

Section III
General Conditions of the Contract
and
Service Level Agreement

TABLE OF CONTENTS

Section III - General Conditions of the Contract and Service Level Agreement.....	4
Definitions	4
1. Interpretation.....	6
2. Sub-Contract.....	6
3. Representation & Guarantee.....	6
4. Scope of Work.....	8
5. Key Performance Measurements.....	8
6. Bank Guarantee for Contract Performance.....	8
6.2 Validity of Bank Guarantee for Contract Performance	8
7. Commencement and Progress	8
8. Contract Administration	9
9. OWNER’s Obligations.....	9
10. Intellectual property rights	9
11. Record of Contract Documents.....	9
12. Ownership of Equipment	10
13. Indemnity	10
14. Confidentiality	10
15. Taxes.....	11
16. Guarantee	11
17. Stipulated Time Schedule	12
18. Liquidated Damages	13
19. Term and extension of Contract.....	14
20. Prices	14
21. Change Orders/Alteration/Variation.....	14
22. Suspension of Work.....	16
23. Time is of Essence	17
24. Completion of the Contract	17
25. Payment Schedule.....	17
26. Event of default by the Bidder.....	19
27. Consequences of Event of Default.....	20
27.4 Termination of the Contract in Part of Full	20
28. Termination.....	21
29. Consequences of Termination	21
30. Penalty	22
31. Arbitration.....	22
32. Insurance	22
33. Transfer of Ownership	23

34.	Limitation of the Bidder's Liability towards the OWNER.....	23
35.	Conflict of Interest.....	23
36.	Severance	23
37.	Governing Language.....	24
38.	No Claim Certificate	24
39.	Publicity	24
40.	Force Majeure.....	24
41.	General.....	24
42.	Exit Management Plan	25
43.	Service Level Agreement & Targets.....	26
44.	Exclusions	27
45.	Fraud and Corrupt Practices	27

Section III - General Conditions of the Contract and Service Level Agreement**Definitions:**

In this RFP, the following terms shall be interpreted as indicated:

1. **“Applicable Laws”** means all applicable statutes, enactments, acts of legislature or laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives, requirement or other governmental restriction and orders or judgements of any Governmental authority, tribunal, board, court or other quasi-judicial authority or other governmental restriction or any similar form of decision applicable to the relevant Party and as may be in effect on the date of execution of Agreement and during the subsistence thereof, applicable to the Project;
2. **%Confidential Information+** means any information disclosed to or by any Party to this Contract and includes any information in relation to the Parties, a third party or any other person who is covered within the ambit of the OWNER’s legislation including any such information that may come to the knowledge of the Parties hereto / PIA sqTeam by virtue of this Contract that:
 - a. is by its nature confidential or by the circumstances in which it is disclosed confidential; or
 - b. is designated by the disclosing Party as confidential or identified in terms connoting its confidentiality; but does not include information which is or becomes public knowledge other than by a breach of this Contract;
3. **%Contract+** means the Agreement entered into between the PIA and the OWNER as recorded in the Contract form signed by the OWNER and the PIA including all attachments and Annexes thereto, the RFP and all Annexes thereto and the agreed terms as set out in the bid, all documents incorporated by reference therein and amendments and modifications to the above from time to time;
4. **“Deliverables”** means the products, infrastructure, licenses and services agreed to be delivered by the PIA in pursuance of the Contract as elaborated in the RFP and includes all documents related to the user manual, technical manual, designs, process documentations, the artefacts, the training materials, process and operating manuals, service mechanisms, policies and guidelines, inter alia payment and/or process related etc. and all their respective modifications;
5. **%Document+** means any embodiment of any text or image however recorded and includes any data, text, images, sound, voice, codes or and databases or microfilm or computer generated micro fiche;
6. **%Goods+** means all of the equipment, hardware, software, products accessories and/or other material / items which the PIA is required to supply, install and maintain under the contract as per the Technical specification;
7. **“Go live”** means the date on which the proposed BharatNet Project Phase-II is successfully implemented as specified in the RFP and all the acceptance work, services, terms & conditions etc. as defined in the RFP are successfully concluded to the satisfaction of USOF;

8. **Intellectual Property Rights** means any patent, copyright, trademark, trade name, service marks, brands, propriety information, software whether arising before or after the execution of this Contract and the right to ownership and registration of these rights;
9. **“ End-to-End Connectivity”** means Complete Installation, Integration, Commissioning and Testing of the created network (duly approved by TPA) which shall include OTDR link test, Power On & Self Testing, As Build Diagram (ABD reports), integration of GP ONT with State and BBNL NOC and Final acceptance certificate;
10. **OEM** means the Original Equipment Manufacturer of any equipment / product that is providing such goods to the PIA under the scope of this RFP / Contract;
11. **Parties** means the OWNER and the PIA and **Party** means either of the Parties;
12. **“Project Implementing Agency (PIA)”** means the successful bidder whose bid has been accepted by the OWNER and with whom the order for Selection of Project Implementing Agency (PIA) for BharatNet Phase . II+ has been placed as per requirements and terms & conditions specified in this RFP and shall be deemed to include the Bidder’s successors, representatives (approved by the OWNER), heirs, executors, administrators and permitted assigns, as the case may be, unless excluded by the terms of the contract;
13. **“Project Store”** means list of locations provided by the PIA to store the material as required in District/Block;
14. **“OWNER”** shall means the State Implementing Agency (SIA) named as the ODISHA POWER TRANSMISSION CORPORATION Ltd , Bhubaneswar+ and shall include its legal representatives, successors and assigns.
15. **OWNER’s Technical Representative** means the Universal Service Obligation Funds (USOF) or persons appointed by the Universal Service Obligation Funds (USOF) from time to time to act on its behalf;
16. **PIA s’ Team** means the Successful Bidder along with all of its partners / OEMs, who have to provide goods & services to the OWNER under the scope of this RFP / Contract. This definition shall also include any authorized service providers/ partners/ agents and representatives or other personnel employed or engaged either directly or indirectly by the PIA for the purposes of this PIA / Contract;
17. **Notice** means:
 - a. a notice; or
 - b. a consent, approval or other communication required to be in writing under this Contract;
18. **“Work Order Value”** means the accepted total contract price of the goods and services as per the original the Bill of Quantity along with extended Guarantee of 3 years and the prices towards Comprehensive Annual Maintenance Contract for 5 years and also includes the revised quantity based on the approved survey. OWNER shall revise the work order to this effect has been issued in favour of PIA .

19. **“Bidder or Contractor”** means all the entity participated in this RfP either in his own capacity or through forming consortium and shall include its legal representatives, successors and assigns.
20. **Tender Portal** shall mean the OFFICIAL tender portal used/to be used or referred to by the OWNER for the purpose of invitation of Bid through electronics mode.
21. **Commissioning** shall mean the first successful operation of the installations after all initial adjustments and trials have been completed in all respect.

1. Interpretation:

1.1 In this RFP unless a contrary intention is evident:

- a. The clause headings are for convenient reference only and may not be part of this RFP;
- b. Unless otherwise specified a reference to a clause number is a reference to all of its sub-clauses;
- c. Unless otherwise specified a reference to a clause, sub-clause or section is a reference to a clause, sub-clause or section of this RFP including any amendments or modifications to the same from time to time;
- d. A word in the singular includes the plural and a word in the plural includes the singular;
- e. A word importing a gender includes any other gender;
- f. A reference to a person includes a partnership and a body corporate;
- g. A reference to legislation includes legislation repealing, replacing or amending that legislation;
- h. Where a word or phrase is given a particular meaning it includes the appropriate grammatical forms of that word or phrase which have corresponding meanings.
- i. In the event of an inconsistency between the terms of this RFP and the Bid, the terms & conditions hereof shall prevail.

1.2 Applicable Standards:

The Goods & Services supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standard appropriate to the Goods & Services and such standards shall be the latest issued by the concerned institution.

2. Sub-Contract:

- 2.1 The engagement of Sub-Contractor is normally not allowed. However, for the purpose of associated works where it is warranted, the contractor shall engage Sub-Contractor with the prior written permission of the OWNER.
- 2.2 Under no circumstances the Sub-Contractor shall further Sub-contract, transfer, assign or otherwise part with the Contract or any part thereof, either directly or indirectly.

3. Representation & Guarantee:

In order to induce the OWNER to enter into this Contract, the PIA hereby represents and guarantee as of the date hereof, the following:

- 3.1 That the PIA has the power and the authority that would be required to enter into this Contract and the requisite experience, the technical know-how and the financial wherewithal required to

- successfully implement the terms & conditions of this contract and to provide services sought by the OWNER under this contract.
- 3.2 That the PIA is not involved in any litigation or legal proceedings, pending, existing, potential or threatened, that may have an impact of affecting or compromising the performance or execution of the work under this Contract.
 - 3.3 That the representations and guarantee made by the PIA in its Bid, the Contract shall continue to remain true and fulfil all the requirements as are necessary for executing the obligations and responsibilities as laid down in the Contract and the RFP and unless the OWNER specifies to the contrary, the PIA shall be bound by all the terms& conditions of the Bid and the contract throughout the period of the contract.
 - 3.4 That the PIA has the professional skills, personnel, infrastructure and resources/authorizations that are necessary for providing all such services as are necessary to fulfil the scope of work stipulated in the RFP and in the Contract.
 - 3.5 That there shall not be any privilege, claim or assertion made by a third party with respect to right or interest in, ownership, mortgage or disposal of any asset, property, movable or immovable as mentioned in any Intellectual Property Rights.
 - 3.6 That the execution of the scope of work and the Services herein is and shall be in accordance and in compliance with all applicable laws.
 - 3.7 That all conditions precedent under the Contract shall be satisfied.
 - 3.8 That neither the execution and delivery by the PIA of the Contract nor the PIA sqcompliance with or performance of the terms and provisions of the Contract (i) will contravene any provision of any Applicable Law or any order, writ, injunction or decree of any court or Governmental Authority binding on the PIA , (ii) will conflict or be inconsistent with or result in any breach of any or the terms, covenants, conditions or provisions of, or constitute a default under any Contract, Contract or instrument to which the PIA is a party or by which it or any of its property or assets is bound or to which it may be subject or (iii) will violate any provision of the Memorandum and Articles of Association of the PIA .
 - 3.9 That the PIA certifies that all registrations, recordings, filings and notarizations of the Contract and all payments of any tax or duty, including but not limited to stamp duty, registration charges or similar amounts which are required to be effected or made by the PIA which is necessary to ensure the legality, validity, enforceability or admissibility in evidence of the Contract have been made.
 - 3.10 That the PIA confirms that there has not and shall not occur any execution, amendment or modification of any agreement/contract without the prior written consent of the OWNER, which may directly or indirectly have a bearing on the Contract or the Project.
 - 3.11 That the PIA owns or has good, legal or beneficial title, or other interest in, to the property, assets and revenues of the PIA on which it grants or purports to grant or create any interest pursuant to the Contract, in each case free and clear of any encumbrance and further confirms that such interests created or expressed to be created are valid and enforceable.
 - 3.12 That the PIA owns, has license to use or otherwise has the right to use, which are required or desirable for performance of its services under this contract. All Intellectual Property Rights (owned by the PIA or which the PIA is licensed to use) required by the PIA for the performance of the contract are valid and subsisting. All actions (including registration, payment of all registration and renewal fees) required to maintain the same in full force and effect have been taken thereon and shall keep the OWNER indemnified in relation thereto.
 - 3.13 That the PIA shall at all times maintain sufficient manpower, resources, and facilities, to provide the Services in a workmanlike manner on a timely basis.
 - 3.14 That in providing the Services or deliverables or materials, neither PIA or its agent, nor any of its employees, shall utilize information which may be considered confidential information of, or proprietary to, any prior employer or any other person or entity;
 - 3.15 That the PIA shall provide adequate and appropriate support and participation, on a continuous basis.

4. Scope of Work:

- 4.1 Scope of the Work shall be as defined in Section V - Scope of Work and Annexes thereto of this tender.
- 4.2 OWNER has engaged the PIA for Survey, Design, Planning, Supply, Installation, Commissioning, End to end Integration and Testing of OFC (Aerial) GPON network along with the extended Guarantee for 3 years and to undertake the responsibility for Comprehensive Annual Maintenance Contract (AMC) of the established network for 5years. The PIA is required to provide such services, support and infrastructure as the OWNER or OWNER's representative may deem proper and necessary, during the term of this Contract, and includes all such processes and activities which are consistent with the proposals set forth in the Bid, the RFP and this Contract and are deemed necessary by the OWNER, in order to meet its business requirements (hereinafter scope of work).
- 4.3 The OWNER or OWNER's representative reserves the right to amend any of the terms & conditions with mutual agreement in relation to the Scope of Work and may issue any such directions which are not necessarily stipulated therein if it deems necessary for the fulfilment of the Scope of Works.

5. Key Performance Measurements:

- 5.1 Unless specified by the OWNER to the contrary, the PIA shall execute the work and carry out the scope of work in accordance with the terms & conditions of this Contract, Scope of Work and the service specifications as laid down in Section III . General Conditions of the Contract and Service Level Agreement of this RFP.
- 5.2 The OWNER reserves the right to amend any of the terms & conditions in relation to the Contract and may issue any such directions which are not necessarily stipulated therein if it deems necessary for the fulfilment of the scope of work. These changes shall be carried as per mutual consent.

6. Bank Guarantee for Contract Performance:

- 6.1 Within 15 days after the receipt of notification of award of the Contract from the OWNER, the PIA shall furnish Bank Guarantee to the OWNER, which shall be equal to 10% of the work Order value and shall be in the form of a Bank Guarantee Bond from a Nationalized Bank in the Proforma given for contract performance of Section IV . Bid Submission Formats.

6.2 Validity of Bank Guarantee for Contract Performance:

- 6.2.1 In case of Implementation order the Bank Guarantee shall remain valid for a period of sixty (60) days beyond the validity of the order (Construction period plus Operations & Maintenance Period).
- 6.2.2. In case of validity of the order get extended or the contract value increases, PIA shall submit Bank Guarantee for such extended period and additional value.

7. Commencement and Progress:

- 7.1 The PIA shall proceed to carry out the activities / services with diligently and expeditiously in accordance with the stipulations regarding time, manner, mode, and method of execution contained in this RFP.
- 7.2 The PIA shall be responsible for and shall ensure that all Services are performed in accordance with the Contract, Scope of Work & Specifications. PIA shall comply with all Specifications and other standards, terms and other stipulations/conditions set out hereunder.
- 7.3 The items supplied under this Contract shall conform to the standards mentioned in the Technical Specifications (TEC GR Nos). In other cases where no applicable standard is available such standards which are issued by the relevant certified agencies shall be applicable. Delivery of the items shall be made by the PIA in accordance with the terms specified by the OWNER in its Notification of Award / Work Order.

8. Contract Administration:

- 8.1 No variation or modification of the terms & conditions of the contract shall be made except by written amendment signed by the parties.
- 8.2 Either party may appoint any individual / organization as their authorized representative through a written notice to the other party. Each Representative shall have the authority to:
- a) Exercise all of the powers and functions of his/her Party under this Contract other than the power to amend this Contract and ensure the proper administration and performance of the terms hereof; and
 - b) Bind his or her Party in relation to any matter arising out of or in connection with this Contract.
- 8.3 The PIA along with other members / third parties / OEMs shall be bound by all undertakings and representations made by the authorized representative of the PIA and any covenants stipulated hereunder, with respect to this Contract, for and on their behalf.
- 8.4 For the purpose of execution or performance of the obligations under this Contract, the OWNER's representative would act as an interface with the nominated representative of the PIA. The PIA shall comply with all instructions that are given by the OWNER's representative during the course of this Contract in relation to the performance of its obligations under the terms of this Contract and the RFP.

9. OWNER's Obligations:

- 9.1 The OWNER's Representative shall interface with the PIA, to provide the required information, clarifications and to resolve any issues as may arise during the execution of the Contract. OWNER shall provide adequate cooperation in providing details, assisting with coordinating and obtaining of approvals from various governmental agencies, in cases, where the intervention of the OWNER is proper and necessary.

10. Intellectual property rights:

- 10.1 OWNER shall own and have Intellectual Property Rights of all the deliverables which have been developed by the PIA during the performance of Services and for the purposes of inter-alia use of such Services under this Contract. The PIA undertakes to disclose all Intellectual Property Rights arising out of or in connection with the performance of the Services to the OWNER and execute all such agreements/documents and file all relevant applications, effect transfers and obtain all permits and approvals that may be necessary in this regard to effectively conserve the Intellectual Property Rights of the OWNER.
- 10.2 If OWNER desires, Further, the PIA shall be obliged to ensure that all approvals, registrations which are inter-alia necessary for use of the infrastructure installed by the PIA, the same shall be acquired in the name of the OWNER, prior to termination of this Contract and which shall be assigned by the OWNER to the PIA for the purpose of execution of any of its obligations under the terms of the Bid, RFP or this Contract. However, subsequent to the term of this Contract, such approvals etc. shall endure to the exclusive benefit of the OWNER.
- 10.3 The PIA shall ensure that while it uses any hardware, processes or material in the course of performing the Services, it does not infringe the Intellectual Property Rights of any person and PIA shall keep the OWNER indemnified against all costs, expenses and liabilities howsoever, arising out of any illegal or unauthorized use (piracy) or in connection with any claim or proceedings relating to any breach or violation of any permission/license terms or infringement of any Intellectual Property Rights by the PIA during the course of performance of the Services.

11. Record of Contract Documents:

- 11.1 The PIA shall at all time make and keep sufficient copies of the specifications and Contract documents for him to fulfil his duties under the contract, in excess of his own requirement and those copies shall be available at all times for use by the OWNER's Representative and by any other person authorized by the OWNER's Representative.

12. Ownership of Equipment:

- 12.1 The OWNER shall own the services and items supplied by the PIA arising out of or in connection with this Contract.

13. Indemnity:

The PIA shall indemnify and defend SIA and its representatives & employees and hold SIA, its representatives, employees harmless from:

- 13.1 Damages and losses caused by its negligent or intentional act or omission or any damages and losses caused by the negligent act of any third party or sub-contractor or agency engaged by the PIA ;
- 13.2 Damages and losses resulting from the non-compliance with the established obligations; Third Party claim against SIA or its nominated agency that any Deliverables/Services/Equipment provided by the PIA infringes a copyright, trade secret, patents or other intellectual property rights of any third party in which case the PIA shall defend such claim at its expense and shall pay any costs or damages that may be finally awarded against SIA or its nominated agency. The PIA shall not indemnify State/SIA, however, if the claim of infringement is caused by (a) SIA misuse or modification of the Deliverables; or (b) SIA failure to use corrections or enhancements made available by the PIA; or (c) PIA use of the Deliverables in combination with any product or information not owned or developed or supplied by the PIA.
- 13.3. If any Deliverable is or likely to be held to be infringing, the PIA shall at its expense and option either (i) procure the right for SIA to continue using it, or (ii) replace it with a non-infringing equivalent, or (iii) modify it to make it non-infringing.
- 13.4 Any environmental damages caused by it and/or its representatives or employees or employees of any third party or sub-contractor or agency engaged by the PIA.
- 13.5 Breach (either directly by it or through its representatives and/or employees) of any representation and guarantee declared herein by it;
- 13.6 From any and all claims, actions, suits, proceedings, taxes, duties, levies, costs, expenses, damages and liabilities, including attorneys' fees, arising out of, connected with, or resulting from or arising in connections with the services provided due to neglect, omission or intentional act.

14. Confidentiality:

- 14.1 The PIA shall not use Confidential Information, the name or the logo of the OWNER except for the purposes of providing the Service as specified under this RFP;
- 14.2 The PIA shall not, either during the term or 6 months after expiration of this Contract, disclose any proprietary or confidential information relating to the Services, Contract or the network architecture, OWNER's business plan or operations without the prior written consent of the OWNER.
- 14.3 The PIA may only disclose Confidential Information in the following circumstances:
- i. with the prior written consent of the OWNER;
 - ii. to a member of the PIA's Team (Authorized Person) if:
 - a. the Authorized Person needs the Confidential Information for the performance of obligations under this contract;
 - b. the Authorized Person is aware of the confidentiality of the Confidential Information and is obliged to use it only for the performance of obligations under this contract
- 14.4 The PIA shall do everything reasonably possible to preserve the confidentiality of the Confidential Information including execution of a confidential agreement with the members of the, subcontractors and other service provider's team members to the satisfaction of the OWNER.

- 14.5 The PIA shall sign a Non-Disclosure Agreement (NDA) with the OWNER on mutually agreed terms & conditions. The PIA and its antecedents shall be bound by the NDA. The PIA shall be responsible for any breach of the NDA by its antecedents or delegates.
- 14.6 The PIA shall notify the OWNER promptly if it is aware of any disclosure of the Confidential Information otherwise than as permitted by this Contract or with the authority of the OWNER.
- 14.7 The OWNER reserves the right to adopt legal proceedings, civil or criminal, against the PIA in relation to a dispute arising out of breach of obligation by the PIA under this clause.

15. Taxes & Duties:

- 15.1 The GSTIN of OWNER is 21AAACO7873L1Z6, which should be mentioned by the successful bidder while issuing their Tax Invoice. Additionally contractor shall mention SAC Code and rate of Taxes against all supplies of Goods or Services or both in its Tax Invoice.
- 15.2 Tax Invoice shall constitute basic price, CGST plus OGST, or IGST, as the case may be, and such other details which are stipulated in CGST and OGST Rules, 2017.
- 15.3 As regards the Direct Taxes such as Income Tax etc. and other statutory payments and other corporate taxes, for which the contractor is liable, he shall be responsible for such payments to the concerned authorities. For this purpose, the contractor shall keep OWNER indemnified for all times in the event OWNER is made to discharge any tax liability on this account.
- 15.4 The statutory deduction of taxes and duties at source as applicable, related to these works, shall be made by OWNER from the Contractor's bills for which the contractor cannot claim any reimbursement.
- 15.5 TDS so deducted under Income Tax Act, 1961 shall be deposited with the relevant -Tax Authorities -and TDS certificates shall be issued by OWNER.
- 15.6 OWNER shall also deduct tax as applicable under GST Law from the payment made or credited to the supplier on the value of taxable supply, where the total value of such supply, under a contract, exceeds the specified limit.
- 15.7 In case of any changes in the rate of GST after the submission of the bid, but before the evaluation of the price bid, the revised rate shall be considered for evaluation. Similarly, if the rate of taxes and duties changes after the evaluation of the bid and before the issue of Work Order/LOA, the revised rate shall be considered for issue of Works Order/LOA.
- 15.8 Further, OWNER shall deduct Labour Cess @1% from all the invoices towards Supply of Goods and Services excluding such invoices raised against comprehensive AMC Contract.

16. Guarantee:

- 16.1 A comprehensive on-site Guarantee on all goods supplied under this contract shall be provided by the respective Original Equipment Manufacturer (OEM) through PIA till the expiry of 3years extended Guarantee period under the contract.
- 16.2 Technical Support shall be provided by the respective OEM till the end of the contract period.
- 16.3 The PIA shall warrant that the goods supplied under the Contract are new, non-refurbished, unused and recently manufactured; shall not be nearing End of Sale / End of Support; and shall be supported by the PIA and respective OEM along with service and spares support to ensure its efficient and effective operation for the entire duration of the contract.
- 16.4 The PIA warrants that the goods supplied under this contract shall be of the reasonably acceptable grade and quality and consisted with the established and generally accepted

standards for materials of this type. The goods shall be in full conformity with the specifications and shall operate properly and safely. All recent design improvements in goods, unless provided otherwise in the Contract, shall also be made available.

16.5 The PIA further warrants that the Goods supplied under this Contract shall be free from all encumbrances and defects/faults arising from design, material, manufacture or workmanship (except insofar as the design or material is required by the OWNER's Specifications)

16.6 The OWNER shall promptly notify the PIA in writing of any claims arising under this Guarantee.

16.7 Upon receipt of such notice, the PIA shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without prejudice to any other rights which the OWNER may have against the PIA under the Contract.

16.8 If the PIA, having been notified, fails to remedy the defect(s) within a reasonable period, the OWNER may proceed to take such remedial action as may be necessary, at the PIA's risk & expense and without prejudice to any other rights which the OWNER may have against the PIA under the Contract.

17. Stipulated Time Schedule:

17.1 The key milestone dates (critical dates) as anticipated by the OWNER are;

S. No	Deliverable	Timeline for completion	Penalties	Incentives	Documentary Evidence
1.	Issuance of work order	Zero Date	N.A.	N.A.	Work Order along with BOM and Price Schedule by the OWNER.
2.	Singing of Contract Agreement	0-1 month	N.A.	N.A.	1. Contract Agreement. 2. Approval of Composite Contract Performance Bank Guarantee. 3. Advance Bank Guarantee.
3.	Approval of Guaranteed Technical Particulars and Drawings of the Major items	1-2 month	N.A.	N.A.	Guaranteed Technical Particulars and Drawings of the Major items duly approved by the OWNER.
4.	Site Survey & Issue of revised LOA based on Survey	1-2 Month	N.A.	N.A.	1. Submission of final Survey report with detailed Bill of Quantity based on the site survey. 2. Issue of revised LOA based on the approved survey.

S. No	Deliverable	Timeline for completion	Penalties	Incentives	Documentary Evidence
5.	Progressive End-to-End connectivity of GPs-100% (25% each in first 04 months and thereafter every 02 months)	3 rd -12th Month	If the bidder fails to complete 100% of total GPs within stipulated time schedule then a penalty @0.5% for each week of delay or part thereof for the undelivered portion limited to maximum of 10% of the Order value (Excluding AMC cost).	If the bidder completes 100% GPs before the stipulated time schedule then an incentive @ 0.5% of the cost of such GPs for each early completed month shall be given to the bidder, limited to maximum of 3% of the Order value (Excluding AMC cost).	<ul style="list-style-type: none"> i. Material Verification and Acceptance Certificate (MVAC). ii. Joint Measurement Certificate (JMC) iii. Material Reconciliation Statement. iv. Installation , Commissioning and testing report approved by State, v. OTDR link test reports, power on, post, FAT report approved and certificate issued along with configuration reports by State, vi. Final as Built Diagram (ABD report) vii. Monthly Progress Report (Physical Progress and Financial Progress).

Note: 1. Deliverables, time lines, payment & penalty etc. towards Comprehensive Annual Maintenance Contract Period shall be undertaken as per the terms and conditions specified in the Service Level Agreement.

18. Penalty/Liquidated Damages:

- 18.1 The PIA shall perform the Services and comply in all respects with the critical dates and the parties hereby agree that failure on part of the PIA to meet the critical dates without prejudice to any other rights that the OWNER have, may lead to the imposition of such obligations as are laid down in the Delay and Deterrent Mechanism and/or levy of penalty as set and/or termination of the Contract at the discretion of the OWNER.
- 18.2 Penalties shall be capped to maximum of 10% of total cost of Project (excluding AMC cost) Value. Beyond 10% the OWNER has the right to terminate the contract or a portion or part of the work thereof. The OWNER shall give 30 days notice to the PIA of its intention to terminate the Contract and shall so terminate the Contract unless the Bidder initiates remedial action acceptable to the OWNER during the 30 days notice period.
- 18.3 The OWNER may without prejudice to its right to effect recovery by any other method, deduct the amount of liquidated damages from any money belonging to the PIA in its hands (which includes the OWNER's right to claim such amount against PIA's Bank Guarantee) or which may become due to the PIA. Any such recovery or liquidated damages shall not in any way relieve the PIA from any of its obligations to complete the Works or from any other obligations and liabilities under the Contract.

18.4 Delay not attributable to the PIA shall be considered for exclusion for the purpose of computing liquidated damages.

19. Term and extension of Contract:

19.1 The term of this Contract shall be initially for a period of 9 years (Construction Period- One year, Extended Guarantee Period- 3 years and Comprehensive Annual Maintenance Contract- 5 years) from the date of issue of contract and Go live of the entire work, according to the time schedules.

19.2 The OWNER shall reserve the sole right to grant any extension to the term above mentioned and shall notify in writing to the PIA, at least 01 month before the expiration of the term hereof, whether it shall grant the PIA an extension of the term. The decision to grant or refuse the extension shall be at the OWNER's discretion. Accordingly, the Bank Guarantee of the same amount shall be extended up to extended period of the Contract.

19.3 Additional period up to XX years as deemed appropriate (SIA reserves the right to extend the Contract with the PIA), terms & conditions for SLA, penalty and Prices for on premise services shall remain same as given for XX Year.

19.4 Where the OWNER is of the view that no further extension of the term be granted to the PIA , the OWNER shall notify the PIA of its decision at least 1 (One) months prior to the expiry of the Term. Upon receipt of such notice, the Bidder shall continue to perform all its obligations hereunder, until such reasonable time beyond the Term of the Contract within which, the OWNER shall either appoint an alternative PIA or create its own infrastructure to operate such Services as are provided under this Contract. OWNER shall make payment for work executed for the extended period post contract expiry.

19.5 **In case Comprehensive AMC period extended beyond 5 years, the AMC price shall be escalated @7% p.a. from the price for the 5th year with the same terms and conditions.**

20. Price Variation:

20.1 Taxable Prices of the Contract is FIRM and shall not be subject to any upward revision on any account whatsoever throughout the period of contract. OWNER however reserves the right to review the charges payable for the Maintenance and Management of the infrastructure at any time at the request of OWNER whichever is earlier to incorporate downward revisions as applicable and necessary.

20.2 If at any time, during the period of contract, the PIA offers identical services/products to any other Govt. Department/ Organization at prices lower than those chargeable under this contract, he shall notify the same to the OWNER and extend such reduced prices to the OWNER with immediate effect.

20.3 However, if at any time, rates of GST as applicable due to changes in the rates under GST Law during the contract period, the same shall be to the account of OWNER.

21. Change Orders/Alteration/Variation:

21.1 The PIA shall agree that the requirements/quantities/ specifications and Service requirements given in the RFP are minimum requirements and are in no way exhaustive and guaranteed by the OWNER.

21.1.1 Any upward revision (and/or additions consequent to errors, omissions, ambiguities, discrepancies in the quantities, specifications, architecture etc. of the RFP which the PIA had not brought to the OWNER's notice till the time of award of work and not accounted for in his Bid shall not constitute a change order and such upward revisions and/or addition shall be carried out by the PIA without any time and cost effect to OWNER.

21.1.2 It shall be the responsibility of the PIA to meet all the performance and other requirements of the OWNER as stipulated in the RFP / Contract. Any upward revisions / additions of quantities, specifications, service requirements to those specified by the PIA in his Bid documents, that may be required to be made during installation / commissioning of the

- network or at any time during the currency of the contract in order to meet the conceptual design, objective and performance levels or other requirements as defined in the RFP. These changes shall be carried out as per mutual consent.
- 21.2 The OWNER may at any time, by a written change order given to the PIA, make changes within the general Scope of Work. The OWNER shall have an option to increase or decrease(decrease only if communicated to PIA prior to availing of services / dispatch of goods / equipment) the Quantities and/or Specifications of the goods/equipment to be supplied and installed by the PIA or service requirements, as mentioned in the Contract, at any time during the contract period.
- 21.3 The written advice to any change shall be issued by the OWNER to the PIA up to 4 (four) weeks prior to the due date of provisioning/supply of such goods/equipment or commencement of services.
- 21.4 In case of increase in Quantities / Specifications or Service requirements or in case of additional requirement, the rate as provided in the Contract shall be considered as benchmark rates for procurement of the additional requirement from the PIA. However, based on the industry trends, OWNER retains the right to review these rates. The additional requirement shall also be governed by the same terms & conditions as provided in the Contract except for the appropriate extension of time to be allowed for delivery/installation of such extra goods/equipment or for commencement of such services. In case of decrease in Quantities or Specifications of goods/equipment or Service requirements, the PIA shall give a reduction in price at the rate given in the Contract corresponding to the said decrease.
- 21.5 In case applicable rates for the increase/decrease in question are not available in the Contract then the rates as may be mutually agreed shall apply. The PIA shall not be entitled to any claim by way of change of price, damages, losses, etc. The PIA shall be compensated at actual for any cancellation charges provided the claim is duly supported by documentary evidence of having incurred cancellation charges, which results from OWNER's action in reducing/cancelling Scope of Work.
- 21.6 Conditions for Change Order;
- 21.6.1 The change order shall be initiated only in case (i) the OWNER or OWNER's Technical Representative directs in writing the PIA to incorporate changes to the goods or design requirements already covered in the Contract. (ii) the OWNER or OWNER's Technical Representative directs in writing to the PIA to include any addition to the scope of work or services covered under this Contract or delete any part thereof, (iii) PIA requests to delete any part of the work which shall not adversely affect the work and if the deletions proposed are agreed to by the OWNER and for which the cost and time benefits shall be passed on to the OWNER,
- 21.6.2 Any change order comprising an alteration which involves change in the cost of the goods and/or services (which sort of alteration is hereinafter called a Variation) shall be the Subject of an amendment to the Contract by way of an increase or decrease in the Contract Value and adjustment of the implementation schedule if any.
- 21.6.3 If there is a difference of opinion between the PIA and OWNER's Representative on whether a particular item, work or part of the work constitutes a change order or not, the matter shall be handled in accordance with the procedures set forth in the tender.
- 21.7 Procedures for change Order:
- 21.7.1 Upon receiving any revised requirement/advice, in writing, from the OWNER or OWNER's Technical Representative, the PIA would verbally discuss the matter with OWNER's Representative.
- 21.7.2 In case such requirement arises from the side of the PIA, he would also verbally discuss the matter with OWNER's Representative giving reasons thereof.
- 21.7.3 In either of the two cases as explained above, the representatives of both the parties shall discuss on the revised requirement for better understanding and to mutually decide whether such requirement constitutes a change order or not.

- 21.7.4 If it is mutually agreed that such requirement constitutes a %Change Order+ then a joint memorandum shall be prepared and signed by the PIA and OWNER to confirm a %Change Order+and basic ideas of necessary agreed arrangement.
- 21.7.5 PIA shall study the revised requirement in accordance with the joint memorandum under Clause 21.7.4 and assess subsequent schedule and cost effect, if any.
- 21.7.6 Upon completion of the study referred to above under Clause 21.7.5 the results of this study along with all relevant details including the estimated time and cost effect thereof with supporting documents would be submitted to the OWNER to enable the OWNER to give a final decision whether PIA should proceed with the change order or not in the best interest of the works.
- 21.7.7 The estimated cost and time impact indicated by PIA shall be considered as a ceiling limit and shall be provisionally considered for taking a decision to implement change order.
- 21.7.8 The time impact applicable to the Contract shall be mutually agreed, subsequently, on the basis of the detailed calculations supported with all relevant back up documents.
- 21.7.9 In case PIA fails to submit all necessary substantiation/calculations and back up documents, the decision of the OWNER regarding time and cost impact shall be final and binding on the PIA.
- 21.7.10 If OWNER accepts the implementation of the change order under Clause 21.7.6 in writing, which would be considered as change order, then PIA shall commence to proceed with the enforcement of the change order pending final agreement between the parties with regard to adjustment of the Contract Value and the Schedule.
- 21.7.11 In case, mutual agreement under Clause 21.7.4 above, i.e. whether new requirement constitutes the change order or not, is not reached, then PIA in the interest of the works, shall take up the enforcement of the change order, if advised in writing to do so by OWNER's Representative pending settlement between the two parties to the effect whether such requirement constitutes a change order or not as per the terms & conditions of Contract. The time and cost effects in such a case shall be mutually verified and recorded. Should it establish that the said work constitutes a change order, the same shall be compensated taking into account the records kept in accordance with the Contract.
- 21.7.12 The PIA shall submit the necessary back up documents for the change order showing the break-up of the various elements constituting the change order for the OWNER's review. If no agreement is reached between the OWNER and Bidder within 60 days after OWNER's instruction in writing to carry out the change concerning the increase or decrease in the Contract Value and all other matters described above, either party may refer the dispute to arbitration.
- 21.8 Conditions for Revised Work / Change Order
- 21.8.1 The provisions of the Contract shall apply to revised work / change order as if the revised work / Change order has been included in the original Scope of work. However, the Contract Value shall increase / decrease and the schedule shall be adjusted on account of the revised work / Change orders as may be mutually agreed in terms of provisions set forth in Clause 21. The Bidder's obligations with respect to such revised work / change order shall remain in accordance with the Contract.

22. Suspension of Work:

- 22.1 The PIA shall, if ordered in writing by the OWNER's Representative, temporarily suspend the works or any part thereof for such a period and such a time as ordered, then PIA shall not be entitled to claim compensation for any loss or damage sustained by him by reason of temporary suspension of the Works as aforesaid but shall be eligible for the payment (of products/services delivered and accepted) during the suspension period as per contract. An extension of time for completion, corresponding with the delay caused by any such suspension of the works as aforesaid shall be granted to the PIA, if request for same is made and that the suspension was not consequent to any default or failure on the part of the PIA. Both PIA and OWNER acknowledges the suspension of work by OWNER, if results in extension of contract, the extra cost shall be on account of OWNER which shall be mutually agreed. In case the suspension of

works, is not consequent to any default or failure on the part of the PIA, and lasts for a period of more than 2 months, the Bidder shall have the option to request the OWNER to terminate the Contract with mutual consent.

- 22.2 In the event that the OWNER suspends the progress of work for any reason not attributable to the PIA for a period in excess of 30 days in aggregate, rendering the PIA to extend his Bank Guarantee then OWNER shall bear only the cost of extension of such bank guarantee for such extended period restricted to the normal bank rates as applicable in the international banking procedures subject to the PIA producing the requisite evidence from the bank concerned.

23. Time is of Essence:

- 23.1 Time shall be of the essence in respect of any date or period specified in this RFP or any notice, demand or other communication served under or pursuant to any provision of this RFP and in particular in respect of the completion of the Services by the PIA by the completion date.

24. Completion of the Contract:

- 24.1 PIA shall execute the project within 01 year as per the time line set forth in the tender documents defining key mile stones. Thereafter, the total time period for the project shall be 09 years (01 year Construction, 03 years Extended Guarantee and 5 years Comprehensive AMC) period from the date of Completion of the Project works.

- 24.2 Contract shall be declared completed when all the equipment and materials including spares being supplied by the PIA, utilisation of such materials/equipment, successful testing & commissioning and taking over of the entire works in accordance with the Contract Agreement.

- 24.3 PIA shall plan & execute the contract in a manner such that no surplus materials/Equipment is accumulated after completion of the contract. Surplus Materials/Equipment including construction surplus arising out of the contract, if any, the same shall be taken back by the PIA without any cost to OWNER. In case OWNER has already paid towards such surplus Materials/ Equipment, equivalent paid amount shall be recovered from the Invoices of the Contractors or from the Performance Bank guarantee.

25. Payment Schedule:

- 25.1 Payments shall be released progressively only on satisfactory acceptance of the deliverables for each Task as per the following schedule:

S. No.	Activity/Task (a)	Payment Milestone against Supply of materials/ Equipment (b)	Payment Milestone against services (c)	Documentary Evidence (d)
1.	Acceptance of LOA, Signing of the Contract Agreement ,	5% of the total Supply cost as per the Work Order (excluding AMC cost)	5% of the total Services cost as per the Work Order (excluding AMC cost)	<ul style="list-style-type: none"> i. Submission of Tax Invoice, in terms of the CGST and OGST Rules, as applicable under GST law in triplicate for claiming such inception cost. ii. Acknowledgement of the Letter of Award by the Contractor. iii. Signing of the Contract Agreement. iv. Submission and approval of Contract Performance Bank Guarantee. v. Submission and Acceptance of Bank Guarantee issued in favour of OWNER, towards

				inception cost. vi. Any other documents as required by the OWNER.
2	Completion of Survey Report, Approval of GTP and Drawings of the Major Equipment and issue of revised Work Order.	5% of the total Supply cost as per the Work Order (excluding AMC cost)	5% of the total Services cost as per the Work Order (excluding AMC cost)	i. Submission of Tax Invoice, in terms of the CGST and OGST Rules, as applicable under GST law in triplicate for claiming such inception cost. ii. Submission of Survey Report. iii. Approval of GTP & Drawings of the Major Equipment. iv. Issue of Revised Work Order. v. Any other documents as required by the OWNER.
3.	Supply of OFC, GPON and all other related materials including Accessories	60% of the Cost of Materials (As per the MVAC)	N.A.	i. On completion of supply, receipt, verification & acceptance of the materials/equipment at Project Site. ii. Evidence of dispatch (Tax Invoice of the Vendor) , R/R or L/R, Challan & packing list identifying contents of each shipment, Copy of Contractor's e-way bills. iii. Contractor's detailed Tax Invoice as per the GST guideline. iv. Storage-Cum-Erection Insurance Policy / Certificate endorsing OWNER as principal insured. v. Contractor's Guarantee Certificate of Quality covering the entire Guarantee period. vi. Material Dispatch Clearance Certificate (MDCC) issued by OWNER. vii. Physical Verification and Acceptance of Equipment/ Materials (MVAC). viii. Approved Inspection certificate. ix. Approved Type Test Report. x. Submission of Indemnity Bond equivalent to the total cost of the Materials/ Equipment supplied.
4.	Progressive End-to-End connectivity of GPs in a month (up to 100% of total GP)	20% of the Cost of Materials Utilised (As per the JMC).	80% of the cost of services (As per the JMC).	Supply Portion: i. Submission of Supplementary Tax Invoice in Triplicate. ii. Copy of the Tax Invoice earlier submitted at the time of Supply. iii. Material Utilisation Certificate. Services Portion: i. Joint Measurement Certificate (JMC) for the Erection, Installation and Commissioning of such supplied Equipment/ Materials. ii. Commissioning and testing report approved by State, OTDR link test reports, power on, post, FAT report approved iii. certificate issued along with configuration reports by State. iv. As Build Diagram (ABD report) v. Monthly Progress Report
5.	06 months after go live	5% of the Work Order Value towards material	5% of the Work Order Value towards	Supply & Services Portion: i. Submission of Final Invoice . ii. Evidence of successful

			services	operation of the works (Go Live). iii. Submission and acceptance of final Material Reconciliation Statement for the entire works under the contract based on the MVAC vis-à-vis JMC. iv. Adjustment of excess payment made, if any, arising out of the final material reconciliation statement. v. Work Completion Certificate for each completed work duly certified by the OWNER. vi. Signing of SLA agreement. vii. Final as built Drawings. viii. Submission and Approval of Operation Manual of the network established under Bharat Net Phase-II Project. ix. Any other documents as required by the OWNER.
6	After Extended Guarantee Period of 3 years from the date of the completion of the project.	Balance 5% of the Work Order Value towards material	Balance 5% of the Work Order Value towards services	1. Tax invoice. 2. Signing of the Comprehensive Contract. 3. Bank Guarantee towards AMC.
7.	Comprehensive Annual Maintenance Contract	Payment shall be made at the end of the each quarter.		i. SLA report duly certified by OWNER. ii. Tax invoice. iii. Any other documents as required by the OWNER.

Note 1: All payments shall be released progressively along with GST after certification of Delivery and Implementation Milestones by OWNER/TPA/PMC appointed by OWNER.

Note 2: Since the project timelines are of utmost importance, DoT shall reserve the right to take over the project implementation, in case of the project milestones delayed by over 60 days of its agreed time. In this regard, the decision of the Empowered Committee shall be final and binding.

Note 3: All Payments shall be made in Indian Rupees Only and shall be subject to submission of documentary evidence mentioned above.

Note 4: Payment shall be released by the OWNER against the invoices complete in all respects raised on monthly basis by PIA within 30 calendar days.

Note 5: All payments shall be made through RTGS only.

Note 6: All payments shall be subject to deductions of TDS as per the Income Tax Act, GST Laws and Building & Other Construction Workers' Welfare Cess Act.

Note 7: Other deductions as admissible shall be made from the PIA's Invoice from time to time.

26. Event of default by the Bidder:

26.1 The failure on the part of the PIA to perform any of its obligations or comply with any of the terms of this Contract which results in a material breach of the contract shall constitute an

Event of Default on the part of the PIA. The events of default as mentioned above may include inter-alia the following:

- a) the PIA has failed to adhere to any of the key performance indicators as laid down in the Key Performance Measures / Contract, or if the PIA has fallen short of matching such standards/targets as the OWNER may have designated with respect to any task necessary for the execution of the scope of work under this Contract which results in a material breach of the contract. The above mentioned failure on the part of the PIA may be in terms of failure to adhere to timelines, specifications, requirements or any other criteria as defined by the OWNER;
- b) the PIA has failed to remedy a failure to perform its obligations in accordance with the specifications issued by the OWNER, despite being served with a default notice which laid down the specific deviance on the part of the PIA to comply with any stipulations or standards as laid down by the OWNER; or
- c) the PIA /PIAsq team has failed to conform with any of the Service/Facility Specifications/standards as set out in the scope of work of this RFP or has failed to adhere to any amended direction, modification or clarification as issued by the OWNER during the term of this Contract and which the OWNER deems proper and necessary for the execution of the scope of work under this Contract
- d) the PIA has failed to demonstrate or sustain any representation or Guarantee made by it in this Contract, with respect to any of the terms of its Bid, the RFP and this Contract
- e) There is an order from a court of competent jurisdiction for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to the PIA.

26.2 Where there has been an occurrence of such defaults inter alia as stated above, the OWNER shall issue a notice of default to the PIA, setting out specific defaults / deviances / omissions and providing a notice of Sixty (60) days to enable such defaulting party to remedy the default committed.

26.3 Where despite the issuance of a default notice to the PIA by the OWNER the PIA fails to remedy the default to the satisfaction of the PIA, the OWNER may, where it deems fit, issue to the defaulting party another default notice or proceed to adopt such remedies as may be available to the OWNER.

27. Consequences of Event of Default:

Where an Event of Default subsists or remains uncured the OWNER may/shall be entitled to:

27.1 The PIA shall in addition take all available steps to minimize loss resulting from such event of default.

27.2 The OWNER may, by a written notice of suspension to the PIA, suspend all payments to the PIA under the Contract, provided that such notice of suspension:

- i. shall specify the nature of the failure; and
- ii. shall request the PIA to remedy such failure within a specified period from the date of receipt of such notice of suspension by the PIA

27.3 In all cases of risk purchase, the difference in cost shall be borne by defaulting PIA with capping of maximum 150% of the value of goods/services at contract.

27.4 Termination of the Contract in Part of Full

27.4.1 Retain such amounts from the payment due and payable by the OWNER to the PIA as may be required to offset any losses caused to the OWNER as a result of such event of default and the PIA shall compensate the OWNER for any such loss, damages or other costs, incurred by the OWNER in this regard. Nothing herein shall effect the continued obligation of the PIA and PIA sqteam to perform all their obligations and responsibilities under this Contract in an identical manner as were being performed before the occurrence of the default.

27.4.2 Invoke the Bank Guarantee and other Guarantees furnished hereunder, recover such other costs/losses and other amounts from the PIA as may have resulted from such default and pursue such other rights and/or remedies that may be available to the OWNER under law.

28. Termination:

28.1 The OWNER may, terminate this Contract in full or in part by giving the PIA a prior and written notice indicating its intention to terminate the Contract under the following circumstances:

- a) Where the OWNER is of the opinion that there has been such Event of Default on the part of the PIA which would make it proper and necessary to terminate this Contract and may include failure on the part of the PIA to respect any of its commitments with regard to any part of its obligations under its Bid, the RFP or under this Contract.
- b) Where it comes to the OWNER's attention that the PIA (or the PIA sqTeam) is in a position of actual conflict of interest with the interests of the OWNER, in relation to any of terms of the PIA sqBid, the RFP or this Contract
- c) Where the PIA sqability to survive as an independent corporate entity is threatened or is lost owing to any reason whatsoever, including inter-alia the filing of any bankruptcy proceedings against the PIA, any failure by the PIA to pay any of its dues to its creditors, the institution of any winding up proceedings against the PIA or the happening of any such events that are adverse to the commercial viability of the PIA. In the event of the happening of any events of the above nature, the OWNER shall reserve the right to take any steps as are necessary, to ensure the effective transition of the project to a successor PIA and to ensure business continuity
- d) **Termination for Insolvency:** The OWNER may at any time terminate the Contract by giving written notice to the PIA, without compensation to the PIA, if the PIA becomes bankrupt or otherwise insolvent, provided that such termination shall not prejudice or affect any right of action or remedy which has accrued or shall accrue thereafter to the OWNER.
- e) **Termination for Convenience:** The OWNER, may, by prior written notice sent to the PIA at least 6 months in advance, 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 OWNER's convenience, the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

28.2 The PIA may, subject to approval by the OWNER, terminate this Contract before the expiry of the term by giving the OWNER a prior and written notice at least 12 months in advance indicating its intention to terminate the Contract.

29. Consequences of Termination:

29.1 In the event of termination of this contract due to any cause whatsoever, the contract with stand cancelled effective from the date of termination of this contract.

29.2 In case of exigency, if the OWNER gets the work done from elsewhere, the difference in the cost of getting the work done shall be borne by the PIA with capping of maximum 10% of the value of goods/services at contract

29.3 Where the termination of the Contract is prior to its stipulated term on account of a Default on the part of the PIA or due to the fact that the survival of the PIA as an independent corporate entity is threatened/has ceased, or for any other reason, whatsoever, the OWNER through re-determination of the consideration payable to the PIA as agreed mutually by the OWNER and the PIA or through a third party acceptable to both the parties may pay the PIA for that part of the Services which have been authorized by the OWNER and satisfactorily performed by the PIA up to the date of termination. Without prejudice any other rights, the OWNER may retain such amounts from the payment due and payable by the OWNER to the PIA as may be required to offset any losses caused to the OWNER as a result of any act/omissions of the PIA. In case of any loss or damage due to default on the part of the PIA in performing any of its obligations with regard to the execution of the scope of work under this Contract, the PIA shall compensate the OWNER for any such loss, damages or other costs, incurred by the OWNER. Additionally, other members of its team shall perform all its obligations and responsibilities

under this Contract in an identical manner as were being performed before the collapse of the PIA as described above in order to execute an effective transition and to maintain business continuity. All third parties shall continue to perform all/any functions as stipulated by the OWNER and as may be proper and necessary to execute the scope of work under the Contract in terms of the PIA sqBid, the RFP and this Contract.

- 29.4 Nothing herein shall restrict the right of the OWNER to invoke the Bank Guarantee and other Guarantees furnished hereunder, enforce the Deed of Indemnity and pursue such other rights and/or remedies that may be available to the OWNER under law.
- 29.5 The termination hereof shall not affect any accrued right or liability of either Party nor affect the operation of the provisions of this Contract that are expressly or by implication intended to come into or continue in force on or after such termination.

30. Penalty:

- 30.1 On-going performance and service levels shall be as per parameters, deliverables, time line stipulated by the OWNER in this RFP, failing which the OWNER may, at its discretion, impose Penalties on the PIA.
- 31.2 In case the reason of delay or failure is not attributable on the part of the PIA, OWNER may, at its discretion, waive such Penalties to the PIA.

31. Arbitration:

- 31.1 Except otherwise provided in this RFP in the event of any question or interpretation of any clause, disputer or difference or to any other claim, right, matter or thing whatsoever in any way arising out or relating to this RFP whether arose during the progress of the work or after the cancellation, termination, completion or abandonment thereof, shall be settled by the parties amicably through negotiation within a period of 30 days of the notice by other party, failing which, the dispute shall be referred to the sole arbitrator appointed by the Chief Secretary of the State Government. The arbitration shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modification of re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings. The arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and shall give reasons for the award. The fee payable to arbitrator shall be paid equally by both the parties.
- 31.2 Notwithstanding any dispute or claim of the pendency of any arbitration or other proceedings, OWNER shall continue to Implement the project and provide the services for the whole duration of the RFP.

32. Insurance:

- 32.1 The Goods supplied under this Contract shall be fully insured by the PIA, against any loss or damage up to the time it is delivered to the PIA -designated carrier for shipment to OWNER or to OWNER's designated location. The PIA shall submit to the OWNER, certificate of insurance issued by the insurance company, indicating that such insurance has been taken.
- 32.2 The PIA shall bear all the statutory levies like customs, insurance, freight, etc. applicable on the goods during their shipment from respective manufacturing/shipment site of the OEM to the port of landing.
- 32.3 All charges like transportation charges, octroi, etc. that may be applicable till the goods are delivered at the respective site of installation shall also be borne by the PIA.
- 32.4 The PIA during the term of this contract undertakes to ensure that it has taken or shall take up all appropriate insurances for the delivery of goods that it is required to undertake under law as well as to adequately cover its obligations under this Contract: shall take out and maintain, at his own cost insurance with IRDA approved insurers against the risks, and for the coverage, as specified below: shall pay all premium in relation thereto and shall ensure that nothing is done to make such insurance policies void or voidable at the OWNER's request, shall provide certificate of insurance to the OWNER showing that such insurance has been taken out and

maintained. Employer's liability and workers' compensation insurance in respect of the Personnel of the PIA / PIA sqTeam, 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

Insurance against loss of or damage to (i) equipment or assets procured in full or in part for fulfilment of obligations under this Contract (ii) the PIA sqassets and property used in the performance of the Services.

- 32.5 All the equipment and materials including spares being supplied by the PIA shall be kept completely insured (110% value of the Contract Price) by the PIA at his cost from time of dispatch from the PIA's works / Vendor's works, up to the completion of erection, testing & commissioning and taking over of the entire works in accordance with the Contract. The insurance certificate shall contain OWNER as the principal insured, Name of the Package, Sites and LOA reference etc.

33. Transfer of Ownership:

- 33.1 The PIA must transfer all titles to the assets and goods procured for the purpose of the project to the OWNER upon end to end connectivity of GPs.
- 33.2 The asset(s) so created shall be a National Asset fully owned by the Government of India and non-discriminatory access, including leasing of dark fibre, shall be provided to PIA.

34. Limitation of the Bidder's Liability towards the OWNER:

- 34.1 Except in case of gross negligence or wilful misconduct on the part of the PIA or on the part of any person or company acting on behalf of the PIA in carrying out the Services, the PIA, with respect to damage caused by the PIA to OWNER's resulting in bodily injury, death or damage to physical property with respect to all claims arising under this Contract, shall in aggregate not be liable to OWNER
- i. For any indirect or consequential loss or damage; and
 - ii. For any direct loss or damage that exceeds the total payments payable under this contract to the PIA hereunder.
- 34.2 This limitation of liability shall not affect the PIA's liability, if any, for direct damage to Third Parties resulting in bodily injury, death or damage to physical property caused by the PIA or any person or firm/company acting on behalf of the PIA in carrying out the Services. Notwithstanding anything stated to the contrary in the RFP, Limitation of liability, including for direct damage to Third Parties, shall be to the extent of 100% of the total cost of the project calculated up to and as on the date when such section / clause is required to be invoked.

35. Conflict of Interest:

- 35.1 If the PIA found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the OWNER shall forfeit the EMD as mutually agreed, without prejudice to any other right or remedy that may be available to the OWNER hereunder or otherwise. The PIA shall disclose to the OWNER in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the PIA or the PIA sqteam) in the course of performing the Services as soon as practical after it becomes aware of that conflict.
- 35.2 The OWNER requires that the PIA provides services which at all times hold the OWNER's interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The PIA shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the OWNER.

36. Severance:

- 36.1 In the event any provision of this Contract is held to be invalid or unenforceable under the applicable law, the remaining provisions of this Contract shall remain in full force and effect.

37. Governing Language:

37.1 The Contract shall be written in English language. Subject to Clause 41.5 such language versions of the Contract shall govern its interpretation. All correspondence and other documents pertaining to the Contract that are exchanged by parties shall be written in English language only

38. No Claim Certificate:

38.1 The PIA shall not be entitled to make any claim, whatsoever against the OWNER, under or by virtue of or arising out of, this contract, nor shall the OWNER entertain or consider any such claim, if made by the PIA after he shall have signed a ~~No~~ claim+ certificate in favour of the OWNER in such forms as shall be required by the OWNER after the works are finally accepted.

39. Publicity:

39.1 The PIA shall not make or permit to be made a public announcement or media release about any aspect of this Contract unless the OWNER first gives the PIA its written consent.

40. Force Majeure:

40.1 If, at any time, during the continuance of this contract, the performance in whole or in part by either party of any obligation under this contract is prevented or delayed by reasons of any war or hostility, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts or act of God (hereinafter referred to as events) provided notice of happenings of any such eventuality is given by either party to the other within 21 days from the date of occurrence thereof, neither party shall by reason of such event be entitled to terminate this contract nor shall either party have any claim for damages against other in respect of such non-performance or delay in performance, and deliveries under the contract shall be resumed as soon as practicable after such an event come to an end or cease to exist, and the decision of the OWNER as to whether the deliveries have been so resumed or not shall be final and conclusive. Further that if the performance in whole or part of any obligation under this contract is prevented or delayed by reasons of any such event for a period exceeding 60 days, either party may, at its option, terminate the contract.

40.2 Provided, also that if the contract is terminated under this clause, the OWNER shall be at liberty to take over from the PIA at a price to be fixed by the OWNER, which shall be final, all unused, undamaged and acceptable materials, bought out components and stores in course of manufacture which may be in possession of the PIA at the time of such termination or such portion thereof as the OWNER may deem fit, except such materials, bought out components and stores as the PIA may with the concurrence of the OWNER elect to retain.

41. General:**41.1 Relationship between the Parties**

- a) Nothing in this Contract constitutes any fiduciary relationship between the OWNER and PIA /PIA sq Team or any relationship of employer employee, principal and agent, or partnership, between the OWNER and PIA.
- b) No Party has any authority to bind the other Party in any manner whatsoever except as agreed under the terms& conditions of this Contract.
- c) The OWNER has no obligations to the PIA sqTeam except as agreed under the terms & Conditions of this Contract.

41.2 No Assignment

The PIA shall not transfer any interest, right, benefit or obligation under this Contract without the prior written consent of the OWNER.

41.3 Survival

The provisions of the clauses of this Contract in relation to documents, property, Intellectual Property Rights, indemnity, publicity and confidentiality and ownership survive the expiry or

termination of this Contract and in relation to confidentiality, the obligations continue to apply unless the OWNER notifies the PIA of its release from those obligations.

41.4 Entire Contract

The terms & conditions laid down in the PFP and all the annexures thereto as also the Bid and any attachments/annexes thereto shall be read in consonance with and form an integral part of this Contract. This Contract supersedes any prior Contract, understanding or representation of the Parties on the subject matter.

41.5 Governing Law:

This Contract shall be governed in accordance with the laws of India.

41.6 Jurisdiction of Courts:

High Court of ODISHA at Cuttack have exclusive jurisdiction to determine any proceeding in relation to this Contract.

41.7 Compliance with Laws:

The PIA shall comply with the laws in force in India in the course of performing this Contract.

41.8 Notices

a) A notice means:

- i. A notice; or
- ii. A consent, approval or other communication required to be in writing under this Contract.

All notices, requests or consents provided for or permitted to be given under this Contract shall be in writing and shall be deemed effectively given when personally delivered or mailed by pre-paid certified/registered mail, return receipt requested, addressed as follows and shall be deemed received two days after mailing or on the date of delivery if personally delivered:

To OWNER at:

State/SIA

<<Attn: XXXX, XXXX, State/SIA>>

[Phone:]

[Fax:]>>

To PIA at:

Attn:

[Phone:]

[Fax:]

Any Party may change the address to which notices are to be directed to it by notice to the other parties in the manner specified above.

A notice served on a Representative is taken to be notice to that Representative's Party.

41.9 Waiver:

- a) Any waiver of any provision of this Contract is ineffective unless it is in writing and signed by the Party waiving its rights.
- b) A waiver by either Party in respect of a breach of a provision of this Contract by the other Party is not a waiver in respect of any other breach of that or any other provision.
- c) The failure of either Party to enforce at any time any of the provisions of this Contract shall not be interpreted as a waiver of such provision.

41.9 Modification:

Any modification of this Contract shall be in writing and signed by an authorized representative of each Party.

41.10 Application:

These General Conditions shall apply to the extent that provisions in other parts of the Contract do not supersede them.

42. Exit Management Plan:

- 42.1 This clause sets out the provisions which shall apply upon completion of the contract period or upon termination of the contract for default of the PIA. An Exit Management plan shall be furnished by PIA in writing to the OWNER within 60 days on completion of the contract period

or termination of the contract for default of the PIA, 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 Service Level monitoring.

- i. A detailed program of the transfer process that could be used in conjunction with a Replacement PIA 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 provision of contingent support to Project and Replacement PIA for a reasonable period after transfer.
- iii. Exit Management plan in case of normal termination of Contract period
- iv. Exit Management plan in case of any eventuality due to which Project is terminated before the contract period.
- v. Exit Management plan in case of termination of the PIA

42.2 Exit Management plan at the minimum adhere to the following:

- i. Three (3) months of the support to Replacement PIA post termination of the Contract
- ii. Complete handover of the Planning documents, bill of materials, technical specifications of all equipment, user manuals, guides, IPR, network architecture, change requests if any reports, documents and other relevant items to the Replacement PIA / OWNER
- iii. Certificate of Acceptance from authorized representative of Replacement PIA issued to the PIA on successful completion of handover and knowledge transfer
- iv. In the event of termination or expiry of the contract, Project Implementation or Service Level monitoring, both PIA and OWNER shall comply with the Exit Management Plan.
- v. During the exit management period, the PIA shall use its best efforts to deliver the services.

43. Service Level Agreement & Targets:

43.1 The PIA has to maintain the works for 08 years (3years extended Guarantee and 5 years Comprehensive Annual Maintenance Contract) as per the terms & conditions of the RFP and as per the scope of works mentioned under Section-V of this RfP and to meet the SLA as stated below:

S. No.	Uptime	Penalty (% of AMC)
1	>= 95.0%	No Penalty
2	>= 85 .0% to < 95.0%	10
3	>= 75 .0% to < 85 .0%	15
4	>= 65 .0% to < 75 .0%	20
5	>= 55 .0% to < 65 5 .0%	25
6	Below 55%	50

43.2 Uptime SLA for Block to GP connectivity:

1. PIA shall be entitled to a maximum of 8 hours of Planned Outages per District with maximum four (4) Maintenance Windows per year, thus totalling 32 hours of outages during 1 year period for the network installed and commissioned by the PIA. However, such downtime shall not be treated as part of downtime for Service Level calculations.
2. The PIA shall give 1 week prior notice in case of any such planned outages.
3. The time for such outages shall be normally during non-peak unless otherwise decided mutually for some other time window.

- 43.3 PIA shall be required to submit Business Plan for utilisation and monetisation of the network established under Bharat Net Phase-II Project for approval of OWNER.
- 44.4 **Owner reserves the rights to extend the AMC period beyond 5 years with the price escalated @7% p.a. from the price for the 5th year with the same terms and conditions.**
- 44.5 PIA shall depute adequate no. of trained Engineers during the AMC period and establish Offices for effective AMC. In this respect, PIA shall submit the documentary evidence and execution plan for approval of OWNER.
- 44.6 PIA shall be required to keep provisions for availability of minimum spare Materials/ Equipment to fulfil the timely maintenance and smooth operation of the project works.
- 44.7 PIA shall submit monthly AMC report to OWNER Block to GP wise showing details viz; level of service delivery, uptime, time line for restoration of supply, redressal of consumer complains/ Local Authorities etc. However, the content of such report shall be mutually finalised by the PIA and OWNER at the time of signing of the SLA Agreement.
- 44.8 **EXCLUSIONS:**
- For the purpose of calculating SLA, the following faults or outage hours shall be excluded:
- a) Periods where the State / SIA office staff is inaccessible to confirm the status of the system after fault clearance by the PIA.
 - b) Periods where any link is switched off at State / SIA or Govt. Office due its own reasons. The onus lies on State / SIA or respective Govt. establishment to ensure that the on-site equipment are powered ON and / or the Network Monitoring tools, if any, that are used by State / SIA should be able to filter out the time period of link being voluntarily switched off from the down time calculations.
 - c) Periods where the failure of any components or equipment belonging to State / SIA / Govt. office.
 - d) The time lost in attending to a complaint due to delay in entering State / SIA / Govt. institutions premises shall not be considered as a down time.
- 44.9 Non-conformity to above leads to levy of penalty or withhold of quarterly payment as the case may be.

45. Fraud and Corrupt Practices:

- 45.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standards of ethics during the Bidding Process and subsequent to the issue of the Award of Work and during the subsistence of the Contract. Notwithstanding anything to the contrary contained herein, or in the Award of Work or the Contract, the OWNER shall reject a Bid, withdraw the Award of Work, or terminate the Contract, as the case may be, without being liable in any manner whatsoever to the Bidder as the case may be, if it determines that the Bidder, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the OWNER shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the OWNER towards, inter alia, time, cost and effort of the OWNER, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.
- 45.2 Without prejudice to the rights of the OWNER under Clause 45.1 hereinabove and the rights and remedies which the OWNER may have under the Award of Work or the Contract, if a Bidder, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the Award of Work or the execution of the Contract, such Bidder shall not be eligible to participate in any RFP issued by the OWNER during a period of 2 (two) years from the date such Bidder, as the case

may be, is found by the OWNER to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

For the purposes of this Clause 45, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) "Corrupt Practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the OWNER who is or has been associated in any manner, directly or indirectly with the Bidding Process or the Award of Work or has dealt with matters concerning the Contract or arising therefrom
- (b) "Fraudulent Practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) "Coercive Practice" means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;
- (d) "Undesirable Practice" means (i) establishing contact with any person connected with or employed or engaged by the OWNER with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) "Restrictive Practice" means forming a cartel or arriving at any understanding or arrangement among Bidder with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

Abbreviations:

Abbreviation	
ABD	As Build Diagram
ADSS	All-dielectric self-supporting
BBNL	Bharat Broadband Network Limited
BG	Bank Guarantee
BoQ	Bill of Quantity
CPE	Customer Premise Equipment
DD	Demand Draft
DoT	Department of Telecommunication
EMD	Earnest Money Deposit
ESH	Extended Service Hour
Eth	Ethernet
FAT	Final Acceptance Test
FEC	Finance Evaluation Committee
FTB	Fiber Termination Box
GoI	Government of India
GPON	Gigabit Passive Optical Networks
GPs	Gram Panchayat
HDPE	High-density polyethylene
INR	Indian Rupees
LCBS	Least-Cost Based Selection
Lol	Letter of Intent
MAF	Manufacturers Authorization Form
MoU	Memorandum of Understanding
N/w	Network
NDA	Non-Disclosure Agreement
NIT	Notice Inviting Tender
NOC	Network Operation Center
O&M	Operation & maintenance
O/H	Overhead
OEM	Original Equipment Manufacture
OFC	Optical Fiber Cable
OLT	Optical Line Terminal
ONT	Optical Network Terminal
OTDR	optical time-domain reflectometer
PBH	Primary Business Hour
PIA	Project Implementing Agency
PLB	Permanently Lubricated
PMA	Preferential Market Access
PoP	Point of Presence
PQC	Pre-Qualification Criteria
PSU	Public Sector Unit
RCC	Reinforced Cement Concrete
RF	Radio Frequency
RFP	Request for Proposal
RoW	Right of Way
SIA	State Implementing Agency
SLA	Service Level Agreement
SOR	Schedule of Rate
SPV	Solar Photovoltaic
TAC	Type Approval Certificate
TEC GR	Telecommunication Engineering Center Generic Requirements

Abbreviation	
TSEC	Technical Specification Evaluation Certificate
USOF	Universal Service Obligation Fund
VPN	Virtual Private Network
VRLA	valve-regulated lead-acid
Wi-Fi	Wireless Connectivity