

OICL TENDER No. OICL/HO/ITD/ROUTER/2012/01 Dated 25th June 2012 – Reply of Pre-Bid Queries

S.No.	Ref Clause	Page No.	Bidder's Query	Reply from OICL
1	6.6.1	108	List of Offices is not available in the mentioned page, request OICL to kindly provide us the same.	uploaded on the portal
2	6.6.2	109	List of Offices is not available in the mentioned page, request OICL to kindly provide us the same.	uploaded on the portal
3	6.40	102	Please confirm if BG (EMD) will be prepared on this format only.	YES
4	clause 2.7 point no.-4	30	"The clause be reframed as ""The bidder should have positive net worth for last financial year (measured as paid-up capital plus free reserves) ending 31st March'11 and should have positive NET Profit after tax ( PAT) for last three Financial years ( i.e. 09-10, 10-11, 11-12). The bidder is required to submit the copy of balance Sheets & in case 11-12 balance sheet is not released than they shall provide the unaudited figures with Declaration they will submit the Audited Balance sheet later.	As per our RFP terms & condition
5	2.6.7	30	Request to reduce the EMD value	As per our RFP terms & condition
6	3.18	45	Bidder should not be held accountable on reasons due to- (i) Force Majeure Conditions (ii) Reasons directly attributable upon OICL, its employees, agents etc. (iii) Site not ready, non-compliance of applicable laws by OICL etc. (iv) such components, which has been supplied by OICL or through its vendors, the invocation clause shall not apply Reasonable notice period of at least 30 days should be given to bidder to cure such defects. Only in case of non-adherence of bidder despite such notice period, then such penalty provisions shall be made applicable.	As per our RFP terms & condition
7	3.9.	40	Please provide the delivery location details as same is missing in tender document	uploaded on the portal
8	3.10	40	We suggest the same undertaking/ letter to be taken from OEM	As per our RFP terms & condition
9	2.6.2	25	As per existing Non Disclosure Agreement with customers, we cannot share the Purchase Orders and contact details; however we can share the name of the customers.	As per our RFP terms & condition
10	2.6.4	26	Request to add the below note in the RFP: - The Price offered here is exclusive of taxes , all taxes & duties will be be charged extra as per the current rate of taxation in force.Any increase in taxes and duties will be passed on to customer. Any change in statutory taxes, duties and levies shall be borne by the customer on sufficient documentary proof is submitted by the Wipro.	As per our RFP terms & condition
11	2.6.8	28	We request you to change the bid validity to 30 days from the date of submission of the BID.	As per our RFP terms & condition

12	3.70	39	<p>1. Request to modify as follows- All expenses for acceptance test shall be borne by the bidder. If OICL shall not conclude the acceptance test within fifteen (15) days, after the installation of Equipment and provisioning of Services, the same shall be deemed to be accepted by OICL.</p> <p>2. Also, please clarify who will borne the expenses of person(s) / agnecy designated by OICL</p>	As per our RFP terms & condition
13	3.70	39	<p>Request to modify as follows- Penalty for shall be levied at 0.5% per week for the late delivery/ undelivered portion of the equipment with a maximum of 2.5% of the late delivery / undelivered portion of the equipment value.</p> <p>2. Not withstanding anything contained in this tender the maximum Penalty should be capped @ 2.5 % cost of the undelivered/delayed delivered portion of the material.</p>	As per our RFP terms & condition
14	3.70	39	Requesting this clasue to be delete as the same is addressed in the above point	As per our RFP terms & condition
15	3.11.1	41	<p>Request to add as follows-</p> <p>a) The delay period of Site not ready from OICL side, shall be reduced from the total warranty period of 12 Months.</p> <p>b) If any of the Deliverables have been tampered with or altered by any unauthorised person from the purchaser's side, either by way of retrofitting or otherwise, the warranty provided by the Supplier shall be rendered void to that extent.</p> <p>c) If the Purchaser uses any of the Deliverables in disregard to any operating instructions, the warranty shall be rendered void to that extent.</p> <p>d) Any abuse, negligent use or misuse of any of the Deliverables shall render the warranty void to that extent.</p>	As per our RFP terms & condition
16	3.11.4.6	43	OICL has to provide Road Permit/ TIN No wherever required.	As per our RFP terms & condition
17	3.12	44	Request for 100 % payment within 15 days of delivery for products supplied.	As per our RFP terms & condition
18	3.19	46	<p>Penalty for shall be levied at 0.5% per week for the late delivery/ undelivered portion of the equipment with a maximum of 2.5% of the late delivery / undelivered portion of the equipment value.</p> <p>2. Not withstanding anything contained in this tender the maximum Penalty should be capped @ 2.5 % cost of the undelivered/delayed delivered portion of the material.</p> <p>The maximum aggregate for all penalties together shall not exceed 5% of the contract value</p>	As per our RFP terms & condition
19	3..20	46	Vendor shall be required to bear only the Excess Cost for procurement of goods and/or services similar to those undelivered. The Term "Excess Cost" as referred herein shall mean cost at which alternative arrangements shall be providing the undelivered goods and/ or services of equivalent specification to the Purchaser under this project minus the cost on which the Vendor agreed to provide the undelivered goods and/or services under this project. Provided further that the Vendor shall not be liable to Excess Cost in excess of (ten) 10 percent of the price of undelivered goods or services for which such option is exercised by the Purchaser.	As per our RFP terms & condition

20	3.23	47	<p>OICL may by a written notice sent to the service provider in advance, terminate the contract, in whole or in part at any time of his convenience. The notice of termination shall specify that termination is for OICL's convenience, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.</p> <p>In case of termination for convenience by OICL, the bidder will have to refund any advance service fees paid by OICL to the extent of the unused service period on a pro-rata basis.</p> <p>Pls include the below clause: -</p> <p>In case of termination for convenience by OICL,</p> <p>The Goods that are complete and ready for shipment within 30 days after the Supplier's receipt of notice of termination, the goods shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:</p> <p>(a) To have any portion completed and delivered at the Contract terms and prices ; or</p> <p>(b) To cancel the remainder and pay to the Supplier an agreed amount as per the Terms &amp; conditions of the contract for partially completed Goods and for materials and parts previously procured or services rendered by the Supplier.</p>	As per our RFP terms & condition
21	3.31	49	Requesting this clause to be deleted.	As per our RFP terms & condition
22	3.33	50	<p>Instead of this clause, please incorporate the below clause: -</p> <p>The risk, title and ownership of the products shall be transferred to the customer upon dispatch of such products to the customer</p>	As per our RFP terms & condition
23	3.37	50	<p>Please add a Note in the RFP: -</p> <p>The Price offered here is exclusive of taxes , all taxes &amp; duties will be be charged extra as per the current rate of taxation in force. Any increase in taxes and duties will be passed on to customer.</p> <p>Any change in statutory taxes, duties and levies shall be borne by the customer on sufficient documentary proof is submitted by the Wipro.</p>	As per our RFP terms & condition
24	3.41	51	Request to delete this clause.	As per our RFP terms & condition
25	SNR	Not in RFP	<p>Customer hereby agrees to make the site ready as per the agreed specifications, within the agreed timelines.</p> <p>Customer agrees that Wipro shall not be in any manner be liable for any delay arising out of Customer's failure to make the site ready within the stipulated period, including but not limited to levy of liquidated damages for any delay in performance of Services under the terms of this Agreement.</p>	As per our RFP terms & condition

26	Savings Clause	Not in RFP	Wipro's failure to perform its contractual responsibilities, to perform the services, or to meet agreed service levels shall be excused if and to the extent Wipro's non-performance is caused by Company's omission to act, delay, wrongful action, failure to provide Inputs, or failure to perform its obligations under this Agreement.	As per clause 3.18 of RFP
27	Non Hire Clause	Not in RFP	Customer acknowledges that personnel to be provided by Wipro represent a significant investment in recruitment and training, the loss of which would be detrimental to Wipro's business. In consideration of the foregoing, Customer agrees that for the term of this Agreement and for a period of one year thereafter, Customer will not directly or indirectly, recruit, hire, employ, engage, or discuss employment with any Wipro employee, or induce any such individual to leave the employ of Wipro. For purposes of this clause, a Wipro employee means any employee or person who has who has been involved in providing services under this Agreement.	As per clause 2.10 of RFP
28	Pass Through Warrantymy	Not in RFP	Since Wipro is acting as a reseller of completed products, Wipro shall "pass-through" any and all warranties and indemnities received from the manufacturer or licensor of the products and, to the extent, granted by such manufacturer or licensor, the Customer shall be the beneficiary of such manufacturer's or licensor's warranties and indemnities. Further, it is clarified that Wipro shall not provide any additional warranties and indemnities with respect such products.	As per clause 3.10, 3.11 of RFP
29	Network Architecture	Not in RFP	Request to share the existing Network architecture.	Broad configuration has been defined in scope of work clause 3.11.4. Specific details will be shared with the successful Bidder.
30	2.9.3	35	Kindly specify minum order as commercials are desided on the quantity	Pls refer page No. 92 of RFP
31	3.19	46	liquidated damages should be taken for non delivered site, instead of over on all project value, Request OICL to modify the clause.	As per our RFP terms & condition
32	3.23	47	project required huge investment from the bidder site hence Request OICL to remove this clause. However terminations can be done if case voilation of asked SLA.	As per our RFP terms & condition
33	4.1.9 c.01	72	Kindly specify required qualification & experence of Engineers.	Cisco Certified Network Engineer
34	4.1.9 C	76	SLA seems to be of lease lines & not as per Hardware, kindly provide more clarity the same. SLA should be different for Tier 1, 2 & 3 cities	As per our RFP terms & condition
35	4.1.9 A.01	64	Request OICL to allow Bidder for giving support center details of their partners who will be suporting for this project	As per our RFP terms & condition
36	2.7 Point No. 6	30	TL 9000 is equivalanet to ISO 9000, Request OICL to accept TL 9000 with reference to this clause.	As per our RFP terms & condition
37	3.9	40	Request OICL to increase Instalton & Testing time from 4 weeks to 8 weeks	As per our RFP terms & condition
38	3.11.4 Point 8 B	43	Pls. specify the SOW	Pls refer page No. 42-43 of RFP

39	3.5	38	<p>We request the revised clause to be used with the following caveats should be applicable to the indemnity obligations: Airtel will defend and/or settle any claims against OICL that allege that an Airtel provided product or service as supplied under this Agreement infringes the intellectual property rights of a third party. Airtel will rely on OICL's prompt notification of the claim and cooperation with our defense. Airtel or its agent may modify the product or service so as to be non-infringing and materially equivalent, or Airtel may procure a license. Airtel is not responsible for claims resulting from any unauthorized use of the products or services or for any claim of infringement arising from i) Airtel compliance with OICL or third party designs, specifications, instructions, or technical information; ii) modifications made by OICL or a third party; iii) OICL's non-compliance with the Specifications or the contract, or iv) OICL's use with products, software, or services that are not provided by Airtel.</p>	As per our RFP terms & condition
40	3.6	38	<p>Additional Clauses: The OICL will not invoke the Bank Guarantee if the failure to perform is due to (a) a Force Majeure or (b) a failure by the OICL or its employee or agents to perform its obligation under the Agreement . The amount of the Bank Guarantee shall be cumulative in nature and shall not stand replenished or renewed after payment of each claim or demand by the OICL. The Parties agree that the total amount of Bank Guarantee and the monetary cap on liability will be reduced by any such amount thereof that has been claimed and paid to OICL.</p> <p>That the amount claimed or demanded by OICL under the OICL Guarantee, shall not exceed the loss and is for the actual and direct loss suffered by the OICL . For avoidance of doubt, loss, damages, costs, expenses, claims in the nature of a penalty or consequential damage of any type or loss of profit, loss of goodwill, loss of business will not be claimed under the OICL Guarantee .</p> <p>Where OICL is desirous of invoking the Bank Guarantee , it shall first notify the the Bidder in writing ("Performance Notice") of the material breach and afford the Bidder a minimum of sixty (60) days to rectify the breach. OICL shall not invoke the Bank Guarantee if the Bidder has rectified or cured the failure within the time period aforementioned or such additional time periods that the Parties may agree upon. The cure period afforded to the Bidder shall be extended, equitably, in the event of a a Force Majeure.</p> <p>OICL agrees that it shall wholly indemnify and hold the Bidder harmless against and from all damages, losses, costs and expenses (including legal fees and all other expenses) resulting from a claim or demand arising from or in connection with invoking the OICL Guarantee ) to the extent that OICL was not entitled to invoke the Bank Guarantee ). OICL acknowledges that the Bidder may validly seek the performance of this obligation to indemnify.</p>	As per our RFP terms & condition
41	3.16	45	<p>We request that the assignment right be made mutual thereby each party shall require the consent of the other before assigning the agreement to a third party.</p>	As per our RFP terms & condition
42	3.2	46	<p>Section 3.20 (Termination for Default) sub-clause (ii) , we request that the right to terminate be exercised only in the event the Bidder fails to perform any of its "material" obligation under the Contract.</p>	As per our RFP terms & condition
43	3.21	47	<p>Request revision of the definition of "Force Majeure" as an event will "involve the bidder" to the extent that the bidder is impacted by the same.</p>	As per our RFP terms & condition
44	3.22	47	<p>We request that this right be made mutual.</p>	As per our RFP terms & condition
45	3.31	49	<p>Request deletion as in such contracts Most Favored Customer clauses are not applicable.</p>	As per our RFP terms & condition
46	3.33	50	<p>Request deletion of acceptance subject to "entire satisfaction of OICL". Please note that acceptance shall be in accordance with the parametres agreed to between the Parties . Also, if OICL fails to reject the goods within a period of ten days from the date of installation, the same shall be deemed accepted.</p>	As per our RFP terms & condition

47	3.41	51	Please note that we cannot allow for reimbursement. We have already made provision for liquidated damages and OICL can claim damages for any proven direct losses incurred due to material deficiency in the equipment installed.	As per our RFP terms & condition
48	3.41	52	The total liability of the Bidder shall not exceed twelve months of fees under the Contract.	As per our RFP terms & condition
49	3.46	52	This clause to be made mutual to protect Bidder's information disclosed during the course of this Tender/Contract.	As per our RFP terms & condition
50	4.1.2	55	We cannot allow our network infrastructure to be open for inspection and this is confidential to the company	As per our RFP terms & condition
51			<p><b>RISK OF LOSS:</b> Risk of loss thereof or damage to all or a portion of the equipment will pass to OICL on the delivery date. Title to the equipment will also pass to OICL on the delivery date; provided that, Bidder shall maintain a security interest in the equipment until such time as the equipment has been paid in full. Bidder shall have the ability to reclaim the equipment in the event of non-payment by the OICL.</p> <p><b>LICENSE RIGHTS IN SOFTWARE</b> B. OICL acknowledges that any software supplied by Bidder to OICL hereunder is subject to the proprietary rights of Bidder and/or Bidder's vendor (the "Licensor"). Bidder or its Licensor, as the case may be, will retain title to all of the software. C. Subject to performance by OICL of the terms and conditions of the Agreement or any other agreement/order executed by the Parties, Bidder hereby grants to OICL and OICL hereby accepts from Bidder a limited, non-transferable, non-exclusive license (or sublicense, as applicable) to use the software solely in the operation of the equipment, to commence on delivery of the software to OICL and payment therefore by OICL and to last for the life of the equipment. D. Except as permitted by this paragraph, OICL will not (i) copy or duplicate, or permit anyone else to copy or duplicate, any part of the software, or (ii) create or attempt to create, or permit others to create or attempt to create, by reverse engineering or otherwise, the source programs or any part thereof from the object programs or from other information made available under this Agreement. E. OICL will not, directly or indirectly, sell, transfer, offer, disclose, lease (as lessor), or license the software to any third party.</p> <p><b>WARRANTIES AND DISCLAIMER</b> A. Upon the full satisfaction of OICL's relevant obligations, Bidder will deliver good title to all or any part of the Equipment that is to become the property of OICL pursuant to this Agreement, free from any and all liens, claims, or encumbrances. B. OICL shall be responsible for the return of equipment to Bidder's designated repair location, freight prepaid and packed to assure safe arrival. Bidder shall return repaired, replaced, amended or altered equipment, freight prepaid and packed to assure safe arrival, to OICL's designated location. D. The limited warranties set forth in this Article will not apply with respect to (i) Equipment that has been subject to unauthorized alteration, modification, or repair in contravention of the Bidder's directions; (ii) defects or failures resulting from improper handling, storage, operation, interconnection, or installation; (iii) failure to continually provide a suitable installation and operational environment, which is non-compliant with the operating instructions so informed by the Bidder; or (iv) .EXCEPT AS SPECIFICALLY SET FORTH HEREIN, BIDDER NEITHER MAKES NOR ASSUMES ANY LIABILITY UNDER ANY WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY) ON OR WITH RESPECT TO ANY OF THE EQUIPMENT OR ANY COMPONENT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Delivery of the equipment and the provision of the installation services, in the manner and for the period of time provided in this Contract, and Bidder's satisfaction of its obligations as set forth under the Agreement, represent the only liabilities of Bidder under this Agreement, and Bidder shall not be liable to OICL for any other damages whether based in contract, tort or otherwise, with respect to the Equipment.</p>	Pls refer 3.33 for Risk of Loss, Pls refer 3.38 for Insurance all other are as per RFP terms and conditions

F. Notwithstanding the foregoing, Bidder shall not be obligated to provide the warranty services set forth herein if OICL has not satisfied all payment obligations due and outstanding, as of the date of any claim by OICL under the above warranty. If OICL has due but unpaid obligations, Bidder may, at its sole discretion and without liability to Bidder, in addition to demanding that OICL fulfill all payment obligations contained herein: (i) demand full payment for any repairs of equipment covered by the warranty at Bidder's standard out-of-warranty rates; (ii) reject equipment sent for repairs; or (iii) hold any equipment sent for repairs until OICL fulfills all payment obligations contained herein. None of the foregoing options elected by Bidder shall result in an increase in the duration of the Warranty Period. If OICL sells or transfers title or otherwise transfers its interest in the Equipment to any third party, (i) the software license granted pursuant shall not transfer to such third party purchaser, and (ii) the warranty, shall not transfer to such third party purchaser, without Bidder's written consent. In such event, OICL shall be obligated to disclose in writing to such third party purchaser that the Software license is non-transferable and that the warranty covering such transferred equipment shall be terminated upon the transfer of the equipment to such third party purchaser. In addition to the foregoing, unless Bidder consents in writing to the transfer of any of the equipment by OICL, Bidder shall have no obligation whatsoever to any such third party purchaser and may take legal action against OICL and such third party purchaser as Bidder shall deem appropriate to recover from such third party purchaser or the OICL, the software or damages for the illegal use of such software or to enjoin the use of the software by such third party purchaser, unless Bidder and such third party purchaser enter into a separate software license under terms and conditions to be mutually agreed upon by Bidder and such third party purchaser.

#### GOVERNMENT PERMISSION AND LICENSES

OICL shall be responsible for all dealings with any applicable government authorities. This includes, but is not limited to, obtaining and maintaining any license, permits, and/or other authorizations of any kind required for installation, maintenance, testing, or operation of the Equipment, or any portion thereof, including Services related thereto. OICL shall pay all costs of such licenses, permits and authorizations and all costs and expenses incurred in obtaining and maintaining them. OICL's obligation to pay Bidder shall not in any manner be waived by delay or failure to secure or renew, or by the cancellation of, any required licenses, permits or authorizations. In addition, OICL shall comply with any restrictions or conditions imposed by any applicable government authorities on OICL's receipt or use of any satellite telecommunications services used in conjunction with the equipment in, between, or among any sites within any country in which OICL intends to install such equipment. OICL shall not use such services in violation of any applicable law, rule or regulation.

#### INSURANCE

During the term of this Agreement, OICL shall, at its sole cost and expense, (i) maintain in full force and effect "all risk" extended coverage fire and casualty insurance on the equipment in an amount equal to the unpaid balance (if any) of the purchase price of any equipment which has been delivered to OICL, (ii) insure, or cause the relevant shipper to insure, for the full purchase price of any equipment being shipped, against any loss or damage to the equipment during the shipping of such equipment, and (iii) maintain in full force and effect "all risk" extended coverage fire and casualty insurance on any and all of Bidder's equipment which is used by Bidder in the installation and testing of the equipment and which is on OICL's site(s). In the event that OICL is paid the proceeds from any of the aforementioned insurance, OICL shall pay such proceeds to Bidder to the extent that OICL has not paid the full purchase price to Bidder for the relevant equipment for which such proceeds are attributable, or in the case of Bidder's equipment, the lesser of the full amount of such proceeds and the replacement value of any of the Bidder's equipment so damaged or destroyed or otherwise rendered unavailable to Bidder in its original condition.

#### DELIVERY

(1) At OICL's sole cost, if Bidder is requested by OICL, Bidder will arrange for shipment of said Equipment to locations designated by OICL in accordance with the provisions of this Agreement. Subject to the warranty rights of OICL, acceptance of the Equipment by OICL will be deemed to have occurred on the Delivery Date, unless OICL or OICL's agent notifies Bidder that OICL does not accept such Equipment prior to shipment of Equipment from Bidder's facility.

			(2) In the event that any equipment is ready for delivery in accordance with the delivery schedule and Bidder delays shipments thereof pursuant to OICL's request or because OICL is not prepared to accept such scheduled delivery, Bidder will notify OICL that such equipment is available for shipment and will store the equipment. OICL will reimburse Bidder for all reasonable and actual storage or other expenses that Bidder incurs by reason of such delay and storage. If such delayed shipment has not been shipped within fifteen (15) days, Bidder will invoice OICL, and OICL will pay Bidder the total purchase price for the equipment comprising such shipment. Further, in the event that Bidder is delayed or unable to fulfill any of its other obligations contained in this Agreement by reason of the actions or inaction of OICL, OICL will pay to or reimburse Bidder for all expenses or costs incurred by Bidder by reason of such breach of delay, including without limitation any interest accrued on unpaid liabilities.	
52	2.10	36	The initial contract period for the services shall be one year from the date of acceptance by OICL. The contract shall be automatically renewed on the same terms and conditions, unless amended otherwise, for a further period of four years (one year at a time), upon mutual agreement.	As per our RFP terms & condition
53	3.5 Patent Rights	38	<p>IBM does not indemnify for patents. IBM would like to clarify that the third party IP claims will be handled through the below mentioned process;</p> <p>If a third party claims that a Product IBM provides to Customer infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by IBM, provided that</p> <p>Customer:</p> <ul style="list-style-type: none"> <li>a. promptly notifies IBM in writing of the claim; and</li> <li>b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations</li> </ul>	As per our RFP terms & condition
54	3.7 Installation of Equipment and Services	39	<p>The bidder shall be responsible for installation of equipment and provisioning of services and for making them fully operational. This will be evidenced by a certificate of acceptance duly signed and/ or counter-signed by representatives of OICL.</p> <p>The bidder is required to submit a draft acceptance test plan along with its bid. (Refer requirement specifications SS 4.1.9 C.03) The final acceptance test plan will be mutually agreed to by the bidder and OICL.</p> <p>At the direction of OICL, the acceptance test of the Equipment &amp; Services shall be conducted by the bidder in the presence of OICL and/ or authorized officials and/ or any other team or agency nominated by OICL. All expenses for acceptance test shall be borne by the bidder.</p> <p>The bidder shall conclude the acceptance test not later than fifteen (15) days, after the installation of Equipment and provisioning of Services, in the presence of person(s) or agency designated by OICL.</p> <p>Should the acceptance tests not conclude to the satisfaction of OICL as stated above in this section and as per the specifications mentioned in the RFP/Contract, the bidder shall repair/replace/reconfigure/re-provision, at his cost, the whole or any part of the Equipment/Service as may be necessary for conclusion of the acceptance tests to the satisfaction of OICL within a further period of 10 days.</p>	As per our RFP terms & condition



			<p>Penalty at the rate of 0.5% per week of contract value for the location, subject to a maximum of 5% will be charged for late completion or commissioning of the project. For this purpose, the period will commence form the date of order up to the dated of commissioning of the project. It may be mentioned that commissioning of the project means the installation, configuration and testing in OICL Wan environment.</p> <p>Should acceptance tests still not conclude to the satisfaction of OICL. Penalty at the rate of 0.5% per week of contract value for the location, subject to a maximum of 5% will be charged for late completion or commissioning of the project. For this purpose, the period will commence form the date of order up to the dated of commissioning of the project. as per the specifications, after the expiration of 25 days from the installation of Equipment and provisioning of Services, OICL shall have the right to reject the Equipment and Services in respect of which the acceptance tests are not satisfactorily concluded as provided in this section and to terminate this contract to the extent that relates to such Equipment/ Services and in that event the bidder shall refund and repay all amounts received by the bidder from OICL and all amount paid by OICL towards freight, insurance, customs duty, Octroi and other connected expenses, within 30 days from the receipt of a written claim from OICL.</p>	
55	3.8 Incidental Services	40	Period of services is to be defined at the bidding stage.	Refer page no.73, under service period heading: 5 years
56	3.10 Maintenance	40	<p>7 years warranty will be supported only if OEM supports the same. It should be made part of the MAF certificate that needs to be submitted along with bid.</p> <p>Replacement of spare parts with state of art technology equipment – IBM standard is “IBM is prepared to enter into a separate Maintenance Agreement for maintaining the Products and include applicable service levels therein. IBM will maintain spare parts as it determines in order to achieve such service levels.”</p> <p>Replacement of spare parts – “The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item.”</p>	As per our RFP terms & condition
57	3.11 Warranty and 3.11.1 Warranty on Equipment	41	Warranty and maintenance is the same. Once the equipment is implemented at site the maintenance will begin. Warranty in such a case will not be applicable.	As per our RFP terms & condition
58	3.11.2 Warranty on Services and 3.11.3 Support & Services	41-42	Please define SLA at tender stage.	Pls refer page No. 75 & 76 of RFP
59	3.11.4 Scope of Work	42-43	<p>5. IBM is ideally not responsible for data security, it's a customer responsibility. If OICL requires data protection and security services, we may enter into a separate agreement for that.</p> <p>6. Road permits, entry tax etc are again a customer responsibility, IBM will invoice the same to OICL</p> <p>7. c. – for repetitive HW failure cause will be analyzed including environmental factors at OICL location. In case the HW failure is attributed to environment issue then replacement will be at OICL costs.</p>	As per our RFP terms & condition

			<p>8.e – once the supplied router is implemented at any site, the services for that site is over. Any shifting or change of location IBM will charge for services additionally.</p> <p>8.f – please define OICL requirements.</p>	<ul style="list-style-type: none"> <li>• Inspect the installation site for moisture, loose wires or cables, and excessive dust. Make sure that airflow is unobstructed around the router and into the air intake vents.</li> <li>• Check the status-reporting devices interface: system alarms, LEDs, and LCD.</li> </ul>
60	3.12 Payment Terms	44	<p>Payment Shall accrue from the date of billing. Payment term will be as follows</p> <p>Equipment – 100% within 30 days from the date of billing</p> <p>Services – 100% billing on sign off, 30 days from the date of billing.</p>	As per our RFP terms & condition
61	3.16 Assignment	45	Neither Party shall assign, in whole or in part, his obligations to perform under the contract, to any other party or persons, except with the prior written consent of the other Party.	As per our RFP terms & condition
62	3.18 Delays in the bidder's performance	45	Any unexcused delay by the bidder in the performance of his delivery obligations shall render the bidder liable to any or all of the following sanctions: imposition of liquidated damages.	As per our RFP terms & condition
63	3.19 Liquidated Damages during Delivery, Installation & Warranty	46	<p>Subject to section SS 3.21, if the bidder fails to deliver any or all of the equipment and Services within the time period(s) specified in the contract, for reasons solely and directly attributable to IBM, OICL shall reserve the right to claim from IBM, as its sole and exclusive remedy under the contract, as liquidated damages, a sum equivalent to the 0.5% of the contract price for every week (seven days) or part thereof of delay, up to maximum deduction of 10% of the monthly invoice.</p> <p>Equipment that is reported to be down on a given date should be either fully repaired or replaced by temporary substitute (of equivalent configuration) within the time frame indicated in the Service Level Agreement (SLA) forming a part of the contract (section SS 6.1). The reporting will be through a telephonic message or any other mode as the Parties may decide.</p> <p>Performance of services shall be within the norms specified in the Service Level Agreement (SLA) forming a part of the contract (section SS 6.1).</p> <p>In case bidder fails to meet the above standards of maintenance, there will be a penalty/liquidated damages in Indian rupees per day as specified in the SLA.</p>	As per our RFP terms & condition
64	3.20 Termination for Default	46	Either Party may, without prejudice to any other remedy for material breach of contract by written notice of default sent to the bidder, terminate the contract if such breach remains uncured after 30 days following such notice.	As per our RFP terms & condition
65	3.21 Force Majeure	47	<p>Notwithstanding the provisions of section SS 3.18, SS 3.19 &amp; SS 3.20 the bidder shall not be liable for forfeiture of his performance security, liquidated damages or termination for default, if and to the extent that, his delay in performance or other failure to perform his obligations under the contract is the result of an event of Force Majeure.</p> <p>For purposes of this clause, "Force Majeure" means an event beyond the control of either Party and not foreseeable. Such events may include, but are not restricted to, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.</p>	As per our RFP terms & condition

			If a Force Majeure situation arises, the bidder shall promptly notify OICL in writing of such conditions and the cause thereof. Unless otherwise directed by OICL, the bidder shall seek commercially reasonable alternative means for performance not prevented by the Force Majeure event. All non-monetary obligations under the contract shall be excused at the time of Force Majeure.	
66	3.22 Termination for Insolvency	47	OICL may at any time terminate the contract by giving thirty days written notice to the bidder, if the bidder becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to OICL.	As per our RFP terms & condition
67	3.23 Termination for Convenience	47	IBM would like to suggest deletion of the right to terminate for Convenience. As the contract is only for a year, the Parties may visit this clause at the time of renewal, and mutually decide upon the said termination right and the applicable charges.	As per our RFP terms & condition
68	3.24 Arbitration	47	<p>"OICL and the bidder shall make every effort to resolve amicably by direct informal negotiation, any disagreement or dispute, arising between them under or in connection with the contract.</p> <p>If, after thirty (30) days from the commencement of such informal negotiations, OICL and the bidder have been unable to resolve amicably a contract dispute, either party may require that the dispute be referred for resolution to the formal mechanism specified below.</p> <p>If the dispute is not resolved within a period of thirty (30) days, the same shall be referred to arbitration in accordance with Arbitration and Conciliation Act, 1996 (including all amendments thereto). Each party shall appoint one arbitrator each and the two appointed arbitrators shall appoint the third arbitrator. The decision of the arbitrators shall be final and binding on both parties. The venue of arbitration shall be Bangalore, India. Subject to the above, this Agreement shall be subject to the jurisdiction of the courts of Bangalore, India."</p>	As per our RFP terms & condition
69	3.28 Back up support	48	Request clarification in detail	As per our RFP terms & condition
70	3.29 Power Tolerance	49	IBM suggests deletion of this clause	As per our RFP terms & condition
71	3.31 Price fall	49	IBM suggests deletion of this clause, as the price under any contract is based upon a series of factors, like time of signing the contract, cost of raw materials at that time, cost of labor etc. These factors vary from contract to contract, based upon the circumstances. Therefore, IBM could not commit to the said clause.	As per our RFP terms & condition
72	3.33 Passing of Property	50	Ownership shall not pass to OICL unless and until the equipment and services have been delivered, installed and accepted, in accordance with the conditions of the contract and OICL has made payment for such equipment to the bidder. Necessary insurance covers should be taken by the bidder to protect his supplies till such time the transfer of property takes place as said above.	As per our RFP terms & condition
73	3.36 Deduction and 3.37 Taxes and Duties	50	Entry permits for any state will be provided by OICL upon request from IBM from time to time. Since the title of the equipment is on OICL name hence the entry permit also has to be from OICL.	As per our RFP terms & condition
74	3.38 Insurance	51	The insurance will be valid only upto a point of delivery. Post that it is OICL responsibility to get insurance.	As per our RFP terms & condition
75	3.39 No Claim Certificate	51	IBM could not possibly sign such a no claim certificate. We could not identify at this stage what sort of litigation/claim may arise at that given stage of the contract.	As per our RFP terms & condition
76	3.40 Continuing support	51	IBM would like to clarify that the support shall be until the expiration/termination of the contract.	As per our RFP terms & condition
77	3.41 Satisfactory Complimentary Performance	51	The bidder shall, notwithstanding anything stated in section SS 3.6, SS 3.7 & SS 3.11, ensure satisfactory performance of all equipment and services to the specifications in the contract.	As per our RFP terms & condition

78	3.43 Inspection, Testing	51	IBM suggests deletion of this clause, since these are standard equipments and any testing will be performed at the delivery sites only. If system is faulty or does not power on IBM will replace the unit.	As per our RFP terms & condition
79	3.44 Service Continuity	52	OICL is essentially seeking termination assistance services. These services come for a cost that needs to be paid upfront.	As per our RFP terms & condition
80	3.45 Limitation of Liability	52	Notwithstanding anything stated to the contrary in the RFP and regardless of the nature of claim, Bidder's aggregate liability for direct damages under this Contract shall not exceed the charges paid by Customer to Bidder for the individual product or service that is the subject of claim (if recurring, twelve months charges apply). This limit shall not apply to damages for bodily injury (including death) and damage to real property and tangible personal property for which Bidder is legally liable. The Bidder shall in no event be liable for indirect, consequential, incidental or special damages, loss of/damage to, data and third party claims, even if Bidder has been advised of possibility of such damages.	As per our RFP terms & condition
81	3.46 Confidentiality	52	The clause has several gray area. IBM would like to keep the confidentiality provision mutual, and suggest our AECL, in order to have a confidentiality agreement in place.	As per our RFP terms & condition
	Others			
82	6.6.1 & 6.6.2	108-109	Please share a detailed list of location where the equipment need to be delivered, services to be performed and AMC.	uploaded on the portal