 Mbps bandwidth MPLS Connectivity with protection and final acceptance by DFCCIL should be completed within a week from the date of receipt of Letter of Acceptance and maintaining the system for 5 years.

### 4.1 Payment Terms

#### **i. Taxes and Duties**

Unless otherwise specified in SCC, the bidder shall pay such taxes and duties, fees and other impositions as may be levied under the Applicable Law. All payments will be subject to deduction of tax at source in accordance with the provisions of Indian Income Tax Act and any other Applicable Law.

#### **ii. Payments**

The cost of services and works under this contract shall be paid in Indian Rupees (INR) only. The payment will be made as per schedule of payments agreed by the DFCCIL.

The bidder shall not be entitled to any extra payments towards reimbursements except mentioned in the contract for additional costs incurred by them during such period (warranty and AMC) for purposes of the services and in reactivating the Services.

- (i) Firm is required to tender its rate in the given format.

- (ii) Validity of the tender offer should be at least 90 days, from the last date of submission of current tender.
- (iii) The tendered rates should be exclusive of GST. Applicable taxes will be paid extra.
- (iv) No advance payment will be made. Payment would be made on successful completion of providing IT Services at the end of each quarter on submission of invoice and relevant Monthly Connectivity Availability Report.
- (v) Pro-rata deduction will be made for non-provision of connectivity.

Bidder shall be paid GST at the prevailing rate as per statutory requirement over and above this contract price.

**4.2 Services and SLA**

- a) Supplied Services: Service Level Agreement (SLA): Mandatory & Non-negotiable. The bidder will be responsible for providing 50 Mbps bandwidth MPLS Connectivity with protection plan and its support services.
- b) Downtime defined: Downtime: Any unplanned down time of 50 Mbps bandwidth MPLS Connectivity with protection, irrespective of hardware or software supplied by bidder, during which the services are not available for transactions.

Cumulative downtime: Downtime for each instance of breakdown/ service interruption, irrespective of hardware or software, would be accumulated over one month.

The planned downtime shall not go beyond 4 hours in a months.

**4.3 Penalty for Non-adherence of SLA**

During the Contract period, RailTel shall maintain the minimum Service Level Assurance of 99.5% of MPLS Access. As per terms & conditions of Service Level Agreement (SLA) signed between the RailTel and DFCCIL, RailTel shall submit the Quarterly Serviceability report for connectivity, while submitting the bills for concerned quarterly payment. In case the service availability percentage of any of the MPLS links is less than the assured serviceability percentage i.e. if it is less than 99.5%, DFCCIL shall penalize the RailTel with a penalty, as quoted below. The amount of penalty shall be computed on quarterly basis and adjusted with the forthcoming quarterly payment.

<b>Quarterly Service availability of each MPLS</b>	<b>Rebate factor in terms of Percentage of ARC for a particular MPLS</b>
Up to 99.5%	0.0%
Below 99.5% & Up to 98.0%	1.5%
Below 98.0%	2.0%

If the serviceability %age of any one of the links goes below 90% for three consecutive months, a letter of Caution shall be issued by DFCCIL to the RailTel. If three such letters of Caution are issued to the RailTel, DFCCIL reserves the right to cancel the Contract any time giving one month in advance before the completion of the Contract period.

**4.4 Submission of EMD / Security Deposit:**

EMD / Security Deposit – Not applicable.



# **GENERAL CONDITIONS OF CONTRACT**

## **A. CONTRACT AND INTERPRETATION**

### **1. Definitions**

1.1 In this Contract, the following terms **shall be interpreted as** indicated below.

(a) **Contract elements**

(i) “Contract” means the contract Agreement entered into between the DFCCIL and the Supplier, 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.

(ii) “Contract Documents” means the documents of the Contract Agreement, including any Amendments to these Documents.

(iii) “Contract Agreement” means the agreement entered into between the DFCCIL and the any modifications agreed to by the DFCCIL and the Supplier. The date of the Contract Agreement shall be recorded in the signed form.

(iv) “GCC” means the General Conditions of Contract.

(v) “SCC” means the Special Conditions of Contract.

(vi) “Technical Requirements” means the Technical Requirements Section of the Tender Documents.

(vii) “Implementation Schedule” means the Implementation Schedule Sub-section of the Technical Requirements.

“Contract Price” means the price or prices defined in the Contract Agreement.

“Bidding Documents” refers to the collection of documents issued by the DFCCIL to instruct Supplier of the processes for bidding, selection of the winning bid, and Contract formation, as well as the contractual conditions governing the relationship between the DFCCIL and the Supplier. 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 DFCCIL is obligated to follow during procurement and administration of this Contract.

## **(b) Entities**

- (i) “DFCCIL” means the entity purchasing the IT Services.
- (ii) “Project Manager” means the person **named as such in the SCC** or otherwise appointed by the DFCCIL in the manner provided in GCC Clause 21.1 (Project Manager) to perform the duties delegated by the DFCCIL.
- (iii) “Supplier” means the firm or Joint Venture whose bid to perform the Contract has been accepted by the DFCCIL and is named as such in the Contract Agreement.
- (iv) “Supplier’s Representative” means any person nominated by the Supplier and named as such in the Contract Agreement or otherwise approved by the DFCCIL in the manner provided in GCC Clause (Supplier’s Representative) to perform the duties delegated by the Supplier.
- (v) “Subcontractor” means any firm to whom any of the obligations of the Supplier, including preparation of any design or supply of any Information Technologies or other Goods or Services, is subcontracted directly or indirectly by the Supplier.
- (vi) “Adjudicator” means the person named in SCC of the Contract Agreement, appointed by agreement between the DFCCIL and the Supplier to make a decision on or to settle any dispute between the DFCCIL and the Supplier referred to him or her by the parties, pursuant to GCC Clause 6.1 (Adjudication).

## **c) Scope**

“Scope/ scope Document” means the document that is provided with and becomes part of the Contract Agreement which further defines the scope of Services to be provided and other engagement specifics.

“Services” mean those service(s) as further defined by those specific Service Descriptions and Scope Document provided to Purchaser under Contract Agreement that references this Agreement.

“Contract Period” is the time period during which this Contract governs the relations and obligations of the Purchaser and Supplier in relation to the System,

Service Level Agreement period or SLA period means the period of validity of the SLA given by the Supplier commencing at date of the Operational Acceptance Confirmation of the System during which the Supplier is responsible for SLA with respect to the Service

“Intellectual Property Rights” means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

“Territory” means the territory stated in the Contract Agreement.”

“Deliverables” means those specific Work Products which are identified under the applicable Contract Agreement for delivery to Purchaser.

“Material Defect” means a defect causing serious interruptions in normal operations (important tasks cannot be performed due to a malfunction or an unavailable function in the respective Deliverables that is urgently required to deal with the current situation).

“Contract Agreement” means all written Contract Agreements or other ordering documentation entered into by Supplier and Purchaser containing the pricing and other specific terms and conditions applicable for each of the Services under an applicable Contract Agreement.

**d) Place**

- i) “Purchaser’s Country” is the country named in the SCC.
- ii) “Project Office (s)” means the place(s) specified in the SCC for the providing IT Services i.e. 50 Mbps Bandwidth MPLS Connectivity.
- iii) “Contract Period” is the time period during which this contract governs the relations and obligations of the Purchaser and Supplier in relation to IT Services, as specified in SCC.

**2. Contract Documents**

The following order of precedence shall be applied in the event of conflict or inconsistency between provisions of the components of the Agreement: (i) Contract Agreement; (ii) Letter of Acceptance; (iii) Corrigendum/Addendum; and (iv) SCC; (v) GCC; (vi) Bid Document; All documents forming part of the Contract Agreement (and all parts of these documents) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

**3. Interpretation**

**3.1 Governing Language**

All Contract Documents and related correspondence exchanged between Purchaser and Supplier shall be

written in the language specified in the SCC, and the Contract shall be construed and interpreted in accordance with that language.

### 3.2 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and Supplier 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.

Agreement constitutes the complete and exclusive statement of the agreement between Purchaser and Supplier, and all previous representations, discussions, and writings are merged in, and superseded by the Agreement and the parties disclaim any reliance on any such representations, discussions and writings. Agreement may be modified only by a writing signed by both parties. Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by either party.

### 3.3 Non-waiver

If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

## 4. Notices

All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the representative of Supplier and Purchaser at the addresses first set forth in the Contract Agreement. Where in this Section or elsewhere in this Agreement a written form is required, except for any notice of termination or notice of a material breach which shall occur by exchange of letter(s), that requirement can be met by facsimile transmission, exchange of letters or other written form, including email.

## 5. Governing Law

5.1 Any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of the Republic of India, without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and Indian law, rules, and regulations, Indian law, rules, and regulations shall prevail and govern. The Agreement and any claims relating to its subject matter shall be governed by and construed under the laws of India, without reference to its conflicts of law principles. All disputes shall be subject to the exclusive jurisdiction of the courts

located in New Delhi for all claims, suits, or actions arising under this Agreement (including claims for payments due hereunder) or in connection with Purchaser's use or possession of the Software and Supplier's Proprietary Information. Purchaser shall initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Purchaser knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

5.2 Either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s). A person who is not a party to the Agreement has no rights to enforce any term of this Agreement.

## **6. Settlement of Disputes**

### **6.1 Adjudication**

6.1.1 If any dispute of any kind whatsoever shall arise between the Purchaser and the Supplier 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 System (whether during the progress of Project or after its achieving Operational Acceptance 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 fourteen (14) days after one party has notified the other in writing of the dispute, then, if the Contract Agreement in Appendix 2 includes and names an Adjudicator, the dispute shall, within another fourteen (14) days, be referred in writing by either party to the Adjudicator, with a copy to the other party. If there is no Adjudicator specified in the Contract Agreement, the mutual consultation period stated above shall last twenty-eight (28) days (instead of fourteen), upon expiry of which either party may move to the notification of arbitration pursuant to GCC Clause 6.2.1.

6.1.2 The Adjudicator shall give his or her decision in writing to both parties within twenty-eight (28) days of the dispute being referred to the Adjudicator. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the Purchaser or the Supplier within fifty-six (56) days of such reference, the decision shall become final and binding upon the Purchaser and the Supplier. Any decision that has become final and binding shall be implemented by the parties forthwith.

6.1.3 The Adjudicator shall be paid an hourly fee at the rate specified in the Contract Agreement plus reasonable expenditures incurred in the execution of duties as Adjudicator, and these costs shall be divided equally between the Purchaser and the Supplier.

6.1.4 Should the Adjudicator resign or die, or should the Purchaser and the Supplier agree that the Adjudicator is not fulfilling his or her functions in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Purchaser and the Supplier. Failing agreement between the two within twenty-eight (28) days, the new Adjudicator shall be appointed at the request of either party by the Appointing Authority specified in the SCC, or, if no Appointing Authority is specified in SCC, the Contract shall, from this point onward and until the parties may otherwise agree on an Adjudicator or an Appointing Authority, be implemented as if there is no Adjudicator.

## 6.2 Arbitration:

6.2.1 If the Purchaser or the Supplier is dissatisfied with the Adjudicator's decision and acts before this decision has become final and binding pursuant to GCC Clause 6.1.2, or the Adjudicator fails to give a decision within the allotted time from referral of the dispute pursuant to GCC Clause 6.1.2, and the Purchaser or the Supplier acts within the following fourteen (14) days, or in the absence of an Adjudicator from the Contract Agreement, the mutual consultation pursuant to GCC Clause 6.1.1 expires without resolution of the dispute and the Purchaser or the Supplier acts within the following fourteen (14) days, then either the Purchaser or the Supplier may act to give notice to the other party, with a copy for information to the Adjudicator in case an Adjudicator had been involved, 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.

6.2.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Clause 6.2.1, shall be finally settled by arbitration. Arbitration may be commenced prior to or after Installation of the Information System / Services.

6.2.3 Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

6.3 Notwithstanding any reference to the Adjudicator or arbitration in this clause, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; the Purchaser shall pay the Supplier any monies due the Supplier.

## **B. SUBJECT MATTER OF CONTRACT**

### **7. Scope of the System**

7.1 Unless otherwise expressly limited in the SCC, the Supplier's obligations cover the provision of IT Services for MPLS Connectivity as well as the performance of all Services required for the design, development, and configuration, implementation of the Services / 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.

### **8. Time for Commencement**

8.1 The Supplier shall commence work within the period specified in the SCC, and, the Supplier shall thereafter proceed with the Services / System in accordance with the time schedule specified in the Implementation Schedule and any refinements made in the Agreed and Finalized Project Plan.

### **9. Supplier's Responsibilities:**

9.1 At any point during the Contract, should technological advances be introduced by the Supplier for Software / Services originally offered by the Supplier in its bid and still to be delivered, the Supplier shall be obligated to provision for the latest versions of the available Software patches having equal or better performance with the prior consent from the purchaser

9.2 Supplier to grants Purchaser a non-exclusive, non-transferable and world-wide right to use the IT Services (including its implementation and configuration) and Documentation solely for Purchaser's internal business operations. Permitted uses and restrictions of the IT Service also apply to Documentation.

9.3 Supplier shall provide the Services in accordance with the work order. Supplier shall be responsible for the performance of the Services of such third-party contractors to the same extent as Supplier is liable for its own Consultants.

9.4 As part of the IT Service, Supplier shall (i) provide the initial installation of the MPLS Connectivity (ii) setup and configure relevant hardware and software monitoring agents, and (iii) introduce Purchaser to Supplier's support and communications procedures.

9.5 The IT Service as contemplated under the Agreement shall include the provision of services for the Environment described in the Documentation.

9.6 At Purchaser's request prior to termination or expiration of an Order Form, Supplier shall, within a reasonable time period provide to Purchaser in a reasonable backup media format being utilized by Supplier the Purchaser Data stored in the Computing Environment.

## **10. Purchaser's Responsibilities**

10.1 The Purchaser shall ensure all information and/or data to be supplied by the Purchaser to the Supplier, except when otherwise expressly stated in the Contract.

10.2 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 within the time schedule specified in the Implementation Schedule. Failure to provide such resources, information, and decision making may constitute grounds for Termination.

10.3 If requested by the Supplier, the Purchaser shall use its best endeavors to assist the Supplier 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 national government authorities or public service undertakings that such authorities or undertakings require the Supplier or Subcontractors or the personnel of the Supplier or Subcontractors, as the case may be, to obtain.

10.4 In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Supplier, SCC, Agreed and Finalized Project Plan, or other parts of the Contract, the Purchaser shall use its best endeavors to assist the Supplier in obtaining such services in a timely and expeditious manner.

10.5 The Purchaser shall be responsible for timely provision of all resources, access, and information necessary for the Installation (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 Supplier. Delay by the Purchaser may



result in an appropriate extension of the Time at the Supplier's discretion.

10.6 Unless otherwise specified in the Contract or agreed upon by the Purchaser and the Supplier, the Purchaser shall provide sufficient, properly qualified operating and technical personnel, as required by the Supplier to properly carry out Delivery, Pre-commissioning, Installation, Commissioning at or before the time specified in Implementation Schedule and the Agreed and Finalized Project Plan.

10.7 The Purchaser shall designate appropriate staff for the training courses to be given by the Supplier and shall make all appropriate logistical arrangements for such training as specified in SCC, the Agreed and Finalized Project Plan, or other parts of the Contract.

10.8 The Purchaser assumes primary responsibility for the getting the Acceptance of the Services / System and shall be responsible for the continued operation of the Services. However, this shall not limit in any way the Supplier's responsibilities after the date of Acceptance of Services otherwise specified in the Contract.

10.9 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 if such responsibility is clearly assigned to the Supplier elsewhere in the Contract.

10.10 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 Supplier with respect to the performance of the Acceptance Test.

10.11 The Purchaser shall be responsible for the connection to the Cloud Service, including the Internet connection to the Point of Demarcation.

10.12 Other Purchaser responsibilities, if any, are as stated in the SCC.

## **C. PAYMENT**

### **11. Contract Price**

11.1 The Contract Price shall be as specified in Contract Price and Terms of Payment of the Contract Agreement.

11.2 The Contract Price shall be a firm lump sum not subject to any alteration, except in case of execution of any change request.

11.3 The Supplier's request for payment shall be made to the Payment Purchaser in writing, accompanied by an invoice describing the services provided.

11.4 The Contract Price shall be paid as specified in the Contract Agreement.

11.5 Payments shall be made promptly by the Purchaser, but in no case later than forty-five (45) days after submission of a valid invoice by the Supplier.

### **12. Terms of Payment**

12.1 Purchaser shall pay to Supplier the services fees as specified in the Contract Agreement.

12.2 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 Supplier 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.

### **13. Securities**

#### **Issuance of Securities**

13.1 The Supplier shall provide the securities specified below in favor of the Purchaser at the times and in the amount, manner, and form specified below.

13.2 The security shall be a bank guarantee in the form provided in the Sample Forms Section of the Bidding Documents, or it shall be in another form acceptable to the Purchaser.

13.3 The security shall automatically become null and void once all the obligations of the Supplier 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 Supplier no later than twenty-eight (28) days after its expiration.

13.4 Upon Acceptance of the entire Services, the security shall be reduced to the amount **specified in the SCC**, on the date of such Acceptance, so that the reduced security would only cover the remaining warranty obligations of the Supplier.

#### **14. Taxes and Duties**

Fees and other charges described in this Agreement do not include taxes ("Tax (es)") now or hereafter levied, all of which shall be for Purchaser's account. Octroi shall be paid directly by Purchaser to the State/City Octroi authority at the time of shipment of Software, if applicable. Any applicable direct pay permits or valid tax-exempt certificates shall be provided to Supplier prior to the execution of this Agreement. If Supplier is required to pay Taxes, Purchaser shall reimburse Supplier for such amounts.

#### **D. INTELLECTUAL PROPERTY**

#### **15. Copyright**

15.1 Supplier own all intellectual property rights in and related to the Standard Software, Documentation, Services, Deliverables, Work Products, design contributions, related knowledge or processes, and any derivative works of them.

#### **16. Software License Agreements**

16.1 Except to the extent that the Intellectual Property Rights in the Software vest in the Purchaser, the Supplier hereby grants to the Purchaser license to access and use the Software, including all inventions, designs, and marks embodied in the Software.

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

#### **17. Modifications/ Add-ons**

17.1 Purchaser shall comply with Supplier's registration procedure prior to making Modifications or Add-ons. All Modifications and all rights associated therewith shall be the exclusive property of Supplier. All Add-ons developed by Supplier (either independently or jointly with Purchaser) and all rights associated therewith shall be the exclusive property of Supplier. The Purchaser agrees to execute those documents reasonably necessary to secure Supplier's rights in the foregoing Modifications and Add-ons. All Add-ons developed by or on behalf of Purchaser without Supplier's participation ("Purchaser Add-on"), and all rights associated therewith, shall be the exclusive property of Purchaser subject to Supplier's rights in and to the Software.

## **18. Protection of Rights**

18.1 Purchaser will not copy, translate, disassemble, decompile, nor reverse engineer the Software or other Materials.

18.2 Purchaser shall be permitted to back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the Software. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media, unless technically infeasible.

## **19. Confidential Information**

19.1 Confidential Information of either Supplier or Purchaser (the party disclosing such information being the "Disclosing Party") includes information which the Disclosing Party protects against unrestricted disclosure to others that (i) the Disclosing Party or its representatives identifies as confidential at the time of disclosure; or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure; including, without limitation, information from, about or concerning any third party that is disclosed under this Agreement.

19.2 The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those mentioned in Exceptions below.

19.3 Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party : (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its bona fide individuals whose access is necessary to enable it to exercise its rights and/or perform its obligations hereunder, and who are under obligations of confidentiality substantially similar to those set forth herein.

19.4 As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care.

19.5 Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.

19.6 In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.

19.7 Exceptions.

(a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information;

(b) is generally available to the public without breach of the Agreement by the receiving party,

(c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or

(d) the disclosing party agrees in writing is free of confidentiality restrictions.

## **20. System Security and Data Safeguards**

20.1 When Supplier is given access to Purchaser's systems and data, Supplier shall comply with Purchaser's reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access.

## **E. SUPPLY, INSTALLATION, TESTING, COMMISSIONING, AND ACCEPTANCE OF THE CONNECTIVITY**

### **21. Representatives**

#### **Purchaser's Representative**

21.1 Purchaser will name Project Manager who will be representative from Purchaser. If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Purchaser shall appoint and notify the Supplier in writing of the name of the Project Manager. The Purchaser may from time to time may 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 Supplier without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the System. Such appointment shall take effect only upon receipt of such notice by the Supplier. 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 System or arising from the Contract and shall normally be the person giving or receiving notices on behalf of the Purchaser.

### **Supplier's Representative**

21.2 If the Supplier's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Supplier shall appoint the Supplier'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 System or non-System responsibilities the nominee would retain while performing the duties of the Supplier's Representative. If the Purchaser does not object to the appointment within fourteen (14) days, the Supplier'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 Supplier shall appoint a replacement within fourteen (14) days of such objection.

21.3 Subject to the extensions and/or limitations specified in the SCC (if any), the Supplier's Representative shall have the authority to represent the Supplier on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Supplier.

21.4 The Supplier shall not revoke the appointment of the Supplier's Representative without the Purchaser's prior written consent, which shall not be unreasonably withheld. If the Purchaser consents to such an action, the Supplier shall appoint another person of equal or superior qualifications as the Supplier's Representative.

21.5 The Supplier's Representative and staff are obliged 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 Supplier's Representative is responsible for managing the activities of its personnel and any subcontracted parties.

21.6 The Supplier'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 Supplier'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.

### **Satisfaction with Personnel**

21.7 If at any time Purchaser or Supplier is dissatisfied with the Services, the dissatisfied party shall promptly report such dissatisfaction.

### **Product Upgrades**

21.8 At any point during the Contract, should technological advances be introduced by the Supplier for Software originally offered by the Supplier in its bid and still to be delivered, the Supplier shall be obligated to provision for the latest versions of the available Software patches having equal or better performance with the prior consent from the purchaser

### **Deliverable Acceptance Period**

21.9 Upon delivery by the Supplier of a completed Deliverable, the Purchaser shall have 14 calendar days to accept or reject ("Acceptance Period") the Deliverable, due to a defect using reasonable discretion, based on the acceptance criteria set forth in the Agreement for that Deliverable.

A "defect" means the Deliverable fails to substantially comply with the applicable and corresponding acceptance criteria for that Deliverable set forth in the Agreement.

21.10 If the relevant Deliverable passes the agreed acceptance criteria set forth in the Contract Agreement, Purchaser will accept the Deliverable. Acceptance will not be unreasonably withheld by Purchaser.

### **Term**

21.11 Agreement and the licenses shall become effective as of the date first set forth in the applicable Contract Agreement and shall continue in effect thereafter unless terminated upon the earliest to occur of the following: (i) thirty days after Purchaser gives Supplier written notice of Supplier's direction to terminate this Agreement, for any reason; (ii) thirty days after Supplier gives Purchaser written notice of Purchaser's material breach of any provision of the Contract Agreement.

## **22. Implementation Installation, and Other Services**

22.1 The Supplier 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.

22.2 Prices charged by the Supplier 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 Supplier in the Recurrent Cost Schedules of its Bid) and shall not exceed the prevailing rates charged by the Supplier to other Purchasers in the Purchaser's Country for similar services.

### **23. Inspections and Tests**

23.1 The Project Manager may require the Supplier to carry out any inspection and/or test not specified in the Contract, provided that the Supplier'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 Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Achieving Acceptance and the other obligations so affected.

23.2 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), starting with referral of the matter to the Adjudicator in case an Adjudicator is included and named in the Contract Agreement.

### **24. Force Majeure.**

"Force Majeure" shall mean any event beyond the reasonable control of the Purchaser or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following:

war, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;

rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;

confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler, or any other act or failure to act of any local state or national government authority;

strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation



and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;

earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;

failure, by the Supplier, to obtain the necessary export permit(s) from the governments of the Country(s) of Origin of the Information Technologies or other Goods, or Supplier's Equipment provided that the Supplier has made all reasonable efforts to obtain the required export permit(s), including the exercise of due diligence in determining the eligibility of the System and all of its components for receipt of the necessary export permits.

## **25. Severability.**

It is the intent of the parties that in case any one or more of the provisions contained in the Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of the Agreement, and the Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

## **F. CHANGE IN CONTRACT ELEMENTS**

### **26. Changes to the System**

#### **26.1 Introducing a Change**

26.1.1 Subject to GCC Clauses 26.2.5 and 26.2.7, the Purchaser shall have the right to propose, and subsequently require, the Project Manager to order the Supplier from time to time during 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 agreed scope, 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.

26.1.2 The Supplier 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 Supplier 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 Supplier.

26.1.3 Notwithstanding GCC Clauses 26.1.1 and 26.1.2, no change made necessary because of any default of the Supplier 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 Acceptance.

26.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Clauses 26.2 and 26.3, and further details and sample forms are provided in the Sample Forms Section in the Bidding Documents.

26.1.5 Moreover, the Purchaser and Supplier 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.

## 26.2 Changes Originating from Purchaser

26.2.1 If the Purchaser proposes a Change pursuant to GCC Clauses 26.1.1, it shall send to the Supplier a “Request for Change Proposal,” requiring the Supplier to prepare and furnish to the Project Manager as soon as reasonably practicable a “Change Proposal,” which shall include the following:

- brief description of the Change;
- impact on the Time for Achieving Acceptance;
- detailed estimated cost of the Change;
- effect on any other provisions of the Contract.

26.2.2 Prior to preparing and submitting the “Change Proposal,” the Supplier shall submit to the Project Manager a “Change Estimate Proposal,” which shall be an estimate of the cost of preparing the Change Proposal, plus a first approximation of the suggested approach and cost for implementing the changes. Upon receipt of the Supplier’s Change Estimate Proposal, the Purchaser shall do one of the following:

- accept the Supplier’s estimate with instructions to the Supplier to proceed with the preparation of the Change Proposal;
- advise the Supplier of any part of its Change Estimate Proposal that is unacceptable and request the Supplier to review its estimate;
- advise the Supplier that the Purchaser does not intend to proceed with the Change.

26.2.3 Upon receipt of the Purchaser’s instruction to proceed a), the Supplier shall, with proper expedition, proceed with the preparation of the Change Proposal, in

accordance with The Supplier, at its discretion, may specify a validity period for the Change Proposal, after which if the Purchaser and Supplier has not reached agreement.

26.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the nature of the Change is such that the Contract rates and prices are inequitable, the parties to the Contract shall agree on other specific rates to be used for valuing the Change.

26.2.5 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 Supplier under this GCC Clause 26 would be to increase or decrease the Contract Price as originally set forth in of the Contract Agreement by more than fifteen (15) percent, the Supplier may give a written notice of objection to this Request for Change Proposal prior to furnishing the Change Proposal. If the Purchaser accepts the Supplier's objection, the Purchaser shall withdraw the proposed Change and shall notify the Supplier in writing of its acceptance.

The Supplier'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 Contract Price that any Change not objected to by the Supplier represents.

26.2.6 Upon receipt of the Change Proposal, the Purchaser and the Supplier 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 Supplier a Change Order. If the Purchaser is unable to reach a decision within fourteen (14) days, it shall notify the Supplier with details of when the Supplier 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 Supplier accordingly. Under such circumstances, the Supplier shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Supplier in its Change Estimate Proposal submitted in accordance with GCC Clause 26.2.2.

26.2.7 If the Purchaser and the Supplier cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Achieving 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).

### 26.3 Changes Originating from Supplier

If the Supplier proposes a Change pursuant to GCC Clause 26.1.2, the Supplier 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 26.2.1. Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Clauses 26.2.6 and 26.2.7. However, should the Purchaser choose not to proceed or the Purchaser and the Supplier cannot come to agreement on the change during any validity period that the Supplier may specify in its Application for Change Proposal, the Supplier shall not be entitled to recover the costs of preparing the Application for Change Proposal, unless subject to an agreement between the Purchaser and the Supplier to the contrary.

Change Request Procedure. During the Subscription Term, Purchaser can request Services and either party can request changes to the Services. Such changes shall be documented in a Change Request. When one party initiates a Change Request (the "Requesting Party"), the other party ("Responding Party") will use reasonable efforts to respond to such Change Request within ten (10) business days of receipt. Further, both parties will use reasonable efforts to either fully execute such Change Request, or mutually agree to abandon such Change Request, within fifteen business days of the Responding Party's receipt of the Change Request. Supplier will not perform under a Change Request until agreed to and signed by the parties.

The Service Fee for Services (and other fees as may be agreed in a written Change Request) would be established based on information provided to Supplier by Purchaser. Supplier to rely on the accuracy of this information provided by Purchaser as a material factor in performing the initial sizing/scoping and calculating the Service Fee for Services.

## **27. Extension of time(s) for achieving Acceptance**

27.1 The time(s) for achieving Acceptance specified in the Schedule of Implementation shall be extended if the Supplier is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the System as provided Scope
- (b) any occurrence of Force Majeure as provided in 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 Supplier.

27.2 Except where otherwise specifically provided in the Contract, the Supplier 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 such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Purchaser and the Supplier shall agree upon the period of such extension. In the event that the Supplier does not accept the Purchaser's estimate of a fair and reasonable time extension, the Supplier shall be entitled to refer the matter to the provisions for the Settlement of Disputes pursuant to GCC Clause 6.

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

## **28. Termination**

### **28.1 Termination for Purchaser's Convenience**

28.1.1 The Purchaser may at any time terminate the Contract for any reason by giving the Supplier a notice of termination that refers to this GCC Clause 28.1.

28.1.2 Upon receipt of the notice of termination under GCC Clause 28.1.1, the Supplier shall either as soon as reasonably practical or upon the date specified in the notice of termination 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;

terminate all subcontracts, except those to be assigned to the Purchaser pursuant to GCC Clause 28.1.2 below; remove all Supplier's Equipment from the site, repatriate the Supplier's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;

in addition, the Supplier, subject to the payment specified in GCC Clause 28.1.3, shall deliver to the Purchaser the parts of the System executed by the Supplier up to the date of termination; to the extent legally possible, assign to the Purchaser all right, title, and benefit of the Supplier 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 Supplier and its subcontractors; deliver to the Purchaser all non-proprietary drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.

28.1.3 In the event of termination of the Contract under GCC Clause 28.1.1, the Purchaser shall pay to the Supplier the following amounts:

the Contract Price, properly attributable to the parts of the System executed by the Supplier as of the date of termination; the costs reasonably incurred by the Supplier in the removal of the Supplier's Equipment from the site and in the repatriation of the Supplier's and its Subcontractors' personnel;

any amount to be paid by the Supplier to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;

costs incurred by the Supplier in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 28.1.2; and the cost of satisfying all other obligations, commitments, and claims that the Supplier may in good faith have undertaken with third parties in connection with the Contract and that are not covered by GCC Clauses 28.1.3 above.

## 28.2 Termination for Supplier's Default

28.2.1 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 Supplier, referring to this GCC Clause 28.2:

if the Supplier becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier 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 Supplier takes or suffers any other analogous action in consequence of debt;

if the Supplier assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 29 (Assignment); or if the Supplier, 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:

“Corrupt practice”<sup>1</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

“fraudulent practice”<sup>2</sup> 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;

“Collusive practice”<sup>1</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

“Coercive practice”<sup>2</sup> 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;

“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 a Bank investigation 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 of matters relevant to the investigation or from pursuing the investigation; or
- (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Sub-Clause 9.8.

28.2.2 If the Supplier:

has abandoned or repudiated the Contract;

has without valid reason failed to commence work on the System promptly;

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;  
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 19 at rates of progress that give reasonable assurance to the Purchaser that the Supplier 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 Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier 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 Supplier that refers to this GCC Clause 28.2.

28.2.3 Upon receipt of the notice of termination under GCC Clauses 28.2.1 or 28.2.2, the Supplier shall, either immediately or upon such date as is specified in the notice of termination:

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;

terminate all subcontracts, except those to be assigned to the Purchaser pursuant to GCC Clause 28.2.3 below;

deliver to the Purchaser the parts of the System executed by the Supplier up to the date of termination;

to the extent legally possible, assign to the Purchaser all right, title and benefit of the Supplier 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 Supplier and its Subcontractors;

deliver to the Purchaser all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as at the date of termination in connection with the System.

## **29. ASSIGNMENT**

Neither party without prior written consent of other party, may assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under the Agreement, or Materials or Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. Supplier may assign this Agreement to any of its affiliates.



## SPECIAL CONDITIONS OF CONTRACT (SCC)

The following Special Conditions of Contract (SCC) shall supplement or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions of the SCC shall prevail over those in the General Conditions of Contract. For the purposes of clarity, any referenced GCC clause numbers are indicated in the left column of the SCC.

### 1. Definitions (GCC Clause 1)

GCC 1.1 (a)	There are no Special Conditions of Contract applicable to GCC Clause 1.1 (a).
GCC 1.1 (b) (i)	The DFCCIL is: Dedicated Freight Corridor Corporation of India Limited
GCC 1.1 (b) (ii)	The Project Manager is: Group General Manager - IT
GCC 1.1 (d) (i)	The DFCCIL's Country is: India
GCC 1.1 (d) (ii)	The Project office is : Dedicated Freight Corridor Corporation of India Limited, 4 <sup>th</sup> Floor, Pragati Maidan Metro Station Building Complex, Pragati Maidan, New Delhi – 110001.
GCC 1.1 (d) (iii)	The Contract shall continue in force until all the IT Services have been provided as detailed out unless the Contract is terminated earlier in accordance with the terms set out in the Contract.

### 2. Contract Documents (GCC Clause 2)

GCC 2	There are no Special Conditions of Contract applicable to GCC Clause 2.
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### 3. Interpretation (GCC Clause 3)

GCC 3.1	The Contract's governing language is <b>English</b> .
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### 4. Notices (GCC Clause 4)

GCC 4	Address of the Project Manager <b>Group General Manager / IT</b> Dedicated Freight Corridor Corporation of India Limited 4 <sup>th</sup> Floor, Pragati Maidan Metro Station Building Complex Pragati Maidan, New Delhi – 110001 Office Landline No. - 011-23454921
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#### 5. Governing Law (GCC Clause 5)

GCC 5.1	The Contract shall be interpreted in accordance with the laws of: <b>India</b>
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#### 6. Settlement of Disputes (GCC Clause 6)

GCC 6.1	Not Applicable.
GCC 6.2.1	All disputes and differences of any kind whatsoever arising out of or in connection with the Contract Agreement, whether during the progress of the work, or after its completion and whether before or after determination of Contract shall be decided by / under the Arbitration and Conciliation Act-1996 (Amendment-2015).

#### 7. Scope of the System (GCC Clause 7)

GCC 7.1	As per the defined Scope defined in the Bid document.
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#### 8. Time for Commencement (GCC Clause 8)

GCC 8.1	The Bidder shall commence work within: Immediately from the date of receipt of LOA.
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#### 9. Purchaser's Responsibilities (GCC Clause 10)

GCC 10.4, 10.7, 10.12	There are no Special Conditions of Contract applicable to GCC Clause 10.
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#### 10. Terms of Payment (GCC Clause 12)

GCC 12.2	There are no Special Conditions of Contract applicable to GCC Clause 12.
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#### 11. Securities (GCC Clause 13)

GCC 13.4	There are no Special Conditions of Contract applicable to GCC Clause 13.
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#### 12. Software License Agreement (GCC Clause 16)

GCC 16.2	There are no Special Conditions of Contract applicable to GCC Clause 16.
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#### 13. Representative (GCC Clause 21)

GCC 21.1, 21.3	There are no Special Conditions of Contract applicable to GCC Clause 21.
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## Price Bid Format

Please provide the following information as part of your RFP bid (all information required herein must be provided. If the information provided is found to be incomplete, incorrect or unsatisfactory, the bid is liable to be rejected):

### Schedule of Rates and Quantities

SN	Description	Qty.	Rate per Year (Rs.)	Period (Years)	Total Amount (Excluding GST) (Rs.)
1	Providing IT Services for 50 Mbps bandwidth MPLS Connectivity with protection between Ctrl-S Data Centre, Plot No. GEN 72/1A, TTC Industrial Area, South Central Road, MIDC Industrial Area, Mahape, Thane, Navi Mumbai, Maharashtra - 400710 and DFCCIL, Corporate Office, 4 <sup>th</sup> Floor Data Centre, Pragati Maidan Metro Station Building Complex, New Delhi - 110001 for a period 05 years.	1		5	
2	One time Charges, if any.	1		-	
				<b>Total</b>	

Total Amount excluding GST (In Words) Rs. \_\_\_\_\_

\_\_\_\_\_

**Grand total Cost in words (Rs. \_\_\_\_\_) excluding GST.**