

**E-GOVERNANCE**

**MISSION MODE PROJECT  
(MMP)**

**CRIME AND CRIMINAL TRACKING  
NETWORK & SYSTEMS**

**RFP FOR SELECTION OF SYSTEM  
INTEGRATOR**

**VOLUME – III: Contractual and Legal  
Terms**

**RELEASED BY:**



**Rajasthan Police  
Government of Rajasthan**

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# **General Terms and Conditions of Tender & Contract**

# **1**

## **1 GENERAL TERMS AND CONDITIONS OF TENDER & CONTRACT**

Bidders should read these conditions carefully and comply strictly while sending their bids.

### **a) Definitions**

For the purpose of clarity, the following words and expressions shall have the meanings hereby assigned to them: -

- i. “Contract” means the Contract entered into between the Purchaser and the successful/ selected bidder, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- ii. “Contract Documents” means the documents listed in the Contract, including any amendments thereto.
- iii. “Contract Price” means the price payable to the successful/ selected bidder as specified in the Contract, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.
- iv. “Contract/ Project Period” means the Contract/ Project Period shall commence from the date of Signing of Contract till 5 Years which includes Operations & Maintenance Services after successful commissioning of project.
- v. “Day” means a calendar day as per GoR.
- vi. “Delivery” means the transfer of the Goods from the successful/ selected bidder to the Purchaser in accordance with the terms and conditions set forth in the Contract.
- vii. “Completion” means the fulfilment of the related services by the successful/ selected bidder in accordance with the terms and conditions set forth in the Contract.
- viii. “Goods” means all articles, material, commodities, electricity, livestock, furniture, fixtures, raw material, spares, instruments, software (Application and System Software), machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock and any other category of goods, whether in solid, liquid or gaseous form, purchased or otherwise acquired for the use of a procuring entity as well as services or works incidental to the supply of the goods if the value of services or works or both does not exceed that of the goods themselves.
- ix. “Purchaser/ Tendering Authority/ Procuring Entity” means Person or entity that is a recipient of a good or service provided by a seller (bidder) under a purchase order or contract of sale. Also called buyer, Rajasthan Police in this RFP document.
- x. “BoM” means the Bill of Material

- xi. “Services” means any subject matter of procurement other than goods or works and includes physical, maintenance, professional, intellectual, consultancy and advisory services or any service classified or declared as such by a procuring entity and does not include appointment of any person made by any procuring entity
- xii. “Subcontractor” means any person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the related services is subcontracted by the successful/ selected bidder.
- xiii. “Supplier/ Successful or Selected bidder” means the person, private or government entity, or a combination of the above, whose Bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract, and includes the legal successors or permitted assigns of the successful/ selected bidder.
- xiv. “The Site,” where applicable, means the designated project place(s) named in the bidding document.
- xv. “SLA” means Service Level Contract is a negotiated contract between two parties wherein one is the Purchaser and the other is the successful Bidder. It is a service contract where the level of service is formally defined. In practice, the term SLA is sometimes used to refer to the contracted delivery time (of the service) or performance.
- xvi. “SOW” means Scope of Work for Successful bidder
- xvii. “ETDC” means Electronic Testing & Development Center
- xviii. “FOR/ FOB” means Free on Railway or Freight on Board
- xix. “GoI/ GoR” means Govt. of India/ Govt. of Rajasthan
- xx. “GF & AR” means General Financial and Accounts Rules of Rajasthan
- xxi. “GR” means Goods receipt
- xxii. “INR” means Indian Rupee
- xxiii. “ISI” means Indian Standards Institution
- xxiv. “ISO” means International Organization for Standardization
- xxv. “LD” means Liquidated Damages
- xxvi. “NIB” means Notice Inviting Bid
- xxvii. “OEM” means Original Equipment Manufacturer
- xxviii. “PSD/ SD” means Performance Security Deposit/ Security Deposit
- xxix. “STQC” means Standardization Testing and Quality Certification, GoI
- xxx. “TDS” means Tax Deduction at Source
- xxxi. “VAT/ CenVAT” means Value Added Tax/ Central VAT
- xxxii. “WO/ PO” means Work Order/ Purchase Order
- xxxiii. “MAF” means Manufacture Authorization Form

xxxiv. "RTPPR" means Rajasthan Transparency in Public Procurement Rules, 2013.

xxxv. "RTPPA" means Rajasthan Transparency in Public Procurement Act, 2012.

xxxvi. "SPMU" means State Project Management Unit.

xxxvii. "CDPSM" means Centre for Development of Police Science and Management.

Note: The bidder shall be deemed to have carefully examined the conditions, specifications, size, make and drawings, etc., of the goods to be supplied and related services to be rendered. If the bidder has any doubts as to the meaning of any portion of these conditions or of the specification, drawing, etc., he shall, before submitting the Bid and signing the contract refer the same to the procuring entity and get clarifications.

### **1.1 Contract Documents**

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

### **1.2 Interpretation**

- a) If the context so requires it, singular means plural and vice versa.
- b) Entire Contract: The Contract constitutes the entire contract between the Purchaser and the Supplier/ Selected Bidder and supersedes all communications, negotiations and contracts (whether written or oral) of parties with respect thereto made prior to the date of Contract.
- c) Amendment: No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.
- d) Non-waiver: Subject to the condition (f) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- e) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the rights and the extent to which it is being waived.
- f) 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.

### **1.3 Language**

- a) The Contract as well as all correspondence and documents relating to the Contract exchanged by the successful/ selected bidder and the Purchaser, shall be written in English language only. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the special conditions of the contract, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- b) The successful/ selected bidder shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

### **1.4 Eligible Goods and Related Services**

- a) All articles/ goods being bid, other than those marked in the Bill of Material (BoM)- (Annexure-6 of Volume- I of the RFP) should be the ones which are reproduced in volume and are used by a large number of users in India/ abroad. All products quoted by the successful/ selected bidder must be associated with specific make and model number, item code and names and with printed literature describing configuration and functionality. Any deviation from the printed specifications should be clearly mentioned in the offer document by the bidder/ supplier. Also, the bidder is to quote/ propose only one make/ model against the respective item.
- b) The OEM/ Vendor of the quoted product must have its own registered spares depot in India having adequate inventory of the equipment being quoted for providing the necessary spares as per the requirements of this bidding document.
- c) The OEM/ Vendor of the quoted product should also have its direct representation in India in terms of registered office for at least past 3 years. The presence through any Distribution/ System Integration partner contract will not be accepted.
- d) Bidder must quote products in accordance with above clause "Eligible goods and related services".

### **1.5 Scope of Work**

- a) Subject to the provisions in the bidding document and contract, the goods and related services to be supplied shall be as specified in the bidding document.
- b) Unless otherwise stipulated in the Contract, the scope of work shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining delivery and completion of the goods and related services as if such items were expressly mentioned in the Contract.
- c) The bidder shall not quote and supply any hardware/ software that is likely to be declared as End of Sale in next 1 year and End of Service/ Support for a period of 5



Years from the last date of bid submission. OEMs are required to mention this in the Contract for all the quoted hardware/ software. If any of the hardware/ software is found to be declared as End of Sale/ Service/ Support, then the bidder shall replace all such hardware/ software with the latest ones having equivalent or higher specifications without any financial obligation to the Purchaser.

### **1.6 Delivery & Installation**

- a) Subject to the conditions of the contract, the delivery of the goods and completion of the related services shall be in accordance with the delivery and completion schedule specified in the bidding document. The details of supply/ shipping and other documents to be furnished by the successful/ selected bidder are specified in the bidding document and contract.
- b) The contract for the supply can be repudiated at any time by the Purchaser, if the supplies are not made to his satisfaction after giving an opportunity to the bidder of being heard and recording the reasons for repudiation.
- c) The Supplier/ Selected Bidder shall arrange to supply, install and commission the ordered materials/ system as per specifications within the specified delivery and commissioning period at various offices and locations mentioned in the bidding document.
- d) Shifting the place of Installation: The Purchaser will be free to shift the place of installation within the same State. The successful/ selected bidder shall provide all assistance, except transportation, in shifting of the equipment at no additional cost.
- e) If the selected bidder feels that shifting of equipment anywhere within the state or outside is in the interest of the project, the bidder may request the same to Purchaser. If mutually agreed the place of installation may be changed. All cost in such case would be borne by bidder.

### **1.7 Selected Bidder's Responsibilities**

The Selected Bidder shall supply all the goods and related services included in the scope of supply in accordance with the provisions of bidding document and contract.

### **1.8 Purchaser's Responsibilities**

- a) Whenever the supply of goods and related services requires that the Selected Bidder obtain permits, approvals, and import and other licenses from local public authorities, the Purchaser may provide support if so required by the Selected Bidder.

**1.9 Contract Price**

- a) The Contract Price shall be paid as specified in the contract subject to any additions and adjustments thereto, or deductions there from, as may be made pursuant to the Contract.
- b) Prices charged by the Selected Bidder for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Selected Bidder in its bid.

**1.10 Recoveries from Selected Bidder**

- a) Recoveries of liquidated damages, short supply, breakage, rejected articles shall ordinarily be made from bills.
- b) Amount may also be withheld to the extent of short supply, breakages, and rejected articles and in case of failure in satisfactory replacement by the supplier along with amount of liquidated damages shall be recovered from his dues and security deposit available with the department.
- c) In case, recovery is not possible recourse will be taken under RTPPR or any other law in force.

**1.11 Taxes & Duties**

- a) The TDS, Raj-VAT, Service Tax etc., if applicable, shall be deducted at source/ paid by Purchaser as per prevailing rates.
- b) For goods supplied from outside India, the successful/ selected bidder shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the country.
- c) For goods supplied from within India, the successful/ selected bidder shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.
- d) If any tax exemptions, reductions, allowances or privileges as per prevailing laws, to the successful/ selected bidder in India, the Purchaser may provide necessary support.

**1.12 Intellectual Property Rights****1.12.1 Product Fixes**

All products and related solutions and fixes provided pursuant to this contract shall be licensed according to the terms of the license contract packaged with or otherwise applicable to such product. The successful bidder would be responsible for arranging any licenses associated with products without any additional cost to the Purchaser. "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 Purchaser 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 successful bidder when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.

#### **1.12.2 Bespoke development:**

The IPR (Intellectual Property Rights) rights for any bespoke development done during the implementation of the project will lie with Purchaser. Any customization in the Application based on the requirements of the Purchaser, the source code of the customized Application shall be the property of the Purchaser.

#### **1.12.3 Pre-existing work:**

All IPR including the source code and materials (other than products or fixes) developed or otherwise obtained independently of the efforts of a party under this contract (“pre-existing work”) shall remain the sole property of that party. During the performance of the services for this contract, 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. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the successful bidder should grant Purchaser a non-exclusive, enterprise wide, fully paid-up enterprise edition license(s) to use, reproduce and modify (if applicable) the pre-existing work in the form delivered to Purchaser as part of the service deliverables only for its internal business operations.

Purchaser’s license to pre-existing work is conditioned upon its compliance with the terms of this contract and the enterprise wide license for unlimited number of users applies solely to the pre-existing work that bidder leaves with Purchaser at the conclusion of performance of the services

### **1.13 Copyright**

The copyright in all drawings, design documents, source code and other materials containing data and information furnished to the Purchaser by the Selected Bidder herein shall remain vested in the Selected Bidder, or, if they are furnished to the Purchaser directly or through the Selected Bidder by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

### **1.14 Confidential Information**

- a) The Purchaser and the Selected Bidder shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any drawings, documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information

has been furnished prior to, during or following completion or termination of the Contract.

- b) The Selected Bidder may furnish to its Subcontractor, if permitted, such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Selected Bidder shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Selected Bidder.
- c) The Purchaser shall not use such documents, data, and other information received from the Selected Bidder for any purposes unrelated to the Contract. Similarly, the Selected Bidder shall not use such documents, data, and other information received from the Purchaser for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.
- d) The obligation of a party under sub-clauses above, however, shall not apply to information that: -
  - i. the Purchaser or Selected Bidder need to share with other institutions participating in the Contract;
  - ii. now or hereafter enters the public domain through no fault of that party;
  - iii. can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - iv. otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- e) The above provisions shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the supply or any part thereof.
- f) The provisions of this clause shall survive completion or termination, for whatever reason, of the Contract.

### **1.15 Specifications and Standards**

- a) All articles supplied shall strictly conform to the specifications, trademark laid down in the bidding document and wherever articles have been required according to ISI/ ISO/ other applicable specifications/ certifications/ standards, those articles should conform strictly to those specifications/ certifications/ standards. The supply shall be of best quality and description. The decision of the competent authority/ purchaser whether the articles supplied conform to the specifications shall be final and binding on the selected bidder.
- b) Technical Specifications and Drawings
  - i. The Selected Bidder shall ensure that the goods and related services comply with the technical specifications and other provisions of the Contract.
  - ii. The Selected Bidder shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof

provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

- iii. iii. The goods and related services supplied under this Contract shall conform to the standards mentioned in bidding document and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the country of origin of the Goods.
- c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the bidding document. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with the general conditions of the contract.

### **1.16 Packing and Documents**

- a) The Selected Bidder shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination of the Goods and the absence of heavy handling facilities at all points in transit.
- b) The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the contract, and in any other instructions ordered by the Purchaser.

### **1.17 Insurance**

The goods will be delivered at the destination location as defined in the bidding document in perfect condition. The Goods supplied under the Contract shall be fully insured against loss by theft, destruction or damage incidental to manufacture or acquisition, transportation, storage, fire, flood, under exposure to weather and delivery at the designated project locations, in accordance with the applicable terms. The insurance charges will be borne by the supplier and Purchaser will not be required to pay such charges if incurred.

### **1.18 Transportation**

The selected bidder shall be responsible for transport by sea, rail and road or air and delivery of the material in the good condition to the consignee at destination. In the event of any loss, damage, breakage or leakage or any shortage the bidder shall be liable

to make good such loss and shortage found at the checking/ inspection of the material by the consignee. No extra cost on such account shall be admissible.

### **1.19 Inspection**

- a) The Purchaser or his duly authorized representative shall at all reasonable time have access to the selected bidder's premises and shall have the power at all reasonable time to inspect and examine the materials and workmanship of the goods/ equipment/ machineries during manufacturing process or afterwards as may be decided. Inspection shall be made as required by the Purchaser at the time of delivery and installation of goods (at selected bidder's cost).
- b) The selected bidder shall furnish complete address of the premises of his factory, office, go-down and workshop where inspection can be made together with name and address of the person who is to be contacted for the purpose.
- c) After successful inspection, it will be selected bidder's responsibility to dispatch and install the equipment at respective locations without any financial liability to the Purchaser. However, supplies when received at respective locations shall be subject to inspection to ensure whether they conform to the specification.
- d) The selected bidder has to follow the Standard Operating Procedures (SOP) as provided in the bidding document based on the guidelines issued by NCRB and MHA, GoI to implement CCTNS project in the state.

### **1.20 Samples**

- a) When notified by the Purchaser to the bidder/ selected bidder, goods marked in the Bill of Material shall be accompanied by four sets of samples of the articles quoted properly packed. Such samples if submitted personally will be received in the office. A receipt will be given for each sample by the officer receiving the samples. Samples if sent by train, etc., should be despatched freight paid and the R/R or G.R. should be sent under a separate registered cover. Samples for catering/ food items should be given in a plastic box or in polythene bags at the cost of the bidder.
- b) Each sample shall be marked suitably either by written on the sample or on a slip of durable paper securely fastened to the sample, the name of the bidder and serial number of the item, of which it is a sample in the schedule.
- c) Approved samples would be retained free of cost upto the period of six months after the expiry of the contract. Purchaser shall not be responsible for any damage, wear and tear or loss during testing, examination, etc., during the period these samples are retained.
- d) The Samples shall be collected by the bidder/ selected bidder on the expiry of stipulated period. Purchaser shall in no way make arrangements to return the samples. The samples uncollected within 9 months after expiry of contract shall be forfeited by Purchaser and no claim for their cost, etc., shall be entertained.

- e) Samples not approved shall be collected by the unsuccessful bidder. Purchaser will not be responsible for any damage, wear and tear, or loss during testing, examination, etc., during the period these samples are retained. The uncollected samples shall be forfeited and no claim for their cost, etc., shall be entertained.
- f) Supplies when received may be subject to inspection to ensure whether they conform to the specifications or with the approved samples. Where necessary or prescribed or practical, tests shall be carried out in Government laboratories, reputed testing house like STQC (ETDC) and the like and the supplies will be accepted only when the articles conform to the standard of prescribed specifications as a result of such tests.
- g) The selected bidder shall at its own expense and at no cost to the Purchaser carry out all such tests and/ or inspections of the Goods and Related Services as are specified in the bidding document.

### **1.21 Drawl of Samples**

In case of tests, wherever feasible, samples shall be drawn in four sets in the presence of selected bidder or his authorised representative and properly sealed in their presence. Once such set shall be given to them, one or two will be sent to the laboratories and/ or testing house and the third or fourth will be retained in the office for reference and record.

### **1.22 Testing charges**

Testing charges shall be borne by the Government. In case of test results showing that supplies are not upto the prescribed standards or specifications, the testing charges shall be payable by the selected bidder.

### **1.23 Rejection**

- a) Articles not approved during inspection or testing shall be rejected and will have to be replaced by the selected bidder at his own cost within the time fixed by the Purchaser.
- b) If, however, due to exigencies of Purchaser 's requirements, such replacement either in whole or in part, is not considered feasible, the Purchaser after giving an opportunity to the selected bidder of being heard shall for reasons to be recorded, deduct a suitable amount from the approved rates. The deduction so made shall be final.
- c) The rejected articles shall be removed by the bidder/ selected bidder within 15 days of intimation of rejection, after which Purchaser shall not be responsible for any loss, shortage or damage and shall have the right to dispose of such articles as he thinks fit, at the selected bidder's risk and on his account.

**1.24 Delivery period & Extent of Quantity – Repeat Orders**

- a) The time specified for delivery shall be deemed to be the essence of the contract and the successful bidder shall arrange supplies within the period on receipt of the work order from the Purchaser.
- b) The selected bidder shall arrange supplies within the stipulated time period.
- c) If the Rajasthan Police does not procure any subject matter of procurement or procures less than the quantity specified in the bidding documents due to change in circumstances, the bidder shall not be entitled for any claim or compensation.
- d) Repeat orders for extra items or additional quantities may be placed on the rates and conditions given in the contract within one month of last delivery. Delivery or completion period may also be proportionately increased. The limits of repeat order shall be as under: - 50% of the value of goods or services of the original contract.

**1.25 Freight**

- a) All goods must be sent freight paid through Railways or goods transport.
- b) In case supply is desired to be sent by the Purchaser by passenger train, the entire railway freight will be borne by the bidder.
- c) Remittance charges on payment made shall be borne by the bidder.

**1.26 Payments**

- a) Unless otherwise agreed between the parties, payment for the delivery of the goods will be made on submission of bill in proper form by the bidder to the Purchaser in accordance with G.F.& A.R. All remittance charges will be borne by the bidder.
- b) In case of disputed items, 10% to 25% of the amount shall be withheld and will be paid on settlement of the dispute.
- c) Payment in case of those goods which need testing shall be made only when such tests have been carried out, test results received conforming to the prescribed specification.

**1.27 Liquidated Damages (LD)**

- a) In case of extension in the delivery period with liquidated damages the recovery shall be made on the basis of following percentages of value of goods which the bidder has failed to supply/ install/ complete:-
  - delay up to one fourth period of the prescribed delivery period: 2.5%
  - delay exceeding one fourth but not exceeding half of the prescribed period: 5.0%
  - delay exceeding half but not exceeding three fourth of the prescribed



period: 7.5%

- delay exceeding three fourth of the prescribed period: 10%
- b) Fraction of a day in reckoning period of delay in supplies shall be eliminated if it is less than half a day.
  - c) The maximum amount of liquidated damages shall be 10% of the contract value.
  - d) If the supplier requires an extension of time in completion of contractual supply on account of occurrence of any hindrance, he shall apply in writing to the authority, which has placed the supply order, for the same immediately on occurrence of the hindrance but not after the stipulated date of completion of supply.
  - e) Delivery period may be extended with or without liquidated damages if the delay in the supply of goods is on account of hindrances beyond the control of the bidder.

### **Penalty**

- f) The Service Level Agreement (SLA) as per Annexure 1 of Volume 1, would be imposed on the successful bidder for any deviation from agreed performance benchmark during the O&M phase of this project.

### **1.28 Licenses**

Bidders must make their own arrangements to obtain import licence, if necessary. If a bidder imposes conditions which are in addition to or in conflict with the conditions mentioned herein, his bid is liable to summary rejection. In any case none of such conditions will be deemed to have been accepted unless specifically mentioned in the letter of acceptance of bid issued by the Purchaser.

### **1.29 Settlement of Disputes**

If any dispute arise out of the contract with regard to the interpretation, meaning and breach of the terms of the contract, the matter shall be referred to by the Parties to the DG, Rajasthan Police who will appoint his next level deputy as the Sole Arbitrator of the dispute who will not be related to this contract and whose decision shall be final. The disputes settlement procedure shall be as per Arbitration and Conciliation Act, 1996 of Government of India.

### **1.30 Legal Proceedings**

All legal proceedings, regarding contract, by any of the parties (Purchaser or Successful Bidder) shall have to be lodged in courts situated in Rajasthan and not elsewhere.

### **1.31 Authenticity of Equipment**

- a) The selected bidder shall certify that the supplied goods are brand new, authentic, not refurbished, conform to the description and quality as specified in this bidding document and are free from defects in material, workmanship and service.
- b) If during the contract period, the said goods be discovered counterfeit/unauthentic, or are not in compliance to the specification and quality mentioned in

the bidding document, the decision of the Purchaser in that behalf will be final and conclusive, notwithstanding the fact that the Purchaser may have inspected and approved the said goods. Such rejection of the goods will be at the selected bidder's risk and all the provisions relating to rejection of goods etc., shall apply. The selected bidder shall, if so called upon to do, replace the goods etc., or such portion thereof as is rejected by Purchaser, otherwise the selected bidder shall pay such damage. Nothing herein contained shall prejudice any other right of the Purchaser in that behalf under this contract or otherwise.

- c) Goods accepted by the Purchaser in terms of the contract shall in no way dilute Purchaser's right to reject the same later, if found deficient in terms of the this clause of the contract.

### **1.32 Warranty**

- a) The bidder must supply all items with comprehensive on-site OEM warranty valid for 3 years from the successful Go-Live of the project after the goods, or any portion thereof as the case may be, have been delivered to, installed and accepted at the final destination(s) indicated in the bidding document. However, if delay of installation is more than a month's time due to the reasons ascribed to the bidder, the warranty shall start from the date of last successful installation of the items covered under the Purchase Order.
- b) At the time of goods delivery, the selected bidder shall submit a certificate/undertaking from all the respective OEMs mentioning the fact that the goods supplied are covered under comprehensive warranty & support for the prescribed period.
- c) The Purchaser shall give a written notice to the selected bidder stating the nature of any defect together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the selected bidder to inspect such defects. Upon receipt of such notice, the selected bidder shall expeditiously cause to repair the defective goods or parts thereof or replace the defective goods or parts thereof with brand new genuine/ authentic ones having similar or higher specifications from the respective OEM, at no cost to the Purchaser. Any goods repaired or replaced by the selected bidder shall be delivered at the respective location without any additional costs to the Purchaser.
- d) If having been notified, the selected bidder fails to remedy the defect within the period specified, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, in addition to other recourses available in terms and conditions of the contract and bidding document.
- e) During the warranty period, the bidder shall also be responsible to ensure adequate and timely availability of spare parts needed for repairing the supplied goods.
- f) The warranty on supplied software media, if any, should be at least 90 days.

### 1.33 Indemnification

- a) Subject to Clause mentioned below, Successful bidder (the "Indemnifying Party") undertakes to indemnify Purchaser (the "Indemnified Party") from and against all Losses on account of bodily injury, death or damage to tangible personal property arising in favor of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's performance or non-performance under this contract to the extent of the Indemnifying Party's comparative fault in causing such Losses.
- b) The indemnities set out in the above clause shall be subject to the following conditions:
  - i. The Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
  - ii. The Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense;
  - iii. If the Indemnifying Party does not assume full control over the Defense of a claim as provided in this Article, the Indemnifying Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses;
  - iv. The Indemnified Party shall not prejudice, proceedings or pay or accept any claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
  - v. All settlements of claims subject to indemnification under this Article will:
    - a) Be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and
    - b) Include any appropriate confidentiality contract prohibiting disclosure of the terms of such settlement;
  - vi. The Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favor of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
  - vii. The Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;

- viii. In the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and
- ix. If a Party makes a claim under the indemnity set out under clause mentioned above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).

### **1.34 Patent Indemnity**

- a) The supplier/ selected bidder shall, subject to the Purchaser's compliance with sub-clause (b) below, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: -
  - i. the installation of the Goods by the supplier/ selected bidder or the use of the Goods in the country where the Site is located; and
  - ii. the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the supplier/ selected bidder, pursuant to the Contract.

- b) If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to above, the Purchaser shall promptly give the supplier/ selected bidder a notice thereof, and the supplier/ selected bidder may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- c) If the supplier/ selected bidder fails to notify the Purchaser within thirty (30) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- d) The Purchaser shall, at the supplier's/ selected bidder's request, afford all available assistance to the supplier/ selected bidder in conducting such proceedings or claim, and shall be reimbursed by the supplier/ selected bidder for all reasonable expenses incurred in so doing.
- e) The Purchaser shall indemnify and hold harmless the supplier/ selected bidder and its employees, officers, and Subcontractors (if any) from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages,

costs, and expenses of any nature, including attorney's fees and expenses, which the supplier/ selected bidder may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

### **1.35 Limitation of Liability**

Except in cases of gross negligence or wilful misconduct: -

- a) neither party shall be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the selected bidder to pay liquidated damages and other penalties as defined in the bidding document, to the Purchaser; and
- b) the aggregate liability of the selected bidder to the Purchaser, whether under the Contract, in tort, or otherwise, shall not exceed the amount specified in the Contract, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the selected bidder to indemnify the Purchaser with respect to patent infringement.

### **1.36 Force Majeure**

The Successful bidder or the Purchaser as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this Contract to the extent that such performance is impeded by an event of force majeure ('Force Majeure').

#### **Force Majeure events**

A Force Majeure event means any event or circumstance or a combination of events and circumstances referred to in this Clause, which:

- a) Is beyond the reasonable control of the affected Party;
- b) Such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care;
- c) Does not result from the negligence of such Party or the failure of such Party to perform its obligations under this contract;
- d) Is of an incapacitating nature and prevents or causes a delay or impediment in performance; and
- e) May be classified as all or any of the following events: Such events include:

#### **I. Non-Political Events**

- a) Act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions;
- b) Radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the Successful bidder's use of radiation or radio-activity or biologically contaminating material;
- c) Strikes, lockouts, boycotts, labor disruptions or any other industrial disturbances as the case may be not arising on account of the acts or omissions of the Successful bidder and which affect the timely implementation and continued operation of the Project; or
- d) Any event or circumstances of a nature analogous to any of the foregoing.

## **II. Political Events**

- a) Change in Law, other than any Change in Law for which relief is provided under this Contract;
- b) Expropriation or compulsory acquisition by the Purchaser or any of their nominated agencies of any material assets or rights of the Successful bidder;
- c) Unlawful or unauthorized revocation of, or refusal by Purchaser or any of their nominated agencies, GoI or any of its agencies to renew or grant any clearance or Required Consents required by the Successful bidder to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Successful bidder's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- d) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Successful bidder in any proceedings for reasons other than failure of the Successful bidder to comply with Applicable Laws or Required Consents or on account of breach thereof, or of any contract, or enforcement of this contract or exercise of any of its rights under this contract;
- e) Any requisition of the Project by any other authority; or
- f) Any requisition of the Project by the Purchaser or any of their nominated agencies.
- g) For the avoidance of doubt, suspension of the Project in accordance with the provisions of this contract shall not be considered a requisition for the purposes of Force Majeure event.

## **III. Other Events**

- a) An act of war (whether declared or undeclared), hostilities, invasion, armed conflict or act of foreign enemy, blockade, embargo, prolonged riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage, for a continuous period exceeding seven (v') days.

For the avoidance of doubt, it is expressly clarified that the failure on the part of the Successful bidder under this contract to implement any disaster contingency planning

and back-up and other data safeguards in accordance with the terms of this contract against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event.

#### **Notification procedure for Force Majeure**

- a) The affected Party shall notify the other Party of a Force Majeure event within seven (7) days of occurrence of such event. If the other Party disputes the claim for relief under Force Majeure it shall give the claiming Party written notice of such dispute within thirty (30) days of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in accordance with this Clause
- b) Upon cessation of the situation which led the Party claiming Force Majeure, the claiming Party shall within seven (7) days hereof notify the other Party in writing of the cessation and the Parties shall as soon as practicable thereafter continue performance of all obligations under this Contract.

#### **Allocation of costs arising out of Force Majeure**

- a) Upon the occurrence of any Force Majeure Event prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- b) Upon occurrence of a Force Majeure Event after the Effective Date, the costs incurred and attributable to such event and directly relating to the Project ('Force Majeure Costs') shall be allocated and paid as follows:
  - Upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
  - Upon occurrence of an Other Event of Force Majeure, all Force Majeure Costs attributable to such Other Event, and not exceeding the Insurance Cover for such Other Event, shall be borne by the successful bidder.
  - Upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by Purchaser to the successful Bidder.
  - For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, operation and maintenance expenses, any increase in the cost of the Services on account of inflation and all other costs directly attributable to the Force Majeure Event.
  - Save and except as expressly provided in this Clause, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof.

#### **Consultation and duty to mitigate**

- a) Except as otherwise provided in this Clause, the affected Party shall, at its own cost, take all steps reasonably required to remedy and mitigate the effects of the Force

Majeure event and restore its ability to perform its obligations under this contract as soon as reasonably practicable. The Parties shall consult with each other to determine the reasonable measures to be implemented to minimize the losses of each Party resulting from the Force Majeure event. The affected Party shall keep the other Parties informed of its efforts to remedy the effect of the Force Majeure event and shall make reasonable efforts to mitigate such event on a continuous basis and shall provide written notice of the resumption of performance hereunder.

### **1.37 Change Orders and Contract Amendments**

- a) The Purchaser may at any time order the selected bidder through Notice in accordance with clause “Notices” , to make changes within the general scope of the Contract in any one or more of the following: -
  - i. drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
  - ii. the method of shipment or packing;
  - iii. the place of delivery; and
  - iv. the related services to be provided by the selected bidder.
- b) If any such change causes an increase or decrease in the cost of, or the time required for, the selected bidder’s performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery and Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the selected bidder for adjustment under this clause must be asserted within thirty (30) days from the date of the selected bidder’s receipt of the Purchaser’s change order.
- c) Prices to be charged by the selected bidder for any related services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the selected bidder for similar services.

### **1.38 Termination**

#### **a) Termination for Default**

- i. The procuring entity may, without prejudice to any other remedy for breach of contract, by written notice of default of at least 30 days sent to the selected bidder, terminate the contract in whole or in part: -
  1. If the selected bidder fails to deliver any or all quantities of the goods/services within the time period specified in the contract, or any extension thereof granted by Purchaser; or
  2. If the selected bidder fails to perform any other obligation under the contract within the specified period of delivery of service or any extension granted thereof; or



3. If the selected bidder, in the judgement of the Purchaser, is found to be engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the contract.
  4. If the selected bidder commits breach of any condition of the contract.
- ii. If Purchaser terminates the contract in whole or in part, amount of PSD may be forfeited.

#### **b) Termination for Insolvency**

Purchaser may at any time terminate the Contract by giving a written notice of at least 30 days to the selected bidder, if the selected bidder becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the selected bidder, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to Purchaser.

#### **c) Termination for Convenience**

- i. Purchaser, by a written notice of at least 30 days sent to the selected bidder may terminate the Contract, in whole or in part, at any time for its convenience. The Notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the selected bidder under the Contract is terminated, and the date upon which such termination becomes effective.
- ii. Depending on merits of the case the selected bidder may be appropriately compensated on mutually agreed terms for the loss incurred by the contract if any due to such termination.
- iii. The Goods that are complete and ready for shipment within twenty-eight (28) days after the selected bidder's receipt of the Notice of termination may be accepted by the Purchaser at the Contract terms and prices; the decision of Purchaser would be final. For the remaining Goods, the Purchaser may elect:
  1. To have any portion completed and delivered at the Contract terms and prices; and/or
  2. To cancel the remainder and pay to the selected bidder an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the selected bidder.

### **1.39 Effects Of Termination**

- a) In the event that Purchaser terminates this Contract pursuant to failure on the part of the Successful bidder to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by Successful bidder may be forfeited.
- b) Upon termination of this Contract, the Parties will comply with the Exit Management requirements set in this Contract.
- c) In the event that Purchaser terminates this Contract, the compensation will be decided in accordance with terms and condition of this Contract.

- d) On termination of this Contract for any reason, the Purchaser will decide the appropriate course of action.

#### **1.40 Personnel**

- a) The personnel assigned by Successful bidder to perform the Services shall be employees of Successful bidder, and under no circumstances shall such personnel be considered employees of Purchaser or its nominated agencies. The Successful bidder shall have the sole responsibility for the supervision and control of its personnel and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.
- b) The Successful bidder shall use its best efforts to ensure that sufficient personnel are assigned to perform the Services and those personnel have appropriate qualifications to perform the Services. After discussion with Successful bidder, Purchaser shall have the right to require the removal or replacement of any such personnel performing work under this Contract. In the event that Purchaser or its nominated agencies requests that any personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.
- c) The Successful bidder shall also be responsible to train certain employees of Purchaser, or its nominated agencies with regard to the Services being provided by the Successful bidder as and when required by the Purchaser or its nominated agencies during the entire project period. The parameters of the training required for these employees of Purchaser or its nominated agencies shall be communicated by Purchaser or its nominated agencies to the Successful bidder periodically and shall be in accordance with the latest procedures and processes available in the relevant areas of work.
- d) In the event that the Purchaser or its nominated agencies identifies any personnel of Successful bidder as "Key Personnel", then the Successful bidder shall not remove such personnel from the Purchaser or its nominated agencies engagement without the prior written consent of Purchaser or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.
- e) Except as stated in this Clause, nothing in this Contract will limit the ability of Successful bidder to freely assign or reassign its employees; provided that Successful bidder shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. Purchaser or its nominated agencies shall have the right to review and approve Successful bidder's plan for any such knowledge transfer. Successful bidder shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.

- f) Each Party shall be responsible for the performance of all its obligations under this Contract as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- g) Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Contract. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.

#### **1.41 Trademarks, Publicity**

The successful bidder shall not use the trademarks of the Purchaser without the prior written consent. Except as required by law or the rules and regulations, the successful bidder shall not publish or permit to be published either along or in conjunction with any other person any press release, information, article, photograph, illustration or any other material of whatever kind relating to this Contract, the SLA or the business without prior reference to and approval in writing from the Purchaser. Such approval may not to be unreasonably withheld or delayed by the Purchaser.

#### **1.42 Notices**

- a) Any notice or other document which may be given by either Party under this Contract shall be given in writing in person or by pre-paid recorded delivery post, email or by facsimile transmission.
- b) In relation to a notice given under this Contract, any such notice or other document shall be addressed to the other Party's principal or registered office.
- c) In relation to a notice given under the Contract, a Party shall specify the Parties' address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause.
- d) Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter).
- e) Either Party to this Contract may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

#### **1.43 Variations and Further Assurance**

- a) No amendment, variation or other change to this Contract shall be valid unless authorized in accordance with the change control procedure as set out in this

Contract. Such amendment shall be made in writing and signed by the duly authorized representatives of the Parties to this Contract.

- b) Each Party to this Contract agrees to enter into or execute, without limitation, whatever other contract, document, consent and waiver and to do all other things which shall or may be reasonably required to complete and deliver the obligations set out in this Contract.

#### **1.44 Compliance with Applicable Law**

Each Party to this Contract accepts that its individual conduct shall (to the extent applicable to it) at all times comply with all laws, rules and regulations of government and other bodies having jurisdiction over the area in which the Services are undertaken provided that changes in such laws, rules and regulations which result in a change to the Services shall be dealt with in accordance with the Change Control Schedule set out in this Contract. For the avoidance of doubt the obligations of the Parties to this Contract are subject to their respective compliance with all local, state, national, supra-national, foreign and international laws and regulations.

#### **1.45 Professional Fees**

All expenses incurred by or on behalf of each Party to this Contract , including all fees of agents, legal advisors, accountants and actuaries employed by either of the Parties in connection with the negotiation, preparation and execution of this Contract shall be borne solely by the respective Party which incurred them.

#### **1.46 Ethics**

The Successful bidder represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of Purchaser or its nominated agencies in connection with this contract and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of Purchaser standard policies and may result in cancellation of this Contract.

#### **1.47 Exit Management**

##### **Purpose**

- a) This clause sets out the provisions, which will apply on expiry or termination of the Contract.
- b) In the case of termination during the project implementation and Operation and Management, the Parties shall agree at that time whether, and if so during what period, the provisions of this clause shall apply.
- c) The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this clause.

Transfer of Assets

- a) Purchaser shall be entitled to serve notice in writing on the successful bidder at any time during the exit management period as detailed hereinabove requiring the successful bidder and/or its sub contractors to provide the Purchaser with a complete and up to date list of the Assets within 30 days of such notice. Purchaser shall then be entitled to serve notice in writing on the successful bidder at any time prior to the date that is 30 days prior to the end of the exit management period requiring the successful bidder to sell the Assets, if any, to be transferred to Purchaser or its nominated agencies at book value as determined as of the date of such notice in accordance with the provisions of relevant laws.
- b) In case of contract being terminated by Purchaser, Purchaser reserves the right to ask successful bidder to continue running the project operations for a period of 6 months after termination orders are issued. The other liquidated damages and SLA would be applicable during this period.
- c) Upon service of a notice under this Article the following provisions shall apply:
  - i. in the event, if the Assets to be transferred are mortgaged to any financial institutions by the successful bidder, the successful bidder shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to the Purchaser.
  - ii. All risk in and title to the Assets to be transferred / to be purchased by the Purchaser pursuant to this Article shall be transferred to Purchaser, on the last day of the exit management period.
  - iii. Purchaser shall pay to the successful bidder on the last day of the exit management period such sum representing the Net Block (procurement price less depreciation as per provisions of Companies Act) of the Assets to be transferred as stated in the Terms of Payment Schedule.
  - iv. Payment to the outgoing successful bidder shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements.
  - v. The outgoing successful bidder will pass on to Purchaser and/or to the Replacement successful bidder, the subsisting rights in any leased properties/ licensed products on terms not less favorable to Purchaser/ Replacement successful bidder, than that enjoyed by the outgoing successful bidder.

### **Cooperation and Provision of Information**

During the exit management period:

- a) The Successful bidder will allow the Purchaser access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the Purchaser to assess the existing services being delivered;
- b) Promptly on reasonable request by the Purchaser, the successful bidder shall provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with this contract relating to any

material aspect of the services (whether provided by the Successful bidder or sub contractors appointed by the Successful bidder). The Purchaser shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The Successful bidder shall permit the Purchaser or its nominated agencies to have reasonable access to its employees and facilities as reasonably required to understand the methods of delivery of the services employed by the Successful bidder and to assist appropriate knowledge transfer.

### **Confidential Information, Security and Data**

- a) The Successful bidder will promptly on the commencement of the exit management period supply to the Purchaser the following:
  - i. Information relating to the current services rendered and Purchaser and performance data relating to the performance of sub contractors in relation to the services;
  - ii. Documentation relating to Project's Intellectual Property Rights;
  - iii. Documentation relating to sub-contractors;
  - iv. All current and updated data as is reasonably required for purposes of Purchaser or its nominated agencies transitioning the services to its replacement bidder in a readily available format nominated by the Purchaser, ;
  - v. All other information (including but not limited to documents, records and contracts) relating to the services reasonably necessary to enable Purchaser or its nominated agencies, or its replacement bidder to carry out due diligence in order to transition the provision of the Services to Purchaser or its nominated agencies, or its replacement bidder (as the case may be).
- b) Before the expiry of the exit management period, the Successful bidder shall deliver to the Purchaser all new or up-dated materials from the categories set out in Schedule above and shall not retain any copies thereof, except that the Successful bidder shall be permitted to retain one copy of such materials for archival purposes only.
- c) Before the expiry of the exit management period, unless otherwise provided under the Contract, the Purchaser shall deliver to the Successful bidder all forms of Successful bidder confidential information, which is in the possession or control of Purchaser .

### **Employees**

- a) Promptly on reasonable request at any time during the exit management period, the Successful bidder shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the Purchaser a list of all employees (with job titles) of the Successful bidder dedicated to providing the services at the commencement of the exit management period.

- b) Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the Successful bidder to the Purchaser, or a replacement bidder ("Transfer Regulation") applies to any or all of the employees of the Successful bidder, then the Parties shall comply with their respective obligations under such Transfer Regulations.
- c) To the extent that any Transfer Regulation does not apply to any employee of the Successful bidder, department, or its replacement bidder may make an offer of employment or contract for services to such employee of the Successful bidder and the Successful bidder shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the SPMU or any replacement bidder.

### **Transfer of Certain Contracts**

On request by the Purchaser the Successful bidder shall effect such assignments, transfers, licenses and sub-licenses as the Director General of Police may require the same in the name of Director General of Police, Rajasthan or its replacement bidder in relation to any equipment lease, maintenance or service provision contract between Successful bidder and third party licensor, vendors, and which are related to the services and reasonably necessary for the carrying out of replacement services by the Purchaser or its replacement bidder.

### **Rights of Access to Premises**

- a) At any time during the exit management period, where Assets are located at the Successful bidder's premises, the Successful bidder will be obliged to give reasonable rights of access to (or, in the case of Assets located on a third party's premises, procure reasonable rights of access to) the Purchaser and/or any replacement bidder in order to make an inventory of the Assets.
- b) The Successful bidder shall also give the Purchaser or any of its nominated agency or any replacement bidder right of reasonable access to the Successful bidder's premises and shall procure the Purchaser or any of its nominated agency and any replacement bidder rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the Contract as is reasonably necessary to migrate the services to the Purchaser , or a replacement bidder.

### **General Obligations of the Successful bidder**

- a) The Successful bidder shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the Purchaser or its replacement bidder and which the Successful bidder has in its possession or control at any time during the exit management period.
- b) For the purposes of this Schedule, anything in the possession or control of any Successful bidder, associated entity, or sub contractor is deemed to be in the possession or control of the Successful bidder.

- c) The Successful bidder shall commit adequate resources to comply with its obligations under this clause.

### **Exit Management Plan**

- a) The Successful bidder shall provide the Purchaser with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the Contract as a whole and in relation to the Project Implementation, and the Operation and Management SLA.
- i. A detailed program of the transfer process that could be used in conjunction with a replacement bidder including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
  - ii. plans for the communication with such of the Successful bidder's sub contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the Purchaser's operations as a result of undertaking the transfer;
  - iii. (if applicable) proposed arrangements for the segregation of the Successful bidder's networks from the networks employed by Purchaser and identification of specific security tasks necessary at termination;
  - iv. Plans for provision of contingent support to Purchaser and replacement bidder for a reasonable period after transfer.
- b) The Successful bidder shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- c) Each Exit Management Plan shall be presented by the Successful bidder to and approved by the Purchaser or its nominated agencies.
- d) The terms of payment as stated in the Terms of Payment Schedule includes the costs of the Successful bidder complying with its obligations under this Schedule.
- e) In the event of termination or expiry of Contract, and Project Implementation, each Party shall comply with the Exit Management Plan.
- f) During the exit management period, the Successful bidder shall use its best efforts to deliver the services.
- g) Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.
- h) This Exit Management plan shall be furnished in writing to the Purchaser or its nominated agencies within 90 days from the Effective Date of this Contract.



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# **Special Terms and Conditions of Tender & Contract**

# **2**

## **2 SPECIAL TERMS AND CONDITIONS OF TENDER & CONTRACT**

### **2.1 Payment Terms and Schedule**

Refer Volume- II of this RFP

### **2.2 Service Level Standards/ Requirements/ Contract**

Refer Annexure- 1 of Volume - I of this RFP

### **2.3 Change Requests/ Management**

- a) An institutional mechanism will be set up for taking decisions regarding requests for changes. The Purchaser will set up a Change Control Committee with members from the procurement agency and the selected bidder. If it is unable to reach a consensus, the decision of the Purchaser will be final.
- b) Purchaser may at any time, by a written order given to the bidder , make changes within the general scope of the Contract in any one or more of the following: -
  - i. Designs, specifications, requirements which software or service to be provided under the Contract are to be specifically developed and rendered for Purchaser.
  - ii. The method of deployment, shipping or packing.
  - iii. Schedule for Installation Acceptance.
  - iv. The place of delivery and/or the services to be provided by the bidder.
- c) The change request/ management procedure will follow the following steps: -
  - i. Identification and documentation of the need for the change - The information related to initiator, initiation date and details of change required and priority of the change will be documented by Purchaser.
  - ii. Analysis and evaluation of the Change Request - Impact of the change in terms of the estimated effort, changed schedule, cost and the items impacted will be analysed and documented by the bidder.
  - iii. Approval or disapproval of the change request – Purchaser will approve or disapprove the change requested including the additional payments for software development, quoted man-month rate shall be used for cost estimation, efforts of all technical resources- project manager, analyst, software developer, testing engineer, database architecture etc shall be taken into account for total man-month estimation to carry out the s/w development resulting from the change request. For all technical resources irrespective of their experience and specialisation, the quoted man-month rate shall be used. Efforts of support staff shall not be taken into consideration for this purpose.
  - iv. Implementation of the change – The change will be implemented in accordance to the agreed cost, effort, and schedule by the selected bidder.

- v. Verification of the change - The change will be verified by Purchaser on implementation of the change request.
- d) All changes outside the scope of supplies agreed to herein which may have likely financial implications in terms of the overall cost/ time of the project shall be undertaken by successful bidder only after securing the express consent of Purchaser. In the event that the consent of Purchaser is not received then the change will not be carried out.
- e) While approving any change request, if required, Purchaser may ask the bidder to deploy the required resources on-site.
- f) If any such change outside the scope of supplies agreed to herein causes an increase or decrease in cost of, or the time required for, firm's performance of any provisions under the Contract, equitable adjustments shall be made in the Contract Price or Delivery Schedule, or both, and the Contract shall accordingly be amended. Any claims by firm for adjustment under this must be asserted within 30 (thirty) days from the date of successful bidder receiving the Purchaser change order which shall not be unreasonably withheld or delayed.

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# Annexure

# 3

### 3 ANNEXURE

#### 3.1 DRAFT AGREEMENT FORMAT

This Contract is made and entered into on this \_\_\_\_\_ day of, <<Year>> by and between Governor of Rajasthan acting through Additional Director General of Police and Member Secretary of the CDPSM, Rajasthan Police Academy, Jaipur, India (herein after referred to as Purchaser) which term or expression, unless excluded by or repugnant to the subject or context, shall include his successors in office and assignees on ONE PART

And

M/s \_\_\_\_\_, a company registered under with

its registered office at \_\_\_\_\_ (herein after referred as the “Successful Bidder/ Supplier”) which term or expression, unless excluded by or repugnant to the subject or context, shall include his successors in office and assignees on the OTHER PART.

Whereas,

Purchaser is desirous of appointing an agency for <project title> as per the Scope of Work and Terms and Conditions as set forth in the RFP document dated \_\_\_\_\_ of

<NIB No \_\_\_\_\_>.

And whereas

The successful bidder/supplier represents that it has the necessary experience for carrying out the overall work as referred to herein and has submitted a bid and subsequent clarifications for providing the required services against said NIB and RFP document issued in this regard, in accordance with the terms and conditions set forth herein and any other reasonable requirements of the Purchaser from time to time.

And whereas

Purchaser has accepted the bid of supplier and has placed the Work Order vide Letter No. \_\_\_\_\_ dated \_\_\_\_\_, on which M/s \_\_\_\_\_ has given their acceptance vide their Letter No. \_\_\_\_\_ dated \_\_\_\_\_.

And whereas

M/s The successful bidder/ supplier has deposited a sum of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) in the form of \_\_\_\_\_ ref no. \_\_\_\_\_ dated \_\_\_\_\_ of \_\_\_\_\_ Bank and valid up to \_\_\_\_\_ as security deposit for the due performance of the contract.

Now it is hereby agreed to by and between both the parties as under: -

1. The NIB Ref. No. \_\_\_\_\_ dated \_\_\_\_\_ and RFP document dated \_\_\_\_\_ issued by Purchaser along with its enclosures/ annexures, wherever applicable, are deemed to be taken as part of this contract and are binding on both the parties executing this contract.
2. In consideration of the payment to be made by Purchaser to supplier at the rates set forth in the work order no. \_\_\_\_\_ dated \_\_\_\_\_ will duly supply the said articles set forth in "Annexure-I: Bill of Material" thereof and provide related services in the manner set forth in the RFP, along with its enclosures/ annexures and Technical Bid along with subsequent clarifications submitted by supplier.
3. The Purchaser do hereby agree that if supplier shall duly supply the said articles and provide related services in the manner aforesaid observe and keep the said terms and conditions of the RFP and Contract, the Purchaser will pay or cause to be paid to supplier, at the time and the manner set forth in the said conditions of the RFP, the amount payable for each and every project milestone & deliverable. The mode of Payment will be as specified in the RFP document.
4. The timelines for the prescribed Scope of Work, requirement of services and deployment of technical resources shall be effected from the date of work order i.e. \_\_\_\_\_ and completed by supplier within the period as specified in the RFP document.
5. supplier has failed to supply/ install/ complete: -

a) Delay up to one fourth period of the prescribed delivery period, successful installation & completion of work	2.5%
b) Delay exceeding one fourth but not exceeding half of the prescribed delivery period, successful installation & completion of work.	5.0%
c) Delay exceeding half but not exceeding three fourth of the prescribed delivery period, successful installation & completion of work.	7.5%
d) Delay exceeding three fourth of the prescribed delivery period, successful installation & completion of work.	10.0%

Note:

- i. Fraction of a day in reckoning period of delay in supplies/ maintenance services shall be eliminated if it is less than half a day.
- ii. The maximum amount of agreed liquidated damages shall be 10%.
- iii. If supplier requires an extension of time in completion of contractual supply on account of occurrence of any hindrances, he shall apply in writing to the

authority which had placed the work order, for the same immediately on occurrence of the hindrance but not after the stipulated date of completion of supply.

- iv. Delivery period may be extended with or without liquidated damages if the delay in the supply of goods is on account of hindrances beyond the control of supplier.

6. All disputes arising out of this agreement and all questions relating to the interpretation of this agreement shall be decided as per the procedure mentioned in the RFP document.

In witness whereof the parties have caused this contract to be executed by their Authorized Signatories on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Signed By:	Signed By:
( ) Designation: Company:	For and on behalf of Governor of Rajasthan
<i>In the presence of:</i>	<i>In the presence of:</i>
( ) Designation: Company:	( ) Designation: For and on behalf of Governor of Rajasthan

<p>( ) Designation: Company:</p>	<p>( ) Designation: For and on behalf of Governor of Rajasthan</p>
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