



Tender for
GIS Survey & Application
for
Aurangabad Municipal Corporation
Under the Aurangabad Smart City project executed by
Aurangabad Smart City Development Corporation Limited
Volume 2

MEMORANDUM OF AN AGREEMENT

Name of the Project :- Implementation of IMEGS - Aurangabad Municipal Corporation
eGovernance Application

Project Cost :- _____ (Including Post-warranty Annual Maintenance
Contract Charges)

Project Period :- _____ to _____

Agreement Between

1) Aurangabad Smart City Development Corporation Ltd.

2) _____ (SYSTEM INTEGRATOR)

And

3) Aurangabad Municipal Corporation (AMC), Aurangabad

AGREEMENT (hereinafter referred to as "*Agreement*") made as of the ___ day of _____ (hereinafter referred to as the "*Effective Date*") by and between

- I. Aurangabad Smart City Development Corporation Ltd. (hereinafter referred to, besides its successors and assigns, as the "*ASCDCL*") a Special Purpose Vehicle (SPV) company, incorporated under the Companies Act 2013, solely for the purpose of implementing the Smart City proposal.
 - II. _____ (hereinafter referred to, besides its successors and assigns, as "*SYSTEM INTEGRATOR*")
- And
- III. Aurangabad Municipal Corporation (hereinafter referred to, besides its successors and assigns, as the "*AMC*"), a Corporation formed under the Maharashtra Municipal Corporations Act, through its Commissioner having its office at Aurangabad.

And

(*ASCDCL*, *AMC* and *SYSTEM INTEGRATOR* each being referred to herein individually as a "*Party*" and collectively as the "*Parties*").

WHEREAS ASCDCL had issued a Request for Tenders (RFT) on <date> for the implementation of Aurangabad Municipal Corporation eGovernance Application project (hereinafter referred to as IMEGS). The RFT (including RFT clarifications) is hereby integrated by reference into this Agreement.

AND WHEREAS, *SYSTEM INTEGRATOR* is in the business of providing and implementing eGovernance solutions and whereas it has submitted its techno-commercial proposal on _____ in response to the RFT issued by ASCDCL and has indicated its desire to offer its services to ASCDCL & AMC.

AND WHEREAS ASCDCL & its Consultants, M/s MIPL (hereinafter referred to as the "*Project Consultants*") have evaluated all proposals received and selected the techno-commercial offer submitted by *SYSTEM INTEGRATOR* on the basis that it satisfies the requirements. The techno-commercial proposal (including clarifications if any) is hereby integrated by reference into this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties with the intent to be legally bound, hereby agree as follows:

1. This Agreement consists of the following documents deemed to form and read and construed as a part of this agreement and in case of conflict of wording, in the following order of priority
 - a. This Agreement and Schedules /Annexures attached hereto
 - b. Acceptance Letter issued by ASCDCL Letter No. ____ dated ____.
 - c. RFT with clarifications
 - d. The Techno Commercial proposal with clarifications
2. SYSTEM INTEGRATOR agrees to provide and implement eGovernance solutions described in Annexure A to AMC in accordance with this Agreement. Annexure A defines the scope, nature, quality, time of delivery, key personnel and the functional specifications of the eGovernance solutions in accordance with the RFT and the Technical Proposal submitted by SYSTEM INTEGRATOR ("**Scope of Work**")
3. Subject to the terms and conditions of this Agreement, ASCDCL agrees to pay to SYSTEM INTEGRATOR, the charges or consideration as stipulated in Annexure **B ("Payment terms")**
4. This Agreement shall take effect on the date of this Agreement ("the effective date") and shall expire on _____ unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully extended as agreed between the parties ("**the term**")

5. In event of any ambiguity or question of intent or interpretation arising in relation to this Agreement, this Agreement shall be construed as if jointly drafted by both the parties and no presumption or burden of proof shall arise favoring or disfavoring any party.
6. SYSTEM INTEGRATORS OBLIGATIONS:
- a. SYSTEM INTEGRATOR undertakes to act with due care, skill and diligence in the provision of the e-governance solutions and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors SYSTEM INTEGRATOR shall require its agents and Subcontractors to exercise due care, skill and diligence in the provision of the e-governance solutions and generally in the carrying out of obligations allocated by SYSTEM INTEGRATOR to its agents and Subcontractors under this Agreement.
 - b. In consideration of the payment of the Charges and subject to clause 3 SYSTEM INTEGRATOR shall
 - a. provide the the e-governance solution in accordance with the Specification/ Techno-Commercial Proposal, the RFT, AMC's & Project Consultants' directions and the terms of this Agreement;
 - b. comply with and implement any policies, guidelines and/or any project governance protocols issued by AMC or ASCDCL from time to time and notified to SYSTEM INTEGRATOR in writing
 - c. SYSTEM INTEGRATOR shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment/ labour, remuneration and taxes of all personnel retained for the purposes of complying with this Agreement.duly execute and complete the e-governance solution Project in all respects, strictly in accordance with the approved designs, drawings and work specifications under the technical control and supervision of ASCDCL/AMc & the Project Consultant and within the time limits specified therein
 - d. provide Comprehensive Annual Maintenance Contract Services for a period of 4-years starting from the date of completion of 1-year system warranty period post-completion of the project.

During this Agreement SYSTEM INTEGRATOR shall be an independent contractor and not the employee of AMC or ASCDCL. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of SYSTEM INTEGRATOR are not and shall not hold themselves out to be (and shall not be held out by SYSTEM INTEGRATOR as being) servants or agents of the AMC or ASCDCL for any purposes whatsoever.

- a. To submit the Performance Bank Guarantee amounting to Rs. _____/- (Rupees _____) from a Nationalized Bank, of an equivalent amount payable at Aurangabad, valid for the period of this contract as a Performance Security Fee.

SECTION 1

SCOPE OF WORK, PERIOD OF COMPLETION, DELIVERABLES & PAYMENT

1.1 Scope of Work

The scope of work for *SYSTEM INTEGRATOR* shall be as detailed in the Purchase Order dated. ____ issued to it by *ASCDCL* (Attached herewith as Annexure-A) & in the tender document issued by *ASCDCL* along with subsequent clarifications & modifications.

1.2 Timelines & Deliverables

The period of completion/implementation of various milestones of the project shall be as per the table provided below as per Annexure C

1.2.1 Penalty / Liquidated Damages

1. A delayed delivery/installation penalty (partial or full) of an amount equivalent to 1% of the basic PO value (excluding CAMC) per calendar week of delay or part thereof, subject to a maximum of 10% of basic PO value (excluding CAMC) shall be levied by *ASCDCL* in case of delay in project commissioning within the stipulated 180 days period, without prejudice to its other remedies under this *Agreement or as mentioned in the tender document*.
2. In case of failure on the part of *SYSTEM INTEGRATOR* to deliver the guaranteed service level performance during the warranty & the CAMC period, as stipulated in the tender document & noted hereinbelow, a penalty of Rs. 1000 per day shall be levied in case of default of any of the below mentioned parameters, to be increased by 10% for every subsequent day of failure. For network failure, the penalty shall be Rs. 1000 per day of default, to be increased by 10% for every subsequent day of failure. In case of complete system failure, the penalty shall be Rs. 10,000 per day of default, to be increased by 10% for every subsequent day of default. <SLA Parameters>
3. In case the penalty amount exceeds the amount payable to *SYSTEM INTEGRATOR* by *ASCDCL*, *ASCDCL* shall have the right to recover the same from the Performance Bank Guarantee amount.

1.3 Payments and Milestones

Subject to the provisions of this clause 3 *ASCDCL* shall pay and discharge the Charges (plus any applicable taxes), in the manner specified in the tender document. Invoicing arrangements shall be on such terms as may be agreed between the Parties. The component & service-wise break-up of the fees so payable by *ASCDCL* and the terms of payment shall be as per the milestones & deliverables provided in the tender document & the PO attached as Annexure A to this Agreement.

1.3.1 Taxes: The project value shall be inclusive of all the applicable taxes.

1.3.2 CAMC CHARGES

In addition to the project fees mentioned in Section 1.3 above, ASCDCL shall also pay the annual maintenance charges of Rs. _____ every year (inclusive of all taxes) for a period of 4-years post-warranty period of 1 year from the date of completion of the 1-year warranty period from the date of project completion. The CAMC fees shall be payable quarterly (3-month period) after successful completion of services in the respective quarter. The CAMC charges shall be comprehensive, that is, inclusive of all the material, spares, equipment, labour, services & all the applicable taxes & duties.

1.3.2 The CEO, ASCDCL shall have a right to terminate the maintenance contract & appoint a third-party maintenance agency for the remaining service period, if the services, in his opinion, are found non-satisfactory. The cost escalation, if any, arising out of any such arrangement shall be borne by SYSTEM INTEGRATOR & shall be recovered from the bank guarantee submitted by SYSTEM INTEGRATOR.

SECTION 2

INTELLECTUAL PROPERTY., CONFIDENTIALITY, EVENTS OF DEFAULT & TERMINATION

2.1 INTELLECTUAL PROPERTY RIGHTS

Intellectual Property Rights (“IPR”) means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.

Pre-existing IPR means all IPR existing prior to the date of this Agreement and all IPR in any materials, acquired or developed by or for SYSTEM INTEGRATOR or AMC independently of this Agreement, and any IPR in SYSTEM INTEGRATOR’s standard hardware and software products or modifications or updates to such products.

All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Agreement (collectively “the Materials”) (or any part or parts thereof) shall vest in AMC and SYSTEM INTEGRATOR so acknowledges and confirms. For the avoidance of doubt SYSTEM INTEGRATOR hereby assigns all Intellectual Property Rights, title and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to AMC absolutely

AMC grants to SYSTEM INTEGRATOR a royalty-free non-exclusive licence to use AMC Pre-existing IPR for the Term to the extent necessary to enable SYSTEM INTEGRATOR to fulfil its

obligations under this Agreement. Save as expressly set out in this clause 6 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.

SYSTEM INTEGRATOR shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.

Nothing in this Agreement shall prohibit or be deemed to prohibit SYSTEM INTEGRATOR from providing services similar to the Services to any party other than the Parties hereto. In no event shall SYSTEM INTEGRATOR be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Services.

SYSTEM INTEGRATOR shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that AMC shall be vested with all necessary rights so as to enable AMC to enjoy the benefit of the Services for its business purposes). SYSTEM INTEGRATOR hereby indemnifies AMC/ ASCDCL and shall keep and hold AMC/ ASCDCL harmless from and in respect of all and any losses (whether direct, indirect or consequential) liability, damages, claims, costs or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Agreement.

At the request of AMC/ ASCDCL for and in respect of any such breach, SYSTEM INTEGRATOR shall at its expense and option:

- procure the necessary rights for AMC to continue use;
- replace the relevant deliverable with a non-infringing equivalent;
- replace the relevant deliverable to make it non-infringing while giving equivalent performance; or
- if SYSTEM INTEGRATOR cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to ASCDCL Charges paid for such deliverable less a reasonable amount for ASCDCL /AMC use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, TOGETHER with all losses (whether direct, indirect or consequential) thereby accruing to AMC as a result of the breach.

Upon the termination of this Agreement for whatever reason, SYSTEM INTEGRATOR shall immediately deliver up to AMC/ ASCDCL all the Materials prepared up to the date of termination. The provisions of this clause 6 will survive the expiration or termination of this Agreement for any reason.

2.3 CONFIDENTIALITY

Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement (“Confidential Information”) and shall not disclose same to any third party except to:-

1. its professional advisers subject to the provisions of this clause 2.3; or
2. as may be required by law; or
3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 2.3; or
4. in the case of AMC/ ASCDCL by request of any person or body or authority whose request AMC or persons associated with AMC/ ASCDCL (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

SYSTEM INTEGRATOR undertakes to comply with all reasonable directions of AMC & ASCDCL with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as exhibited at _____ to the RFP (“the Confidentiality Agreement”).

The obligations in this clause 2.3 will not apply to any Confidential Information:

1. in the receiving Party’s possession (with full right to disclose) before receiving it from the other Party; or
2. which is or becomes public knowledge other than by breach of this clause; or
3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
4. is lawfully received by the disclosing Party from a third party (with full right to disclose).

SYSTEM INTEGRATOR acknowledges that the security of the State and its information is of paramount importance to AMC & ASCDCL. Accordingly, SYSTEM INTEGRATOR confirms that it will, if requested by AMC or ASCDCL, from time to time, submit full personal details (including those of Subcontractors) who are assigned to provide the Services (or any part thereof) under this Agreement. SYSTEM INTEGRATOR further acknowledges that checks may be carried out in relation to all such personnel by police authorities and SYSTEM INTEGRATOR shall comply with all reasonable directions of AMC arising therefrom.

The terms of this clause 2.3 shall survive expiry, completion or termination for whatever reason of this Agreement.

2.4 Events of Default

Events of Default shall mean either *SYSTEM INTEGRATOR* Event of Default or *ASCDCL* Event of Default or both as the context may admit or require

a. *SYSTEM INTEGRATOR* Event of Default

Any of the following events shall constitute an Event of Default by *SYSTEM INTEGRATOR* ("*SYSTEM INTEGRATOR* EVENT OF DEFAULT"):-

- ii. *SYSTEM INTEGRATOR* has failed to achieve Project Milestone and obtain Project Milestone Completion Certificate, within the time period laid down in this AGREEMENT;
- iii. *SYSTEM INTEGRATOR* has failed to comply with the Applicable Laws / Applicable Permits or any Rules and such failure has resulted in a Material Breach of the Agreement;
- iv. *SYSTEM INTEGRATOR* has failed to implement the Project in accordance with the provisions of the Agreement and such failure, in the reasonable estimation of *ASCDCL*, is likely to delay achieving Project Completion Date.
- v. *SYSTEM INTEGRATOR*'s failure to perform or discharge any of its obligations under this Agreement, which has or is likely to have a Material Adverse Effect;
- vi. *SYSTEM INTEGRATOR* is in Material Breach of any of its obligations under the Agreement and the same has not been remedied for more than 120 days;
- vii. Any representation made or warranty as given by *SYSTEM INTEGRATOR* under the Agreement is found to be false or misleading;
- viii. A resolution has been passed by the shareholders of *SYSTEM INTEGRATOR* for voluntary winding up of *SYSTEM INTEGRATOR*;
- ix. Any petition for winding up of *SYSTEM INTEGRATOR* has been admitted and liquidator or provisional liquidator has been appointed or *SYSTEM INTEGRATOR* has been ordered to be wound up by court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of *ASCDCL*, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of *SYSTEM INTEGRATOR* under this Agreement;
- x. *SYSTEM INTEGRATOR* has abandoned the Project for the consecutive period of 3 (three) months;
- xi. *SYSTEM INTEGRATOR* has unlawfully repudiated the Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- xii. *SYSTEM INTEGRATOR* has suffered an attachment levied on any of its assets, which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 120 days.
- xiii. *SYSTEM INTEGRATOR* has failed to perform the maintenance tasks reported to it for a consecutive period more than 30 days.

2.5 Termination due to Event of Default

Termination for *SYSTEM INTEGRATOR* Event of Default

- i. Without prejudice to any other right or remedy which *ASCDCL* may have in respect thereof under this Agreement, upon the occurrence of a *SYSTEM INTEGRATOR* Event of Default, *ASCDCL* shall be entitled to terminate the Agreement in the manner as set out hereinbelow:
- ii. If *ASCDCL* decides to terminate the Agreement pursuant to preceding (i), it shall in the first instance issue "Preliminary Notice to Remedy" to *SYSTEM INTEGRATOR* and within 30 (Thirty) days of receipt of the Preliminary Notice to Remedy, *SYSTEM INTEGRATOR* shall submit to *ASCDCL* in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "*SYSTEM INTEGRATOR*'s Proposal to Rectify"). In case of non-submission of the *SYSTEM INTEGRATOR*'s Proposal to Rectify within the said period of 30 (Thirty) days, *ASCDCL* shall be entitled to terminate the Agreement by issuing the Termination Notice.
- iii. If the *SYSTEM INTEGRATOR*'s Proposal to Rectify is submitted within the period stipulated therefore, *SYSTEM INTEGRATOR* shall have further period of 30 (Thirty) days ("Cure Period") to remedy / cure the underlying Event of Default. If, however *SYSTEM INTEGRATOR* fails to remedy / cure the underlying Event of Default within such further period allowed, *ASCDCL* shall be entitled to terminate the Agreement by issuing the Termination Notice.

Termination Notice

- a) If a Party having become entitled to do so decides to terminate the Agreement pursuant to the preceding Sections, it shall issue Termination Notice setting out:
 - i. in sufficient detail the underlying Event of Default;
 - ii. the Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice;
 - iii. the estimated Termination Payment including the details of computation thereof; and,
 - iv. Any other relevant information.

Obligation of Parties

- a) Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:
 - i. until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility;

- ii. The Termination Payment, if any, payable by either Party in accordance with the following sub clause (f) is paid to the Other Party on the Termination Date.

Withdrawal of Termination Notice

1. Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same. Provided that the Party in breach shall compensate the other Party for any direct costs / consequences occasioned by the Event of Default, which caused the issue of Termination Notice.

a) Termination Payments

- i. Upon Termination of the Agreement on account of *SYSTEM INTEGRATOR* Event of Default, prior to the Project Completion Date, *ASCDCL /AMC* shall retain equipment, if any, already delivered &/or installed by *SYSTEM INTEGRATOR* and forfeit the Performance Security.
- ii. Upon Termination of the Agreement on account of *SYSTEM INTEGRATOR* Event of Default, *ASCDCL* shall not make any payments to *SYSTEM INTEGRATOR*. In addition, *ASCDCL* shall also get the project completed by any other third-party contractor & shall be entitled to recover from *SYSTEM INTEGRATOR* any excess prices which may be paid by *ASCDCL*.

2.6 Rights of *ASCDCL* on Termination

Upon Termination of the Agreement for any reason whatsoever, *ASCDCL* shall upon making the Termination Payment, if any, to *SYSTEM INTEGRATOR* have the power and authority to:

- a. take possession and control of the Project Equipment.
- b. prohibit *SYSTEM INTEGRATOR* and any person claiming through or under *SYSTEM INTEGRATOR* from entering upon / dealing with the Project Facility and Project Site;
- c. Notwithstanding anything contained in this Agreement, *ASCDCL* shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re- employment on any ground, in relation to any person in the employment of or engaged by *SYSTEM INTEGRATOR* in connection with the Project.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of *SYSTEM INTEGRATOR*

SYSTEM INTEGRATOR represents and warrants to *ASCDCL* that:

- a. it is duly organized, validly existing and in good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under the Agreement and to carry out the transactions contemplated hereby;
- c. it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- d. it has the financial standing and capacity to undertake the Project;
- e. the Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. the information furnished in the bid / proposal and as updated on or before the date of the Agreement is true and accurate in all respects as on the date of this Agreement;
- g. the execution, delivery and performance of the Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of *SYSTEM INTEGRATOR*'s Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- h. It owns, has obtained or is able to obtain, valid licenses for all intellectual property rights that are necessary for the performance of its obligations under this agreement and for *ASCDCL* & *AMC* to obtain the benefit of this e-governance project.
- h. there are no actions, suits, proceedings or investigations pending or to *SYSTEM INTEGRATOR*'s knowledge threatened against it at law or in equity before any court or before any other judicial, quasijudicial or other authority, the outcome of which may constitute *SYSTEM INTEGRATOR* Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- i. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- j. it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- l. no representation or warranty by *SYSTEM INTEGRATOR* contained herein or in any other document furnished by it to *AMC* or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- m. Without prejudice to any express provision contained in this Agreement, *SYSTEM INTEGRATOR* acknowledges that prior to the execution of this Agreement, *SYSTEM INTEGRATOR* has after a complete and careful examination made an independent evaluation of the *AMC*'s premises, lands and facilities and IT infrastructure and the information provided by *AMC*, and has made appropriate inquiries so as to satisfy in relation to all matters connected with the performance of its obligations under this Agreement and also has determined to its satisfaction the nature and extent of risks

and hazards as are likely to arise or may be faced by *SYSTEM INTEGRATOR* in the course of performance of its obligations hereunder.

SYSTEM INTEGRATOR also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that *ASCDCL* shall not be liable for the same in any manner whatsoever to *SYSTEM INTEGRATOR*.

3.2 Representations and Warranties of AMC & ASCDCL

AMC & ASCDCL represents and warrants to *SYSTEM INTEGRATOR* that:

- a. *ASCDCL & AMC* have full power and authority to enter into the Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- b. The Agreement constitutes *AMC's & ASCDCL's* legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- c. It has a good and valid right over the surveillance locations and has power and authority to grant permission in respect thereto to *SYSTEM INTEGRATOR*.

3.3 Obligation to Notify Change

In the event that any of the representations or warranties made / given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

ARTICLE 4 MISCELLANEOUS

4.1 Indemnification

SYSTEM INTEGRATOR shall be liable for and shall indemnify *ASCDCL & AMC* for and in respect of all and any losses, claims, demands, damages or expenses which *ASCDCL & AMC* may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of *SYSTEM INTEGRATOR*, its employees, Subcontractors or agents or any of them or as a result of *SYSTEM INTEGRATOR's* failure to exercise skill, care and diligence as outlined hereinabove.

Neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.

4.2 Force Majeure

Neither *Party* shall be deemed in default of this *Agreement* to the extent that performance of its obligations or attempts to cure any breach are delayed, restricted or prevented by reasons of any act of God, fire, natural disasters, virus attacks on software, theft, act of government, strikes or labor disputes or any other act or condition beyond the reasonable control of the *Party* in question.

4.3 Severability

The terms and conditions of this *Agreement* are severable. If any paragraph, provision, or clause in this *Agreement* shall be found or be held to be invalid or unenforceable in any jurisdiction in which this *Agreement* is being performed, the remainder of this *Agreement* shall be valid and enforceable and the *Parties* shall use good faith to negotiate a substitute, valid and enforceable provision that most nearly effects the *Parties'* intent in entering into this *Agreement*.

4.4 Assignment and Charges

SYSTEM INTEGRATOR shall not assign in favour of any person the Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of *ASCDCL*.

4.5 Waiver

a. Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;

ii. shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and

iii. Shall not affect the validity or enforceability of the Agreement in any manner.

b. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver / breach of any terms, conditions or provisions of this Agreement.

4.6 No Partnership

Nothing contained in the Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

4.7 Language

All notices required to be given under the Agreement and all communications, documentation and proceedings which are in any way relevant to the Agreement shall be in writing and in English language.

4.8 Counterparts

The Agreement may be executed in 2 counterparts, each of which when executed and delivered shall constitute an original of the Agreement but shall together constitute one and only the Agreement.

4.9 General Liability and Indemnity

a. *SYSTEM INTEGRATOR* shall indemnify, defend and hold *ASCDCL & AMC* harmless against any and all proceedings, actions and Third Party claims arising out of a breach by *SYSTEM INTEGRATOR* and its contractors, sub-contractors, agents, employees, etc. of any of its obligations under the Agreement except to the extent that any such claim has arisen due to breach by *ASCDCL or AMC* of any of its obligations under this Agreement.

b. *ASCDCL & AMC* shall, indemnify, defend and hold harmless *SYSTEM INTEGRATOR* against any and all proceedings, actions, Third Party claims for loss, damage and expense of whatever kind and nature arising out of breach by *ASCDCL or AMC*, its officers, servants and agents of any obligations of *AMC or ASCDCL* under the Agreement except to the extent that any such claim has arisen due to breach by *SYSTEM INTEGRATOR* of any of its obligations under this Agreement.

4.10 Amendments

The Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by both the Parties hereto and evidenced in writing.

4.11 Survival

Termination of this Agreement:

a. shall not relieve *SYSTEM INTEGRATOR or ASCDCL or AMC* of any obligations already incurred hereunder which expressly or by implication survives Termination hereof; and

b. except as otherwise provided in any provision of the Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party, prior to the effectiveness of such Termination or arising out of such Termination.

4.12 Notices

Any notice/communication required or permitted to be sent shall be in writing and shall be sent in a manner requiring a signed receipt, and if mailed, then mailed by registered or certified mail, return receipt requested. Notice shall be effective upon receipt.

A. If to *ASCDCL*

The CEO, *ASCDCL*
Aurangabad

B. If to SYSTEM INTEGRATOR

C. A. If to *AMC*

The Commissioner, *AMC*
Aurangabad

4.13 Governing Law

This *Agreement* shall be governed and interpreted in accordance with Indian laws. The *Parties* agree to submit to the exclusive jurisdiction of the Aurangabad District Court under the Bombay High Court, over all disputes hereunder or related hereto.

4.14 Headings

The section headings contained in this *Agreement* are for reference purposes only and shall not in any way affect the meaning or interpretation of this *Agreement*.

4.15 Exit Management

a. Exit Management Purpose

- i. This clause sets out the provisions, which will apply on expiry and termination of the Contract, the Project implementation and operations so as to ensure continuity of operations and no disruption of services to the public.
 - ii. Upon termination of the Contract due to default or otherwise, the Parties shall agree at that time whether, and if so during what period, the provisions of this clause shall apply.
 - iii. The Parties shall ensure that they continue to co-operate with each other and carry out their respective obligations during the exit management period as set out in the Exit Management Plan formulated and updated from time to time by the Parties in consultation with each other, to facilitate and implement the seamless transition of Services from the Service Provider to either Authority or its nominated agency or new Service Provider selected and appointed by Authority.
- b. Transfer of Assets
- i. The Authority shall be entitled to serve notice in writing to the Service Provider at any time during the exit management period, requiring the Service Provider and/ or its Consortium partners to provide the Authority with a complete and up to date list of the Project Assets within 30 (Thirty) days of such notice which are to be transferred/ handed over to the Authority .
 - ii. In the event, if the Project Assets to be transferred are mortgaged to any financial institutions by the Service Provider, the Service Provider shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to the Authority
 - iii. Service Provider shall transfer all the Project Assets to the Authority on INR 1 cost claims pursuant to this article on the last day of the exit management period in good working condition to the satisfaction of Authority .
 - iv. Service Provider shall transfer the application/software, software code, databases, hardware, business data, architecture schematics, designs, storage media and other information/ documents within 30 (Thirty) days of notice period
- c. Cooperation and provision of information
- i. The Service Provider will allow the Authority or its nominated agency to access the information reasonably required to define the current mode of operation associated with the provision of the Services to enable the Authority to assess the existing Services being delivered.
 - ii. Promptly on reasonable request by the Authority, the Service Provider shall provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with this agreement relating to any material aspect of the services (whether provided by the Service Provider or Consortium Partners of the Service Provider). The Authority shall be entitled to copy of all such information. Such information shall also include details pertaining to the services rendered and other performance data.
- d. Confidential Information and Data Security

- i. The Service Provider will promptly on the commencement of the exit management period supply to the Authority or its nominated agency or any replacement Service Provider selected by it, the following:
 - Information relating to the current services rendered and customer and performance data relating to the performance of Consortium partners in relation to the services;
 - Documentation relating to Project's Intellectual Property Rights;
 - Documentation relating to vendors & original equipment manufacturer (OEM's);
 - All current and updated data as is reasonably required for purposes of the Authority or its nominated agencies transitioning the services to its Replacement Service Provider in a readily available format nominated by the Authority, its nominated or replacement Service Provider;
 - All other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable the Authority or its nominated agency, or its replacement agency to carry out due diligence in order to transition the provision of the Services to Authority or its nominated agency, or its replacement agency (as the case may be).
 - ii. Before the expiry of the exit management period, the Service Provider shall deliver to the Authority or its nominated Service Provider or replacement Service Provider, as the case may be, all new or up-dated materials from the categories set out in the above point and shall not retain any copies thereof, except that the Service Provider shall be permitted to retain one copy of such materials for archival purposes only.
 - iii. Before the expiry of the exit management period, unless otherwise provided under the contract, the Authority or its nominated Service Provider or replacement Service Provider shall deliver to the Service Provider all forms of Service Provider's confidential information, which is in the possession or control of Authority or its users.
- e. Employees
- i. Promptly on reasonable request at any time during the exit management period, the Service Provider shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the Authority or its nominated agency or replacement implementing agency, a list of all employees (with job titles) of the outgoing Service Provider dedicated to providing the services at the commencement of the exit management period.
 - ii. The Service Provider shall ensure that its employees and personnel continue to render Services during the exit management period. The Authority or its nominated agency in consultation with the Service Provider may retain those employees or may direct the Service Provider to remove their employees after either the Authority or its nominated Service Provider or replacement Service Provider has arranged for its replacement and the new replacing employee/personnel has successfully taken over the operations/ functions being carried out by the out-going employee of the Service Provider.

f. Transfer of Certain Agreements

On request by the Authority or its nominated agency, the Service Provider shall effect such assignments, transfers, licences and sub-licences as the Authority may require in favour of the Authority or its nominated agency or replacement Service Provider, in relation to any equipment lease, maintenance or service provision agreement between Service Provider and third party lessors, vendors, and which are related to the services and reasonably necessary for the carrying out of replacement services by the Authority or its nominated agency or replacement Service Provider.

4.16 Arbitration

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the Mumbai Centre for International Arbitration ("MCIA Rules"), which rules are deemed to be incorporated by reference in this clause.

1. The seat of the arbitration shall be Aurangabad.
2. The Tribunal shall consist of three arbitrators.
3. The language of the arbitration shall be English.
4. The law governing this arbitration agreement shall be Arbitration and Conciliation Act, 1996.
5. The law governing the contract shall be laws in force in India.

4.17 General

- i. This *Agreement* constitutes the entire *Agreement* between *SYSTEM INTEGRATOR*, *ASCDCL* and *AMC* relating to the subject matter hereof. This *Agreement* shall only be amended by a writing signed by all the *Parties*.
- ii. The terms and conditions and details forming the part of tender document, along with the clarifications & modifications shall be treated as forming part of the *Agreement*.
- iii. In the event of there being any disputes or differences pertaining to the compliance of obligations, the same shall be brought to the notice of the CEO, *ASCDCL* and decisions of the CEO, *ASCDCL* shall be conclusive and binding upon the *Parties*. This shall also be a binding pre-arbitration condition for the *Parties*.
- IV. *SYSTEM INTEGRATOR* shall not be entitled for any claim/demand in any nature whatsoever otherwise than agreed under the tender document and mentioned hereinabove.
- v. The *Parties* have agreed to make part of the *Agreement* the 1) Tender Document along with subsequent clarifications & modifications (Attached herewith as an Exhibit

A to this Agreement) 2) Minutes of the Negotiations Meeting held on _____. The Parties further agree that the terms contained in the tender document, along with subsequent clarifications & modifications, shall be binding on both the parties, unless the same has been modified by mutual consent.

IN WITNESS WHEREOF, the *Parties* have executed and delivered this *Agreement* as of the date first above written-

(Signatures of the Parties & Witnesses)
