

**NATIONAL INSTITUTE FOR SMART GOVERNMENT ON BEHALF OF
THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

Ministry of Digital Economy

**BIDDING DOCUMENT – Draft contract
Volume 03 of 03**

Two Stage Bidding Procedure

FOR THE

**APPOINTMENT OF A MASTER SYSTEM INTEGRATOR (MSI) FOR
DEVELOPMENT, IMPLEMENTATION AND MAINTENANCE OF THE “UNIQUE
DIGITAL IDENTITY (SL-UDI) PROJECT” OF GOVERNMENT OF SRI LANKA**

INVITATION FOR BIDS No: NISG/SLUDI-2025

**June 2025
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SECTION VII – General Conditions Of Contract (GCC)

A. CONTRACT AND INTERPRETATION

1 Definitions

The following words and expressions shall have the meanings hereby assigned to them:

- 1.1 **“Adjudicator”** means the person named in Appendix 2 (Adjudicator) of the Contract or otherwise appointed by agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference between the Employer and the Contractor referred to him or her by the parties, pursuant to GCC Clause 51 (Disputes and Arbitration).
- 1.2 **“Agreed and Finalized Project Plan”** means the project plan that has been approved by the Employer in accordance with GCC Clause 19 (Project Planning and Performance) and is included at Appendix 8 of the Contract.
- 1.3 **“Arbitration”** means a process in which parties to a dispute agree to have a neutral person or panel reach a binding decision that settles their dispute based on previously agreed-upon norms and rules. It will be as per UNCITRAL Model Law on International Commercial Arbitration
- 1.4 **“Bidding Documents”** refers to the collection of documents issued by the Employer to instruct and inform potential Contractors of the processes for bidding, selection of the winning bid, and Contract information, as well as the contractual conditions governing the relationship between the Employer and the Contractor.
- 1.5 **“Government of Sri Lanka (GoSL)”** means the government of the Employer’s Country.
- 1.6 **“Commissioning”** means operation of the IT Products and/or Services or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided in GCC Sub- Clause 27.1 (Commissioning) hereof, for the purpose of carrying out Operational Acceptance Test(s).
- 1.7 **“Completion”** means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally, that all work in respect of Pre-commissioning and Installation of the Facilities or such specific part thereof has been completed, that all Documentation has been supplied, and that the Facilities or specific part thereof are ready for Commissioning as provided in GCC Clause 26 (Completion) hereof.
- 1.8 **“Contract”** means the contract entered into between the Employer and the Contractor and constituted by the Contract Documents.
- 1.9 **“Contract Documents”** means the documents listed in Article 1.0 (Contract Documents) of the Contract (including any amendments thereto).
- 1.10 **“Contract Period”** is the time period during which this Contract governs the relations and obligations

of the Employer and Contractor in relation to the IT Products and/or Services, as specified in the PC.

- 1.11 **“Contract Price”** means the sum specified in Article 2.1 (Contract Price) of the Contract, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.
- 1.12 **“Contractor”** also referred to herein as Master System Integrator (MSI) means the party named as the Contractor in the Contract and includes the legal successors or permitted assigns of the Contractor.
- 1.13 **“Contractor’s Country”** is the country in which the Contractor is legally organized, as named in the Contract.
- 1.14 **“Contractor’s Equipment”** means all equipment, tools, apparatus, or things of every kind required in or for installation, completion and maintenance of the System that are to be provided by the Contractor, but excluding the IT Products and/or Services, or other items forming part of the System.
- 1.15 **“Contractor’s Representative”** means any person nominated by the Contractor and approved by the Employer in the manner provided in GCC Clause 18 (Representatives) hereof to perform the duties delegated to the Contractor.
- 1.16 **“Coverage Period”** means the Days of the Week and the hours of those Days during which maintenance, operational and/or technical support services (if any) must be available.
- 1.17 **“Custom Documentation”** means Documentation identified as such in Appendix 5 of the Contract and such other Documentation as the parties may agree in writing to be Custom Documentation.
- 1.18 **“Custom Software”** means Software identified as such in Appendix 4 of the Contract and such other Software as the parties may agree in writing to be Custom Software.
- 1.19 **“Day”** means calendar day.
- 1.20 **“Defect”** means an imperfection or flaw that impairs worth or utility of the Product.
- 1.21 **“Defect Liability Period”** means the period of validity of the warranties given by the Contractor commencing at Commissioning of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 29 (Defect Liability) hereof.
- 1.22 **“Delivery”** means the transfer of the Products from the Contractor to the Employer in accordance with the current edition Incoterms specified in the Contract.
- 1.23 **“Designated Operating Environment”** means the particular hardware and software environment in which the Software is designed to be used, which environment is specified in the SOR.
- 1.24 **“Documentation”** means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Employer under the Contract. See also Standard Documentation and Custom Documentation.

- 1.25 **“Effective Date”** means the date of signing of contract having all conditions precedent (specified in Article 3 (Effective Date) of the Contract Form) fulfilled
- 1.26 **“Employer”** means the person named as such in the PC and includes the legal successors or permitted assigns of the Employer.
- 1.27 **“Employer’s Country”** means the country named in the PC.
- 1.28 **“Facilities”** means the Products to be supplied and installed, as well as all Installation Services to be carried out by the Contractor under the Contract.
- 1.29 **“Functional Guarantees”** means the guarantees specified in the Appendix to the Contract titled Functional Guarantees.
- 1.30 **“GC”** means the General Conditions.
- 1.31 **“General-Purpose Software”** means Software that supports general- purpose office and software development activities and is identified as such in Appendix 4 of the Contract and such other Software. Such General-Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software.
- 1.32 **“Hardware”** means all equipment, furnishings, and other tangible items outlined in the SOR that the Contractor is required to supply or to supply and install under the Contract, including, without limitation, the Products and/or Services and documentation, but excluding the Contractor’s Equipment.
- 1.33 **“Implementation Schedule”** means the Implementation Schedule as specified in the Agreed and Finalized Project Plan.
- 1.34 **“Installation”** means the preparation and placement of the System for use.
- 1.35 **“Installation Services”** means all Services required to achieve Installation.
- 1.36 **“Intellectual Property Rights”** means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extract or re- utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter into computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so.
- 1.37 **“Month”** means calendar month.
- 1.38 **“Operational Stabilization Period”** means the period of 90 days available to the MSI post Go live by the Employer of the Facilities, which certifies the Contractor’s fulfillment of the Contract in respect

of Functional Guarantees of the Facilities and shall include waiver of service levels

- 1.39 **“Origin”** means the place where the Products were produced or from which the Services are supplied. Products are produced when, through manufacturing, processing, software development, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components. The Origin of Products and Services is distinct from the nationality of the Contractor and may be different.
- 1.40 **“Packaged Software”** means the software Product, the subject of the License, specified in the SOR including any updates or new releases, modifications, enhancements, Documentation, flow charts, logic diagrams and listings.
- 1.41 **“Party”** means the Employer or the Contractor, as the context requires, and Parties” means both of them.
- 1.42 **“PC”** means the Particular Conditions.
- 1.43 **“Pre-commissioning”** means the testing, checking and other requirements specified in the Schedule of Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GC Clause 8 (Time for Commencement and Completion) hereof.
- 1.44 **“Preventive Maintenance”** means the care and servicing by personnel for the purpose of maintaining Hardware in satisfactory operating condition by providing for systematic inspection, detection, and correction of incipient failures either before they occur or before they develop into major defects. Preventive Maintenance is usually cost as a fixed fee over the maintenance period.
- 1.45 **“Post-Warranty Services Period”** means the number of years defined in the PC (if any), following the expiration of the Warranty Period during which the Contractor is obligated to provide Software licenses, maintenance, and/or technical support services for the System, either under this Contract or under separate contract(s).
- 1.46 **“Product”** means a product deliverable specified in the Schedule of Requirements which is to be supplied to the Employer by or on behalf of the Contractor, including but not limited to all information processing and communications-related Hardware, Software, consumable items, plans and/or any supporting documentation, and including such integrations and configurations as are required to perform its function.
- 1.47 **“Project Manager”** means the person appointed by the Employer in the manner provided in GCC Clause 18.1 (Representatives) hereof and named as such in the PC to perform the duties delegated by the Employer.
- 1.48 **“Project Plan”** means the set of tasks required to achieve Completion, Operational Acceptance and Commissioning, as described in the Agreed and Finalized Project Plan.
- 1.49 **“Project Site(s)”** means the place(s) specified in the PC for delivery of the IT Products and/or

Services.

- 1.50 **“Rental Items”** means the Hardware rented or leased by the Employer from the Contractor under a lease agreement for a rental fee.
- 1.51 **“Schedule of Requirements”**, hereinafter also referred to as “SOR” means the Schedule of Requirements Section of the Bidding Documents Volume 2 as amended and appended to the Contract as Appendix 14, including to the extent relevant, but not limited to, the following:
- Background and Procurement Objectives,
 - Scope of works, including Technical Requirements,
 - Agreed and Finalized Project Plan,
 - Implementation Schedule,
 - Service Level Agreement.
- 1.52 **“Services”** means all technical, logistical, management, consultancy and any other Services as specified in the Schedule of Requirements to be provided by the Contractor under the Contract to supply, install, customize, integrate, and make operational the Products provided. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, Installation, integration, training, data migration, Pre-commissioning, Commissioning, maintenance, and technical support.
- 1.53 **“Site”** means the place(s) specified in the PC for Installation and Commissioning of the IT Products and/or Services.
- 1.54 **“Software”** means the items to be supplied under this Contract as specified at Appendix 4 to this Contract.
- 1.55 **“Software Support Services”** means the Services specified in the SOR to be provided by the Contractor to the Employer in respect of the Packaged Software.
- 1.56 **“Source Code”** means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software).
- 1.57 **“Standard Documentation”** means all Documentation not specified as Custom Documentation.
- 1.58 **“Standard Software”** means Software identified as such in Appendix 4 of the Contract and such other Software as the parties may agree in writing to be Standard Software.
- 1.59 **“Sub-Contractor”** means any third-party provider with whom the Contractor contracts for the supply or execution of any part of the Products and/or Services to be provided by under the Contract and includes its legal successors or permitted assigns.

1.60 **“System” or “Sub-system”** means a combination of Products which are integrated so as to operate together.

1.61 This clause has been omitted

1.62 **“Training Schedule”** means the Program of training including dates and training topics to be provided by the Contractor to the Employer’s personnel.

Third Party Softwares: Third party software refers to applications or tools developed by a company or individual other than the MSI or GOSL and its subsidiaries.

1.63 **“Warranty Period”** means the period defined in the SOR by which the Contractor warrants its Products will remain defect-free, and any remediation of any defect that arises in this period will be the responsibility of the Contractor and costs of such remediation will be borne by the Contractor.

1.64 **“Week”** means seven (7) consecutive Days, beginning the day of the week as is customary in the Employer’s Country.

1.65 **“Year”** means 365 days.

1.66 **“Live Run”** hereinafter also referred to as **“Go-Live”** is the time at which Iteration 1 (described in Schedule of Requirements “SOR” – Appendix 14) is made fully operational by the Contractor for its intended purpose, including sign-off of User Acceptance Tests “UAT”

2 Contract Documents

2.1 Subject to Article 2.2 (Order of Precedence) of the Contract, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

2.2 In the event and to the extent of any inconsistency between two or more documents that form part of this Contract, those documents will be interpreted in the following order of precedence:

- a) RFP including Addenda/corrigendum/clarifications issued
- b) Appendix 15 (Minutes of Contract Finalization Discussions and Contract Amendments mutually agreed to in writing) attached to the Contract,
- c) the Contract and Appendices 1 to 7 and 9 to 14 attached to the Contract,
- d) the PC and its Appendices,
- e) all GCs (including documents incorporated by reference in these terms and conditions),
- f) Appendix 8 (Agreed and Finalized Project Plan) attached to the Contract,
- g) the Contractor’s bid and original Price Schedules, and

- h) the remaining appendixes to these GCs (including documents incorporated by reference in any Appendix).

3 Interpretation

3.1 In the Contract, except where the context requires otherwise:

- a) words indicating one gender include all genders,
- b) words indicating the singular also include the plural and words indicating the plural also include the singular,
- c) provisions including the word —agree, —agreed, —agreement require the agreement to be recorded in writing,
- d) —written or —in writing means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
- e) references to a ‘company’ shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- f) references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- g) references to a ‘person’ shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- h) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- i) any reference to a ‘day’ (including within the phrase ‘business day’) shall mean a period of 24 hours running from midnight to midnight;
- j) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- k) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- l) Master System Integrator (MSI) or Implementation Agency (IA) or contractor has been used interchangeably for the same entity i.e. bidder selected for the project

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

3.2 Incoterms

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of Parties there-under shall be as prescribed by Incoterms.

Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

3.3 Entire Agreement

Subject to GCC Sub-Clause 17.6 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of Parties with respect thereto made prior to the date of Contract.

3.4 Amendment

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

3.5 Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Sub-Contractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Sub-Contractors and the Employer.

3.6 Non-Waiver

3.6.1 Subject to GCC Sub-Clause 3.6.2 below, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.6.2 Any waiver of a Party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

3.7 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other

provisions and conditions of the Contract.

4 Communications

- 4.1 Wherever these General Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:
- a) in writing and delivered against receipt; and
 - b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract.
- 4.2 When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be.
- 4.3 Communications shall be deemed to include any approvals, consents, instructions, orders, and certificates to be given under the Contract.

5 Law and Language

- 5.1 The Contract shall be governed by and interpreted in accordance with laws of the country specified in the PC.
- 5.2 The ruling language of the Contract shall be that stated in the PC.
- 5.3 The language for communications shall be the ruling language unless otherwise stated in the PC.

6 Corrupt Practices

- 6.1 It is the policy of the GoSL that the officials of the procuring entity, as well as bidders, Contractors and contractors under GoSL financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, GoSL:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) —corrupt practice means the offering, giving receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any party in the procurement process or the execution of a contract,
 - (ii) —fraudulent practice means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract,
 - (iii) —collusive practices means a scheme or arrangement between two or more bidders, with or without the knowledge of the employer, designed to influence the action of any

party in a procurement process or the execution of a contract

- (iv) —coercive practices means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract,
- (b) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in GoSL-financed activities if it at any determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, a GoSL- financed contract; and
- (c) will have the right to require Contractors and contractors to permit GoSL or its representative to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by GoSL.

B. SUBJECT MATTER OF CONTRACT

7 Scope of Facilities

7.1 Unless otherwise expressly limited in the SOR, the Contractor shall:

- 7.1.1 provide the Products and Services as specified in the SOR,
- 7.1.2 be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually Agreed and Finalized Project Plan pursuant to GCC Clause 19 (Project Planning and Performance) within the time schedule specified in the Implementation Schedule. Failure to provide such resources, information, and decision making may constitute grounds for termination pursuant to GCC Clause 47 (Termination for Contractor's Default),
- 7.1.3 provide all Documentation and Products as well as the performance of all Products and Services, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the SOR and/or the Agreed and Finalized Project Plan,
- 7.1.4 unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Products and Services as if such work and/or items and materials were expressly mentioned in the Contract, and
- 7.1.5 provide Products and Services as implied by the Recurrent Cost Form of the Contractor's bid, such as consumables, spare parts, and technical services (e.g., maintenance, technical assistance, and operational support), such as are specified in the SOR, including the relevant terms, characteristics, and timings.

8 Time for Commencement and Completion:

- 8.1 The Contractor shall commence work on the Facilities within the period specified in the PC and without prejudice to GCC Sub-Clause 26.2 (Completion) hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Implementation Schedule and any refinements made in the Agreed and Finalized Project Plan.
- 8.2 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time stated in the PC or within such extended time to which the Contractor shall be entitled under GCC Clause 43 (Extension of Time for completion hereof).

9 Contractor's Responsibilities

- 9.1 The Contractor shall conduct all activities with due care and diligence, in accordance with the Contract and with the skill and care expected of a competent provider of IT Products and/or Services, information systems, support, maintenance, training, and other related services, or in accordance with best industry practices. When completed, the IT Products and/or Services should be fit for the purposes for which they are intended as defined in the Contract.
- 9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the Employer's existing equipment, installations and including reviewing any hardware, software and data interfaces as provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.
- 9.3 The Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Sub-Contractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GCC Clause 10 hereof and that are necessary for the performance of the Contract.
- 9.4 The Contractor shall comply with all laws in force in the country where the IT Products and/or Services are to be installed. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Sub-Contractors and their personnel, but without prejudice to GCC Clause 10 (Employer's Responsibilities) hereof. The employer shall keep the contractor informed about all such laws and amendments to it.
- 9.5 Any IT Products and/or Services that will be incorporated in or be required for the Facilities and other supplies shall have as their origin an Eligible Country. Any Sub-Contractors retained by the Contractor shall have as their origin an Eligible Country
- 9.6 If the Contractor is a joint venture or consortium of two or more parties, all such parties shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract and shall designate one of such parties to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Employer.
- 9.7 The Contractor shall, in all dealings with its labor and the labor of its Sub-Contractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs, and all local laws and regulations pertaining to the

employment of labor.

9.8 Other Contractor responsibilities, if any, are as stated in the SOR.

10 Employer's Responsibilities:

- 10.1 The Employer shall ensure the accuracy of all information and/or data to be supplied by the Employer to the Contractor, except when otherwise expressly stated in the Contract.
- 10.2 The Employer shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed and Finalized Project Plan (pursuant to GC Sub-Clause 19.2 (Project Planning and Performance) within the time schedule specified in the Implementation Plan in the SOR. Failure to provide such resources, information, and decision making may constitute grounds for termination pursuant to GCC Clause 48 (Termination by Contractor).
- 10.3 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access to it, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract.
- 10.4 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in the SOR.
- 10.5 If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor 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 Contractor or Sub-Contractors or the personnel of the Contractor or Sub-Contractors, as the case may be, to obtain.
- 10.6 In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Contractor, as specified in the SOR, PC, Agreed and Finalized Project Plan, or other parts of the Contract, the Employer shall use its best endeavors to assist the Contractor in obtaining such services in a timely and expeditious manner.
- 10.7 The Employer shall be responsible for timely provision of all resources, access, and information necessary for the provision of the IT Products and/or Services (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 Contractor. Delay by the Employer may result in an appropriate extension of the Time for Operational Acceptance, at the Contractor's discretion.

- 10.8 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and technical personnel as required by the Contractor to properly carry out the provision of the IT Products and/or Services at or before the time specified in the Implementation Schedule and the Agreed and Finalized Project Plan.
- 10.9 The Employer will designate appropriate staff for the training courses to be given by the Contractor and shall make all appropriate logistical arrangements for such training as specified in the SOR, PC, the Agreed and Finalized Project Plan, or other parts of the Contract.
- 10.10 This clause has been omitted
- 10.11 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of the User Acceptance Test(s).
- 10.12 In the event that the Employer shall be in breach of any of its obligations under this Clause, the additional cost incurred by the Contractor in consequence thereof shall be determined by the Project Manager and added to the Contract Price.
- 10.13 Other Employer responsibilities, if any, are as stated in the SOR.

C. PAYMENT

11 Contract Price

- 11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract.
- 11.2 Unless an adjustment clause is provided for in the PC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the SOR or as otherwise provided in the Contract.
- 11.3 Subject to GC Sub-Clauses 9.2, 10.1 and 39 (Unforeseen Conditions) hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

12 Terms of Payment

- 12.1 The Contractor's request for payment shall be made to the Employer in writing, accompanied by
- 12.1.1 an invoice describing, as appropriate,
- (i) the IT Products and/or Services provided,
 - (ii) when the IT Products and/or Services were supplied and (if applicable) accepted,
 - (iii) the amount payable in respect of each item, and

- 12.1.2 documents submitted pursuant to GCC Sub-Clause 22.5 (Transport and Delivery) and upon fulfillment of other obligations stipulated in the Contract.
- 12.2 The Contract Price shall be paid as specified in Appendix 7 (Terms and Procedures of Payment) to the Contract.
- 12.3 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the IT Products and/or Services or any part(s) thereof.
- 12.4 Payments shall be made promptly by the Employer, but in no case later than forty-five (45) days after submission of a valid invoice by the Contractor. In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) specified in Appendix 7 (Terms and Procedures of Payment) to the Contract for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.
- 12.5 All payments shall be made in the currency (ies) specified in the Contract, pursuant to GCC Clause 11 For IT Products and/or Services supplied locally, payments shall be made in the currency as specified in the PC.
- 12.6 Unless otherwise specified in Appendix 7 (Terms and Procedures of Payment), to the Contract, payment of the foreign currency portion of the Contract Price for Products supplied from outside the Employer's Country shall be made to the Contractor through the irrevocable letter of credit opened by an authorized bank in the Contractor's Country and will be payable on presentation of the appropriate documents. It is agreed that the letter of credit will be subject to Article 10 of the latest revision of Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce, Paris

13 Securities

13.1 Issuance of Securities

The Contractor shall provide the securities specified below in favor of the employer at the times, and in the amount, manner and form specified below.

13.2 Advance Payment Security

- (a) If specified in the PC, the Contractor shall, within twenty- eight (28) days of the notification of Contract award, provide a security equal in the amount and currency to the advance payment, and valid until the IT Products and/or Services achieve go live.
- (b) The security shall be a bank guarantee from a scheduled bank in India in the form provided in Section IX (Contract Forms) or it shall be in another form acceptable to the Employer.
- (c) The performance security shall automatically become null and void once all the obligations of the Contractor 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 remain valid upto a period of 180 days from the expiry of the contract and shall be returned to

the Contractor no later than twenty-eight (28) days after the expiry of the validity period of the performance security.

- (d) The Employer shall not make a claim under the performance security, except for amounts to which the Employer is entitled under the Contract. The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the performance security to the extent to which the Employer was not entitled to make the claim.

14 Taxes and Duties

- 14.1 For IT Products and/or Services supplied from outside the Employer's country, the Contractor shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies, payable in the Employer's country. Any duties, such as importation or customs duties, and taxes and other levies, payable in the Employer's country for the supply of Products and Services from outside the Employer's country are the responsibility of the Employer unless these duties or taxes have been made part of the Contract Price in Article 2 of the Contract and the Price Schedule to which it refers, in which case the duties and taxes will be the Contractor's responsibility.
- 14.2 For IT Products and/or Services supplied locally, the Contractor shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Products or Services to the Employer. The only exceptions are taxes or duties, such as value-added or sales tax or stamp duty as apply to, or are clearly identifiable, on the invoices and provided they apply in the Employer's country, and only if these taxes, levies and/or duties are also excluded from the Contract Price in Article 2 of the Contract and the Price Schedule to which it refers.
- 14.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.
- 14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in the country where the Site is located (hereinafter called Tax) in this GCC Sub-Clause 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Sub-Contractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from, as the case may be, in accordance with GCC Clause 40 (Change in Laws and Regulations) hereof.

D. INTELLECTUAL PROPERTY

15 Intellectual Property and Copyright

15.1 Products and fixes:

All products and related solutions and fixes provided pursuant to this Agreement shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product, the ownership of which shall continue to vest with the product owner. Implementation Agency would be responsible for arranging any licenses associated with products. "Product" means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to Employer for license which is published by product owner or its affiliates, or a third party. "Fixes" means product fixes that are either released generally (such as commercial product service packs) or that are provided to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing. All the Intellectual Property Rights (IPR) in the third party software used in providing services including those forming part of or incorporated into the deliverables shall remain with the respective third party owners/ Contractor's licensor and Employer shall have user rights in accordance with end user license agreement (EULA) as applicable to use of such software

15.2 Bespoke development:

Subject to the provisions of Clause 15.3 and 15.4 below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie exclusively with the Employer.

15.3 Pre-existing work:

All IPR including the source code and materials developed or otherwise obtained independently of the efforts of a Party under this Agreement ("pre-existing work") including any enhancement or modification thereto shall remain the sole property of that Party. During the performance of the services for this agreement, each party grants to the other party (and their sub-contractors as necessary) a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the Implementation Agency should grant Employer a non exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to Employer as part of the service or deliverables only for its internal business operations. Under such license, either of parties will have no right to sell the pre-existing work of the other party to a Third Party. The foregoing license does not authorizes Employer to (a) separate Contractor pre-existing IP from the deliverable/software in which they are incorporated for creating a stand alone product for marketing to others; (b) independently sell, lease, exchange, mortgage, pledge, license, sub license, assign or in any other way convey, transfer or alienate the Employer pre-existing IP in favour of any person (either for commercial consideration or not (including by way of transmission), and/or (c) except as specifically and to the extent permitted by the Employer in the relevant Statement of Work, reverse compile or in any other way arrive at or attempt to arrive at the source code of the Contractor pre-existing

IP. Purchaser's license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that bidder leaves with Purchaser at the conclusion of performance of the services.

15.4 Residuals:

In no event shall Implementation Agency be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables, set out in this Agreement or Annexure. In addition, subject to the confidentiality obligations, Implementation Agency shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services.

16 Software Services and License Agreements

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

Such license to access and use the Software shall:

- (a) be:
 - (i) nonexclusive,
 - (ii) fully paid up and irrevocable (except that it shall terminate if the Contract terminates under PC Clause 46),
 - (iii) valid throughout the territory of the Employer's Country (or such other territory as specified in the PC), and
 - (iv) subject to additional restrictions (if any) as specified in the PC,
- (b) permit the Software to be used as per End User License Agreement (EULA)

- 16.2 The Standard Software may be subject to audit by the Contractor, in accordance with the terms specified in the PC, to verify compliance with the above license agreements.

- 16.3 The Employer will require the Contractor to meet the mandatory requirements for Licensing Agreements as specified in the SOR.

17 Confidential Information

- 17.1 The Employer (the "Disclosing Party") and the Contractor (the "Receiving Party") shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third Party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract ("Confidential Information"), whether such information has been furnished prior to, during or following termination of the Contract.

- 17.2 For the purposes of GCC Sub-Clause 17.1, the Contractor is also deemed to be the Receiving Party of Confidential Information generated by the Contractor itself in the course of the performance of its obligations under the Contract and relating to the businesses, finances, contractors, employees, or other contracts of the Employer or the Employer's use of the IT Products and/or Services.

17.3 Notwithstanding GCC Sub-Clauses 17.1 and 17.2:

- (a) the Contractor may furnish to its Sub-Contractor Confidential Information of the Employer to the extent reasonably required for the Sub-Contractor to perform its work under the Contract; and
- (b) the Employer may furnish Confidential Information of the Contractor: (i) to support service contractors and their sub- contractors to the extent reasonably required for them to perform their work under their support service contracts; and (ii) to its affiliates and subsidiaries, in which event the Receiving Party shall ensure that the person to whom it furnishes Confidential Information of the Disclosing Party is aware of and abides by the Receiving Party's obligations under this GCC Clause 17 as if that person were party to the Contract in place of the Receiving Party.

17.4 The Employer shall not, without the Contractor's prior written consent, use any Confidential Information received from the Contractor for any purpose other than the operation, maintenance and further development of the IT Products and/or Services. Similarly, the Contractor shall not, without the Employer's prior written consent, use any Confidential Information received from the Employer for any purpose other than those that are required for the performance of the Contract.

17.5 The obligation of a party under GCC Sub-Clauses 17.1 through 17.4 above, however, shall not apply to that information which:

- (a) now or hereafter enters the public domain through no fault of the Receiving Party,
- (b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party,
- (c) otherwise, lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality.
- (d) is independently developed by the Receiving Party without the use of Confidential Information and without the participation of individuals who have had access to confidential information.
- (e) (e) is required to be provided under any law, or process of law duly executed.

The obligations of the party/parties herein shall be governed by IP Act (2003) of Sri Lanka and all applicable laws of Sri Lanka.

17.6 The above provisions of this GCC Clause 17 shall not in any way modify any undertaking of confidentiality given by either of the parties to this Contract prior to the date of the Contract in respect of the System or any part thereof.

17.7 The provisions of this GCC Clause 17 shall be for the term of the resultant contract and shall survive the termination, of the Contract for three (3) Years thereafter.

E. EXECUTION OF THE FACILITIES

18 Representatives

18.1 Project Manager

- 18.1.1 If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Contractor without delay.
- 18.1.2 No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.
- 18.1.3 All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided.

18.2 Contractor's Representative

- 18.2.1 If the Contractor's Representative is not named in Appendix 1 (Contractor's Representative) of the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. The request must be accompanied by a detailed curriculum vitae for the nominee, as well as description of any other responsibilities the nominee would retain while performing the duties of the Contractor's Representative. If the Employer does not object to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefore, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, in accordance with this GCC Sub-Clause 18.2.1.
- 18.2.2 Subject to the extensions and/or limitations specified in the SOR (if any), the Contractor's Representative shall have the authority to represent the Contractor on all day-to-day matters relating to the System or arising from the Contract. The Contractor's Representative shall give to the Project Manager all the Contractor's notices, instructions, information, and all other communications under the Contract.
- 18.2.3 All notices, instructions, information and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as otherwise provided for in this Contract.

- 18.2.4 The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents to such an action, the
- 18.2.5 Contractor shall appoint another person of equal or superior qualifications as the Contractor's Representative, pursuant to the procedure set out in GCC Sub- Clause 18.2.1.
- 18.2.6 The Contractor's Representative and staff are obliged to work closely with the Project Manager and staff, act within their own authority, and abide by directives issued by the Employer that are consistent with the terms of the Contract. The Contractor's Representative is responsible for managing the activities of its personnel and any subcontracted personnel.
- 18.2.7 The Contractor's Representative may, subject to the approval of the Employer (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 Contractor'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 a copy thereof has been delivered to the Employer and the Project Manager.
- 18.2.8 Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 18.2.4 shall be deemed to be an act or exercise by the Contractor's Representative.

18.3 Objections and Removals

- 18.3.1 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may have behaved inappropriately, be incompetent, or be negligent. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from work on the System.
- 18.3.2 If any representative or person employed by the Contractor is removed in accordance with GCC Sub- Clause 18.3.1 above, the Contractor shall, where required, promptly appoint a replacement.

19 Project Planning and Performance

- 19.1 If specified in the SOR, the Contractor shall develop, in close cooperation with the Employer, and based on the Preliminary Project Plan included in the Contractor's bid, an Agreed and Finalized Project Plan encompassing the activities specified in the SOR.
- 19.2 The Agreed and Finalized Project Plan will be prepared by the Contractor and approved by the Employer in accordance with the procedure specified in the SOR.
- 19.3 If required, the impact on the Implementation Schedule of modifications agreed during

finalization of the Agreed and Finalized Project Plan shall be incorporated in the Contract by amendment, in accordance with GCC Clause 43 (Extension Time for Completion).

- 19.4 The Contractor shall undertake to supply, install, test, and commission the IT Products and/or Services in accordance with the SOR and Agreed and Finalized Project Plan.
- 19.5 The progress report and other reports specified in the SOR shall be prepared by the Contractor and submitted to the Employer in the format and frequency specified in the SOR.
- 19.6 If at any time the Contractor's actual progress falls behind the project schedule described in the Agreed and Finalized Project Plan, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised project schedule, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Sub-Clause 8.2, any extension thereof entitled under GCC Sub-Clause 43.1 (Extension of Time for Completion), or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

20 Sub-Contracting

- 20.1 Appendix 3 (List of Approved Sub-Contractors) to the Contract specifies critical items of supply or services and a list of Sub- Contractors for each item that are considered acceptable by the Employer. If no Sub-Contractors are listed for an item, the Contractor shall prepare a list of Sub Contractors it considers qualified and wishes to be added to the list for such items, with the approval of the Employer.
- 20.2 The Contractor may from time to time propose additions to or deletions from any such list, only with the written concurrence of the Employer. Provided that the Contractor shall take steps to ensure and satisfy the Employer that a Sub-Contractor sought to be replaced would meet the same or equivalent expertise & experience of the Sub-Contractor being replaced. The Contractor shall submit any such list or any modification to the list to the Employer for its approval in sufficient time so as not to impede the progress of work on the System. The Employer shall not withhold such approval unreasonably, unless the Employer is not satisfied with the Sub-contractor. Such approval by the Employer of a Sub-Contractor(s) shall not relieve the Contractor from any of its obligations, duties, or responsibilities under the Contract. The Contractor shall not engage any Sub Contractor to which the Employer has objected in writing.
- 20.3 The Contractor may, at its discretion, select and employ Sub- Contractors for such critical items from those Sub Contractors listed pursuant to GCC Sub-Clause 20.1. If the Contractor wishes to employ a Sub-Contractor not so listed, or subcontract an item not so listed, it must seek the Employer's prior approval under GCC Sub-Clause 20.4.
- 20.4 For items for which pre-approved Sub-Contractor lists have not been specified in Appendix 3 to the Contract, the Contractor may employ such Sub-Contractors as it may select, provided: (i) the Contractor notifies the Employer in writing at least twenty-eight (28) days prior to the proposed mobilization date for such Sub-Contractor, and (ii) by the end of this period either the Employer has granted its approval in writing or fails to respond. Except to the extent that it permits, the deemed approval of the Employer of Sub-Contractors not listed in the Contract, nothing in this Clause, however, shall limit the rights and obligations of either the Employer or Contractor as

they are specified in GCC Sub-Clauses 20.1, 20.2 and 20.2 or in Appendix 3 of the Contract.

- 20.5 Each sub-contract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GCC Sub-Clause 20.6 (if and when applicable), or in event of termination by the Employer under GCC Clause 46.
- 20.6 If a Sub-Contractor's obligations extend beyond the expiry date of the relevant Defect Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.

21 Design and Engineering

21.1 Technical Specifications and Drawings

- 21.1.1 The Contractor shall execute the basic and detailed design and the implementation activities necessary for successful provision of the IT Products and/or Services in compliance with the provisions of the Contract or, where not so specified, in accordance with good industry practice.

The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification of such design, drawings, specification, or other documents provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

- 21.1.2 The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.

21.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified in the SOR. During Contract execution, any changes in such codes and standards shall be applied after approval by the Employer and shall be treated in accordance with GCC Sub-Clause 42.3 (Changes Originating From Contractor).

21.3 Approval/Review of Technical Documents by Project Manager

- 21.3.1 The Contractor shall prepare or cause its Sub-Contractors to prepare and furnish to the Project Manager the documents listed in the Appendix to the Contract titled List of Documents for Approval or Review, for its approval or review as specified and in accordance with the requirements of GCC Sub-Clause 19.1.
- 21.3.2 Any part of the IT Products and/or Services covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

- 21.3.3 GCC Sub-Clause 21.5 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.
- 21.4 Any part of the IT Products and/or Services covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval of these documents.
- 21.5 GCC Sub-Clauses 21.3.2 through 21.3.3 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.
- 21.5.1 Within twenty one (21) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GC Sub-Clause 21.4, the Project Manager shall either return one copy of the document to the Contractor with its approval endorsed on the document or shall notify the Contractor in writing of its disapproval of the document and the reasons for disapproval and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the fourteen (14) days, then the document shall be deemed to have been approved by the Project Manager.
- 21.5.2 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice.
- 21.5.3 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GC Sub-Clause 21.4. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), and the document shall be deemed to have been approved.
- 21.5.4 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and / or any modification(s) to a document that cannot be settled between the Parties within a reasonable period, then, in case the Contract includes and names an Adjudicator, such dispute may be referred to the Adjudicator for determination in accordance GCC 51 (Disputes and Arbitration). If such dispute is referred to an Adjudicator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Adjudicator upholds the Contractor's view on the dispute and if the Employer has not given notice under GC Clause 51, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Operational Acceptance shall be extended accordingly.
- 21.5.5 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information

furnished in writing to the Contractor by or on behalf of the Employer.

- 21.5.6 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval of the document, pursuant to the provisions of this GCC Sub-Clause 21.5. If the Project Manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GC Clause 42 (Change in the Facility) shall apply to such a request.

22 Transport and Delivery

- 22.1 Subject to GCC Clauses 9 and 14, the Contractor shall manufacture or procure and transport all IT Products and/or Services in an expeditious and orderly manner to the Project Site.

- 22.2 Delivery of the IT Products and/or Services shall be made by the Contractor in accordance with the SOR.

- 22.3 Partial deliveries require the explicit written consent of the Employer, which consent shall not be unreasonably withheld.

22.4 Transportation

- 22.4.1 The Contractor shall provide such packing of the IT Products and/or Services as is required to prevent their damage or deterioration during shipment. The packing, marking, and documentation within and outside the packages shall comply strictly with the Employer's instructions to the Contractor.

- 22.4.2 The Contractor shall bear responsibility for and cost of transport to the Project Sites in accordance with the terms and conditions used in the specification of prices in Appendix 6 (Revised Price Schedules) to the Contract, including the terms and conditions of the associated Incoterms.

- 22.4.3 Unless otherwise specified in the PC, the Contractor shall be free to use transportation through carriers registered in any Eligible Country and to obtain insurance from any Eligible Country.

- 22.4.4 Unless otherwise specified in the PC, the Contractor shall provide the Employer with shipping and other documents, as specified below:

For Products supplied from outside the Employer's Country:

- (i) Upon shipment, the Contractor shall notify the Employer, and the insurance company contracted by the Contractor to provide cargo insurance by cable, facsimile, electronic mail, or Electronic Data Interchange (EDI) with the full details of the shipment. The Contractor shall promptly send the following documents to the Employer by facsimile and email and hard copies Air mail and/or courier, as appropriate, with a copy to the cargo insurance company:

- a. two copies of the Contractor's invoice showing the description of the Products, quantity, unit price, and total amount,

- b. usual transportation documents,
- c. insurance certificate,
- d. certificate(s) of origin, and
- e. estimated time and point of arrival in the Employer's Country and at the Project Sites.

For Products supplied locally (i.e. from within the Employer's Country):

(ii) Upon shipment, the Contractor shall notify the Employer by cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Contractor shall promptly send the following documents to the Employer by mail or courier, as appropriate:

- a. two copies of the Contractor's invoice showing the
 - i. Products' description, quantity, unit price, and total amount,
- b. delivery note, railway receipt, or truck receipt,
- c. certificate of insurance,
- d. certificate(s) of origin, and
- e. estimated time of arrival at the Project Sites

22.5 Customs clearance

22.5.1 The Employer shall bear responsibility for, and cost of, customs clearance into the Employer's Country in accordance with the Incoterm(s) used for Products supplied from outside the Employer's Country in the Price Schedules referred to by Article 2 of the Contract.

22.5.2 At the request of the Employer, the Contractor shall make available a representative or agent during the process of customs clearance in the Employer's Country for Products supplied from outside the Employer's Country. In the event of delays in customs clearance that are not the fault of the Contractor:

22.5.3 the Contractor shall be entitled to an extension in the Time for Achieving Operational Acceptance, pursuant to GCC Clause 43 (Extension of Time for Completion),

22.5.4 the Contract Price shall be adjusted to compensate the Contractor for any additional storage charges that the Contractor may incur because of the delay.

23 Product Upgrades

23.1 At any point during performance of the Contract, should technological advances be introduced by the Contractor for the IT Products and/or Services originally offered by the Contractor in its bid and still to be delivered, the Contractor shall be obligated to offer to the Employer the latest versions of the available information technologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GCC Clause 42

(Change in the Facility).

23.2 At any point during performance of the Contract, for IT Products and/or Services still to be delivered, the Contractor will also pass on to the Employer any cost reductions and additional and/or improved support and facilities that it offers to other clients of the Contractor in the Employer's Country, pursuant to GCC Clause 42.

23.3 During performance of the Contract, the Contractor shall offer to the Employer all new versions, releases, and updates of Standard Software, as well as related documentation and technical support services, within thirty (30) days of their availability from the Contractor to other clients of the Contractor in the Employer's Country, and no later than twelve (12) months after they are released in the country of origin. In no case will the prices for this Software exceed those quoted by the Contractor in the Recurrent Costs tables in its bid.

23.4 During the Warranty Period, unless otherwise specified in the PC, the Contractor will provide at no additional cost to the Employer all releases, and updates for all Standard Software that are used in with the IT Products and/or Services, within thirty (30) days of their availability from the Contractor to other clients of the Contractor in the Employer's country, and no later than twelve (12) months after they are released in the Country of Origin of the Software.

23.5 The Employer shall introduce all new versions, releases or updates of the Software within eighteen (18) months of receipt of a production-ready copy of the new version, release, or update, provided that the new version, release, or update does not adversely affect System operation or performance or require extensive reworking of the System. In cases where the new version, release, or update adversely affects System operation or performance, or requires extensive reworking of the System, the Contractor shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the Contractor stop supporting or maintaining a version or release of the Software less than twenty-four (24) months after the Employer receives a production-ready copy of a subsequent version, release, or update. The Employer shall use all reasonable endeavors to implement any new version, release, or update as soon as practicable, subject to the twenty-four-month-long stop date.

24 IT Products and/or Services

24.1 Prices charged by the Contractor for IT Products and/or Services, that are not included in the Contract, shall be agreed upon in advance by the parties (including, but not restricted to, any prices submitted by the Contractor in the Recurrent Cost Schedules of its Bid) and shall not exceed the prevailing rates charged by the Contractor to other Employers in the Employer's Country for similar IT Products and/or Services.

25 Inspection and Testing

25.1 The Employer or its representative shall have the right to inspect and/or test any components of the IT Products and/or Services, as specified in the SOR, or specify such tests to be executed by the Contractor, to confirm their good working order and/or conformity to the Contract at the point of delivery and/or at the Project Site.

- 25.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 25.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.
- 25.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.
- 25.5 If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons and may provide the Project Manager with a certified report of the results thereof.
- 25.6 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the time for Completion and the other obligations so affected.
- 25.7 If any component of the IT Products and/or Services fails to pass any test and/or inspection, the Contractor shall either rectify or replace such component and shall repeat the test and/or inspection upon giving a notice under GCC Sub-clause 25.3.
- 25.8 If any dispute shall arise between the parties in connection with or caused by an inspection and/or about any component to be incorporated in the IT
- 25.9 Products and/or Services that cannot be settled amicably between the parties within a reasonable period, either party may invoke the process pursuant to GCC Clause 51 (Disputes and Arbitration), starting with referral of the matter to the Adjudicator in case an Adjudicator is included and named in the Contract.

26 Completion

- 26.1 As soon as the IT Products and Installation Services have, in the opinion of the Contractor, been delivered, Pre commissioned and made ready for Commissioning and User Acceptance Testing in accordance with the Schedule of Requirements, and the Agreed and Finalized Project Plan, the Contractor shall notify the Employer in writing.
- 26.2 The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 26.1, either issue an Installation Certificate in the form specified in the Contract Forms Section in the Bidding Documents, stating that the Installation of the IT Products has been achieved by the date of the Contractor's notice under GCC Clause 26.1, or

notify the Contractor in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components making up the IT Products and Installation Services. The Contractor shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies that have been notified to the Contractor by the Project Manager. The Contractor shall then promptly carry out retesting of the IT Products and Installation Services and, when in the Contractor's opinion they are ready for Commissioning and Operational Acceptance Testing, notifying the Employer in writing, in accordance with GCC Sub-Clause 26.1. The procedure set out in this Sub Clause GCC 26.2 shall be repeated, as necessary, until the Installation Certificate is issued.

26.3 If the Project Manager fails to issue the Installation Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 26.1, or if the Employer puts the IT Products and Installation Services into production operation, then the IT Products and Installation Services shall be deemed to have achieved successful Installation as of the date of the Contractor's notice or repeated notice, or when the Employer put the IT Products and Installation Services into production operation, as the case may be.

27 Commissioning and Operational Stabilization Period (OSP)

27.1 Commissioning

27.1.1 Commissioning of the IT Products and/or Services shall be commenced by the Contractor:

- a) immediately after issue of the Installation Certificate by the Project Manager, pursuant to GCC Sub- Clause 26.2, or
- b) as otherwise specified in the Technical Requirements (specified in the SOR) or the Agreed and Finalized Project Plan; or
- c) immediately after Installation occurred, under GCC Sub-Clause 26.3.

27.1.2 The Employer shall supply the operating and technical personnel, and all materials and information reasonably required to enable the Contractor to carry out its obligations with respect to Commissioning.

27.2 Operational Stabilization Period

27.2.1 Operational Stabilization shall occur in respect of the IT Products and Installation Services when:

- a) The User Acceptance Tests, specified in the SOR and/or Agreed and Finalized Project Plan have been successfully completed; or
- b) the Employer has put the System into production or use for Ninety (90) consecutive days. If the System is put into production or use in this manner, the Contractor shall notify the Employer and document such use.
- c) Unless otherwise specified in the PC, liquidated damages payable shall apply

only after the Operational Stabilization period of 90 days.

27.2.2 At any time after any of the events set out in GC Sub- Clause 27.2.1 above have occurred, the Contractor shall give a notice to the Project Manager of SL-UDI requesting the Operationalization of Service levels.

27.2.3 After consultation with the Employer, and within fourteen (14) days after receipt of the Contractor's notice, the Project Manager shall:

- a) issue confirmation on application of Service levels.

F. GUARANTEES AND LIABILITIES

28 Completion Time Guarantee

28.1 The Contractor guarantees that it shall complete the supply, Installation, Commissioning, and achieve User Acceptance and Operational Stabilization of the IT Products and/or Services within the time periods specified in the Implementation Schedule and/or Agreed and Finalized Project Plan pursuant to GCC Clause 19, or within such extended time to which the Contractor shall be entitled under GCC Clause 43 (Extension of Time for Completion).

29 Defect Liability

29.1 The Contractor warrants that for the period specified in the SOR, all Products, including Documentation, and/or Services (to the extent relevant) to be delivered under this contract:

- (a) Shall be free from defects in the design, engineering, and workmanship,
- (b) are newly manufactured, unused, and incorporate all recent material improvements in design; and
- (c) complies with or exceeds the Technical Specifications in the SOR.

29.2 Exceptions and/or limitations, if any, to this warranty with respect to Software (or categories of Software), shall be as specified in the PC. Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.

29.3 In addition, the Contractor warrants that:

- (a) all Products components to be incorporated into the System form part of the Contractor's and/or Sub- Contractor's current product lines,
- (b) they have been previously released to the market, and
- (c) those specific items identified in the PC (if any) have been in the market for at least the minimum periods specified in the PC.

29.4 The Warranty Period shall commence from the date of Go-Live.

29.5 If during the Warranty Period any defect as described in GCC Sub- Clause 29.1 should be

found in the design, engineering, Documentation, and workmanship of the Products and/or Services provided by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Products and/or Services caused by such defect. Any defective Products and/or Services that have been replaced by the Contractor shall remain the property of the Contractor.

29.6 The Contractor shall not be responsible for the repair, replacement, or making good of any defect, or of any damage to the Products and/or Services arising out of or resulting from any of the following causes:

- (a) improper operation or maintenance of the Product and/or Service by the Employer,
- (b) normal wear and tear,
- (c) use of the IT Products and/or Services with items not supplied by the Contractor, unless otherwise identified in the Schedule of Requirements, or approved by the Contractor; or
- (d) modifications made to the Products and/or Services by the Employer, or a third party, not approved by the Contractor.

29.7 The Contractor's obligations under this GC Clause 29 shall not apply to:

- (a) any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or
- (b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility in writing and has been accepted by the Employer.

29.8 The Employer shall give the Contractor a notice promptly following the discovery of such a defect, stating the nature of any such defect together with all available evidence.

29.9 The Contractor may, with the consent of the Employer, remove from the Site any IT Products and/or Services that are defective, if the nature of the defect, and/or any damage to the IT Products and/or Services caused by the defect, is such that repairs cannot be expeditiously carried out at the Site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the IT Products and/or Services, the Employer may give the Contractor notice requiring that tests of the defective part be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

29.10 If such a part fails the tests, the Contractor shall carry out further repair, replacement, or making good (as the case may be) until that part of the IT Product and/or Service passes such tests. The tests shall be agreed upon by the Employer and the Contractor.

29.11 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the IT Product and/or Service caused by such defect within the time period specified in the PC, the Employer may, following notice to the Contractor, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the

Employer in connection with such work shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the performance security (refer GCC Sub-Clause 13.3 (Performance Security)).

- 29.12 If the IT Products and/or Services cannot be used by reason of such defect and/or making good of such defect, the Warranty Period for the IT Products and/or Services shall be extended by a period equal to the period during which the IT Products and/or Service could not be used by the Employer because of such defect and/or making good of such defect.
- 29.13 Items substituted for defective parts of the IT Product and/or Service during the Warranty Period shall be covered by the Defect Liability Period for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater. < Proc to Check?>
- 29.14 At the request of the Employer and without prejudice to any other rights and remedies that the Employer may have against the Contractor under the Contract, the Contractor will offer all possible assistance to the Employer to seek warranty services or remedial action from any subcontracted third-party producers or licensor of IT Products and/or Services including without limitation assignment or transfer in favour of the Employer of the benefit of any warranties given by such producers or licensors to the Contractor.

30 Functional Guarantees

- 30.1 The Contractor guarantees that during the Operational Stabilization Period, the IT Products and/or Services and all parts thereof shall attain the Functional Guarantees, subject to and upon the conditions therein specified.
- 30.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the IT Products and/or Services or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to extend the Operational Stabilization Period (for not more than 15 days) until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GCC Clause 47 (Termination for Contractor's Default).
- 30.3 If, for reasons solely attributable to the Contractor, the Functional Guarantees are not attained either in whole or in part, but the minimum level of the Functional Guarantees is met, the Contractor shall, at the Contractor's option, either,
- (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the User Acceptance Test; or
 - (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees.

31 Intellectual Property Rights Warranty

31.1 The Contractor hereby represents and warrants that:

- (a) the IT Products and/or Services as supplied, installed, tested and accepted,
- (b) use of the IT Products and/or Services in accordance with the Contract, and
- (c) copying of open source Software and Documentation provided to the Employer in accordance with the Contract do not and will not infringe any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Employer to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Contractor shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for development of the IT Products and/or Services. The terms of usage of the COTS software licenses shall be governed by End User License Agreement (EULA).

32 Intellectual Property Rights Indemnity

32.1 The Contractor shall indemnify, defend and hold harmless the Employer and its employees and officers from and against any and all reasonable losses, liabilities, and costs actually awarded by a competent court (including losses, liabilities, and costs incurred in defending a claim alleging such a liability), that the Employer or its employees or officers may suffer as a result of any third party claim of infringement or alleged infringement of any Intellectual Property Rights claims.

32.2 Such indemnity shall not cover any use of the IT Products and/or Services, including the Documentation, other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the IT Products and/or Services, or any secondary IT Products and/or Services that result thereby in association or combination with any IT Products and/or Services not supplied by the Contractor, where the infringement arises because of such association or combination and not because of use of the IT Products and/or Services in its own right.

32.3 Such indemnities shall also not apply if there is any claim or infringement:

- (a) is asserted by a parent, subsidiary, or affiliate of the Employer's organization,
- (b) is a direct result of a design mandated by the Employer's SOR and the possibility of such infringement was noted in the Contractor's bid, or
- (c) results from the alteration of the IT Products and/or Services, including the Documentation, by the Employer or any person other than the Contractor or a person authorized by the Contractor.
- (d) Employer's specifications
- (e) Third party software, where the contractor's use of such software has been in accordance with relevant licensing terms.

32.4 If a claim of infringement (attributed to the entire scope of work of MSI) of Intellectual Property Rights is made or threatened by a third party, the Employer will allow the Contractor,

at the Contractor's expense, to

either:

- (a) obtain for the Employer the right to continued use of the IT Products and/or Services, or
- (b) replace or modify the IT Products and/or Services so that the alleged infringement ceases so long as the IT Products and/or Services continue to provide the Customer with equivalent functionality and performance as required in the SOR.
- (c) If such measures do not achieve the desired result and if the infringement is established by a final decision of the courts or a judicial or extrajudicial settlement, CONTRACTOR shall refund EMPLOYER the fees effectively paid for that deliverable by EMPLOYER subject to depreciation for the period of use, on a straight line depreciation over a 5 year period basis. The foregoing provides for the entire liability of CONTRACTOR and the exclusive remedy of EMPLOYER in matters related to infringement of third party intellectual property rights

32.5 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Sub-Contractors from and against any and all losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Contractor or its employees, officers, or Sub-Contractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data drawing, specification, or other documents or materials provided to the Contractor in connection with this Contract by the Employer or any persons (other than the Contractor) contracted by the Employer, except to the extent that such losses, liabilities, and costs arise as a result of the Contractor's breach of GCC Sub-Clause 32.8.

32.6 Such indemnity shall not cover any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract, or any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other IT Products and/or Services not provided by the Employer or any other person contracted by the Employer, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.

32.7 Such indemnities shall also not apply:

- (a) if any claim of infringement is asserted by a parent, subsidiary, or affiliate of the Contractor's organization,
- (b) to the extent that any claim of infringement caused by the alteration, by the Contractor, or any persons contracted by the Contractor, of the design, data, drawing, specification, or other documents or materials provided to the Contractor by the Employer, or any persons contracted by the Employer.
- (c) inclusion in a deliverable of any content or other materials provided by EMPLOYER and the infringement relates to or arises from such EMPLOYER materials or provided material;
- (d) modification of a deliverable after delivery by CONTRACTOR to EMPLOYER if such

modification was not made by or on behalf of CONTRACTOR

- (e) operation or use of some or all of the deliverable in combination with products, information, specification, instructions, data, materials not provided by CONTRACTOR; or
- (f) use of the deliverables for any purposes for which the same have not been designed or developed or other than in accordance with any applicable specifications or documentation provided under the applicable statement of work by CONTRACTOR; or
- (g) use of a superseded release of some or all of the deliverables or Employer's failure to use any modification of the deliverable furnished under this Agreement including, but not limited to, corrections, fixes, or enhancements made available by CONTRACTOR.

32.8 If any proceedings are brought or any claim is made against the Contractor arising out of the matters referred to in GCC Sub-Clause 32.5, the Contractor shall promptly give the Employer notice of such proceedings or claims

33 Limitation of Liability

33.1 Except in cases of criminal negligence or willful misconduct, and Third party Intellectual Property Rights Indemnity claims pursuant to Clause 32:

- 33.1.1 neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any special, indirect, punitive, exemplary or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, and
- 33.1.2 the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total contract value, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Employer with respect to Third party claims to patent infringement.
- 33.1.3 Limitation of liability shall be capped at the contract value.
- 33.1.4 Contractor shall be excused and not be liable or responsible for any delay or failure to perform the services or failure of the services or a deliverable under this Agreement, to the extent that such delay or failure has arisen as a result of any delay or failure by the Employer or its employees or agents or third party service providers to perform any of its duties and obligations as set out in this Agreement. In the event that Contractor is delayed or prevented from performing its obligations due to such failure or delay on the part of or on behalf of the Employer, then Contractor shall be allowed an additional period of time to perform its obligations and unless otherwise agreed the additional period shall be equal to the amount of time for which Contractor is delayed or prevented from performing its obligations due to such failure or delay on the part of or on behalf of the Employer. Such failures or delays shall be brought to the notice of the Employer and subject to mutual agreement with the Employer, then Contractor shall take such actions as may be necessary to correct or remedy the failures or delays.

34 Criminal Charges and Convictions

34.1 The Contractor warrants that it has disclosed and will continue to disclose during the term of this Contract full details of all criminal convictions and all pending criminal charges against it or any of its personnel, associates or Sub- Contractors that would reasonably be expected to adversely affect the Contractor or the Contractor's capacity to fulfill its obligations under this Contract. The Contractor is not required to provide information to the Contractor in a form or in a manner which would cause the Contractor to breach the privacy of the individual, but the Contractor will take all reasonable steps to either:

- (a) provide sufficient information to enable the Employer to assess the level of any risk or conflict posed to it by the existence of such conviction or pending charge, or
- (b) take such steps as necessary to ensure that the person who is the subject of the conviction or pending charge ceases to be directly or indirectly involved with this Contract.

G. RISK DISTRIBUTION

35 Transfer of Ownership

35.1 With the exception of any Software and Documentation, the ownership of the IT Products and/or Services shall be transferred to the Employer at the time of Delivery or otherwise under terms that may be agreed upon and specified in the Contract.

35.2 Ownership and the terms of usage of any Software and Documentation supplied under the Contract shall be governed by GCC Clause 15 (Intellectual Property and Copyright), and any elaboration in the SOR.

35.3 Ownership of the Contractor's Equipment used by the Contractor and its Sub-Contractors in connection with the Contract shall remain with the Contractor or its Sub-Contractors.

36 Care of IT Products and/or Services

36.1 The Contractor shall be responsible for the care and custody of the IT Products and/or Services or any part thereof until the date of Completion of the IT Products and/or Services pursuant to GCC Clause 26 (Completion) or, where the Contract provides for Completion of the IT Products and/or Services in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the IT Products and/or Services or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the IT Products and/or Services caused by the Contractor or its Sub-Contractors in the course of any work carried out, pursuant to GCC Clause 29 (Defect Liability). Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the IT Products and/or Services or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clauses 36.2

36.2 If any loss or damage occurs to the IT Products and / or Services or any part thereof or to the Contractor's temporary IT Products and/or Services by reason of

- (a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 38 (Insurance) hereof; or
- (b) any use or occupation by the Employer or any third Party other than a Sub-Contractor, authorized by the Employer of any part of the IT Products and/or Services; or
- (c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,

The Employer shall pay to the Contractor all sums payable in respect of the IT Products and/or Services executed, notwithstanding that the same be lost, destroyed or damaged, and will

pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the IT Products and/or Services thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 42 (Change in the Facilities). If the Employer does not request the Contractor in writing to make good any loss or damage to the IT Products and/or Services thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 42, excluding the performance of that part of the IT Products and/or Services thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the IT Products and/or Services, the Employer shall terminate the Contract pursuant to GCC Sub-Clause 46.1 hereof.

36.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the IT Products and/or Services, except

- (a) as mentioned in GCC Sub-Clause 36.2 with respect to the Contractor's temporary IT Products and/or Services, and

36.4 where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 36.2 (b) and (c) With respect to any loss or damage caused to the IT Products and/or Services or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GCC Sub-Clause 42.1, the provisions of GCC Sub Clause 41.3 shall apply.

37 Loss of or Damage to Property, Accident or Injury to Workers, Indemnification

37.1 The Contractor and each and every Sub-Contractor shall abide by the applicable job safety, insurance, customs, and immigration measures prevalent and laws in force in the Employer's Country.

37.2 Subject to GCC Sub-Clause 37.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all reasonable suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the IT Products and/or Services whether accepted or not, arising in connection with the supply and installation of the IT Products and/or Services and by reason of the negligence/wilful default of the Contractor or its Sub-Contractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents

37.3 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC Sub- Clause 37.2, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any

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

- 37.4 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Sub-Contractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Contractor or its employees, officers, or Sub-Contractors may suffer as a result of the death or personal injury of any person or loss of or damage to property of the Employer,.
- 37.5 If any proceedings are brought or any claim is made against the Contractor that might subject the Employer to liability under GCC Sub- Clause 37.4, the Contractor shall promptly give the Employer notice of such proceedings or claims, and the Employer may at its own expense and in the Contractor's name conduct such proceedings or claim and any negotiations for the settlement of any such proceeding or claim. If the Employer fails to notify the Contractor within twenty- eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Contractor shall be free to conduct the same on its own behalf. Unless the Employer has so failed to notify the Contractor within twenty-eight (28) days, the Contractor shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Contractor shall, at the Employer's request, afford all available assistance to the Employer in conducting such proceedings or claim and shall be reimbursed by the Employer for all reasonable expense incurred in so doing.

38 Insurance

- 38.1 To the extent specified in the Appendix to the Contract titled Insurance Requirements, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(a) Third Party Liability Insurance

Covering bodily injury or death suffered by third Parties including the Employer's personnel, and loss of or damage to property occurring in connection with the supply and installation of the IT Products and/or Services.

(b) Worker's compensation

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(c) Employer's liability

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed

- 38.2 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix to the Contract titled Insurance Requirements, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's

Sub- Contractors shall be named as co-insured under all such policies. All insurers' rights of subrogation against such co- insured for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurance is in full force and effect. The policies shall provide that not less than twenty- one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so, requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC Sub-Clause 38.5.

39 Unforeseen Conditions

39.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract by an experienced contractor on the basis of reasonable examination of the data relating to the IT Products and/or Services and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the IT Products and/or Services, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Contractor's Equipment, notify the Project Manager in writing of:

- (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen,
- (b) the additional work required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions,
- (c) the extent of the anticipated delay, and
- (d) the additional cost and expense that the Contractor is likely to incur.

39.2 On receiving any notice from the Contractor under this GCC Sub- Clause 39.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstruction encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

39.3 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Sub- Clause 39.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.

39.4 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 39.1, the Time for Completion shall be extended in accordance with GCC Clause 43 (Extension of Time for Completion).

40 Change in Laws and Regulations

40.1 If, after the date twenty-eight (28) days prior to the date of bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligation under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the PC pursuant to GCC Sub- Clause 11.2.

41 Force Majeure

41.1 Force Majeure shall mean any event beyond the reasonable control of the Employer or of the Contractor as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, the following:

- (a) war, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war.
- (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts.
- (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of 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.
- (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute,
- (e) shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague.
- (f) earthquake, landslides, 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
- (g) shortage of labor, materials or utilities were caused by circumstances that are themselves Force Majeure.

41.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

41.3 The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 8.

41.4 The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or

their obligations under the Contract, but without prejudice to either Party's right to terminate the Contract under GCC Clauses 44 (Suspension), 45 (Termination for Employer's Convenience), 46 (Termination for Contractor's Default), and 47 (Termination by Contractor).

41.5 No delay or nonperformance by either Party hereto caused by the occurrence of any event of Force Majeure shall:

- (a) constitute a default or breach of the Contract, or
- (b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GCC Sub-Clauses 36.2 (Care of IT Products and/or Services), if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

41.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other, but without prejudice to either Party's right to terminate the Contract. However the contractor shall be entitled to receive payment for all the services rendered by it under the contract till the time of termination under this clause.

41.7 In the event of termination pursuant to GCC Sub-Clause 41.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC Sub-Clauses 46.2 and 46.3.

41.8 Notwithstanding GCC Sub-Clause 41.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

H. CHANGE IN CONTRACT ELEMENTS

42 Change in the Facilities

42.1 Introducing a Change

42.1.1 Either Party may seek to vary any obligation of the Contract by making application to the other Party. No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party to the Contract.

42.1.2 Subject to GCC Sub-Clauses 42.2.5 and 42.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the SOR (interchangeably called —Change), provided that such Change falls within the general scope of the SOR and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the work against the Agreed and Finalized Project Plan and the technical compatibility of the Change envisaged with the nature

of the SOR as originally specified in the Contract. A Change may involve, but is not restricted to, the substitution of updated IT Products and/or Services and related Services in accordance with GCC Clause 23 (Product Upgrades).

- 42.1.3 The Contractor may from time to time during its performance of the Contract propose to the Employer (with a copy to the Project Manager), any Change that the Contractor considers necessary or desirable to improve the quality or efficiency. The Employer may at its discretion approve or reject any Change proposed by the Contractor.
- 42.1.4 Notwithstanding GCC Sub-Clauses 42.1.2, and 42.1.3, no change made necessary because of any default of the Contractor 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 Operational Stabilization Period.
- 42.1.5 The procedure on how to proceed with and execute Changes is specified in GC Sub-Clauses 42.2 and 42.3 (Changes Originating from Employer and Contractor) and further details and forms are provided in the Sample Forms Section in the Bidding Documents.
- 42.1.6 Moreover, the Employer and Contractor will agree, during development of the Agreed and Finalized Project Plan, to a date prior to the scheduled date for the Operational Stabilization Period after which the SOR shall be frozen. Any Change initiated after this time will be dealt with after Operational Stabilization Period.

42.2 Changes Originating from Employer

- 42.2.1 If the Employer proposes a Change pursuant to GC Sub-Clause 42.1.2, it shall send to the Contractor a —Request for Change Proposal, requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a —Change Proposal, which shall include the following:
 - a) brief description of the Change,
 - b) impact on the Time for Operational Stabilization,
 - c) detailed estimated cost of the Change,
 - d) effect on Functional Guarantees (if any),
 - e) effect on any other provisions of the Contract
- 42.2.2 Prior to preparing and submitting the —Change Proposal, the Contractor shall submit to the Project Manager a —Change Estimate Proposal, which shall be an estimate of the cost of preparing and submitting the Change Proposal, plus a first approximation of the suggested approach and cost for implementing the changes. Upon receipt of the Contractor's Change Estimate Proposal, the Employer shall do one of the following:
 - a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal,
 - b) advise the Contractor of any part of its Change Estimate Proposal that is unacceptable and request the Contractor to review its estimate,

- c) advise the Contractor that the Employer does not intend to proceed with the Change.
- 42.2.3 Upon receipt of the Employer's instruction to proceed under GC Sub-Clause 42.2.2(a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GC Sub-Clause 42.2.1. The Contractor, at its discretion, may specify a validity period for the Change Proposal, after which if the Employer and Contractor have not reached agreement in accordance with GC Sub-Clause 42.2.6, then GC Sub-Clause 42.2.7 shall apply.
- 42.2.4 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.
- 42.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance with the Request for Change Proposal and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract by more than the percentage stated in the ITB Clause 42, the Contractor may give a written notice of objection to this Request for Change Proposal prior to furnishing the Change Proposal. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing of its acceptance.
- 42.2.6 The Contractor's failure to object to a Request for Change Proposal shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, 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 Contractor represents.
- 42.2.7 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters contained in the Change Proposal. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor a Change Order. If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.
- 42.2.8 If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor 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 Contractor in its Change Estimate Proposal submitted in accordance with GCC Sub-Clause 42.2.2.
- 42.2.9 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Operational Stabilization Period, 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 51 (Disputes and Arbitration).

42.3 Changes Originating from Contractor

42.3.1 If the Contractor proposes a Change pursuant to GCC Sub-Clause 42.1.3, the Contractor 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 Sub-Clause 42.1.3. Upon receipt of the Application for Change Proposal, the Parties shall follow the procedures outlined in GCC Clauses 42.2.6 and 42.2.7 except that the words —Change Proposal shall be read, for the purposes of this GCC Sub- Clause 42.3 as —Application for Change Proposal. However, should the Employer choose not to proceed or the Employer and the Contractor cannot come to agreement on the change during any validity period that the Contractor may specify in its Application for Change Proposal, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal, unless subject to an agreement between the Employer and the Contractor to the contrary.

43 Extension of Time for Completion

43.1 The Time(s) for Completion specified in the PC pursuant to GCC Sub- Clause 8.2 shall be extended if the Contractor 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 SOR as provided in GCC Clause 42,
- b) any occurrence of Force Majeure as provided in GCC Clause 41, unforeseen conditions as provided in GCC Clause 39, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b), and (c) of GCC Sub-Clause 36.2,
- c) any suspension order given by the Employer under GCC Clause 44 hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 45.2, or
- d) any changes in laws and regulations as provided in GCC Clause 40, or
- e) any default or breach of the Contract by the Employer, or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer, or
- f) any delay on the part of a sub-contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause, or
- g) delays attributable to the Employer or caused by customs, or
- h) 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 Contractor.

43.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time

extension, the Contractor shall be entitled to refer the matter to an Arbitrator, pursuant to GCC Sub-Clause 51.1.

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

43.4 In all cases where the Contractor has given notice of a claim for an extension of time under GCC 43.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall, thereafter, comply with all reasonable instructions which the Project Manager shall give to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 43.1, the amount of such extra costs shall be added to the Contract Price.

44 Suspension

44.1 The Employer may request the Project Manager, by notice to the Contractor, to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons, therefore. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.

44.2 If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 42 (Change in the Facilities), excluding the performance of the suspended obligations from the Contract.

44.3 If,

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such a sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or
- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 10.2 (Employer's Responsibilities), or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract or reduce the rate of progress.

44.4 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GC Clause 44, then the Time for Completion shall be extended in accordance with GC Sub- Clause 43.1 (Extension of Time for Completion), and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

44.5 During the period of suspension, the Contractor shall not remove from the Site any IT Products and/or Services or part thereof, or any Contractor's Equipment, without the prior written consent of the Employer.

45 Termination for Employer's Convenience

45.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a prior notice of termination of 90 days that refers to this GCC Clause 45.

45.2 Upon receipt of the notice of termination under GC Sub- Clause 45.1, the Contractor shall either as soon as practical or upon the date specified in the notice of termination:

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the SOR already executed, or any work required to leave the Site in a clean and safe condition,
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to GCC Sub-Clause 45.2(d)(ii) below,
- (c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Sub-Contractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and
- (d) subject to the payment specified in GC Sub-Clause 45.3, shall:
 - (i) deliver to the Employer the parts of the SOR executed by the Contractor up to the date of termination,
 - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the IT Products and/or Services, as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Sub-Contractors, and
 - (iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Sub-Contractors as of the date of termination in connection with the IT Products and/or Services.

45.3 In the event of termination of the Contract under GCC Sub- Clause 45.1, the Employer shall pay to the Contractor the following amounts:

- (a) the Contract Price, properly attributable to part or whole of the IT Products and/or Services executed by the Contractor as of the date of termination,
- (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's

Equipment from the Site and in the repatriation of the Contractor's and its Sub-Contractors' personnel,

- (c) any amounts to be paid by the Contractor to its Sub- Contractors in connection with the termination of any subcontracts, including any cancellation charges,
- (d) costs incurred by the Contractor in protecting the IT Products and/or Services and leaving the Site in a clean and safe condition pursuant to GCC Sub-Clause 46.1 (Termination for Contractor's Default), and
- (e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third Parties in connection with the Contract and that are not covered by GCC Sub-Clauses 46.3(a) through (d) above.

46 Termination for Contractor's Default

46.1 The Employer, 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 Contractor, referring to this GCC Sub-Clause 47.1:

- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor 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 Contractor takes or suffers any other analogous action in consequence of debt,
- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 48 (Assignment); or
- (c) if the Contractor, in the judgment of the Employer has engaged in corrupt, fraudulent, coercive or collusive 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 the Contract.

46.2 If the Contractor

- (a) has abandoned or repudiated the Contract,
- (b) has without valid reason failed to commence work on the IT Products and/or Services promptly,
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause,
- (d) refuses or is unable to provide sufficient Documentation, Services, or labor to execute and complete the IT Products and/or Services 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 Employer that the Contractor can attain Operational Stabilization of the IT Products and/or Services by the Time for Operational Stabilization as extended,

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination of 90 days to the Contractor

that refers to this GCC Sub- Clause 46.2.

46.3 Upon receipt of the notice of termination under GCC Sub- Clauses 46.1 or 46.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the IT Products and/or services already executed, or any work required to leave the Site in a clean and safe condition,
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to GCC Sub-Clause 46.3(d) below,
- (c) deliver to the Employer the parts of the IT Products and/or Services executed by the Contractor up to the date of termination,
- (d) to the extent legally possible, assign to the Employer all rights, title and benefit of the Contractor to the IT Products and/or Services or Subsystems as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Sub-Contractors,
- (e) deliver to the Employer all drawings, specifications, and other documents prepared by the Contractor or its Sub- Contractors as of the date of termination in connection with the Products and/or Services.

46.4 The Employer may enter upon the Site, expel the Contractor, and complete the Products and/or Services itself or by employing any third Party. Upon completion of the Products and/or Services or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

46.5 Subject to GCC Sub-Clause 46.6, the Contractor shall be entitled to be paid the Contract Price attributable to the portion of the IT Products and/or Services executed as of the date of termination, and the costs, if any, incurred in protecting the IT Products and/or Services and in leaving the Site in a clean and safe condition pursuant to GCC Sub-Clause 46.3. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

46.6 If the Employer completes the IT Products and/or Services, the cost of completing the IT Products and/or Services by the Employer shall be determined.

46.7 If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 46.5, plus the reasonable costs incurred by the Employer in completing the IT Products and/or Services, exceeds the Contract Price, the Contractor shall be liable for such excess.

46.8 If such excess is greater than the sums due the Contractor under GCC Sub-Clause 46.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC Sub-Clause 46.5, the Employer shall pay the balance to the Contractor. The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

47 Termination by Contractor

47.1 If

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or
- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the IT Products and/or Services,

then the Contractor may give a notice to the Employer of such events, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 47.1(b), forthwith terminate the Contract.

47.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Sub-Clause 47.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

47.3 If the Contract is terminated under GCC Sub-Clauses 47.1(b) or 47.2, then the Contractor shall immediately:

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the IT Products and/or Services already executed, or any work required to leave the Site in a clean and safe condition,
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to GCC Sub-Clause 47.3(d)(ii),
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Sub-Contractors' personnel from the Site, and
- (d) subject to the payment specified in GCC Sub-Clause 47.4, shall,
 - (i) deliver to the Employer the parts of the IT Products and/or Services executed by the Contractor up to the date of termination,

- (ii) to the extent legally possible, assign to the Employer all rights, title and benefit of the Contractor to the IT Products and/or Services, or Subsystems as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Sub-Contractors, and
- (iii) to the extent legally possible, deliver to the Employer all drawings, specifications, and other documents prepared by the Contractor or its Sub-Contractors as of the date of termination in connection with the IT Products and/or Services.

47.4 If the Contract is terminated under GCC Sub-Clauses 47.1 or 47.2, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 45.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with, or in consequence of such termination.

47.5 Termination by the Contractor pursuant to this GCC Clause 47 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Clause 47.

47.6 In GCC Clauses 45 to 47, the expression —portion of the IT Products and/or Services executed shall include all work executed, Services provided, and all IT Products and/or Services, acquired (or subject to a legally binding obligation to purchase) by the Contractor and used or intended to be used for the purpose of the Contractor and used or intended to be used for the purpose of the IT Products and/or Services, up to and including the date of termination.

47.7 In GCC Clauses 45 to 47, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Appendix to the Contract titled Terms and Procedures of Payment.

48 Assignment

48.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, assign to any third Party the Contract or any part thereof, or any right, benefit, obligation or interest therein or there under, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

49 Export Restrictions

49.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Employer, to the country of the Employer or to the use of the IT Products and/or Services to be supplied which arise from trade regulations from a country supplying those IT Products and/or Services, and which substantially impede the Contractor from meeting its obligations under the Contract, shall release the Contractor from the obligation to provide deliveries or services, always provided, however, that the Contractor can demonstrate to the satisfaction of the Employer and of GoSL that it has completed all formalities in a timely manner, including applying for permits, authorizations, and licenses necessary for the export of the IT Products and/or Services under the terms of the Contract. Termination of the Contract on this basis shall be for the Employer's convenience pursuant to GCC Clause 45.

I. CLAIMS, DISPUTES AND ARBITRATION

50 Contractor's Claims

50.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any clause of these General Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstances giving rise to the claim. The notice shall be given as soon as practicable, and not later than twenty-eight (28) days after the Contractor became aware, or should have become aware, of the event or circumstance.

50.2 If the Contractor fails to give notice of a claim within such a period of twenty-eight (28) days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

- (a) The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- (b) The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Employer's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records and shall (if instructed) submit copies to the Project Manager.
- (c) Within forty-two (42) days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
 - (i) this fully detailed claim shall be considered as interim,

- (ii) the Contractor shall send a final claim within twenty-eight (28) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.
- (d) Within forty-two (42) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. The Project Manager may also request any necessary further details but shall nevertheless give his/her response on the principles of the claim within such time.
- (e) Each payment certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.
- (f) The Project Manager shall agree with the Contractor or estimate:
 - (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GCC Clause 43 (Extension of time for Completion), and/or
 - (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.
- (g) The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.
- (h) In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either Party may refer the matter to the Disputes and Arbitration procedures pursuant to GCC Clause 51 hereof.

51 Disputes and Arbitration

51.1 Adjudication

- (a) The parties, within fourteen (14) days of the Effective Date, will agree and appoint an Adjudicator.
- (b) If any dispute of any kind whatsoever shall arise between the Employer and the Contractor 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 IT Products and/or Services (whether during the progress of implementation or after its achieving Operational Stabilization and whether before or after the termination, abandonment, or breach of the Contract), the Parties shall seek to resolve any such dispute or difference by mutual consultation. If the Parties fail to resolve such a dispute or difference by mutual consultation, within fourteen (14) days after one Party has notified the other in writing of the dispute or difference, then, if the Contract in

Appendix includes, and names an Adjudicator, the dispute shall 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, the mutual consultation period stated above shall last twenty-eight (28) days (instead of 14), upon expiry of which either Party may move to the notification of arbitration pursuant to GCC Sub- Clause 51.2(a).

- (c) The Adjudicator shall give his or her decision in writing to both Parties within twenty-eight (28) days of a 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 Employer or the Contractor within fifty-six (56) days of such reference, the decision shall become final and binding upon the Employer and the Contractor. Any decision that has become final and binding shall be implemented by the Parties forthwith.
- (d) The Adjudicator shall be paid an hourly fee at the rate specified in Appendix 2 (Adjudicator) to the Contract, plus reasonable expenditures incurred in the execution of duties as Adjudicator, and these costs shall be divided equally between the Employer and the Contractor.
- (e) Should the Adjudicator resign or die or should the Employer and the Contractor agree that the Adjudicator is not fulfilling his or her function in accordance with the provision of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. Failing agreement between the Parties within twenty-eight (28) days, the new Adjudicator shall be appointed at the request of either Party by the Appointing Authority specified in the Appendix to the Contract titled Adjudicator, or, if no Appointing Authority is specified in 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.

51.2 Arbitration

- (a) If either the Employer or the Contractor is dissatisfied with the Adjudicator's decision, or if the Adjudicator fails to give a decision within twenty-eight (28) days of a dispute being referred to him or her, then the Employer or the Contractor may, within fifty-six (56) days of such reference, give notice to the other Party, with a copy for information to the Adjudicator, of its intention to commence arbitration, as provided below, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- (b) Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Sub-Clause 51.2(a), shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the IT Products and/or Services.
- (c) Arbitration proceedings shall be conducted in accordance with the rules of procedures specified in the PC.

51.3 Notwithstanding any reference to the Adjudicator or arbitration in this clause,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree.
- (b) The Employer shall pay the Contractor any monies due to the Contractor.

52 Data Protection

- 52.1 The Contractor represents and warrants that it shall comply with the respective obligations imposed under the Personal Data Protection Act No. 09 of 2022 of Sri Lanka in relation to processing personal data of data subjects obtained and/or received pursuant to this agreement and the Contractor shall take all appropriate technical and organizational security measures to ensure that the personal data is protected against accidental or unauthorized loss, destruction, damage, access, processing, erasure, transfer, use, modification, disclosure or other misuse, and that only personnel authorized by the Contractor would have access to personal data on a need-to-know basis. The Contractor further agrees to process personal data obtained and/or received pursuant to this Agreement, only in accordance with the terms of this Agreement and/or other specific instructions of the Employer and shall refrain from further processing such personal data for any other purpose.
- 52.2 On a request made by the Employer, the Contractor shall ensure that its employees will promptly return to the Employer any part, or all the personnel data and other confidential information obtained and/or received pursuant to this Agreement.

SECTION VIII: PARTICULAR CONDITIONS (PC)

PARTICULAR CONDITIONS

The following Particular Conditions (PC) shall supplement or amend the General Conditions (GCC).

Whenever there is a conflict, the provisions in PC shall prevail over those in GCC. For the purposes of clarity, any referenced GCC Clause numbers are indicated in the left column of PC.

1. Definitions	
Effective Date:	As specified in Article 3 of Contract Form.
Contract Period is	4 (four) years from the date of commencement.
The Employer is:	Government of Sri Lanka (GoSL)
The Employer's Country is	Sri Lanka
The Project Manager is:	Would be Nominated by GoSL at a later date.
The Project Sites <i>are</i>	Refer Annex 12 Project Sites and sites of SOR Appendix 14.
1 Definitions	
1.1.12	“Contractor” means the Party named as the Contractor in the Contract, and where applicable in Schedule of Requirements (“SOR”) in Appendix 14 attached hereto, also referred to as MSI or “Master Systems Integrator” and includes the legal successors or permitted assigns of the Contractor.
1.1.15	As appointed by the Contractor by the GCC 18.2

1.1.62	The term “Sub-Contractor” may also include Biometric Service Providers or “BSP”, Infrastructure Service Provider, Original Equipment Manufacturers (OEM) and such other parties accepted by the Employer for the delivery of all obligations under this Contract.
5. Law and Language	
5.1	The Contract shall be interpreted in accordance with the laws of the Democratic Socialist Republic of Sri Lanka
5.2	The ruling language is English
5.3	The language for communications is English
8. Time for Commencement	
8.1	Commencement Date: Effective Date
8.2	Completion Date of the Contract: 4.0 (four) years from the date of Commencement.
9. Contractor’s Responsibilities	
9.7	Where the Contractor is a joint venture, consortium or association of two or more partners, all such partners shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract.
10. Employer’s Responsibilities	
10.11	Following the Acceptance the backup, delivering and storing process Further As per SOR Section 5.2: Hosting Infrastructure Once handed over, Employer will be responsible
11. Contract Price	
11.2	The Contract Price is not adjustable
12. Terms of Payment	
12.2	(i) Prior to delivery of any hardware, software, or any other component, MSI shall submit a detailed list of equipment with specifications and quantity to be deployed and obtain approval of Employer on the deployment schedule. (ii) Payments shall only be released on satisfactory completion and acceptance of the deliverables and services by the Employer. (iii) The Contractor (MSI) shall submit the invoice as per the contract along with all the supporting documents including necessary proof of milestone achievement, deliverable signoffs, system generated SLA monitoring reports, etc.

	(iv) The invoice should bear the name of Employer, should be on Contractor's (MSI's) letter head, should include signature & seal of the Contractor (MSI) for physical invoices or digital signature of Contractor's (MSI's) representative for electronic invoices, should clearly mention the project name, should clearly provide description of services for which the invoice is submitted, etc. (v) The invoice should clearly mention the bank account details of the MSI for electronic release of payment using applicable methods (SWIFT, Domestic Payment, etc.) and tax-identification details for the purpose of relevant calculations (including deduction of taxes levies, duties, etc.) (vi) The invoice should clearly mention the amount (excl. taxes), amount of taxes and total amount separately. In case of multiple taxes, the invoice should be submitted with the detailed calculation on the taxes considered for the invoice. (vii) All payments agreed to be made to Contractor (MSI) in accordance with the Contract shall be as per the relevant provision in the General / Particular conditions.
12.4	Not Applicable
12.5	Payments shall be made only in INR.
13. Securities	
13.2 (a)	The Contractor shall provide, within Twenty- Eight (28) days of the notification of Contract award, an advance security bank guarantee of Indian Rupees 3 crores. This amount shall be refundable within 60 days from the date of completion of the project
13.2 (b)	The Contractor shall provide, within Twenty Eight (28) days of the notification of Contract award, an Advance Payment Security in the amount and currency of the Advance Payment specified in Appendix 7, Terms and Procedure for Payment Schedule of the Contract Agreement.
13.3(a)	The Performance Security shall be denominated in the currency quoted by the contractors in its price schedule for an amount equal to Ten percent (10%) of the Contract Price excluding any Recurrent Costs. The performance security of the joint venture shall be in the names of all joint venture partners. Performance Security shall be submitted within twenty-eight (28) days of the notification of contract award. For the avoidance of doubt, it is hereby stated that the release of the Performance Security shall occur only upon the completion of Sixty (60) days after the end of the Support and maintenance phase and the Employer being satisfied with the successful completion of all obligations by the Contractor under this Contract, including the procedures described in Annexure 6 "Transition & Exit Management" of SOR - Appendix 14.

14. Taxes and Duties	
14.3	In this Procurement the following taxes are exempted. • Value Added Tax (VAT) • Ports and Airport Development Levy (PAL) • CESS • Customs Import Duty (CID) • Social Security Contribution Levy (SSCL)
15. Intellectual Property and Copyright	
15.2	The following clause is added under this clause. Technical documents and manuals can be duplicated by the Employer for non-commercial and internal use.
15.3	A. The Employer may assign, license or otherwise voluntarily transfer its contractual rights to use the Standard Software or Packaged Software or elements of the Standard Software/ Packaged Software, without the contractor's prior written consent under the following circumstances, - For use by any end user organization and/or designated government organization in Sri Lanka and/or change the project ownership. B. For the avoidance of doubt, it is hereby agreed between the parties that the Employer shall have the sole Intellectual Property Rights ownership to customizations or special/specific configurations done to the SL-UDI software, from the Effective Date of this Contract.
15.4	The Following policy for Intellectual Property Rights ownership would determine Employer's and Contractor's rights and obligations (i.e. except standard software). a. The Employer shall have the sole Intellectual Property Rights ownership to the Custom Software or Packaged Software or elements thereof, including customizations specific to this contract. b. The Contractor shall, not later than expiry of the Warranty Period, deliver to the Employer an inventory of the said Custom Software together with all related documentation, including but not limited to Source Code, data dictionaries, all relevant diagrams (i.e. ER diagram, class diagram, sequence diagram deployment diagram etc.), with all the rights to use the Source Code by the Employer at the end of the warranty period. c. The Employer shall have the right to replicate the Custom Software in all offices of government of Sri Lanka falling within the scope of this contract during the contract period and thereafter. Employer shall also have rights to further develop this category of Software, at the end of warranty period.

	d. The Contractor shall provide new versions and new releases of the Custom Software or elements thereof at the Employer's discretion, free of charge, during the O&M or Warranty period. In the event the Employer exercises the option to obtain the said new versions or new releases, the Contractor's obligation in respect of the Warranty for the said versions or releases shall be limited to the remaining period of the O&M applicable to Custom Software.
16. Software Services and License agreements	
16.1	The following is added: Software Licenses: All software should be royalty free and licensed to the Employer, Democratic Socialist Republic of Sri Lanka on a perpetual basis wherever applicable and should be valid for use at any location specified by the government. Complete set of source code/scripts developed for this project (custom software) should be provided to the Employer. Any updates, modifications carried to the source code as a result of servicing/maintenance should be provided to the Employer.
16.1(b)(ii)	License for the custom software developed for SL-UDI shall permit the Software to be used or copied for use or transferred to a replacement computer(s) or users. However this shall not be applicable to the COTS products and their usage shall be governed by EULA.
16.1(b)(vi)	The Software license usage shall be governed by End User License Agreement (EULA).
16.2	The Contractor's right to audit the Standard Software will be subject to the following terms. Employer will make available to the contractor within 14 days of a written request accurate and up to date record of the number of locations of copies, the number of authorized users or any other relevant data required demonstrating use of Standard Software as per the License agreement.
23. Product Upgrades	
23.4	The Contractor shall provide the Employer with all releases, updates and upgrades to all Standard Software during the Warranty Period, at no additional cost, as specified in the GCC.
23.3 & 23.5	All the product updates/releases and patches shall be implemented by the contractor within the reasonable timeframe. Any critical updates/patches/releases (e.g. anti-virus, firmware updates/patches etc.) shall be implemented with immediate effect after necessary testing and validation of such updates/patches/releases in the test environment and contractor shall ensure that there is no impact on the performance, security, availability, confidentiality, operations of the systems.
26. Completion	
26.2	The acceptance testing shall be carried out by employer as per the timelines indicated in the implementation schedule in SOR or as per the timelines agreed to in the Project Plan. In case of any unforeseen delays identified by the employer in completion of the acceptance testing or issuing installation certificate,

	employer shall notify the contractor within reasonable time period with the specific reasons for delays and accordingly a revised timeline shall be agreed for completion of acceptance testing or issuing the installation certificate.
26.3	The timelines for conducting the acceptance testing and issuing the installation certificate shall be read in conjunction with PC 26.2 above. Employer may decide to put the systems into operations/usage even in case of any major or minor issues identified during acceptance testing are pending for resolution by the contractor and usage of systems by the employer doesn't absolve the contractor from its responsibility to address the pending issues identified during the acceptance testing. The certificate of installation or acceptance of systems shall be performed only after resolution of all the issued identified during the User acceptance testing.
28. Completion Time Guarantee	
28.1	Liquidated damage shall be as defined in service level annexure-9
28.2	Liquidated damage shall be as defined in service level annexure-9
29. Defect Liability	
29.1	For Software, exceptions or limitations to the Contractor's warranty obligations shall be as follows; None
29.2(c)	The Contractor warrants that the following items have been released to the market for the following specific minimum time periods: No specific minimum time requirements are established for this Contract other than that the Information Technologies must have been previously released to the market
29.	The Warranty Period shall begin from the date of Live Run of Iteration 1 of SL-UDI (described in Schedule of Requirements "SOR" –Appendix 14 of this Contract) and shall be for a period of 12 months for hardware, Software, networks and other items. Period of post warranty shall be Two (02) years. Employer at its discretion may enter into an agreement with the Contractor for Post warranty after completion of warranty period on an annually renewable basis and shall be at the rate quoted by the Contractor in the original Bid. Note: All charges with regard to the supply of spare parts, labour, travel, per diem and accommodation to Contractor's staff etc. shall be borne by the Contractor during the period of warranty. Employer shall not pay any additional expenditure for services rendered during the above period, within the Scope of the contract.
29.10	During the Warranty Period, the Contractor shall be required to remedy defects or damage within the times specified in the Service Level Agreement (SLA).
38. Insurance	
38.1.1	Insurance cover referred to herein, should cover "All Risks" Refer Section-38.
38.1.2	-----Left Blank Intentionally-----

38.1.3	-----Left Blank Intentionally-----
38.1.4	-----Left Blank Intentionally-----
38.1.5	(a) Workers' compensation insurance in respect of the Personnel of the Contractor, Sub Contractors and third parties shall be in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and the period is from the date of signing the contract until successful completion of the O & M (warranty) period of the "System". (b) insurance against loss of or damage to - software, hardware and network equipment purchased in whole or in part with funds provided under this Contract, - the Contractor's property used in the performance of the Services, and - any documents prepared by the Contractor in the performance of the Services. Note: Should any loss or damage occur to the System or any part of the System any time prior to System Handover, the Contractor shall: (i) Initiate and pursue claim till settlement; and Promptly make arrangements for repair and/or replacement of any damaged item/s irrespective of settlement of claim by the underwriters
51. Disputes and Arbitration	
51.2 (a)	Not Applicable.
51.2 (c)	If any dispute of any kind whatsoever shall arise between the Employer and the Contractor 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 subject matter of this contract (whether during the progress of implementation or after achieving Operational Stabilization and whether before or after the termination, abandonment, or breach of the Contract), the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, within fourteen (14) days after one party has notified the other in writing of the dispute or difference, either party may give Notice to the other party, of its intention to commence arbitration, as provided below, indicating the matter in dispute. No arbitration in respect of this matter may be commenced unless such notice is given. Any dispute, in respect of which a notice of intention to commence arbitration has been given, in accordance with the above, shall be finally settled by arbitration. Arbitration may be commenced prior to or after installation of the Information Technologies.

	The following rules of procedure for mediation and arbitration shall be applicable (a) if the Contractor is foreign (including a Joint Venture when at least one partner is foreign) or (b) if the Contractor is a national of the Employer's country. (a) Dispute for resolution by arbitration shall be in accordance with the UNCITRAL Arbitration Rules as at present in force. (b) The arbitration shall be heard before an arbitrator mutually agreeable to the parties; provided, that if the parties cannot agree on the choice of arbitrator within 10 days after the first party seeking arbitration has given written notice, then the arbitration shall be heard by three arbitrators, one chosen by each party, and the third chosen by those two arbitrators. The arbitrators will be selected from a panel of people who have experience with and knowledge of information technology and at least one of the arbitrators selected will be an attorney. A hearing on the merits of all claims for which arbitration is sought by either party shall commence not later than 60 days from the date demand for arbitration is made by the first party seeking arbitration. The arbitrator(s) must render a decision within 10 days after the conclusion of such hearing. Any award in such arbitration shall be final and binding upon the parties and the judgment thereon may be entered in any court of competent jurisdiction. (c) The arbitrators shall apply the substantive laws of UNCITRAL, without reference to provisions relating to conflict of laws. The arbitrators shall not have the power to alter, modify, amend, add to, or subtract from any term or provision of this Agreement, nor to rule upon or grant any extension, renewal, or continuance of this Agreement. The arbitrators shall have the authority to grant any legal remedy available had the parties submitted the dispute to a judicial proceeding. The place of Arbitration shall be neutral and would be decided mutually by MSI and GoSL.
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SECTION IX: CONTRACT FORMS

1. CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT is made the *[nth]* day of *[month & Year]*. BETWEEN

- (1) *[Name of Employer]*, a corporation incorporated under the laws of *[country of Employer]* and having its principal place of business at *[address of Employer]* (hereinafter called “the Employer”), and
- (2) *[Name of Contractor]*, a corporation incorporated under the laws of *[country of Contractor]* and having its principal place of business at *[address of Contractor]* (hereinafter called “the Contractor”).

WHEREAS the *Employer* desires to engage the Contractor to supply, install, achieve Operational Stabilization of, and support the following Information Technology Products and /or Services *[brief description of the Information Technology Products and/or Services]* (“the IT Products and/or Services”), and the Contractor has agreed to such engagement upon and subject to the terms and conditions appearing below in this Contract Agreement.

NOW IT IS HEREBY AGREED

as follows:

1. Definitions:	1.1	Contract Documents (Reference GCC Clause 2)
Contract Documents Article 1		The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract: a) This Contract Agreement and the Fifteen (15) Appendices attached to the Contract Agreement b) Particular Conditions of Contract c) General Conditions of Contract d) The Contractor’s bid and original Price Schedules e) RFP including Addenda/clarifications issued by the employer. [Add here: any other documents. Check consistency with GCC 2.2 and amend as appropriate]

	1.2	Order of Precedence (Reference GCC Clause 2) In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above, provided that Appendix 14 shall prevail over all provisions of the Contract Agreement and the other Appendices attached to the Contract Agreement and all the other Contract Documents listed in Article 1.1 above.
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	1.3	Definitions (Reference GCC Clause 1) Capitalized words and phrases used in this Contract Agreement shall have the same meanings as are ascribed to them in the General Conditions of Contract.
Article 2: Contract Price and Terms of Payment	2.1	Contract Price (GCC Clause 11)
		The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations under the Contract. The Contract Price shall be the aggregate of: <i>[: amount of foreign currency A in words], [amount in figures], plus [: amount of foreign currency B in words], [amount in figures], plus [: amount of local currency in words], [: amount in figures],</i> as specified in the Grand Summary Price Schedule. 1. The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules, including the terms and conditions of the associated Incoterms, and the taxes, duties and related levies if and as identified.
	2.2	Terms of Payment (GCC Clause 12) The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the Appendix (Terms and Procedures of Payment) hereto. The Employer may instruct its bank pursuant to GCC Clause 12.5 to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor. The credit amount shall be discussed and finalized with MSI and shall be subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, ICC Publication No.600.
	2.3	In the event that the amount payable under 2.2 is adjusted in accordance with GCC 11.2 or with any of the other terms of the Contract, the Employer shall arrange for the documentary credit to be amended accordingly. [The Employer may want to insert a similar provision for

		the payment of Products supplied from within the Employer's Country]
Article 3: Effective Date for Determining the Contract Commencement	3.1	Effective Date (GCC Clause 1.1)
		The Effective Date shall be the date on which all of the following conditions have been fulfilled: (a) This Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor, (b) The Contractor has submitted to the Employer the advance payment security and performance security, in accordance with GCC Clause 13.2 and GCC Clause 13.3, (c) The Detail Project Plan as agreed to between by the Employer and the Contractor (MSI) at the Contract negotiation. (d) Requirements specified in (a) ,(b), and (c) above should be fulfilled within 28 (twenty-eight) Days of the date of notification award. (e) The Detail Project Plan as agreed to between by the Employer and the Contractor (MSI) at the Contract negotiation. Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.
	3.2	If the conditions listed under 3.1 above are not fulfilled within 28 (twenty eight) days from the date of this Contract Agreement because of reasons not attributable to the Contractor, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Achieving Operational Stabilization and/or other relevant conditions of the Contract.
Article 4: Communication	4.1	The address of the Employer for notice purposes, pursuant to GCC 4.1 is: <i>[Insert address]</i> .
	4.2	The address of the Contractor for notice purposes, pursuant to GCC 4.1 is: <i>[Insert address]</i>
Article 5: Appendixes	5.1	The applicable Appendixes listed below shall be deemed to form an integral part of this Contract Agreement.
	5.2	Reference in the Contract to any Appendix shall mean the applicable Appendixes listed below and attached to this Contract Agreement, and the Contract shall be read and Construed accordingly.

APPENDIXES *[Employer to list all Appendices and add the statement (not applicable) if that particular Appendix does not apply to this contract]*

Appendix 1. Contractor's Representative [refer GCC 18.2(b)]

Appendix 2. Adjudicator [refer GCC 51(b)]

Appendix 3. List of Approved Sub-Contractors [refer GCC 20.1]

Appendix 4. Categories of Software [refer GCC Definition & Section IV Form]

Appendix 5. Custom Documentation [refer GCC Definition & Section IV Form]

Appendix 6. Revised Price Schedules (if any)

Appendix 7. Terms and Procedures for Payment [refer GCC 12.1]

Appendix 8. Agreed and Finalized Project Plan [refer GCC 19.1]

Appendix 9. List of Documents for Approval and Review [refer GCC 21.3(1)]

Appendix 10. Has been omitted

Appendix 11. Insurance Requirements [refer GCC 38.1]

Appendix 12. Price Adjustment [refer ITB GCC 11.2]

Appendix 13. Software License Agreement [refer GCC 16.3]

Appendix 14. Schedule of Requirements [refer GCC 19.1]

Appendix 15. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

For and on behalf of the Employer

Signed:

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

in the presence of

For and on behalf of the Contractor

Signed:

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

in the presence of

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

BETWEEN *[: name of Employer]*, —the Employer

And

[: name of Contractor], —the Contractor

Appendix 1: Contractor's Representative

In accordance with GCC Clause 18.2 the Contractor's Representative is:

Name: *[: name and provide title and address further below or state "to be nominated within fourteen (14) days of the Effective Date"]*

Title: *[if appropriate: title]*

In accordance with GCC Clause 4.1, the Contractor's addresses for notices under the Contract are: Address of the Contractor's Representative: *[as appropriate: personal delivery, postal, cable, telegraph, telex, facsimile, electronic mail, and/or EDI addresses.]*

Fallback address of the Contractor: *[as appropriate: personal delivery, postal, cable, telegraph, telex, facsimile, electronic mail, and/or EDI addresses.]*

Appendix 2: Adjudicator

Not Applicable.

Appendix 3: List of Approved Sub-Contractors

The Employer has approved use of the following Sub-Contractors nominated by the Contractor for carrying out the item or component of the IT Products and/or Services indicated. Where more than one Sub-Contractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice sufficiently in advance of the time when the subcontracted work needs to commence to give the Employer reasonable time for review. In accordance with GCC Clause 20.1, the Contractor is free to submit proposals for Sub-Contractors for additional items from time to time. No sub-contracts shall be placed with any such Sub-Contractors for additional items until the Sub-Contractors have been approved in writing by the Employer and their names have been added to this list of Approved Sub-Contractors, subject to GCC Clause 20.3.

[specify: item, approved Sub-Contractors, and their place of registration that the Contractor proposed in the corresponding attachment to its bid and that the Employer approves that the Contractor engage during the performance of the Contract. Add additional pages as necessary.]

Item	Approved Sub-Contractors	Place of Registration

Appendix 4: Categories of Software

The following table assigns each item of Software supplied and installed under the Contract to one of the three categories: (i) System Software (ii) General-Purpose Software, or (iii) Application Software; System Software, General-Purpose Software and Application Software would require to be in either one of the following two categories,

Categories of software are as below,

System Software - System software is software designed to provide a platform for other software. Examples of system software includes operating systems, Virtual machines etc.

General- Purpose Software - General purpose application software is a type of application that can be used for a variety of tasks. It is not limited to one function. They provide large number of features for its users. Examples of General-purpose application software including Word processors, Spreadsheets and Presentation software, software development tools, libraries and platform frameworks, general purpose application servers, general purpose opensource libraries and frameworks, etc.

Application Software - Application software is the specific software systems that are used to manage SLUDI functionalities.

- (i) **Standard Application Software** – This includes software that Commercial Off-The-Shelf (COTS) software products and solutions which are subject to licensing.
- (ii) **Custom Application Software** - Bespoke software or tailor-made software specially developed for the SLUDI functionalities integral to this project.

4.1 Please use the table below for System Software

Software	Is it a third party software/Open Source (Yes/No)	Description and Expected Functionality

4.2 Please use the table below for General Purpose Software

Software	Is it a third party software/Open Source (Yes/No)	Description and Expected Functionality

4.3 Please use the table below for Application Software

Software	Mark Only One Category Applicable		Is it a third party software/Open Source (Yes/No)	Description and Expected Functionality
	Standard Application Software	Custom Application Software		

4.4 Please use the table below for disclosure of Pre-Existing work of MSI/OEM

Pre-Existing work	Is it a MSI owned/third party software/Open Source (Yes/No)	Description and Expected Functionality

4.5 Please use the table below for disclosure of AI algorithms

Software	Is it a MSI owned/third party software/Open Source (Yes/No)	Description and Expected Functionality

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Appendix 5: Custom Documentation

The follow table specifies the Custom Materials the Contractor will provide under the Contract.

Custom Materials

Appendix 6: Revised Price Schedules

The attached Revised Price Schedules (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the Price Schedules contained in the Contractor's Bid. These Revised Price Schedules reflect any corrections or adjustments to the Contractor's bid price, pursuant to the ITB Clauses 22.3, 34.4, and 42.1.1.

Appendix 7: Terms and Procedures for Payment

Subject to the provisions of GCC Clause 12 (Terms of Payment), the Employer shall pay the Contract Price to the Contractor in the manner specified below. Except as otherwise noted all payments shall be paid for the portion of contract price corresponding to the IT Products and/or services, actually delivered, install or User accepted at unit prices and in the currencies specified in the Price Schedules of the Contract Agreement.

- i. Payments shall only be released on satisfactory completion and acceptance of the deliverables and services by the Employer.
- ii. The Contractor (MSI) shall submit the invoice as per the contract along with all the supporting documents including necessary proof of milestone achievement, deliverable signoffs, system generated SLA monitoring reports, etc.
- iii. The invoice should bear the name of Employer, should be on Contractor's (MSI's) letter head, should include signature & seal of the Contractor (MSI) for physical invoices or digital signature of Contractor's (MSI's) representative for electronic invoices, should clearly mention the project name, should clearly provide description of services for which the invoice is submitted, etc.
- iv. The invoice should clearly mention the bank account details of the MSI for electronic release of payment using applicable methods (SWIFT, Domestic Payment, etc.) and tax-identification details for the purpose of relevant calculations (including deduction of taxes levies, duties, etc.)
- v. The invoice should clearly mention the amount (excl. taxes), amount of taxes and total amount separately. In case of multiple taxes, the invoice should be submitted with the detailed calculation on the taxes considered for the invoice.
- vi. The invoices will be verified by GoSL through the PMC and placed before JPMC for approval.
- vii. Payment shall be released by The Indian Embassy in Sri Lanka after approval from JPMC.
- viii. All payments agreed to be made to Contractor (MSI) in accordance with the Contract shall be as per the relevant provision in the General / Particular conditions.

7.1 Payment Terms

To be inserted as per price bid format provided in RFP Vol-1

7.2 Cost Sub - Table Infra

This table needs to be filled SEPARATELY for Table 1 (IT INFRASTRUCTURE), Table 2, 2.1 (SOFTWARE), and Table 3

#	Component Name	Country of Origin	OEM	Model / Version	License Type (for software)	Quantity

Appendix 8: Agreed and Finalized Project Plan

[Agreed and Finalized Plan to be inserted]

The Bidder must prepare a Preliminary Project Plan with the Bidding document describing, among other things, the methods and human and material resources that the Bidder proposes to employ in the design, management, coordination, and execution of all its responsibilities, if awarded the Contract, as well as the estimated duration and completion date for each major activity.

Appendix 9: List of Documents for Approval and Review

Pursuant to GCC Sub-Clause 21.3, the Contractor shall prepare, or cause its Sub-Contractor to prepare, and present to the Project Manager the following documents for Refer the Appendix 14 SOR Section 6.2.

A. Approval

1. Etc.

B. Review

1. Etc.

Appendix 10: Functional Guarantees

NOT APPLICABLE

Appendix 11: Insurance Requirements

Insurances to be taken out by the Contractor

In accordance with the provisions of GCC Clause 38.1, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

a) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

b) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

c) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following insurances:

Details:

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
<i>a. [in currency(ies)]</i>		<i>[names]</i>	<i>[place]</i>	<i>[place]</i>

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 38.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Sub-Contractors shall be named as co-insured's under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 38.1, except for the Cargo, Workers' Compensation and Employer's Liability Insurances. All insurers' rights of subrogation against such co-insured's for losses or claims arising out of the performance of the Contract shall be waived under such policies.

Appendix 12: Price Adjustment

NOT APPLICABLE

Appendix 13: Software License Agreement

[Agreed license to be inserted or attached]

Appendix 14: Schedule of Requirements

[SOR to be attached or inserted]

Appendix 15: Minutes of Contract Finalization Discussions and Agreed Contract Amendments

The attached Contract amendments (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the relevant clauses in the GCC, PC, Schedule of Requirements, or other parts of this Contract as defined in GCC Clause 1.1.

2. PERFORMANCE AND ADVANCE PAYMENT SECURITY FORMS

2.1 Performance Security Form (Bank Guarantee)

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: *[Name and Address of Employer]*

Date: *[date]*

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

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

At the request of the Contractor, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[amount(s)² in figures and words]* upon receipt by us of your first demand in writing declaring the Contractor to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

On the date of your issuing, to the Contractor, the User Acceptance Certificate for the IT Products and/or Services, the value of this guarantee will be reduced to any sum(s) not exceeding *[amount(s)² in figures and words]*. This remaining guarantee shall expire no later than *[number and select of months/of years (of the Warranty Period that needs to be covered by the remaining guarantee)]* from the date of the

User Acceptance Certificate for the IT Products and/or Services,³ and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20 (a) is hereby excluded.

[Signature(s)]

² The Bank shall insert the amount(s) specified and denominated in the PC for GCC Clauses 13.3(a) and 13.3(d) respectively, either in the currency (ies) of the Contract or a freely convertible currency acceptable to the Employer.

³ In this sample form, the formulation of this paragraph reflects the usual PC provisions for GCC Clause 13.3. However, if the PC for GCC Clauses 13.3(a) and 13.3(d) varies from the usual provisions, this paragraph, and possibly the previous paragraph, need to be adjusted to precisely reflect the provisions specified in the PC.

2.2 Advance Payment Security Form (Bank Guarantee)

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: *[Name and Address of Employer]*

Date: *[date]*

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

We have been informed that on *[date of award]* you awarded Contract No. *[Contract number]* for *[title and/or brief description of the Contract]* (hereinafter called "the Contract") to *[complete name of Contractor]* (hereinafter called "the Contractor"). Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of *[amount in numbers and words, for each currency of the advance payment]* is to be made to the Contractor against an advance payment guarantee.

At the request of the Contractor, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total the amount of the advance payment referred to above, upon receipt by us of your first demand in writing declaring that the Contractor is in breach of its obligations under the Contract because the Contractor used the advance payment for purposes other than toward the proper execution of the Contract.

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

For each payment after the advance payment, which you will make to the Contractor under this Contract, the maximum amount of this guarantee shall be reduced by the ninth part of such payment.⁴ At the time at which the amount guaranteed becomes nil, this guarantee shall become null and void, whether the original is returned to us or not.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[Signature(s)]

⁴ *This sample formulation assumes an Advance Payment of 10% of the Contract Price excluding Recurrent Costs, and implementation of the main option proposed by this MBD in the PC for GCC Clause 13.2(b) for gradually reducing the value of the Advance Payment Security. If the Advance Payment is other than 10%, or if the reduction in amount of the security follows a different approach, this paragraph would need to be adjusted and edited accordingly.*

3. INSTALLATION AND ACCEPTANCE CERTIFICATES

3.1 Installation Certificate

Contract:

To: [*: name and address of Contractor*]

Dear Sir or Madam:

Pursuant to GCC Clause 26 (Installation of the IT Products and/or Services) of the Contract entered into between yourselves and the [*name of Employer*] (hereinafter the “Employer”) dated [*date of Contract*], relating to the [*brief description of the Information Technology Products and/or Services*], we hereby notify you that the IT Products and/or Services (or a Subsystem or major component thereof) was deemed to have been correctly installed on the date specified below.

1. Description of the IT Products and/or Services (or relevant Subsystem or major component:
[*Description*]
2. Date of Installation: [*date*]

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

For and on behalf of the Employer

Signed:

Date:

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

3.2 User Acceptance Certificate

Date: [date]

Contract:

To: [name and address of Contractor]

Dear Sir or Madam:

Pursuant to GCC Clause 27 (Commissioning and Operationalization) of the Contract entered into between yourselves and the [name of Employer] (hereinafter the “Employer”) dated [date of Contract], relating to the [brief description of the Information Technology Products and/or Services], we hereby notify you the IT Products and/or Services (or the Subsystem or major component identified below) successfully completed the User Acceptance Tests specified in the Contract. In accordance with the terms of the Contract, the Employer hereby takes over the IT Products and/or Services (or the Subsystem or major component identified below), together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the IT Products and/or Services (or Subsystem or major component):
[description]
2. Date of User Acceptance: [date]

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

For and on behalf of the Employer

Signed:

Date:

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

4. CHANGE ORDER PROCEDURES AND FORMS

Date: [date]

Contract:

General

This section provides samples of procedures and forms for carrying out changes to the IT Products and/or Services during the performance of the Contract in accordance with GCC Clause 43 (Changes to the IT Products and/or Services) of the Contract.

Change Order Log

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

References to Changes

- (1) Request for Change Proposals (including Application for Change Proposals) shall be serially numbered CR-nnn.
- (2) Change Estimate Proposals shall be numbered CN-nnn. (3) Estimate Acceptances shall be numbered CA-nnn.
- (4) Change Proposals shall be numbered CP-nnn.
- (5) Change Orders shall be numbered CO-nnn.

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

ANNEXES

- 4.1 Request for Change Proposal Form
- 4.2 Change Estimate Proposal Form
- 4.3 Estimate Acceptance Form
- 4.4 Change Proposal Form
- 4.5 Change Order Form
- 4.6 Application for Change Proposal Form

4.1 Request for Change Proposal Form (Employer)

(Employer's Letterhead)

Date: [date]

Contract:

To: [name of Contractor and address]

Attention: [name and title]

Dear Sir or Madam:

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

1. Title of Change: [title]
2. Request for Change No./Rev.: [number]
3. Originator of Change: [select Employer /Contractor (by Application for Change Proposal), and add: name of originator]
4. Brief Description of Change: [description]
5. Subsystem or major component affected by requested Change): [description]
6. Technical documents and/or drawings for the request of Change: Document or Drawing No. Description
7. Detailed conditions or special requirements of the requested Change: [description]
8. Procedures to be followed:
 - (a) Your Change Proposal will have to show what effect the requested Change will have on the Contract Price.
 - (b) Your Change Proposal shall explain the time it will take to complete the requested Change and the impact, if any, it will have on the date when Operational Stabilization of the entire IT Products and/or Services agreed in the Contract.
 - (c) If you believe implementation of the requested Change will have a negative impact on the quality, operability, or integrity of the IT Products and/or Services, please provide a detailed explanation, including other approaches that might achieve the same impact as the- requested Change.
 - (d) You should also indicate what impact the Change will have on the number and mix of staff needed by the Contractor to perform the Contract.
 - (e) You shall not proceed with the execution of work related to the requested Change until we have accepted and confirmed the impact it will have on the Contract Price and the Implementation Schedule in writing.

- (f) As a next step, please respond using the Change Estimate Proposal form, indicating how much it will cost you to prepare a concrete Change Proposal that will describe the proposed approach for implementing the Change, all its elements, and will also address the points in paragraph 8 above pursuant to GCC Clause 42.2. Your Change Estimate Proposal should contain a first approximation of the proposed approach, and implications for schedule and cost, of the Change.

For and on behalf of the *Employer*

Signed:

Date:

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

4.2 Change Estimate Proposal Form (Contractor)

(Contractor's Letterhead)

Date: [date]

Contract:

To: [name of Employer and address]

Attention: [name and title]

Dear Sir or Madam:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change in accordance with GCC Clause 43.2 of the Contract. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GCC Clause 43.2, is required before we proceed to prepare the actual Change Proposal including a detailed estimate of the cost of implementing the Change itself.

1. Title of Change: [title]
2. Request for Change No./Rev.: [number]
3. Brief Description of Change (including proposed implementation approach):
[: description]
4. Schedule Impact of Change (initial estimate): [description]
5. Initial Cost Estimate for Implementing the Change: [initial cost estimate]
6. Cost for Preparation of Change Proposal: [cost in the currencies of the Contract], as detailed below in the breakdown of prices, rates, and quantities.

For and on behalf of the Contractor

Signed:

Date:

in the capacity of: [state: "Contractor's Representative" or other higher-level authority in the Contractor's organization]

4.3 Estimate Acceptance Form (Employer)

(Employer's Letterhead)

Date: [date]

Contract:

To: [name of Contractor and address]

Attention: [name and title]

Dear Sir or Madam:

We hereby accept your Change Estimate and agree that you should proceed with the preparation of a formal Change Proposal.

1. Title of Change: [title]
2. Request for Change No./Rev.: [request number / revision]
3. Change Estimate Proposal No./Rev.: [proposal number / revision]
4. Estimate Acceptance No./Rev.: [estimate number / revision]
5. Brief Description of Change: [: description]
6. Other Terms and Conditions:

In the event that we decide not to order the Change referenced above, you shall be entitled to compensation for the cost of preparing the Change Proposal up to the amount estimated for this purpose in the Change Estimate Proposal, in accordance with GCC Clause 43 of the General Conditions of Contract.

For and on behalf of the *Employer*

Signed: Date:

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

4.4 Change Proposal Form (Contractor)

(Contractor's Letterhead)

Date: *[date]*

Contract:

To: *[name of Employer and address]*

Attention: *[name and title]*

Dear Sir or Madam:

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

1. Title of Change: *[name]*
2. Change Proposal No./Rev.: *[proposal number/revision]*
3. Originator of Change: *[select: Employer /Contractor; and add: name]*
4. Brief Description of Change: *[description]*
5. Reasons for Change: *[reason]*
6. The IT Products and/or Services Subsystem, major component, or equipment that will be affected by the requested Change: *[description]*
7. Technical documents and/or drawings for the requested Change: Document or Drawing No. Description
8. Estimate of the increase/decrease to the Contract Price resulting from the proposed Change: *[amount in currencies of Contract]*, as detailed below in the breakdown of prices, rates, and quantities.

Total lump sum cost of the Change:

Cost to prepare this Change Proposal (i.e., the amount payable if the Change is not accepted, limited as provided by GCC Clause 42.2.):

9. Additional Time for Achieving Operational Stabilization required due to the Change: *[amount in days / weeks]*
10. Effect on the Functional Guarantees: *[description]*
11. Effect on the other terms and conditions of the Contract: *[description]*
12. Validity of this Proposal: for a period of *[number]* days after receipt of this Proposal by the Employer
13. Procedures to be followed:
 - (a) You are requested to notify us of your acceptance, comments, or rejection of this detailed Change Proposal within *[number]* days from your receipt of this Proposal.

- (b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.

For and on behalf of the Contractor

Signed:

Date:

in the capacity of: *[state: "Contractor's Representative" or other higher-level authority in the Contractor's organization]*

4.5 Change Order Form (Employer)

(Employer's Letterhead)

Date: [date]

Contract:

To: [name of Contractor and address]

Attention: [name and title]

Dear Sir or Madam:

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

1. Title of Change: [name]
2. Request for Change No./Rev.: [request number / revision]
3. Change Order No./Rev.: [order number / revision]
4. Originator of Change: [select: Employer /Contractor; and add: name]
5. Authorized Price for the Change:
 Ref. No.: [number] Date: [date]
 [amount in foreign currency A] plus [amount in foreign currency B] plus [: amount in foreign currency C] plus [amount in local currency]
6. Adjustment of Time for Achieving Operational Stabilization: [amount and description of adjustment]
7. Other effects, if any: [state: "none" or description]

For and on behalf of the Employer

Signed:

Date:

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

For and on behalf of the Contractor

Signed:

Date:

in the capacity of: [state "Contractor's Representative" or higher-level authority in the Contractor's organization]

4.6 Application for Change Proposal Form (Contractor)

(Contractor's Letterhead)

Date: *[date]*

Contract:

To: *[name of Employer and address]*

Attention: *[name and title]*

Dear Sir or Madam:

We hereby propose that the below-mentioned work be treated as a Change to the IT Products and/or Services.

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

For and on behalf of the Contractor

Signed:

Date:

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