



**Office of the Principal Scientific Adviser
to the Government of India**

CORRIGENDUM

Additions to the Clauses

Addition to Section 2: Instructions to Bidders Clause 3 Bid Submission

3.7 Pre-qualification Criteria

The following criterion shall be met by the bidder to become eligible for the technical evaluation.

S.N.	Parameter	Criteria	Evidence to be submitted
1	Legal Entity	1. A company/ LLP incorporated in India under the relevant Companies Act, 1956 or 2013 and subsequent amendments thereto 2. Registered with the GST Authorities in India with active status	Certified by Authorized Signatory: 1. Copy of Certificate of Incorporation 2. Copy of Registration Certificates with GST or registration receipt/copy or Government issued waiver (if applicable)
2	Turnover	The bidder company should have a turnover of INR 1 Crores every year in the last 3 financial years i.e., FY2018-19, FY2019-20, FY2020-21 The Startup, if incorporated during the last three financial year, should have turnover of INR 1 Crore for the financial years as applicable. Startup must have audited balance sheet for at least FY2020-21.	Audited Balance Sheet(s) Or Certificate by Chartered Accountant
3	Resources	The bidder shall have at least 300 (Three hundred) software engineers/coders on their payroll at the time applying for the bid.	Self-certificate duly signed by authorized person
4	Experience	Bidder should have experience of successful implementation of at least one digital platforms with functionalities namely innovation challenge management, and collaboration management.	Copy of work order + Completion Certificates from the client; or Self-Certificate of Completion (Certified by CA); Certificate must mention the name of the project(s), project brief details, client & its contact details, project value, project duration and successful implementation status of digital platform and the functionalities viz. innovation challenge

			management, collaboration management and virtual event management.
5	Data Centre	The entire digital platform must have development, staging and production environment hosted in the data centre located in India and the bidder agrees to migrate the development, staging and production environment to data centre / cloud provided by the O/o PSA.	Self-certificate or letter of Undertaking to this effect on company's letter head signed by company's authorized signatory
6	Blacklisting	Bidder shall not have been blacklisted or debarred from tendering for corrupt or fraudulent practices or non-delivery, non-performance by Govt. of India and/or any State Government and/or any Central/State PSU at the time of bid submission date.	Self-certificate or Letter of Undertaking regarding 'No Blacklisting' on company's letterhead signed by company's authorized signatory

Note: Consortiums are not allowed.

Addition to Section 2: Instructions to Bidders Clause 9 Hosting

9.4 The SMS and Email Services of NIC can be availed, where ever required for the platform.

9.5 NIC will provide Virtual Machines (VM), firewall, IP and load balancers for the production deployment. All software licences must be procured and installed by the bidders. Cost of these should be factored in the financial bid.

Addition to Section 2: Instructions to Bidders Clause 11 General Terms and Conditions

Clause 11.20.1 Termination for Convenience

The general rule is that neither party to a contract may avoid performance of its duties to the other unless the other party first materially breaches the contract. For example, the vendor may not refuse to perform its work under a contract unless the Purchaser does something that would constitute a material breach, such as failing to make payments in accordance with the agreed upon payment terms. Similarly, in the absence of a material breach by a vendor, the Purchaser cannot simply terminate and pay the vendor only for the work performed up to the date of cancellation. The Purchaser may at any time terminate the Contract for any reason by giving the IA a notice of Termination in case of non-performance by the Vendor.

Clause 11.22.1 Change Management Procedure

Any software application may require changes after development and certification stages. It is understandable that the requirements may undergo change post the finalization of FRS document. However, it is advisable that the software is developed keeping the initial requirement specified in the FRS document and the application is made live. Hence it is very important for the Purchaser to make sure that the requirements are captured comprehensively and accurately in the FRS document. It should also be appreciated that all software developed undergo revision/ upgrades/ enhancements. A mechanism should be devised in order to release changes/ upgrades

of software application in a phased manner in the form of version releases. To implement a change request in case the cost of the effort >10% of the total contract value, the deviations will be calculated in a mutually agreeable way by the IA and the Purchaser and any additional payments will be calculated using the Function Point Analysis (FPA).

Clause 11.23 Deemed Acceptance

In case the Purchaser / Government Department fails to respond and provide feedback on above stated submission, the deliverables or SLA and performance reports will be DEEMED ACCEPTED. The Purchaser / Government Department shall not force the bidder, post the elapse of the <15 days> approval period, to rework on the said project outputs/ outcomes. However, in case the purchaser confirms to vendor with an alternative date, then that date would stand revised for deemed acceptance. Such revisions may be limited to 2 (two).

Clause 11.24 Penalty

If any act or failure by the Bidder under the agreement results in failure or inoperability of systems and if the Purchaser has to take corrective actions to ensure functionality of its property.

- a) Purchaser may seek to recover such amounts from the Implementation Agency, to the extent of damage to its any equipment, if the damage was due to the actions directly attributable to the staff of Bidder, limited to the contract value.
- b) The Purchaser shall implement all penalty clauses after giving due notice to the Bidder.
- c) If the Bidder fails to complete the due performance of the contract in accordance with the specification and conditions of the offer document, the Purchaser reserves the right either to cancel the order or to recover a suitable amount as deemed reasonable as Penalty / Liquidated Damage for nonperformance.

Clause 11.25 Intellectual Property Rights (IPR)

The Intellectual Property Rights (IPR) rights for bespoke development done during the implementation of the project must lie with the Purchaser. The "Policy on Collaborative Application Development by Opening the Source Code of Government Applications", notified by Ministry of Electronic and Information Technology, Government of India, in the Gazette of India on 6thMay 2015, must be adhered.

Clause 11.26 Go-Live and Maintenance

The warranty period shall commence from the date of Go Live of the project or of any component or subsystem for which phased Go-Live is provided for in the Agreement.

Purchaser/Government department should approve signoff within 15 days from the submission of deliverables for Go-Live/Phased Go-live (as relevant, depending on project requirement) by the implementing agency. In case the Purchaser/ Government department fails to respond and provide feedback on the above stated submission, the deliverables will be deemed accepted for the commencement of warranty for the project. However, in case the purchaser confirms to vendor an alternative date, then the date would stand revised for deemed acceptance. Such revisions may be limited to 2 (two).

Clause 11.27 Liquidated Damages

Time is the essence of the Agreement and the delivery dates are binding on the Implementation Agency. In the event of delay or any gross negligence in implementation of the project before Go-Live, for causes solely attributable to the Implementation Agency, in meeting the deliverables, the Purchaser shall be entitled at its option to recover from the Implementation Agency as agreed, liquidated damages, a sum of 0.5% of the value of the deliverable which suffered delay or gross negligence for each completed week or part thereof subject to a limit of 10% of the total contract value. This right to claim any liquidated damages shall be without prejudice to other rights and remedies available to Purchaser under the contract and law. Purchaser reserves its right to recover these amounts by any mode such as adjusting from any payments to be made by Purchaser to the Bidder. Liquidated damages will be calculated on per week basis.

Modifications in Clauses

Modification to Section 2 Instructions to Bidders Clause 5.2 and 5.4

A quality and Cost based selection methodology will be followed to evaluate the bidders for this marquee project- an exhaustive due diligence will be done on the critical parameters of the project covering System Functionality, Technology, Specific implementation experience, Training methodology, performance in previous Proof of concept, Certifications, Past experience of the vendor in executing similar assignments, size of those assignments, profile of team members and Project Methodology.

The Proposal Evaluation Committee in this case will access experts to objectively evaluate & compare the various solutions components proposed by the bidders. The technical proposals will be awarded 70% weightage, while 30% weightage will be given to cost in the financial proposals.

Technical Evaluation Criteria

The technical bids shall be evaluated and will be given marks based on the following criterion:

S.N.	Category	Maximum Marks	Documents
1	Number of clients using the digital platforms developed by the bidder that had innovation challenge management or similar role-based data and workflow management functionality. 5 marks for each client (Max 20 Marks)	20	Proof of implementation such as client certificate reg. deployment of solution etc OR Self-certificate and/or Letter of Undertaking to this effect on company's letter head signed by company's authorized signatory. The details on the certificate must mention the name of the project, project brief details, client & its contact details, project value, project duration and successful implementation status of digital platform and the functionalities. The functionality to be also demonstrated through the screenshots.

2	<p>Number of clients using the digital platform developed by the bidder that had collaboration management functionality.</p> <p>5 marks for each client (Max 10 Marks)</p>	10	<p>Proof of implementation such as client certificate reg. deployment of solution etc</p> <p>OR</p> <p>Self-certificate and/or Letter of Undertaking to this effect on company's letter head signed by company's authorized signatory.</p> <p>The details on the certificate must mention the name of the project(s), project brief details, client & its contact details, project value, project duration and successful implementation status of digital platform and the functionalities.</p> <p>The functionality to be also demonstrated through the screenshots.</p>
3	<p>Number of clients using the digital platform developed by the bidder that had virtual event management functionality.</p> <p>5 marks for each client (Max 5 Marks)</p>	5	<p>Proof of implementation such as client certificate reg. deployment of solution etc</p> <p>OR</p> <p>Self-certificate and/or Letter of Undertaking to this effect on company's letter head signed by company's authorized signatory.</p> <p>The details on the certificate must mention the name of the project(s), project brief details, client & its contact details, project value, project duration and successful implementation status of digital platform and the functionalities. The functionality to be also demonstrated through the screenshots.</p>
4	<p>Number of clients using the digital platform developed by the bidder that had innovation challenge management, collaboration management and virtual event management functionalities (i.e. all these functionalities in one digital platform)</p> <p>5 marks for each client (Max 5 Marks)</p>	5	<p>Proof of implementation such as client certificate reg. deployment of solution etc</p> <p>OR</p> <p>Self-certificate and/or Letter of Undertaking to this effect on company's letter head signed by company's authorized signatory.</p> <p>The details on the certificate must mention the name of the project, project brief details, client & its contact details, project value, project duration and</p>

			<p>successful implementation status of digital platform and the functionalities.</p> <p>The functionality to be also demonstrated through the screenshots.</p>
5	<p>Team offered for the development of the digital platform</p> <ul style="list-style-type: none"> Proposed Team structure Proposed Team member details along with CV and role and responsibilities in the project. 	15 Marks	<p>Self-certificate and/or Letter of Undertaking to this effect on company's letter head signed by company's authorized signatory.</p> <p>Experience of digital platforms will be given preference and weightage.</p>
6	<p>Scalability of solution</p> <p>Overall unique users in the digital platform having innovation challenge, collaboration, or virtual event management modules in any 3 months in the calendar year 2020-21 or 2021-22.</p> <p>>25,000 & <=50,000 users: 1 Marks</p> <p>>50,000 & <=100,000 users: 2 Marks</p> <p>>100,000 users: 5 Marks</p>	5 Marks	<p>Proof of each such parameter- such as screenshots from system capturing such details certified by the client.</p> <p>OR</p> <p>Self-certificate and/or Letter of Undertaking to this effect on company's letter head signed by company's authorized signatory.</p>
7	<p>Presentation on the implementation approach</p> <ul style="list-style-type: none"> Understanding on the scope of work, implementation approach, milestones, and timelines (10 Marks) Design and architecture of the solution proposed, technology stack (10 Marks) Innovation over and above given in the RFP and value-added services (10 Marks) Security, scalability, QA tools, data archival etc (5 Marks) Exit Management and platform transfer (5 Marks) 	40 Marks	<ul style="list-style-type: none"> Understanding on the scope of work Demonstration of capabilities and technologies Proposed Solution and Architecture Proposed Technology Stack (open source and proprietary stack) Implementation Approach, milestones, and timelines Critical success factors like security, scalability etc. Exit management strategy <p>Document providing details of above mentioned functionality signed by an authorized signatory.</p>
	Total Marks	100	

Note:

- The bidder must get a minimum of 60 marks to qualify the technical evaluation criteria. The financial bids of all such bidders who get the qualifying marks shall be evaluated.
- The client should not be intra-department in the bidder's organization.

Overall Marking

The final proposal evaluation will be based on QCBS (70:30, 70 for Technical and 30 for Financial). as explained below:

- a. Financial Score, $F_i - [F(\text{Lowest})/ F_i]*100$
- b. Financial Weightage, $F_w - 30\%$
- c. Technical Score, $T_i - T_i$ as per technical evaluation
- d. Technical Weightage, $T_w - 70\%$
- e. QCBS Score, $B_i - [F_i*30\%]+[T_i*70\%]$

where $i=1, 2, \dots$ total qualified bids

Modification to Section 2 Instructions to Bidders Clause 7.2

The Project will be funded by Invest India on behalf of Oo/PSA, GoI. O/o PSA will be the owner of the digital platform and it will provide sign-offs on each deliverable/milestone and final sign-off for the project. In lieu of this signoff on milestones, O/o PSA will ensure the payment to the bidder 60 days after the formal signoff and communication on the same to bidder. Payment to bidder will be facilitated by the Invest India.

Modification to Section 2 Instructions to Bidders Clause 7.3

All invoice/bills should be raised in favour of "Invest India" by the Vendor/Implementation Agency with a copy mark to the O/o PSA.

Modification to ANNEXURE-B: FINANCIAL BID

1. The bidders are required to quote the total financial cost to be charged
2. No other charges over and above will be paid as specified in the form below.

Resource Allocation& Efforts Estimation	Amount (Rs.)	GST (%)	Total Amount (Rs.)
A. Total Development Charges			
B. Infrastructure charges (including development and staging environment)			
C. Total License fee (Mention the list of commercial products or technologies, if any)			
D. Security Audit Charges			
E. AMC Charges (for 2 years)			
Total Project Cost (A+B+C+D+E)			

Design and Development Charges (including 1-year technical support)

S. No.	Resource Role	Resource Nos	Duration (in Months)	Rate (Rs.)	Amount (Rs.)	GST (%)	Total Amount (Rs.)
1							
2							
3							
N-1							
N							

Clarification to Pre-Bid Meeting Minutes, Annexure 2, Point 4

2-3 months delivery will not be enforced. Bidders are free to detail the phase wise delivery timelines for the three major milestones namely 1. Innovation Challenge Management 2. Community Collaboration 3. Virtual Events and Exhibitions (Knowledge Showcase). Cost breakup for the delivery of these milestones should be a part of the financials.

ANNEXURE 1: VARIOUS FORMATS

Formats for Pre-Qualification Bid

Pre Qualification Form 1 - Supporting Information for Pre-Qualification Conditions

The Bidder is required to fill relevant information in the format given below. The pre-qualification bid must contain documentary evidences and supporting information to enable purchaser to evaluate the eligibility of the Bidder without ambiguity.

S.No.	Criteria	Pre-qualification Criteria description	Supporting Document <attach documents>	Compliance (Yes/No)	Reference in Response to Pre-Qualification Bid (Section # and Page #)

Pre Qualification Form 2- Details of Experience of Bidder in Various Projects

As per the format below, the bidder should provide information for each project on similar assignments required for pre-qualification and technical evaluation criteria.

Sr. No.	Credential for < Pre-qualification Criteria No. / Technical Criteria No>		
	Name of the Organization - <<Name of the Bidder that have executed /executing the project>>		
	Parameter	Details	
<u>General Information</u>			
1	Customer Name		
2	Name of the contact person and contact details for the client of the assignment		
3	Whether client visit can be organized	(YES / NO)	
<u>Project Details</u>			
4	Project Title		
5	Start Date and End Date		
6	Government/Private/PSU/Others please specify		
7	Geographical Coverage (No. of locations the project covers)		
8	Date of Go-Live		
9	Total Cost of the project		
10	Current Status (Live / completed / ongoing / terminated / suspended)		
11	No of staff provided by your company		

12	Please indicate the current or the latest AMC period with the client (From Month –Year to Month-Year)	
13	Please indicate whether the client is currently using the implemented solution	
14	Whether Go-live completion has been achieved for at least 80% of the components in the scope of the concerned contract	(YES / NO)
Size of the project		
15	Order Value of the project (in lakhs)	
16	Capital Expenditure involved (in lakhs)	
17	Cost of services provided by the bidder (in Lakhs)	
18	Cost of services provided by the partners, if involved (in Lakhs)	
19	Number of total users and concurrent users of the solution at the client location(s):	Total users
		Concurrent users
20	Training responsibilities of Bidder	
21	Any other information to be shared with Oo/ PSA, GoI	
Narrative Description of the Project:		
Detailed Description of actual services provided by Bidder:		
Documentary Proof:		
List of modules and sub-modules implemented:		

Certification: I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe the Projects implemented by our Company.

Signature of Authorized Signatory (with official seal)

Name :

Designation :

Address :

Telephone & Fax :

E-mail Address :

Pre Qualification Form 3 - Bidder Details

<<To be printed on Bidder's Letterhead and signed by Authorized Signatory>>

Date: DD/MM/YYYY

To,
The Office of the Principal Scientific Advisor
To the Govt of India
New Delhi

Subject: Bidder Details

Please find below details of bidder for participation in **"Request for Proposal for Development & Maintenance of Science & Innovation @ Bharat Platform."**

#	Particulars	
1	Name of the Organization	
2	Type of Organization (Pvt Ltd/Public Limited/LLP)	
3	Country of Registered Office	
4	Address of Registered Office	
5	Date of Registration	
6	Details of any Global Certifications (ISO/ITIL/CMMi etc)	
7	GST Number	
8	PAN/Equivalent	
9	Address of Registered Office in India	
10	No of Years of Operation in India	
11	Authorized Signatory Name	
12	Authorized Signatory Designation	
13	Authorized Signatory Contact Details	

Thanking you,

Yours faithfully

(Signature of the Authorized signatory of the Bidding Organization)

Name:

Designation:

Date:

Company Seal:

Business Address:

Technical Evaluation Forms - Formats for Pre-Qualification Bid

Technical Evaluation Form 1- CVs of the Manpower Proposed

<<CV of the proposed Manpower to be submitted in the following format>>

1	Name of the Staff				
2	Current Designation in the Organization				
3	Proposed Role in the Project				
4	Proposed Responsibilities in the Project				
5	Date of Birth				
6	Education	<Degree>/<Diploma>, <Centre/University>, <Year of passing>			
7	Key Training and Certifications				
8	Language Proficiency	Language	Reading	Writing	Speaking
9	Employment Record (For the Total Relevant Experience)	From / To:	Employer	Position Held	
10	Total No of Years of Work Experience				
11	Total No. of Years of Experience for the Role Proposed				
12	Highlights of relevant assignments handled and significant accomplishments	Use following format for each project			
		Name of Assignment/ Project:			
		Year:			
		Location:			
		Client:			
		Main Project Features:			
		Positions Held:			
Activities Performed:					

Technical Evaluation Form 2 - Technical Solution

The Bidder is required to describe the proposed Technical Solution in this section. The Technical Solution would be evaluated on the following broad parameters. (Oo/ PSA, GoI reserves the rights to add, delete, or modify these parameters at any time during the Tender process, without assigning any reasons whatsoever and without being required to intimate the Bidders of any such change)

- Clear articulation and description of the design and technical solution and various components
- Extent of compliance to functional and technical requirements specified in the scope of work and in accordance with leading practices.

The Bidder should provide **detailed design** for the following (listing all assumptions – if any, that have been considered in a separately marked section) :

- Solution details including proposed solution, the proposed modules or components of proposed solution, any other solution component required to meet functional and technical requirements
- By means of diagrammatic / pictorial representations, the Bidder should provide complete details of the hardware (if any) and software architecture of the proposed solution.
- Details of any third-party solution, their description and purpose (if proposed).
- Capabilities of the proposed solution to address the functional requirements
- Details and calculations where possible on the estimates made on sizing the IT infrastructure (servers, storage, network components)
- Technical coverage of solutions (Servers, Database, Test environment etc.) including proposed IT landscape. Bidder should mention any specific requirements related to their solution (Network bandwidth, security components etc.)
- Bill of Material for proposed solution
- Application Security Architecture
- Disaster Recovery details and approach
- Data Migration approach
- Testing approach

Technical Evaluation Form 3 - Approach & Methodology

1. The Bidder should cover details of the methodology proposed to be adopted for planning and implementation of solutions and infrastructure relating to establishment of the proposed solution.
2. The bidder shall cover the details for best practices from imparting similar kind of training for users in an organization similar to the purchaser based on bidder's prior implementation experience in the same
3. Detailed Methodology and approach provided for training of the different stakeholders within Oo/ PSA, Gol.
4. Best practices from undertaking Change Management for users in an organization similar to Oo/ PSA, Gol based on bidder's prior implementation experience in the same.
5. The Bidder may give suggestions on improvement of the scope of work given and may mention the details of any add on services related to this project over and above what is laid down in the RFP. List of deliverables should also be identified and explained.
6. The Bidder shall describe the knowledgebase, best practices and tools that will be used by the project team for the execution of scope of work activities based on bidder's prior implementation experience in the same
7. The Bidder should cover details of the methodology proposed to be adopted for operations and maintenance related the proposed solution.
8. The Bidder should provide details about of the Helpdesk and handholding staff available for the purpose of resolution of issues pertaining to the conditions at the proposed solution.
9. Project Methodology should contain but not limited to following
 - a. Overall implementation methodology (Objective of phases, deliverables at each phase, etc.)
 - b. Methodology for performing business design
 - c. Methodology for quality control and testing of configured system
 - d. Methodology of internal acceptance and review mechanism for deliverables by the bidder.
 - e. Proposed Acceptance criteria for deliverables
 - f. Methodology and approach along with proposed tools and processes which will be followed by the bidder during project implementation.
 - g. Change Management and Training Plan
 - h. Risk and Quality management plan
10. Additional information directly relevant to the scope of services of the RFP may be submitted to accompany the proposal.
11. Overview of support methodology offered in Warranty, AMC/ATS and Support & Maintenance phase
12. Detailed bill of services offered for Warranty, AMC/ATS and Support and Maintenance services
13. Detailed support model for services under support and Maintenance

Technical Evaluation Form 4 - Project Plan & Deployment of Personnel

Bidder should propose comprehensive project plan for implementation, meeting RFP requirements. (Bidder may propose a timeline equal to or lesser than that of mentioned). Bidder should articulate how proposed approach and methodology, proposed project plan, proposed teams, Subject Matter Expertise and specific capabilities deployed shall meet the requirements of Oo/ PSA, GoI or its Nominated agencies / Partners

S. No.	Activities	Week Wise Plan				
		Milestone 1	Milestone 2	Milestone 3	Milestone 4	...
1	Activity 1					
1.1	Task 1					
1.2	Task 2					
2	Activity 2					
	..					
3	Activity 3					
3.1	Task 1					
3.2	Task 2					

Technical Evaluation Form 5 - Details of Experience of Bidder in Various Projects

As per the format below, the bidder should provide information for each project on similar assignments required for pre-qualification and technical evaluation criteria.

Sr. No.	Credential for < Pre-qualification Criteria No. / Technical Criteria No>		
	Name of the Organization - <<Name of the Bidder that have executed /executing the project>>		
	Parameter	Details	
General Information			
1	Customer Name		
2	Name of the contact person and contact details for the client of the assignment		
3	Whether client visit can be organized	(YES / NO)	
Project Details			
4	Project Title		
5	Start Date and End Date		
6	Government/Private/PSU/Others please specify		
7	Geographical Coverage (No. of locations the project covers)		
8	Date of Go-Live		
9	Total Cost of the project		
10	Current Status (Live / completed / ongoing / terminated / suspended)		
11	No of staff provided by your company		

12	Please indicate the current or the latest AMC period with the client (From Month –Year to Month-Year)	
13	Please indicate whether the client is currently using the implemented solution	
14	Whether Go-live completion has been achieved for at least 80% of the components in the scope of the concerned contract	(YES / NO)
Size of the project		
15	Order Value of the project (in lakhs)	
16	Capital Expenditure involved (in lakhs)	
17	Cost of services provided by the bidder (in Lakhs)	
18	Cost of services provided by the partners, if involved (in Lakhs)	
19	Number of total users and concurrent users of the solution at the client location(s):	Total users
		Concurrent users
20	Training responsibilities of Bidder	
21	Any other information to be shared with Oo/ PSA, GoI	
Narrative Description of the Project:		
Detailed Description of actual services provided by Bidder:		
Documentary Proof:		
List of modules and sub-modules implemented:		

Certification: I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe the Projects implemented by our Company.

Signature of Authorized Signatory (with official seal)

Name :

Designation :

Address :

Telephone & Fax :

E-mail Address :

ANNEXURE II

**CONTRACT AGREEMENT FOR SELECTION OF SYSTEM INTEGRATORS/
IMPLEMENTATION AGENCIES**

Disclaimer:

Kindly note this model contract is purely for reference purposes and any changes to same shall be made solely at the discretion of Invest India.

No contractual liability/obligations are created from this model contract.

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MASTER SERVICES AGREEMENT

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NON-DISCLOSURE AGREEMENT

DEFINITIONS

OBLIGATIONS OF THE RECEIVING PARTY

SERVICE LEVEL AGREEMENT

MASTER SERVICES AGREEMENT

THIS MASTER SERVICE AGREEMENT (“Agreement”) is made on this the <***> day of <***> 20... at <***>, India.

BETWEEN

.....having its office at
----- India hereinafter referred to as ‘Purchaser’ / ‘**Purchaser**’ or ‘-----’, which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the *Companies Act, 1956*, having its registered office at <***> (hereinafter referred to as ‘**the Implementation Agency/IA**’ which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

Each of the parties mentioned above are collectively referred to as the ‘**Parties**’ and individually as a ‘**Party**’.

WHEREAS:

1. Purchaser is desirous to implement the project of Development and Maintenance of S&I at Bharat Platform .
2. In furtherance of the same, Purchaser undertook the selection of a suitable Implementation Agency through a competitive bidding process for implementing the Project and in this behalf issued Request for Proposal (RFP) dated 11th March 2021.
3. The successful bidder has been selected as the Implementation Agency on the basis of the bid response set out as Annexure D of this Agreement, to undertake the Project of the development and implementation of the solution, its roll out and sustained operations.

NOW THEREFORE, in consideration of the mutual covenants, promises, assurances, representations and provisions set forth herein, the Parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out below .

Term	Meaning
Adverse Effect	means material adverse effect on (a) the ability of the Implementation Agency to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legal validity, binding nature or enforceability of this Agreement;
Agreement	means this Master Services Agreement, Service Level Agreement and Non-Disclosure Agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP;
Applicable Law(s)	means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement 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 the execution of this Agreement and during the subsistence thereof, applicable to the Project;
Assets	shall have the same meaning ascribed to it in Clause 10.1 (a)
Software	means the software designed, developed / customized, tested and deployed by the Implementation Agency for the purposes of the Project and includes the source code (in case of Bespoke development) along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products (including the COTS products used for the product), proprietary software components and tools deployed by the Implementation Agency;
Bespoke Development	Bespoke development means development of custom-built software for some specific organization.
Business Hours	shall mean the working time for Purchaser users which is 9:30 AM to 6:30 PM. Again for Web Server and other components which enable successful usage of web portals of Purchaser the working time should be considered as 24 hours for all the days of the week. It is desired that IT maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance; [Note: the office time should be customize as per the requirement of the project. The purpose of putting webserver is to ensure online services (if relevant to the project) 24X7]
Confidential Information	means all information including Purchaser Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how, plans, budgets and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement); All such information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly marked as "confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within <15 days> from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

Control	means, in relation to any business entity, the power of a person to secure (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person's wishes and in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;
Deliverables	means the products, infrastructure and services agreed to be delivered by the Implementation Agency in pursuance of the agreement as defined more elaborately in the RFP, Implementation and the Maintenance phases and includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related), inter alia payment and/or process related etc., source code and all its modifications;
Proprietary Information	shall have the same meaning ascribed to as defined under this MSA.
Effective Date	shall have the same meaning ascribed to it in Clause 3;
Purchaser Data	means all proprietary data of the department or its nominated agencies generated out of operations and transactions, documents all taxpayers data and related information including but not restricted to user data which the Implementation Agency obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement;
Final Acceptance Test	shall be conducted on completion of the following: 1) Purchaser Data Center operational, (if applicable) 2) Deployment & operational hardware and networking at requisite locations, 3) UAT of the overall integrated solution and portal.
Final Testing and Certification Agency	shall have the same meaning ascribed to it in Clause 5.4;
Force Majeure	shall have the same meaning ascribed to it in Clause 16.1;
Force Majeure Costs	shall have the same meaning ascribed to it in Clause 16.4 (b);
Gol	means the Government of India;

Go-Live

[Note: An objective definition of Go-Live must be customized basis the project requirements. A sample definition is provided below.]

1.1.1

(a) Subject to partial acceptance of the System as described below, Go-Live shall occur in respect of the System, when (a) the Final Acceptance Tests, as specified in the agreed and finalized project plan have been successfully completed; or (b) the Final Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Purchaser within a period of <insert days> days from the date of installation or any other agreed-upon period; or (c) the Purchaser has put the System into production or use for 60 consecutive days. If the System is put into production or use in this manner, the Implementation Agency shall notify the Purchaser and document such use.

1.1.2

(b) At any time after any of the events set out in Clause above have occurred, the Implementation Agency may give a notice to the Purchaser requesting the issue of an Final Acceptance Certificate.

1.1.3

(c) *After consultation with the Purchaser, and within fifteen (15) days after receipt of the Implementation Agency's notice, the Purchaser shall:*

(a) issue a Final Acceptance Certificate; or

issue the Operational Acceptance Certificate, if the situation covered by sub-clause (a) arises.

1.1.4

(d) The IA shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Final Acceptance Test that the Purchaser has notified the IA of. Once such remedies have been made by the IA, the IA shall notify the Purchaser, and the Purchaser, with the full cooperation of the IA, shall use all reasonable endeavors to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the Final Acceptance Tests, the IA shall notify the Purchaser of its request for Final Acceptance Certification, in accordance with sub clause (b) The Purchaser shall then issue to the IA the Final Acceptance Certification in accordance with subclause (c), or shall notify the IA of further defects, deficiencies, or other reasons for the failure of the Final Acceptance Test. The procedure set out in this sub-clause (d) shall be repeated, as necessary, until a Final Acceptance Certificate is issued.

1.1.5

(e) If the System or Subsystem fails to pass the Final Acceptance Test(s) in accordance with these provisions, then either:

- i. the Purchaser may consider terminating the Contract, pursuant to termination provisions; or (b) if the failure

to achieve Final Acceptance within the specified time period is a result of the failure of the Purchaser to fulfill its obligations under the Contract, then the IA shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Agreement.

- ii.* If within 15 days after receipt of the IA's notice the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the IA in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the System or Subsystem shall be deemed to have been accepted as of the date of the IA's said notice.
- iii.* Partial Acceptance: If so specified in the Agreement, Installation and Commissioning shall be carried out individually for each identified major component or Subsystem(s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the Final Acceptance Test, shall apply to each such major component or Subsystem individually, and Operational Acceptance Certificate(s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in the below clause..
- iv.* The issuance of Final Acceptance Certificates for individual major components or Subsystems pursuant to clause a shall not relieve the IA of its obligation to obtain an Final Acceptance Certificate for the System as an integrated whole (if so specified in the Agreement) once all major components and Subsystems have been supplied, installed, tested, and commissioned.
- v.* In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue a Final Acceptance Certificate within fifteen (15) days after the fittings and/or furnishings have been delivered and/or installed or the site works have been completed. The IA shall, however, use all reasonable endeavors to promptly remedy any defects or deficiencies in such minor components detected by the Purchaser or IA.

Indemnified Party	shall have the same meaning ascribed to it in Clause 15.1;
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Intellectual Property Rights	means all rights in written designs and copyrights, moral rights, rights in databases and Bespoke Software / Pre-existing work including its up-gradation systems and compilation rights (whether or not any of these are registered and including application for registration);
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Escrow Agreement	An agreement that pursuant to Clause 22 provides for the regular deposit into escrow of all source code, object code, and documentation with
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	respect to all public material and Service Provider's proprietary material (and cumulative updates thereof), together with (a) continually updated instructions as to the compilation, installation, configuration, deployment and use of the Source Code, and (b) a list of all non-deposited third party software used in conjunction with the Source Code to provide the full functionality of the deposited materials.
Invest India	Invest India is the national investment promotion and facilitation agency of India. Invest India, set up in 2009, is a non-profit venture under the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India.
Material Breach	means a breach by either Party (Purchaser or Implementation Agency) of any of its obligations under this Agreement which has or is likely to have an Adverse Effect on the Project which such Party shall have failed to cure;
O/o PSA, Gol	Office of The Principal Scientific Advisor to the Government of India. The PSA's office aims to provide pragmatic and objective advice to the Prime Minister and cabinet on matters related to science, technology and innovation with a focus on application of science and technology in critical infrastructure, economic and social sectors in partnership with Government departments, institutions and industry
Required Deliverables	shall have the same meaning ascribed to it in Annexure C of this Agreement;
Parties	means Purchaser and Implementation Agency for the purposes of this Agreement and " Party " shall be interpreted accordingly;
Performance Guarantee	Means the guarantee provided by a Nationalized Bank in favour of the Implementation Agency. The amount of Performance Security shall be 3% of the overall cost of the project. This performance security shall be valid till six months after the completion of the project or for such time as is required under this Agreement basis mutual discussion;
Planned Application Downtime	means the unavailability of the application services due to maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure wherein prior intimation (at least two working

	days in advance) of such planned outage shall be given and approval sought from the Purchaser as applicable;
Planned network outage	means the unavailability of the network services due to infrastructure maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure. Prior intimation of such planned outage shall be given and approval sought from the Purchaser as applicable and shall be notified at least two working days;
Project	means Pilot, Project Implementation (roll out) and Maintenance in terms of the Agreement;
Project Implementation	means Project Implementation as per the testing standards and acceptance criteria prescribed by Purchaser or its nominated agencies;
Project Implementation Phase	shall be from the Effective Date of the Agreement to the date of final acceptance testing & certification as set out in Clause 5.4 of this Agreement;
Project Implementation Unit (PIU)	shall be constituted by Purchaser to monitor the activities, deliverables and progress of the Project. PIU will comprise of the staff members of the Purchaser, other officials from concerned department and external experts (as defined in the RFP);
Project Timelines	shall have the same meaning ascribed to in Annexure C;
Providing Party	shall have the same meaning ascribed to it in Clause 12.5;
Receiving Party	shall have the same meaning ascribed to it in Clause 12.5;
Replacement Implementation Agency	means any third party that Purchaser or its nominated agencies appoint to replace Implementation Agency upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
Required Consents	means the consents, waivers, clearances and licenses to use Purchaser's Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the software and other items that Purchaser or their nominated agencies are required to make available to Implementation Agency pursuant to this Agreement;
Services	means the services delivered to the Stakeholders of Purchaser or its nominated agencies, employees of Purchaser or its nominated agencies, and to professionals, using the tangible and intangible assets created, procured, installed, managed and operated by the Implementation Agency including the tools of information and communications technology and includes but is not limited to the list of services specified in Annexure B;
Service Level	means the level of service and other performance criteria which will apply to the Services delivered by the Implementation Agency;
SLA	means the Performance and Maintenance SLA executed as part of this Master Service Agreement;

Stakeholders	means the students, Franchisee's, Investors, Citizens, Purchaser or its nominated agencies, Purchaser, employees and the Departments of State Government;
Term	shall have the same meaning ascribed to it in Clause 3.;
Third Party Systems	means systems (or any part thereof) in which the Intellectual Property Rights are not owned by the Purchaser or Implementation Agency and to which Implementation Agency has been granted a license to use and which are used in the provision of Services;
Unplanned Application Downtime	means the total time for all the instances where services in the software requirement specification document prepared by the Implementation Agency are not available for more than 5 consecutive minutes;
Network	in Purchaser users refers to all the IT assets installed by the Implementation Agency as part of the Project for networking;
Unplanned network outage	means the total time for all the instances where services in the software requirement specification document prepared by the Implementation Agency are not available for more than 5 consecutive minutes;
Application	means the software application developed as a part of scope of work set out in Clause 2.1(a)
Application Downtime	means the time for which user/s is not able to access the application. However, in calculating downtime, scheduled downtime (for example, backup time, batch processing time, routine maintenance time) would not be considered;
Network Uptime	Network Uptime refers to network availability between Purchaser's Head Quarters to Data center. "%Uptime" means ratio of 'up time' (in minutes) in a month to Total time in the month (in minutes) multiplied by 100;
Warranty / AMC Period	shall be <insert number> years from the date of successful completion /Go-live.
Safety and Security	[Note: insert any safety and security requirements additional to those specified in clause 12.4, Otherwise insert 'not applicable']

1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- (b) use of any gender includes the other genders;
- (c) references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having

separate legal personality);

- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re- enacted;
- (f) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- (g) references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which banks in the state of -----are generally open for business;
- (h) references to times are to Indian Standard Time;
- (i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (j) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- (k) System integrator (SI) or Implementation Agency (IA) has been used for the same entity i.e. bidder selected for the project.

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to two decimal places, with the third digit of five or above being rounded up and below five being rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

1.4 Ambiguities within Agreement

In case of ambiguities or discrepancies within this Agreement, the following principles shall apply:

- (a) as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- (b) as between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures; and
- (c) as between any value written in numerals and that in words, the value in words shall prevail.

1.5 Priority of documents

This Agreement, including its Schedules and Annexures, represents the entire agreement between the Parties as noted in this Clause. If in the event of a dispute as to the interpretation or meaning of this Agreement it should be necessary for the Parties to refer to documents forming part of the bidding process leading to this Agreement, then such documents shall be relied upon and interpreted in the following descending order of priority:

- (a) This Master Service Agreement along with
- (b) the SLA agreement,
- (c) NDA agreement,
- (d) Schedules and Annexures;
- (e) the RFP along with subsequently issued corrigendum
- (f) Technical and financial proposal submitted by the successful bidder, to the extent they

along with subsequently issued clarifications furnished by the Implementation Agency in response to the RFP, to the extent they are not inconsistent with any terms of the RFP.

For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures / Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexures / Schedules and Annexures / Schedules shall prevail over the contents and specifications of the RFP.

2. SCOPE OF THE PROJECT

The Implementation Agency shall be required to:

develop / customize and implement <Insert the details of solution>; manage and provide technical support to the solution for the period of <insert period> years from the date of Go-Live.

The roles and responsibilities of the Parties under this Agreement have been set out in detail as Annexure F of this Agreement.

For the avoidance of doubt, it is expressly clarified that this Agreement shall govern the provision of the contracted services under the SLA to the Purchaser and its nominated agencies. It is anticipated that new or renewal agreements may be undertaken by creating a separate SLA, with schedules and annexures as required, under this Agreement for each additional engagement.

2.1 Scope of work

Detailed scope of work for the selected bidder is as follows:

1. -----
2. -----
3. -----

3. TERM AND DURATION OF THE AGREEMENT

This Agreement shall come into effect on <***> 2021- (hereinafter the 'Effective Date') and shall continue till operation and maintenance completion date which shall be the date of the completion of the operation and maintenance to the Purchaser or its nominated agencies, unless terminated earlier (as per clause 14), in which case the contract will get terminated on fulfillment of all obligations mentioned as per clause 14 and Schedule-II.

4. CONDITIONS PRECEDENT & EFFECTIVE DATE

4.1 Provisions to take effect upon fulfillment of Conditions Precedent

Subject to express terms to the contrary, the rights and obligations under this Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out below. However, Purchaser or its

nominated agencies may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the Implementation Agency.

For the avoidance of doubt, it is expressly clarified that the obligations of the Parties (or its nominated agencies) under this Agreement shall commence from the fulfillment of the Conditions Precedent as set forth below.

4.2 a. Conditions Precedent of the Implementing Partner

The Implementation Agency shall be required to fulfill the Conditions Precedent in which is as follows:

- i. to provide a Performance Security/Guarantee and other guarantees/ payments within <21 days> of the receipt of notification of award from the purchaser; and
- ii. to provide the Purchaser or its nominated agencies certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Implementation Agency (optional).

4.2 b. Conditions Precedent of the Purchaser (needs to be customized as per project requirement)

The Purchaser shall be required to fulfill the Conditions Precedents which are as follows:

- i. Handing over of <project office> (if applicable)
- ii. Necessary clearances associated with the execution of the project, unless specified to be performed by the IA
- iii. Approval of the Project by a Competent Authority, etc

4.3 Extension of time for fulfillment of Conditions Precedent

The Parties may, by mutual agreement extend the time for fulfilling the Conditions Precedent and the Term of this Agreement.

4.4 Non-fulfillment of the Implementation Agency's Conditions Precedent

- (a) In the event that any of the Conditions Precedent of the Implementation Agency have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by Purchaser or its nominated agencies, this Agreement shall cease to exist;
- (b) In the event that the Agreement fails to come into effect on account of non fulfillment of the Implementation Agency's Conditions Precedent, the Purchaser or its nominated agencies shall not be liable in any manner whatsoever to the Implementation Agency and the Purchaser shall forthwith forfeit the Earnest Money Deposit.
- (c) In the event that possession of any of the Purchaser or its nominated agencies facilities has been delivered to the Implementation Agency prior to the fulfillment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to Purchaser or its nominated agencies, free and clear from any encumbrances or claims.

5. OBLIGATIONS UNDER THE SLA

5.1 The SLA shall be a separate contract in respect of this Agreement and shall be entered into concurrently with this Agreement between Purchaser and Implementation Agency;

5.2 In relation to any future SLA entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein.

5.3 Change of Control

- (a) In the event of a change of control of the Implementation Agency during the Term, the Implementation Agency shall promptly notify Purchaser and/or its nominated agencies of the same in the format set out as Annexure A of this Agreement.
- (b) In the event that the net worth of the surviving entity is less than that of Implementation Agency prior to the change of control, the Purchaser or its nominated agencies may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the Implementation Agency from a guarantor acceptable to the Purchaser or its nominated agencies (which shall not be Implementation Agency or any of its associated entities).
- (c) If such a guarantee is not furnished within 30 days of the Purchaser or its nominated agencies requiring the replacement, the Purchaser may exercise its right to terminate the SLA and/ or this Agreement within a further 30 days by written notice, to become effective as specified in such notice.
- (d) Pursuant to termination, the effects of termination as set out in Clause 14 of this Agreement shall follow.

For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Implementation Agency shall not be deemed an event of a change of control for purposes of this Clause unless the surviving entity is of less net worth than the predecessor entity.

5.4 Final testing and certification

The Project shall be governed by the mechanism of final acceptance testing and certification to be put into place by the Purchaser and Implementation Agency as under:

- (a) Final testing and certification criteria will lay down a set of guidelines following internationally accepted norms and standards for testing and certification for all aspects of project development and implementation covering software, hardware and networking including the processes relating to the design of solution architecture, design of systems and sub-systems, coding, testing, business process description, documentation, version control, change management, security, service oriented architecture, performance in relation to compliance with SLA metrics, interoperability, scalability, availability and compliance with all the technical and functional requirements of the RFP and this Agreement;
- (c) Final testing and certification criteria will be finalized from the development stage to ensure that the guidelines are being followed and to avoid large scale modifications pursuant to testing done after the application is fully developed;
- (d) Final testing and certification criteria will consider conducting specific tests on the software, hardware, networking, security and all other aspects;

- (e) Final testing and certification criteria will establish appropriate processes for notifying the Implementation Agency of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the Implementation

Agency to take corrective action; etc.

- 5.5** The Parties shall each ensure that the range of the Services under the SLA shall not be varied, reduced or increased except with the prior written agreement between the Purchaser and Implementation Agency in accordance with the Change Control Schedule set out in Schedule I of this Agreement. Save for the express terms of the Terms of Payment Schedule set out as Schedule V of this Agreement, Purchaser or its nominated agencies and its users may purchase any particular category of Services that may become necessary as per the Change Control Schedule set out in Schedule I of this Agreement, without the need to go for a separate procurement process.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and warranties of the Implementation Agency

The Implementation Agency represents and warrants to the Purchaser or its nominated agencies that:

[Note: A concept of materiality could be introduced for some of the clauses, on request of the successful bidder]

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- (b) it is a competent provider of a variety of information technology and business process management services;
- (c) it has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (d) from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (e) in providing the Services, it shall use reasonable endeavours not to cause any unnecessary disruption to Purchaser's normal business operations
- (f) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- (g) the information furnished in the Implementation Agency's response to the RFP and any subsequent clarification pertaining to the evaluation process, furnished on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement;
- (h) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- (i) there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (k) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement;
- (l) no representation or warranty by it contained herein or in any other document furnished by it to Purchaser or its nominated agencies in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
- (m) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of Purchaser or its nominated agencies in connection therewith.

6.2 Representations and warranties of the Purchaser or its nominated agencies

Purchaser or its nominated agencies represent and warrant to the Implementation Agency that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- (b) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;

- (f) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on the Purchaser or its nominated agencies ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects;
- (j) all information provided by it in the RFP in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- (k) upon the Implementation Agency performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Implementation Agency, in accordance with this Agreement.

7. OBLIGATIONS OF THE PURCHASER OR ITS NOMINATED AGENCIES

Without prejudice to any other undertakings or obligations of the Purchaser or its nominated agencies under this Agreement, the Purchaser or its nominated agencies shall perform the following:

- (a) To provide any support through personnel to test the system during the Term;
- (b) To provide any support through personnel and/or test data during development, rollout, steady state operation, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- (c) Purchaser shall provide the data (including in electronic form wherever available) to be migrated.
- (d) To authorize the Implementation Agency to interact for implementation of the Project with external entities such as the state treasury, authorized banks, trademark database etc.
- (e) **Provide prompt Deliverable feedback:** *Within <15 working days> from the submission of a deliverable/SLA and performance reports, the <purchaser> shall provide a sign offs on the deliverable or its comments for changes.*

In case the <purchaser> fails to respond and provide feedback on above stated submission, the deliverables or SLA and performance reports will be deemed accepted. Post <15 working days> there will be no rework of the said deliverable except, in case the purchaser has provided an alternate date for acceptance or basis mutual discussion between both parties. Any subsequent rework post acceptance / deemed acceptance would form the subject of a formal change request under the provisions of this Agreement.

8. OBLIGATIONS OF THE IMPLEMENTATION PARTNER

- 8.1 It shall provide to the Purchaser or its nominated agencies, the Deliverables as set out in Annexure F of this Agreement.
- 8.2 It shall perform the Services as set out in Section 2 of this Agreement and in a good and workmanlike manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, and so as to comply with the applicable Service Levels set out with this Agreement.
- 8.2 It shall ensure that the Services are being provided as per the Project Timelines set out in the RFP.

9. APPROVALS AND REQUIRED CONSENTS

- 9.1 The Parties shall cooperate to procure, maintain and observe all relevant and regulatory and governmental licenses, clearances and applicable approvals (hereinafter the “**Required Consents**”) necessary for the Implementation Agency to provide the Services. The costs of such Approvals shall be borne by the Party normally responsible for such costs according to local custom and practice in the locations where the Services are to be provided.
- 9.2 The Purchaser or its nominated agencies shall use reasonable endeavors to assist Implementation Agency to obtain the Required Consents In the event that any Required Consent is not obtained, the Implementation Agency and the Purchaser or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the Purchaser or its nominated agencies to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Required Consents are obtained, provided that the Implementation Agency shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the Required Consents are obtained if and to the extent that the Implementation Agency’s obligations are not dependent upon such Required Consents.

10. USE OF ASSETS BY THE IMPLEMENTATION AGENCY

10.1 During the Term the Implementation Agency shall:

- (a) take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the Implementation Agency exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the “**Assets**”) in proportion to their use and control of such Assets; and
- (f) keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Implementation Agency takes control of and/or first use the Assets and during the entire Term of the Agreement.
- (c) ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Implementation Agency will be followed by the Implementation Agency and any person who will be responsible for the use of the Assets;
- (d) take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Implementation Agency or as may, in the reasonable opinion of the Implementation Agency, be necessary to use the Assets in a safe manner;
- (e) ensure that the Assets that are under the control of the Implementation Agency, are kept suitably housed and in conformity with Applicable Law;
- (f) procure permission from the Purchaser or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- (g) not knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.

11. ACCESS TO THE PURCHASER OR ITS NOMINATED AGENCIES LOCATIONS

11.1 For so long as the Implementation Agency provides services to the Purchaser or its nominated agencies location, as the case may be, on a non-permanent basis and to the extent necessary, the Purchaser as the case may be or its nominated agencies shall, subject to compliance by the Implementation Agency with any safety and security guidelines which may be provided by the Purchaser as the case may be or its nominated agencies and notified to the Implementation Agency in writing, provide the Implementation Agency with:

- (a) reasonable access, in the same manner granted to the Purchaser or its nominated agencies employees, to the Purchaser as the case may be location twenty-four hours a day, seven days a week;
- (b) reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other the Purchaser as the case may be location, if any, as may be reasonably necessary for the Implementation Agency to perform its obligations hereunder and under the SLA.

11.2 Access to locations, office equipments and services shall be made available to the Implementation Agency < on an “as is, where is” basis / in appropriate working condition (as per

scope of work defined in the tender)> by the Purchaser as the case may be or its nominated agencies. The Implementation Agency agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in RFP for the following purposes:

- (a) for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
- (b) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality).

12. MANAGEMENT PHASE

12.1 Governance

The review and management process of this Agreement shall be carried out in accordance with the Governance Schedule set out in Schedule V of this Agreement and shall cover all the management aspects of the Project.

12.2 Use of Services

- (a) The Purchaser as the case may be or its nominated agencies, will undertake and use the Services in accordance with any instructions or procedures as per the acceptance criteria as set out in the SLA or this Agreement or any agreement that may be entered into between the Parties from time to time;
- (b) The Purchaser as the case may be or its nominated agencies shall be responsible for the operation and use of the Deliverables resulting from the Services.

12.3 Changes

Unless expressly dealt with elsewhere in this Agreement, any changes under or to this Agreement or under or to the SLA shall be dealt with in accordance with the Change Control Schedule set out in Schedule I of this Agreement.

12.4 Security And Safety

- (a) The Implementation Agency shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act or Telegraph Act including the regulations issued by dept. of telecom (wherever applicable), IT Security Manual of the Purchaser as specifically stated in the RFP and follow the industry standards related to safety and security (including those as stated in the RFP), insofar as it applies to the provision of the Services.
- (b) Each Party to the SLA/Agreement shall also comply with Purchaser or the Government of India, and the respective State's security standards and policies in force from time to time at each location of which Purchaser or its nominated agencies make the Implementation Agency aware in writing insofar as the same apply to the provision of the Services.
- (c) The Parties to the SLA/Agreement shall use reasonable endeavors to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Purchaser as the case may be or any of their nominees data, facilities or Confidential Information.

- (d) The Implementation Agency shall upon reasonable request by the Purchaser as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- (e) As per the provisions of the SLA or this Agreement, the Implementation Agency shall promptly report in writing to the Purchaser or its nominated agencies, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of Purchaser as the case may be.

12.5 Cooperation

Except as otherwise provided elsewhere in this Agreement or the SLA, each Party ("**Providing Party**") to this Agreement or to the SLA undertakes promptly to provide the other Party ("**Receiving Party**") with all such information and co-operation which the Receiving Party reasonably requests, provided that such information and co-operation:

- (a) does not require material expenditure by the Providing Party to provide the same;
- (b) is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement or the SLA;
- (c) cannot be construed to be Confidential Information; and
- (d) is capable of being provided by the Providing Party.

Further, each Party agrees to co-operate with the contractors and subcontractors of the other Party as reasonably requested in order to accomplish the purposes of this Agreement.

13. FINANCIAL MATTERS

13.1 Terms of Payment

- (a) In consideration of the Services and subject to the provisions of this Agreement and of the SLA, the Purchaser shall pay the Implementation Agency for the Services rendered in pursuance of this agreement, in accordance with the Terms of Payment Schedule set out as Schedule V of this Agreement.
- (b) Payments shall be subject to the application of liquidated damages (for period prior to "Go Live") or SLA penalties and its adjustments/corrections (for post "Go-Live") as may be provided for in the Agreement and the SLA from the relevant milestone(s),
- (c) Save and except as otherwise provided for herein or as agreed between the Parties in writing, the Purchaser shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the Implementation Agency performance of any obligations under this Agreement or the SLA) other than those covered in Schedule V of this Agreement. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy

charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.

13.2 Invoicing and Settlement

- (a) Subject to the specific terms of the Agreement and the SLA, the Implementation Agency shall submit its invoices in accordance with the following principles:
 - (i) The Purchaser shall be invoiced by the Implementation Agency for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the Implementation Agency shall raise an invoice as per Schedule V of this Agreement; and
 - (ii) Any invoice presented in accordance with this Clause shall be in a form agreed with the Purchaser.
- (b) The Implementation Agency alone shall invoice all payments after receiving due approval of completion of payment milestone from the competent authority. Such invoices shall be accurate with all adjustments or changes in the terms of payment as stated in Schedule V of this Agreement. The Implementation Agency shall waive any charge for a Service that is not invoiced within 30 days after the end of the month in which the change relating to such Service is (i) authorized or (ii) incurred, whichever is later.
- (c) Payment shall be made within <60 working days> of the receipt of invoice along with supporting documents such as work done report provided by IA to the Purchaser subject to deduction of applicable liquidated damages (till "Go Live") or SLA penalties (post "Go Live"). The penalties are imposed on the vendor as per the SLA criteria specified in the SLA.
- (d) The Purchaser shall be entitled to delay or withhold payment of any invoice or part of it delivered by the Implementation Agency under Schedule V of this Agreement where the Purchaser disputes/withholds such invoice or part of it provided that such dispute is bona fide. The withheld amount shall be limited to that which is in dispute. The disputed / withheld amount shall be settled in accordance with the escalation procedure as set out in Schedule V of this Agreement. Any exercise by the Purchaser under this Clause shall not entitle the Implementation Agency to delay or withhold provision of the Services.
- (e) The Implementation Agency shall be solely responsible to make payment to its sub-contractors.

13.3 Tax

- (a) The Purchaser or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the Implementation Agency wherever applicable. The Implementation Agency shall pay for all other taxes in connection with this Agreement, SLA, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.
- (b) The Purchaser or its nominated agencies shall provide Implementation Agency with the original tax receipt of any withholding taxes paid by Purchaser or its nominated agencies

on payments under this Agreement. The Implementation Agency agrees to reimburse and hold the Purchaser or its nominated agencies harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among the Purchaser or its nominated agencies, the Implementation Agency and third party subcontractors.

- (c) If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by the Purchaser for providing the goods and services i.e. service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the Implementation Agency in performing the Services, then the remuneration and reimbursable expense otherwise payable to the Implementation Agency under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule V. However, in case of any new or fresh tax or levy imposed after submission of the proposal the Implementation Agency shall be entitled to reimbursement on submission of proof of payment of such tax or levy.
- (d) The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with the following:
 - (i) any resale certificates;
 - (ii) any relevant information regarding out-of-state or use of materials, equipment or services; and
 - (iii) any direct pay permits, exemption certificates or information reasonably requested by the other Party.

14. TERMINATION

14.1 FOR MATERIAL BREACH

- (a) In the event that either Party believes that the other Party is in Material Breach of its obligations under this Agreement, such aggrieved Party may terminate this Agreement upon giving a one month's notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, the Purchaser or Implementation Agency, as the case may be will have the option to terminate the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events and the termination will become effective:
 - (i) If the Implementation Agency is not able to deliver the services as per the SLAs defined in RFP which translates into Material Breach, then the Purchaser may serve a 30 days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the Purchaser will have the option to terminate this Agreement. Further, the Purchaser may offer a reasonable opportunity to the Implementation Agency to explain the circumstances leading to such a breach.

- (b) The Purchaser may by giving a one month's written notice, terminate this Agreement if a change of control of the Implementation Agency has taken place. For the purposes of this Clause, in the case of Implementation Agency, change of control shall mean the events stated in Clause 5.3, and such notice shall become effective at the end of the notice period as set out in Clause 5.3 (c).
- (c) In the event that Implementation Agency undergoes such a change of control, Purchaser may, as an alternative to termination, require a full Performance Guarantee for the obligations of Implementation Agency by a guarantor acceptable to Purchaser or its nominated agencies. If such a guarantee is not furnished within 30 days of Purchaser's demand, the Purchaser may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the Implementation Agency.
- (d) The termination provisions set out in this Clause shall apply *mutatis mutandis* to the SLA.

14.2 TERMINATION FOR CONVENIENCE

14.2.1 The Purchaser may at any time terminate the Contract for any reason by giving the IA a 15 days notice of termination that refers to this clause.

14.2.2 Upon receipt of the notice of termination under this clause, the IA shall either as soon as reasonably practical or upon the date specified in the notice of termination:

- (a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to Clause 14.2.2 (d) (ii) below;
- (c) remove all IA's Equipment from the site, repatriate the IA's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
- (d) in addition, the IA shall:
 - (i) deliver to the Purchaser the parts of the System executed by the IA up to the date of termination;
 - (ii) to the extent legally possible, assign to the Purchaser all right, title, and benefit of the IA to the System, or Subsystem, as at the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the IA and its Subcontractors;
 - (iii) deliver to the Purchaser all non-proprietary drawings, specifications, and other documents prepared by the IA or its Subcontractors as of the date of termination in connection with the System.

14.3 Effects of termination

- (a) In the event that Purchaser terminates this Agreement pursuant to failure on the part of the Implementation Agency to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by Implementation Agency may be forfeited.
- (b) Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule III of this Agreement.
- (c) In the event that Purchaser or the Implementation Agency terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as Schedule V of this Agreement.
- (d) Purchaser agrees to pay Implementation Agency for i) all charges for Services Implementation Agency provides and any Deliverables and/or system (or part thereof) Implementation Agency delivers through termination and any charges at the tendered rate, for extension period beyond termination as decided by the Nodal Agency as per Schedule 2, and ii) reimbursable expenses Implementation Agency incurs through termination.
- (e) If Purchaser terminates without cause, Purchaser also agrees to pay any applicable adjustment expenses to Implementation Agency incurs as a result of such termination (which Implementation Agency will take reasonable steps to mitigate).
- (f) In the event of termination of the Contract under 14.2, the Purchaser shall pay to the IA the following amounts:
 - (i) the Contract Price, properly attributable to the parts of the System executed by the IA as of the date of termination;

- (ii) the costs reasonably incurred by the IA in the removal of the IA's Equipment from the site and in the repatriation of the IA's and its Subcontractors' personnel;
- (iii) any amount to be paid by the IA to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
- (iv) costs incurred by the IA in protecting the System and leaving the site in a clean and safe condition pursuant to Clause 14.2; and
- (v) the cost of satisfying all other obligations, commitments, and claims that the IA may in good faith have undertaken with third parties in connection with the Contract and that are not covered by Clauses 14.3 (d) above.

14.4 Termination of this Agreement due to bankruptcy of Implementation Agency

The Purchaser may serve written notice on Implementation Agency at any time to terminate this Agreement with immediate effect in the event that the Implementation Agency reporting an apprehension of bankruptcy to the Purchaser or its nominated agencies

15. INDEMNIFICATION & LIMITATION OF LIABILITY

15.1 Subject to Clause 15.4 below, Implementation Agency (the "Indemnifying Party") undertakes to indemnify, hold harmless the Purchaser (the "Indemnified Party") from and against all claims, liabilities, losses, expenses (including reasonable attorneys' fees), fines, penalties, taxes or damages (Collectively "Loss") on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or willful default in performance or non-performance under this Agreement.

15.2 If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages, **that may be finally awarded against Indemnified Party.**

15.3 Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by

- a) Indemnified Party's misuse or modification of the Service;
- b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party;
- c) Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party;

However, if any service, information, direction, specification or materials provided by Indemnified Party or any third party contracted to it, is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either

- i. Procure the right for Indemnified Party to continue using it

- ii. Replace it with a noninfringing equivalent
- iii. Modify it to make it noninfringing.

The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.

15.4 The indemnities set out in Clause 15 shall be subject to the following conditions:

- (i) the Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
- (ii) the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense;
- (iii) if the Indemnifying Party does not assume full control over the Defense of a claim as provided in this Article, the Indemnifying Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses;
- (iv) the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
- (v) all settlements of claims subject to indemnification under this Clause will:
 - a. be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and
 - b. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
- (vi) the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
- (vii) the Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;
- (viii) in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and
- (ix) if a Party makes a claim under the indemnity set out under Clause 15.1 above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).

15.5 The liability of either Party (whether in contract, tort, negligence, strict liability in tort, by statute or

otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event exceed one time the total contract value payable under this Agreement. The liability cap given under this Clause shall not be applicable to the indemnification obligations set out in Clause 15 and breach of Clause 12.4 and 17.

15.6 In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) nor for any third party claims (other than those set-forth in Clause 15.1) even if it has been advised of their possible existence.

15.7 The allocations of liability in this Section 15 represent the agreed and bargained-for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

16. FORCE MAJEURE

16.1 Definition of Force Majeure

“Force Majeure” shall mean any event beyond the reasonable control of the Purchaser or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected.

16.2 Force Majeure events

A Force Majeure shall include, without limitation, the following:

- a.** war, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
- b.** strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
- c.** earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;

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

16.2.2 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The time for

achieving Final Acceptance shall be extended.

16.2.3 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under Clause 16.

16.2.4 No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:

(a) constitute a default or breach of the Contract;

(b) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance,

if, and to the extent that, such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

16.2.5 If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.

16.2.6 In the event of termination pursuant to Clause 16, the rights and obligations of the Purchaser and the Supplier shall be as specified in the clause titled Termination.

16.2.7 Notwithstanding Clause 16.2.4, Force Majeure shall not apply to any obligation of the Purchaser to make payments to the Supplier under this Contract.

16.2.8 For the avoidance of doubt, it is expressly clarified that the failure on the part of the Implementation Agency under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking aren't the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure". In so far as applicable to the performance of Services, Service Provider will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).

17. CONFIDENTIALITY

17.1 The Purchaser or its nominated agencies shall allow the Implementation Agency to review and utilize highly confidential public records and the Implementation Agency shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.

- 17.2** Additionally, the Implementation Agency shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- 17.3** The Purchaser or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Implementation Agency regarding any forbidden disclosure.
- 17.4** The Implementation Agency shall ensure that all its employees, agents and sub-contractors involved in the project, execute individual non-disclosure agreements, which have been duly approved by the Purchaser with respect to this Project. The implementing agency may submit a declaration that it has obtained the NDA from its employees. However, if the project is critical in nature, IA may get NDAs signed from every resource involved in the project and submit it to purchaser (Optional).
For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:
- (a) information already available in the public domain;
 - (b) information which has been developed independently by the Implementation Agency;
 - (c) information which has been received from a third party who had the right to disclose the aforesaid information;
 - (d) Information which has been disclosed to the public pursuant to a court order.
- 17.5** To the extent the Implementation Agency shares its confidential or proprietary information with the Purchaser for effective performance of the Services, the provisions of the Clause 17.1 to 17.3 shall apply mutatis mutandis on the Purchaser or its nominated agencies.
- 17.6** Any handover of the confidential information needs to be maintained in a list, both by Purchaser & SI, containing at the very minimum, the name of provider, recipient, date of generation of the data, date of handing over of data, mode of information, purpose and signatures of both parties.
- 17.7** Notwithstanding anything to the contrary mentioned hereinabove, the Implementation Agency shall have the right to share the Letter of Intent / work order provided to it by the Purchaser in relation to this Agreement, with its prospective purchasers solely for the purpose of and with the intent to evidence and support its work experience under this Agreement.

18. AUDIT, ACCESS AND REPORTING

The Implementation Agency shall allow access to the Purchaser or its nominated agencies to all information which is in the possession or control of the Implementation Agency and which relates to the provision of the Services as set out in the Audit, Access and Reporting Schedule and which is reasonably required by the Purchaser to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule III of this Agreement.

19. INTELLECTUAL PROPERTY RIGHTS

19.1 Products and fixes: All products and related solutions and fixes provided pursuant to this Agreement shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product, the ownership of which shall continue to vest with the product owner. Implementation Agency would be responsible for arranging any licenses associated with products.

“Product” means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to Purchaser for license which is published by product owner or its affiliates, or a third party. **“Fixes”** means product fixes that are either released generally (such as commercial product service packs) or that are provided to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.

19.2 Bespoke development: Subject to the provisions of Clause 19.3 and 19.4 below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie exclusively with the Purchaser.

19.3 Pre-existing work: All IPR including the source code and materials developed or otherwise obtained independently of the efforts of a Party under this Agreement (**“pre-existing work”**) including any enhancement or modification thereto shall remain the sole property of that Party. During the performance of the services for this agreement, each party grants to the other party (and their sub-contractors as necessary) a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the Implementation Agency should grant Purchaser a non-exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to Purchaser as part of the service or deliverables only for its internal business operations. Under such license, either of parties will have no right to sell the pre-existing work of the other party to a Third Party. Purchaser’s license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that bidder leaves with Purchaser at the conclusion of performance of the services.

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

20. WARRANTY & MAINTENANCE

20.1 Standard: The Implementation Agency warrants that the Project, including all the system(s), materials and goods supplied pursuant to the Agreement, shall be free from any defect or deficiency in the material, design, engineering, and workmanship that prevent the system and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the system and/or any of its sub-system(s). Commercial warranty provisions of products

supplied under the Agreement shall apply to the extent they do not conflict with the provisions of this Agreement.

20.1.1 The IA also warrants that the products, materials and other goods supplied under the Agreement are new, unused and incorporate all recent improvements in design that materially affect the system's or subsystem's ability to fulfill the technical requirements specified in the RFP.

20.1.2 In addition, the IA warrants that: (i) all Goods components to be incorporated into the System form part of the IA/OEM's and/or Subcontractor's current product lines.

20.1.3 The warranty period shall commence from the date of Go Live of the project or of any major component or subsystem for which phased Go-Live is provided for in the Agreement and shall extend for as follows: .

Component	Period
<COTS Software>	6 months post completion of the agreement
<Bespoke Software>	6 months post completion of the agreement

Purchaser/Government department should approve signoff within <15 days> from the submission of deliverables for Go-Live/Phased Go-live (as relevant, depending on project requirement) by the implementing agency.

20.1.4 If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services provided by the Implementation Agency, the Implementation Agency shall promptly, in consultation and agreement with Purchaser, and at the Implementation Agency's sole cost repair, replace, or otherwise make good (as the Implementation Agency shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the

system caused by such default, defect or deficiency. Any defective component, excluding hard disks, that has been replaced by the Implementation Agency shall remain the property of the Implementation Agency.

20.1.5 The IA may, with the consent of the Purchaser, remove from the site any product and other goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the Purchaser may give the IA notice requiring that tests of the defective part be made by the IA immediately upon completion of such remedial work, whereupon the IA shall carry out such tests. If such part fails the tests, the IA shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by the Purchaser and the Supplier.

20.1.6 If the IA fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within a reasonable time period, the Purchaser may, following notice to the IA,

proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Purchaser in connection with such work shall be paid to the Purchaser by the IA or may be deducted by the Purchaser from any amount due to the IA.

20.1.7 If the System or any of its sub-systems cannot be used by reason of such default, defect or deficiency and/or making good of such default, defect or deficiency, attributable to IA, the warranty period for the Project shall be extended by a period equal to the period during which the Project or any of its system could not be used by the Purchaser because of such defect and/or making good of such default, defect or deficiency. For reasons not attributable to IA, the IA shall not be liable.

20.1.8 Items substituted for defective parts of the System during the Warranty Period shall be covered by the Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.

20.1.9 The Implementing Agency shall have no liability in the case of breach of this warranty due to (i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the Implementing Agency, (ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the Implementing Agency; (iii) the deliverables having been tampered with, altered or modified by Purchaser without the written permission of the Implementing Agency, or (iv) use of the deliverables otherwise than in terms of the relevant documentation.

20.2 Implied Warranty: The warranties provided herein are in lieu of all other warranties, both express and implied, and all other warranties, including without limitation that of merchantability or fitness for intended purpose is specifically disclaimed.

21. LIQUIDATED DAMAGES

Time is the essence of the Agreement and the delivery dates are binding on the Implementation Agency. In the event of delay or any gross negligence in implementation of the projet before Go-Live, for causes solely attributable to the Implementation Agency, in meeting the deliverables, the Purchaser shall be entitled at its option to recover from the Implementation Agency as agreed, liquidated damages, a sum of <1%> of the value of the deliverable which suffered delay or gross negligence for each completed week or part thereof subject to a limit of <10%> of the total contract value. This right to claim any liquidated damages shall be without prejudice to other rights and remedies available to Purchaser under the contract and law.

22. ESCROW AGREEMENT

22.1 Implementation Agency shall comply with the escrow provisions below for all Bespoke Development & customized codes (including subcontractor-owned materials and other Third Party Material incorporated in Implementation Agency's Proprietary Material), except to the extent Implementation Agency demonstrates to the satisfaction of the Purchaser that compliance is not permitted by the nature of Implementation Agency's limited rights in such material.

22.2 Within <ninety (90) days> after the Purchaser's acceptance of the Solution, the Parties shall enter into a software escrow agreement ("Escrow Agreement") with a reputable, independent, third party that provides software escrow services among its principal business offerings ("Escrow Agent"). The Escrow Agreement shall provide for the regular deposit into escrow of all source code (including without limitation all make files, configurational files, data tables upon which execution is dependent, and the like, collectively the "Source Code"), object code, and documentation with respect to all Public Material and Implementation Agency's Proprietary Material (and cumulative updates thereof), together with (a) continually updated instructions as to the compilation, installation, configuration, deployment, and use of the Source Code, and (b) a list of all non-deposited third party software used in conjunction with the Source Code to provide the full functionality of the deposited materials. In the event of the termination or expiration of the initial Escrow Agreement or any successor agreement, with minimal delay the Parties shall enter into a substantially equivalent agreement with a successor provider of software escrow services (who shall then be known as the "Escrow Agent").

22.3 Implementation Agency will make its initial deposit of Source Code within fifteen (15) days after the effective date of the Escrow Agreement.

22.4 Implementation Agency shall periodically update the escrow deposit as the Parties shall agree in the Escrow Agreement. In addition to other usual and customary terms, the Escrow Agreement shall provide that the Purchaser shall be entitled to obtain the deposited materials from escrow upon the Purchaser's making a proper claim for release from escrow in the event that (c) proper written notice is given to the Escrow Agent that release of the copy of the deposited materials is pursuant to applicable Central or Purchaser bankruptcy, insolvency, reorganization, or liquidation statute; (d) Implementation Agency files articles of dissolution (but not if Implementation Agency is consolidated or merged into another entity); (e) the Contract expires or terminates for Material Breach of Implementation Agency.

22.5 The release of deposited materials from escrow shall not confer upon the Purchaser any right of ownership in the deposited materials or the underlying intellectual property embodied therein. In the event of the release of deposited materials to the Purchaser from escrow, the Purchaser shall use the deposited materials solely for the benefit of the Purchaser and its constituents, consistently with the grants of license set forth in Clause 19 of this Agreement.

22.6 The release of materials from escrow, without more, shall not cause any further amounts to accrue as payable to Implementation Agency by the Purchaser, and the term of the Purchaser's possessory and usage rights with respect to the released materials shall be perpetual.

22.7 The Escrow Agreement shall provide for its automatic termination upon the earlier of five (5) years after the expiration or termination of this Contract, or, release of all Source Code to the Purchaser and the Purchaser's subsequent confirmation of compliance with the terms of the Escrow Agreement. Implementation Agency shall pay the escrow costs, as well as all costs associated with causing its subcontractors and other third parties to abide by the Escrow Agreement.

23. INSURANCE COVER

23.1 Obligation to maintain insurance

In connection with the provision of the Services, the Service Provider must have and maintain:

- (a) for the Agreement Period, valid and enforceable insurance coverage for:
 - (i) public liability;
 - (ii) either professional indemnity or errors and omissions;
 - (iii) product liability;
 - (iv) workers' compensation as required by law; and
 - (v) any additional types specified in Schedule I; and
- (b) for <one> year following the expiry or termination of the Agreement, valid and enforceable insurance policies (if relevant),

in the amount not less than the Insurance Cover specified in Schedule I.

23.2 Certificates of currency

The Implementation Agency must, on request by the Purchaser, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 23. The Service Provider agrees to replace any coverage prior to the date of expiry/cancellation.

23.3 Non-compliance

Purchaser or its nominated agencies may, at its election, terminate this Agreement as per clause 14, upon the failure of Implementation Agency or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve Implementation Agency of its obligations under this Agreement.

24. MISCELLANEOUS

24.1 Personnel

(a) The personnel assigned by Implementation Agency to perform the Services shall be employees of Implementation Agency or its subcontractor(s), and under no circumstances shall such personnel be considered employees of Purchaser or its nominated agencies. The Implementation Agency shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.

(b) The Implementation Agency shall use its best efforts to ensure that sufficient Implementation Agency personnel are assigned to perform the Services and that such personnel have appropriate qualifications to perform the Services. After discussion with Implementation Agency, Purchaser or its nominated agencies shall have the right to require the removal or replacement of any Implementation Agency personnel performing work under this Agreement based on bonafide reasons. In the event that Purchaser or its nominated agencies requests that any Implementation Agency personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.

(d) In the event that the Purchaser and Implementation Agency identify any personnel of Implementation Agency as "Key Personnel", then the Implementation Agency shall not remove such personnel from the Project without the prior written consent of Purchaser or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.

(e) Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of Implementation Agency to freely assign or reassign its employees; provided that Implementation Agency shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. Purchaser or its nominated agencies shall have the right to review and

approve Implementation Agency's plan for any such knowledge transfer. Implementation Agency shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.

(f) Each Party shall be responsible for the performance of all its obligations under this Agreement or the SLA as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.

(g) Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.

24.2 Independent Contractor

Nothing in this Agreement or the SLA shall be construed as establishing or implying any partnership or joint venture between the Parties to this Agreement or the SLA and, except as expressly stated in this Agreement or the SLA, nothing in this Agreement or the SLA shall be deemed to constitute any Parties as the agent of any other Party or authorizes either Party to:

- (a) incur any expenses on behalf of the other Party;
- (b) enter into any engagement or make any representation or warranty on behalf of the other Party;
- (c) pledge the credit of or otherwise bind or obligate the other Party; or
- (d) commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

24.3 Sub-contractors

Implementation Agency shall not subcontract any work related to <Insert details> without Purchaser's prior written consent. However the Implementation Agency shall provide the list of all the other services planned to be sub contracted, within 15 days of signing the Agreement. It is clarified that the Implementation Agency shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The Implementation Agency undertakes to indemnify the Purchaser or its nominated agencies from any claims on the grounds stated hereinabove.

24.4 Assignment

- (a) All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the Purchaser and their respective successors and permitted assigns.
- (b) Subject to Clause 5.3, the Implementation Agency shall not be permitted to assign its rights and obligations under this Agreement to any third party.
- (c) The Purchaser may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Implementation Agency shall be a party to such novation, to any third party contracted to provide outsourced services to Purchaser or any of its nominees.

24.5 Trademarks, Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that Implementation Agency may, upon completion, use the Project as a reference for credential purpose. Except as required by law or the rules and regulations of each stock exchange upon

which the securities of one of the Parties is listed, neither Party shall publish or permit to be published either along or in conjunction with any other person any press release, information, article, photograph, illustration or any other material of whatever kind relating to this Agreement, the SLA or the business of the Parties without prior reference to and approval in writing from the other Party, such approval not to be unreasonably withheld or delayed provided however that Implementation Agency may include Purchaser or its client lists for reference to third parties subject to the prior written consent of Purchaser not to be unreasonably withheld or delayed. Such approval shall apply to each specific case and relate only to that case.

24.6 Notices

- (a) Any notice or other document which may be given by either Party under this Agreement or under the SLA shall be given in writing in person or by pre-paid recorded delivery post, email or by facsimile transmission.
- (b) In relation to a notice given under this Agreement, any such notice or other document shall be addressed to the other Party's principal or registered office address as set out below:

<Insert Address>

Tel:

Fax:

Email:

Contact:

With a copy to:

Implementation Agency

Tel:

Fax:

Email:

Contact:

In relation to a notice given under the MSA / SLA, a Party shall specify the Parties' address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause.

- (d) Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter).

(e) Either Party to this Agreement or to the SLA may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

24.7 Variations and Further Assurance

(a) No amendment, variation or other change to this Agreement or the SLA shall be valid unless authorised in accordance with the change control procedure as set out in the Change Control Schedule set out in Schedule I of this Agreement. Such amendment shall be made in writing and signed by the duly authorised representatives of the Parties to this Agreement or the SLA.

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

24.8 Severability and Waiver

(a) If any provision of this Agreement or the SLA, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this Agreement or the SLA or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.

(b) No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the SLA of any right, remedy or provision of this Agreement or the SLA shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision.

24.9 Compliance with Applicable Law

Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to its business like the Implementation Agency as an information technology service provider) at all times comply with all laws, rules and regulations of government and other bodies having jurisdiction over the area in which the Services are undertaken provided that changes in such laws, rules and regulations which result in a change to the Services shall be dealt with in accordance with the Change Control Schedule set out in Schedule I of this Agreement.

24.10 Professional Fees

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

24.11 Ethics

The Implementation Agency represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of Purchaser or its nominated agencies in connection with this agreement and acknowledges that

the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of Purchaser standard policies and may result in cancellation of this Agreement, or the SLA.

24.12 Entire Agreement

This Agreement and the SLA with all schedules & annexures appended thereto and the contents and specifications of the RFP constitute the entire agreement between the Parties with respect to their subject matter, and as to all other representations, understandings or agreements which are not fully expressed herein, provided that nothing in this Clause shall be interpreted so as to exclude any liability in respect of fraudulent misrepresentation.

24.13 Amendment

Any amendment to this Agreement shall be made in accordance with the Change Control Schedule set out in Schedule I of this Agreement by mutual written consent of all the Parties

25. GOVERNING LAW AND DISPUTE RESOLUTION

25.1 This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement and the performance of the parties contemplated under this Agreement, to the extent that such convention might otherwise be applicable.

25.2 Any dispute arising out of or in connection with this Agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as Schedule V of this Agreement.

25.3 In case the escalations do not help in resolution of the problem within 3 weeks of escalation, both the parties should agree on a mediator for communication between the two parties. The process of the mediation would be as follows:

- Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.
- The mediator shall use his best endeavors to conclude the mediation within a certain number of days of his appointment.
- If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to Experts for advising on the issue.

25.4 In case the mediation does not help in resolution and it requires expertise to understand an issue, a neutral panel of 3 experts, agreeable to both parties should be constituted. The process of the expert advisory would be as follows:

- Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the timeframe and requesting for expert advisory. This is to be sent with a copy to the mediator.

- Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute
- The expert panel shall use his best endeavors to provide a neutral position on the issue.
- If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.

- 25.4 Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein. If parties fail to appoint sole arbitrator within thirty (30) days, then each party shall appoint one arbitrator and both the appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator and the award of the arbitration made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at *New Delhi* India. Any legal dispute will come under the sole jurisdiction of New Delhi, India / state jurisdiction of Delhi, India.
- 25.5 Compliance with laws: Each party will comply with all applicable export and import laws and regulations.
- 25.6 Risk of Loss: For each hardware item, Implementation Agency bears the risk of loss or damage up to the time it is delivered to the Implementation/Purchaser-designated carrier for shipment to Purchaser or Purchaser's designated location.
- 25.7 Third party components: Implementation Agency will provide all third party components solely on a pass-through basis in accordance with the relevant third party terms and conditions.

IN WITNESS WHEREOF the Parties have by duly authorized

Representatives set their respective hands and seal on the date first above

Written in the presence of:

WITNESSES:

Signed by:

(Name and designation) **For and on behalf of Purchaser**

(FIRST PARTY)

Signed by:

(Name and designation)

IMPLEMENTATION AGENCY

(SECOND PARTY)

(Name and designation) For and on behalf of Implementation Agency

Signed by:

26. SCHEDULES

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SCHEDULE I – CHANGE CONTROL SCHEDULE

This Schedule describes the procedure to be followed in the event of any proposed change to the Master Service Agreement (“**MSA**”), Project Implementation Phase, SLA and Scope of Work and Functional Requirement Specifications. Such change shall include, but shall not be limited to, changes in the scope of services provided by the Implementation Agency and changes to the terms of payment as stated in the Terms of Payment Schedule.

The Purchaser and IA recognize that frequent change is an inevitable part of delivering services and that a significant element of this change can be accomplished by re-organizing processes and responsibilities without a material effect on the cost. The IA will endeavor, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and Purchaser or its nominated agencies will work with the Implementation Agency to ensure that all changes are discussed and managed in a constructive manner. This Change Control Schedule sets out the provisions which will apply to all the changes to this agreement and other documents except for the changes in SLAs for which a separate process has been laid out in Clause 11 of the SLA.

This Change Control Schedule sets out the provisions which will apply to changes to the MSA.

CHANGE MANAGEMENT PROCESS

a. CHANGE CONTROL NOTE ("CCN")

- i. Change requests in respect of the MSA, the Project Implementation, the operation, the SLA or Scope of work and Functional Requirement specifications will emanate from the Parties' respective Project Manager who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached as Annexure A hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- ii. The IA and the Purchaser or its nominated agencies, during the Project Implementation Phase and the Purchaser or its nominated agencies during the Operations and Management Phase and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the RFP and is suggested and applicable only after the testing, commissioning and certification of the Pilot Phase and the Project Implementation Phase as set out in this Agreement.
- iii. It is hereby also clarified here that any change of control suggested beyond 25 % of the value of this Project will be beyond the scope of the change control process and will be considered as the subject matter for a separate bid process and a separate contract. It is hereby clarified that the 25% of the value of the Project as stated in herein above is

calculated on the basis of bid value submitted by the Implementation Agency and accepted by the Purchaser or its nominated agencies or as decided and approved by Purchaser or its Nominated Agencies. For arriving at the cost / rate for change upto 25% of the project value, the payment terms and relevant rates as specified in Annexure D shall apply.

b. Quotation

- i. The IA shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN the IA shall provide as a minimum:
 1. a description of the change
 2. a list of deliverables required for implementing the change;
 3. a time table for implementation;
 4. an estimate of any proposed change
 5. any relevant acceptance criteria
 6. an assessment of the value of the proposed change;
 6. material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work
- ii. Prior to submission of the completed CCN to the Purchaser, or its nominated agencies, the Service Provider will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the IA shall consider the materiality of the proposed change in the context of the MSA and the Project Implementation affected by the change and the total effect that may arise from implementation of the change.

c. Costs

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the IA meets the obligations as set in the CCN. In case of recertification due to proposed changes, required cost will be borne by the party that initiated the change. In the event the IA is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party will be borne by the IA.

d. Obligations

The IA shall be obliged to implement any proposed changes once approval in accordance with above provisions has been given, with effect from the date agreed for implementation and within an agreed timeframe. IA will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact. The cost associated with any hardware/goods/License for COTS product should not exceed the price quoted in the bidders proposal. Any costs associated with changes to Software specifications which can not be arrived at on the basis of the IA's proposal shall be mutually agreed to between the IA and the Purchaser.

SCHEDULE II - EXIT MANAGEMENT SCHEDULE

1 PURPOSE

- 1.1 This Schedule sets out the provisions, which will apply on expiry or termination of the MSA, the Project Implementation, Operation and Management SLA.
- 1.2 In the case of termination of the Project Implementation and/or Operation and Management, the Parties shall agree at that time whether, and if so during what period, the provisions of this Schedule shall apply.
- 1.3 The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Schedule.

2 TRANSFER OF ASSETS

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

3 COOPERATION AND PROVISION OF INFORMATION

- 3.1 During the exit management period:
- (i) The Implementation Agency will allow the Purchaser or its nominated agency access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the Purchaser to assess the existing services being delivered;
 - (ii) promptly on reasonable request by the Purchaser, the IA shall provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with this agreement relating to any material aspect of the services (whether provided by the Implementation Agency or sub contractors appointed by the Implementation Agency). The Purchaser shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The Implementation Agency shall permit the Purchaser or its nominated agencies to have reasonable access to its employees and facilities as reasonably required by the Chairman, PIU to understand the methods of delivery of the services employed by the Implementation Agency and to assist appropriate knowledge transfer.

4 CONFIDENTIAL INFORMATION, SECURITY AND DATA

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

Implementation Agency confidential information, which is in the possession or control of Chairperson, PIU or its users.

5 EMPLOYEES

- 5.1 Promptly on reasonable request at any time during the exit management period, the Implementation Agency shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the Purchaser or its nominated agency a list of all employees (with job titles) of the Implementation Agency dedicated to providing the services at the commencement of the exit management period.
- 5.2 Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the Implementation Agency to the Purchaser or its nominated agency, or a Replacement Implementation Agency ("**Transfer Regulation**") applies to any or all of the employees of the Implementation Agency, then the Parties shall comply with their respective obligations under such Transfer Regulations.

6 TRANSFER OF CERTAIN AGREEMENTS

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

7 RIGHTS OF ACCESS TO PREMISES

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

8 GENERAL OBLIGATIONS OF THE IMPLEMENTATION AGENCY

- 8.1 The Implementation Agency shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the Purchaser or its nominated agency or its Replacement Implementation Agency and which the Implementation Agency has in its possession or control at any time during the exit management period.
- 8.2 For the purposes of this Schedule, anything in the possession or control of any Implementation Agency, associated entity, or sub contractor is deemed to be in the possession or control of the Implementation Agency.
- 8.3 The Implementation Agency shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

9 EXIT MANAGEMENT PLAN

- 9.1 The Implementation Agency shall provide the Purchaser or its nominated agency with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the MSA as a whole and in relation to the Project Implementation, and the Operation and Management SLA.
- (i) A detailed program of the transfer process that could be used in conjunction with a Replacement Implementation Agency including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
 - (ii) plans for the communication with such of the Implementation Agency's sub contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the Purchaser's operations as a result of undertaking the transfer;
 - (iii) (if applicable) proposed arrangements for the segregation of the Implementation Agency's networks from the networks employed by Purchaser and identification of specific security tasks necessary at termination;
 - (iv) Plans for provision of contingent support to Purchaser, and Replacement Implementation Agency for a reasonable period after transfer.
- 9.2 The Implementation Agency shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- 9.3 Each Exit Management Plan shall be presented by the Implementation Agency to and approved by the Purchaser or its nominated agencies.
- 9.4 The terms of payment as stated in the Terms of Payment Schedule include the costs of the Implementation Agency complying with its obligations under this Schedule.
- 9.5 In the event of termination or expiry of MSA₇ and Project Implementation, each Party shall comply with the Exit Management Plan.
- 9.6 During the exit management period, the Implementation Agency shall use its best efforts to deliver the services.
- 9.7 Payments during the Exit Management period shall be made in accordance with the Terms of

Payment Schedule.

- 9.8 This Exit Management plan shall be furnished in writing to the Purchaser or its nominated agencies with the signing of the contract.

SCHEDULE III - AUDIT, ACCESS AND REPORTING

1 PURPOSE

This Schedule details the audit, access and reporting rights and obligations of the Purchaser or its nominated agency and the Implementation Agency.

2 AUDIT NOTICE AND TIMING

- 2.1 As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavours to agree to a timetable for routine audits during the Project Implementation Phase and the Operation and Management Phase. Such timetable during the Implementation Phase, the Purchaser or its nominated agency and thereafter during the operation Phase, the Purchaser or its nominated agency shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Implementation Agency any further notice of carrying out such audits.
- 2.2 The Purchaser or its nominated agency may conduct non-timetabled audits at his/ her own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Implementation Agency, a security violation, or breach of confidentiality obligations by the Implementation Agency, provided that the requirement for such an audit is notified in writing to the Implementation Agency a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the Implementation Agency considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Governance Schedule.
- 2.3 The frequency of audits shall be a (maximum) half yearly, provided always that the Purchaser or its nominated agency shall endeavor to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Implementation Agency. Any such audit shall be conducted by with adequate notice of 2 weeks to the Implementation Agency.
- 2.4 Purchaser will ensure that any 3rd party agencies (except CAG) appointed to conduct the audit will not be the competitor of Implementation Agency and will be bound by confidentiality obligations.

3 ACCESS

The Implementation Agency shall provide to the Purchaser or its nominated agency reasonable access to employees, subcontractors, suppliers, agents and third party facilities as detailed in the RFP, documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The Chairperson, PIU / Steering Committee shall have the right to copy and retain copies of any relevant records. The Implementation Agency shall make every reasonable effort to co-operate with them.

4 AUDIT RIGHTS

- 4.1 The Purchaser or its nominated agency shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in the RFP), data centres, documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:

- (i) The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of Purchaser and documentation related thereto;
- (ii) That the actual level of performance of the services is the same as specified in the SLA;
- (iii) That the Implementation Agency has complied with the relevant technical standards, and has adequate internal controls in place; and
- (iv) The compliance of the Implementation Agency with any other obligation under the MSA and SLA.
- (v) Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the Implementation Agency-
- (vi) For the avoidance of doubt the audit rights under this Schedule shall not include access to the Implementation Agency's profit margins or overheads, any confidential information relating to the Implementation Agency' employees, or (iii) minutes of its internal Board or Board committee meetings including internal audit, or (iv) such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the MSA.

5 AUDIT RIGHTS OF SUB-CONTRACTORS, SUPPLIERS AND AGENTS

- 5.1 The Implementation Agency shall use reasonable endeavors to achieve the same audit and access provisions as defined in this Schedule with sub-contractors who supply labour, services in respect of the services. The Implementation Agency shall inform the Purchaser or its nominated agency prior to concluding any sub-contract or supply agreement of any failure to achieve the same rights of audit or access.
- 5.2 REPORTING: The Implementation Agency will provide quarterly reports to the Chairperson, PIU / Steering committee regarding any specific aspects of the Project and in context of the audit and access information as required by the Purchaser or its nominated agency.

6 ACTION AND REVIEW

- 6.1 Any change or amendment to the systems and procedures of the Implementation Agency, or sub-contractors, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- 6.2 Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the Purchaser or its nominated agency and the Implementation Agency Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the MSA.

7 TERMS OF PAYMENT

The Purchaser shall bear the cost of any audits and inspections. The terms of payment are exclusive of any costs of the Implementation Agency and the sub-contractor, for all reasonable assistance and information provided under the MSA, the Project Implementation, Operation and Management SLA by the Implementation Agency pursuant to this Schedule.

8 RECORDS AND INFORMATION

For the purposes of audit in accordance with this Schedule, the Implementation Agency shall maintain true and accurate records in connection with the provision of the services and the Implementation Agency

shall handover all the relevant records and documents upon the termination or expiry of the MSA.

SCHEDULE IV - GOVERNANCE SCHEDULE

7.1 PURPOSE

The purpose of this Schedule is to:

- (i) establish and maintain the formal and informal processes for managing the relationship between the Purchaser and the Implementation Agency (including the outputs from other Schedules to this Agreement;
- (ii) define the principles that both Parties wish to follow to ensure the delivery of the Services;
- (iii) ensure the continued alignment of the interests of the Parties;
- (iv) ensure that the relationship is maintained at the correct level within each Party;
- (v) create the flexibility to revise and maintain the relationship and this Agreement during the Term;
- (vi) set out the procedure for escalating disagreements; and
- (vii) enable contract administration and performance management.

7.2 GOVERNANCE STRUCTURE

1. Project Managers: The relationship under this Agreement will be managed by the Project Managers appointed by each Party, who will provide the interface between the executive management of the respective Parties.
2. Project Implementation Unit (PIU): Within 7 days following the Effective Date, Purchaser or its nominated agencies and the Implementation Agency shall each appoint a Project Manager. In the event that either Party wishes to substitute its Project Manager it will do so in manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within 7 days of the substitution.
3. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
4. The PIU will meet formally on a fortnightly / monthly / quarterly, as required, basis at a time and location to be agreed between them. These meetings will cover, as a minimum, the following agenda items: (i) consideration of Quarterly Performance Reports; (ii) consideration of matters arising out of the Change Control Schedule; (iii) issues escalated in accordance with the escalation procedure as set out in the Governance Schedule; (iv) matters to be brought before the PIU in accordance with the MSA and the Schedules; (v) any matter brought before the PIU by the Implementation Agency under this Article; and (vi) any other issue which either Party wishes to add to the agenda.
5. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in the Terms of Payment Schedule, the Parties agree to discuss in the PIU any appropriate amendment to the Agreement or any Service Level Agreements or Statement of Works including any variation to the terms of payment as

stated in the Terms of Payment Schedule. Any variation so agreed shall be implemented through the change control procedure as set out in the Change Control Schedule.

7.3 GOVERNANCE PROCEDURES

- 7.3.1 The Implementation Agency shall document the agreed structures in a procedures manual.
- 7.3.2 The agenda for each meeting of the PIU shall be set to reflect the discussion items referred to above and extraordinary items may be added either with the agreement of the Parties or at the request of either Party. Copies of the agenda for meetings of the PIU, along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.
- 7.3.3 All meetings and proceedings will be documented such documents to be distributed to the Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.
- 7.3.4 The Parties shall ensure as far as reasonably practicable that the PIU shall resolve the issues and resolve the objectives placed before them and that members representing that Party are empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achieve this.
- 7.3.5 In order formally to submit a Disputed Matter to the aforesaid for a, one Party ("Claimant") shall give a written notice ("Dispute Notice") to the other Party. The Dispute Notice shall be accompanied by (a) a statement by the Claimant describing the Disputed Matter in reasonable detail and (b) documentation, if any, supporting the Claimant's position on the Disputed Matter.
- 7.3.6 The other Party ("Respondent") shall have the right to respond to the Dispute Notice within 7 days after receipt of the Dispute Notice. In the event that the parties are unable to resolve the Disputed Matter within a further period of 7 days, it shall refer the Disputed Matter to next level of the dispute resolution for action as per the process mentioned in this MSA.
- 7.3.7 All negotiations, statements and / or documentation pursuant to these Articles shall be without prejudice and confidential (unless mutually agreed otherwise).
- 7.3.8 If the Disputed Matter is having a material effect on the operation of the Services (or any of them or part of them) the Parties will use all their respective reasonable endeavours to reduce the elapsed time in reaching a resolution of the Disputed Matter.

SCHEDULE V - TERMS OF PAYMENT SCHEDULE

The following schedule would be followed for payment during the Project implementation:

S. No	Key Activities/ Milestones	Deliverables	Payment (%)
1.			
2.			
3.			
4.			
5.			

Key note:



27. ANNEXURE

ANNEXURE A – FORMAT FOR CHANGE CONTROL NOTICE

Change Control Note		CCN Number:
Part A: Initiation		
Title:		
Originator:		
Sponsor:		

Date of Initiation:	
Details of Proposed Change	
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)	
Authorised by Purchaser	Date:
Name:	
Signature:	Date:
Received by the IA	
Name:	
Signature:	
Change Control Note	CCN Number:
Part B : Evaluation	
(Identify any attachments as B1, B2, and B3 etc.) Changes to Services, charging structure, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue.	
Brief Description of Solution:	
Impact:	
Deliverables:	
Timetable:	
Charges for Implementation: (including a schedule of payments)	
Other Relevant Information: (including value-added and acceptance criteria)	
Authorised by the Implementation Agency	Date:
Name:	
Signature:	

Change Control Note	CCN Number :
Part C : Authority to Proceed	
Implementation of this CCN as submitted in Part A, in accordance with Part B is: (tick as appropriate)	
Approved	

Rejected Requires Further Information (as follows, or as Attachment 1 etc.)	
For Purchaser and its nominated agencies	For the Implementation Agency
Signature	Signature
Name	Name
Title	Title
Date	Date

ANNEXURE B - LIST OF SERVICES PROVIDED BY THE IMPLEMENTATION AGENCY

Various services to be offered by the Implementation Agency will consist of:

- i. .
- ii. .
- iii. .
- iv. .
- v. .

Note:

- Purchaser will sign the end user license agreement for the software brought from any 3rd party for the purpose of this Project however Implementation Agency shall be solely responsible to make payment for the cost of software to such third party software vendor.

ANNEXURE C –REQUIRED DELIVERABLE AND ASSOCIATED TIMELINES

Deliverable	Description of deliverable	Timelines (from signing of contract)
Project Initiation & Solution Design		
	•	
	•	
	•	
•		
•		
•		

ANNEXURE D - BID

1. TECHNICAL BID RESPONSE – EXTRACTED AS APPENDIX – A

2. FINANCIAL BID RESPONSE:

2a. Summary of Cost Components

S. No.	Item	Total Price	Taxes (wherever applicable)	Total cost (total price + taxes)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
Total Cost				
Total cost in figures:				

2b. Summary of Man-month rates

S. No.	Category of manpower	Man month rates
1.		
2.		
3.		
4.		

3. Details of Cost Component

S. No.	Category	Component	No of Components / Units of Service (X)	Rate (per unit) (Y)	Total Cost (= X*Y)
1.					

2.				
----	--	--	--	--

S. No.	Category	Component	No of Components / Units of Service (X)	Rate (per unit) (Y)	Total Cost (= X*Y)
1.					
				
2.					
1.					
1.					
2.					
3.					
1.					
2.					
3.					
4.					
1.					
1.					

S. No.	Category	Component	No of Components / Units of Service (X)	Rate (per unit) (Y)	Total Cost (= X*Y)

ANNEXURE E – BILL OF MATERIAL

ANNEXURE F – ROLES AND RESPONSIBILITIES OF THE PARTIES

Roles and Responsibilities of Implementation Agency (Indicative only, needs to be customized)

1. Preparation of Detailed Project Plan in line with the overall plan provided in the RFP. The same should be prepared in consultation with Purchaser.
2. Procure, develop, install, commission, operate and maintain:
 - a. Requisite hardware & system software at Purchaser's HQ, Data Center and other locations as per the requirements mentioned in this RFP
 - b. Networking equipments, connectivity and LAN as per the requirements mentioned in this RFP,
 - c. Meet the defined SLAs for the performance of the system.
3. Addressing technology obsolescence by appropriate upgradation, replacement and / or replenishment of systems deployed at various locations (data center, HQ and other locations).
4. Insure the entire hardware against the infrastructure deployed at various locations for the entire duration of the contract against vandalism, theft, fire and lightning.
5. Keep all system software i.e. OS, antivirus, office applications etc., for Servers, PCs etc. at Data Centre and various locations, up to date by installing regular upgrades / patches.
6. Rectification of system software problems due to crashing or malfunctioning of the OS, RDBMS or front end within the time limits to meet the SLAs as defined in RFP.
7. Develop / customize, deploy and maintain the requisite Software Solution as per the requirements of the Corporation at appropriate locations.
8. Ensure adequate security of hardware & software system from viruses, Trojan horses, spyware, worms, Denial of Service (DoS) attack, fire, flood, power outage, natural disaster, man made disaster etc.
9. Provide necessary support for the resolution of bugs, patches & upgrades of the software solution.
10. Provide necessary manpower for managing the Change Requests.
11. Design various manuals like User manual, Trouble Shooting manual etc. for the system.
12. Submit the source code of any Bespoke software development to the purchaser.
13. Provide computer basic skills training and advanced training on application modules to the staff members and stakeholders of the Corporation.
14. Maintain the business continuity, as per agreed business continuity plan.
15. Deploy requisite manpower and infrastructure for the digitization of the existing data.
16. Deploy the required manpower to manage the operations.
17. Ensuring the SLAs for downtime of system, software development / customization, procurement and delivery of hardware & networking equipments, errors in data entry as defined in RFP Volume 1 are met.
18. Management and quality control of all services and infrastructure.

19. Any other services which is required for the successful execution of the project.
20. Regular Backup as per the schedule and Disaster Recovery.
21. Generation of MIS reports as per the requirements of Purchaser.
22. Generation of the report for the monitoring of SLAs.
23. Meet the defined Technical Specifications for the IT Infrastructure including Hardware and networking equipments keeping in mind the application and future requirements of the Corporation.

Roles and Responsibilities of Purchaser (Indicative only, needs to be customized)

1. Provide adequate space at the Purchaser's HQ for setting up of infrastructure, software development and other activities to be carried out by the Bidder.
2. Coordination between all the divisions for providing necessary information for the study and development / customization of the necessary solution.
3. Co-ordination with other Government agencies to assist the selected bidder in execution of the project.
4. Coordinate with Bidder for conducting workshops for the Stakeholder departments.
5. Provide the data available in the form of physical files or existing databases to the selected bidder for digitization purposes.
6. Deployment of staff members of the Corporation for verification of the digitized data within the defined timelines.
7. Ensure that Data Backups are being taken regularly by bidder as per the schedule agreed upon.
8. Ensure that the hardware and other infrastructure deployed at HQ, DC etc. meets the specifications as mentioned in RFP and is maintained properly to meet the SLAs as defined in RFP.
9. Monitoring of overall timelines, SLAs and calculation of penalties accordingly.
10. Conducting User Acceptance Test (UAT) for the application solution deployed.
11. Issuing the Acceptance Certificate on successful deployment of the software application, hardware deployed, digitized data and for other components of the Scope of Work (wherever required).
12. Any other requirements that could arise during operations for effective governance and to meet any administrative requirement.
13. To create internal capacity now for execution of the project after takeover from the bidder.
14. Ensuring the staff members and other stakeholders attend the training programs as per the schedule defined by the bidder and agreed upon by Purchaser.
15. Provide sign off on the deliverables of the project including SRS, design documents etc.

+NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on this the <***> day of <***> 20--- at <***>, India.

BETWEEN

..... having its office at

..... India hereinafter referred to as '**Purchaser**' or '**-----**', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the *Companies Act, 1956*, having its registered office at <***> (hereinafter referred to as '**the Implementation Agency/IA**' which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

Each of the parties mentioned above are collectively referred to as the '**Parties**' and individually as a '**Party**'.

WHEREAS:

1. Purchaser is desirous to implement the project of-----.
2. The Purchaser and Implementation Agency have entered into a Master Services Agreement dated <***> (the "**MSA**") as well as a Service Level Agreement dated <***> (the "**SLA**") in furtherance of the Project.
3. Whereas in pursuing the Project (the "**Business Purpose**"), a Party ("Disclosing Party) recognizes that they will disclose certain Confidential Information (*as defined hereinafter*) to the other Party ("Receiving Party").
4. Whereas such Confidential Information (*as defined hereinafter*) belongs to Receiving Party as the case may be and is being transferred to the Disclosing Party to be used only for the Business Purpose and hence there is a need to protect such information from unauthorized use and disclosure.

NOW THEREFORE, in consideration of the mutual covenants, promises, assurances, representations and provisions set forth herein, the Parties hereto agree as follows:

DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the same meanings set out in Schedule I of MSA.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs and Schedules are to clauses, sub-clauses, paragraphs of and schedules to this Agreement;
- (b) use of any gender includes the other genders;
- (c) references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (f) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- (g) references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which banks in the state of <***> are generally open for business;
- (h) references to times are to Indian standard time;
- (i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (j) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

1.4 Ambiguities within Agreement

In case of ambiguities or discrepancies within this Agreement, the following principles shall apply:

- (a) as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- (b) as between the provisions of this Agreement and the Schedules, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules; and
- (c) as between any value written in numerals and that in words, the value in words shall

prevail.

1.5 Priority of agreements

The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the MSA and this Agreement shall be read together and construed harmoniously. In the event of any conflict between the MSA and this Agreement, the provisions contained in the MSA shall prevail over this Agreement.

2. TERM

This Agreement will remain in effect for five years from the date of the last disclosure of Confidential Information ("**Term**"), at which time it will terminate, unless extended by the disclosing party in writing.

3. SCOPE OF THE AGREEMENT

- (a) This Agreement shall apply to all confidential and proprietary information disclosed by Disclosing Party to the Receiving Party and other information which the disclosing party identifies in writing or otherwise as confidential before or within (30) thirty days after disclosure to the Receiving Party ("Confidential Information"). Such Confidential Information consists of certain specifications, documents, software, prototypes and/or technical information, and all copies and derivatives containing such Information that may be disclosed to the Disclosing Party for and during the Business Purpose, which a party considers proprietary or confidential.
- (b) Such Confidential Information may be in any form or medium, tangible or intangible, and may be communicated/disclosed in writing, orally, or through visual observation or by any other means to the Receiving Party.

4. OBLIGATIONS OF THE RECEIVING PARTY

The Receiving Party shall:

- (a) use the Confidential Information only for the Business Purpose and shall hold the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, taking into account the nature of the Confidential Information, and
- (b) grant access to Confidential Information only to its employees on a 'need to know basis' and restrict such access as and when not necessary to carry out the Business Purpose.
- (c) cause its employees to comply with the provisions of this Agreement;
- (d) reproduce Confidential Information only to the extent essential to fulfilling the Business Purpose, and
- (e) prevent disclosure of Confidential Information to third parties;

- (f) disclose the Confidential Information to its consultants/contractors on a need to know basis; provided that by doing so, the Receiving Party agrees to bind such consultants/ contractors to terms at least as restrictive as those stated herein. The Receiving Party upon making a disclosure under this Clause shall:
 - (i) advise the consultants/contractors of the confidentiality obligations imposed on them by this Clause.
- (g) upon the Disclosing Party's request, the Receiving Party shall either return to the disclosing party all Confidential Information or shall certify to the disclosing party that all media containing Confidential Information have been destroyed.
Provided, however, that an archival copy of the Confidential Information may be retained in the files of the Receiving Party's counsel, solely for the purpose of proving the contents of the Confidential Information.
- (h) not to remove any of the other Party's Confidential Information from the premises of the Disclosing Party without prior written approval.
- (i) exercise extreme care in protecting the confidentiality of any Confidential Information which is removed, only with the Disclosing Party's prior written approval, from the Disclosing Party's premises. Each Party agrees to comply with any and all terms and conditions the disclosing party may impose upon any such approved removal, such as conditions that the removed Confidential Information and all copies must be returned by a certain date, and that no copies are to be made off of the premises.
- (j) Upon the Disclosing Party's request, the Receiving Party shall promptly return to the Disclosing Party all tangible items containing or consisting of the disclosing party's Confidential Information all copies thereof.

5. EXCEPTIONS TO CONFIDENTIAL INFORMATION

The foregoing restrictions on each party's use or disclosure of Confidential Information shall not apply to the Confidential Information that the Receiving Party can demonstrate that such Confidential Information:

- (a) was independently developed by or for the Receiving Party without reference to the Information, or was received without restrictions; or
- (b) has become generally available to the public without breach of confidentiality obligations of the Receiving Party; or
- (c) was in the Receiving Party's possession without restriction or was known by the Receiving Party without restriction at the time of disclosure; or
- (d) is the subject of a subpoena or other legal or administrative demand for disclosure; provided, however, that the Receiving Party has given the disclosing party prompt

notice of such demand for disclosure and the Receiving Party reasonably cooperates with the disclosing party's efforts to secure an appropriate protective order; or

- (e) is disclosed with the prior consent of the disclosing party; or
- (f) was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing party and was not previously acquired by the Receiving Party from the disclosing party under an obligation of confidence; or
- (g) the Receiving Party obtains or has available from a source other than the disclosing party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the disclosing party.

6. OWNERSHIP OF THE CONFIDENTIAL INFORMATION

- (a) Each Party recognizes and agrees that all of the disclosing Party's Confidential Information is owned solely by the Disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain.
- (b) By disclosing the Confidential Information or executing this Agreement, Disclosing Party does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right. The Disclosing Party disclaims all warranties regarding the information, including all warranties with respect to infringement of intellectual property rights and all warranties as to the accuracy or utility of such information.
- (c) Access to Confidential Information hereunder shall not preclude an individual who has seen such Confidential Information for the purposes of this Agreement from working on future projects for the Disclosing Party which relate to similar subject matters, provided that such individual does not make reference to the Confidential Information and does not copy the substance of the Confidential Information during the Term. Furthermore, nothing contained herein shall be construed as imposing any restriction on the Receiving Party's disclosure or use of any general learning, skills or know-how developed by the Receiving Party's personnel under this Agreement.
- (d) Execution of this Agreement and the disclosure of Confidential Information pursuant to this Agreement do not constitute or imply any commitment, promise, or inducement by either Party to make any purchase or sale, or to enter into any additional agreement of any kind.

7. DISPUTE RESOLUTION

- (a) If a dispute arises in relation to the conduct of this Contract (Dispute), a party must comply with this clause 7 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 7.
 - (b) A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.
 - (c) During the 14 days after a notice is given under clause 7(b) (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the arbitrator within a period of one month from the notification by one party to the other of existence of such dispute then each party shall appoint one arbitrator and both the appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator and the award of the arbitration. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at Delhi. Any legal dispute will come under the sole jurisdiction of Delhi.
- (b) The Receiving Party agrees that the Disclosing Party shall have the right to obtain an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

8. VARIATION

This Agreement may only be varied in writing and signed by both Parties.

9. WAIVER

Waiver including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

- (a) shall be in writing
- (b) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

- (c) shall be executed by a duly authorized representative of the Party; and
- (d) shall not affect the validity or enforceability of this Agreement in any manner.

10. EXCLUSION OF IMPLIED WARRANTIES

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

11. ENTIRE AGREEMENT

This Agreement and the Annexure together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

12. SEVERABILITY

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the dispute resolution procedure set forth under this Agreement or otherwise.

13. NO PARTNERSHIP

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as expressly provided under the terms of this Agreement.

14. THIRD PARTIES

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

15. SUCCESSORS AND ASSIGNS

The Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

16. NOTICES

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by hand delivery, recognized courier, registered post, email or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Purchaser:

Attn: <***>

Tel:

Fax:

Email:

Contact:

With a copy to:

If to the Implementation Agency:

Attn. <***>

Phone: <***>

Fax No. <***>

17. LANGUAGE

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

18. COUNTERPARTS

This Agreement may be executed in counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

19. MITIGATION

Without prejudice to any express provisions of this Agreement on any mitigation obligations of the Parties, each of the Purchaser and the Implementation Agency shall at all times take all reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

20. REMOVAL OF DIFFICULTIES

The Parties acknowledge that it is conceivable that the Parties may encounter difficulties or problems in the course of implementation of the Project and the transactions envisaged under this Agreement. The

Parties agree and covenant that they shall mutually discuss such difficulties and problems in good faith and take all reasonable steps necessary for removal or resolution of such difficulties or problems.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of the Implementation
Agency by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of the Purchaser by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

1.

2.

SERVICE LEVEL AGREEMENT

THIS AGREEMENT is made on this the <***> day of <***> 20 at <***>, India.

BETWEEN

..... having its office at

..... India hereinafter referred to as '**Purchaser**' or '**Buyer**', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the *Companies Act, 1956*, having its registered office at <***> (hereinafter referred to as '**the Implementation Agency/IA**' which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

Each of the parties mentioned above are collectively referred to as the '**Parties**' and individually as a '**Party**'.

WHEREAS:

1. Purchaser is desirous to implement the project of----- -- (the "**Project**").
2. The Buyer and Implementation Agency have entered into a Master Services Agreement dated <***> (the "**MSA**").

NOW THEREFORE, in consideration of the mutual covenants, promises, assurances, representations and provisions set forth herein, the Parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out in Annexure A.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs and Schedules are to clauses, sub-clauses, paragraphs of and schedules to this Agreement;
- (b) use of any gender includes the other genders;

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- (c) references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;

- (d) references to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (f) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- (g) references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which banks in the state of-----are generally open for business;
- (h) references to times are to Indian Standard Time;
- (i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (j) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

1.4 Ambiguities within Agreement

In case of ambiguities or discrepancies within this Agreement, the following principles shall apply:

- (a) as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- (b) as between the provisions of this Agreement and the Schedules, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules; and
- (c) as between any value written in numerals and that in words, the value in words shall prevail.

1.5 Priority of agreements

The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the MSA and this Agreement shall be read together and construed harmoniously. In the event of any conflict between the MSA and this Agreement, the provisions contained in the MSA shall prevail over this Agreement.

2. STRUCTURE

This SLA shall operate as a legally binding services agreement specifying terms which apply to the

Parties in relation to the provision of the Services by the Implementation Agency to the Buyer and its nominated agencies under this Agreement and the MSA.

3. OBJECTIVES OF THIS SLA

The Implementation Agency shall be required to ensure that the Service Levels which shall ensure the following:

- (a) Improving the efficiency of operations for the Purchaser.
- (b) Leveraging the benefits in new system in order to:
 - (i) Reduce of manual records and replace with computerized standardized documents.
 - (ii) Infuse transparency in operations by enabling the stakeholders to have easy access to the records and provision of login ids and biometrics to infuse accountability in operations
 - (iii) Enable faster request processing in delivery of services with better turn around time.
 - (iv) Facilitate automated data transfer with state-wide connectivity to prevent unnecessary duplication & simplify preparation of registers and reports.
 - (v) Generate meaningful MIS from the system.
 - (vi) Provide inbuilt mechanism of security and quality control for crucial dealer data.

To meet the aforementioned objectives the Implementation Agency will provide the Service Levels in accordance with the performance metrics as set out in detail in this Agreement. Further this Agreement shall govern the provision of the contracted services of the Implementation Agency to the Purchaser and its nominated agencies after the Go-Live Date.

4. SCOPE OF SLA

This Agreement has been executed in relation to the outsourcing portion of the Project between the Parties. The detailed Service Levels have been set out in Annexure B to this Agreement.

This Agreement shall ensure the following:

- (a) Establishment of mutual responsibilities and accountability of the Parties;
- (b) Definition each Party's expectations in terms of services provided;
- (c) Establishment of the relevant performance measurement criteria;
- (d) Definition of the availability expectations;
- (e) Definition of the escalation process;
- (f) Establishment of trouble reporting single point of contact; and
- (g) Establishment of the framework for SLA change management

The following parties are obligated to follow the procedures as specified by this Agreement:

- (a) Buyer
- (b) Implementation Agency

5. AGREEMENT OWNERS

The following personnel shall be notified to discuss the Agreement and take into consideration any proposed SLA change requests:

	Title	Telephone	Email
Buyer	Authorized Representative, Purchaser	<***>	<***>
Implementation Agency	<***>	<***>	<***>

6. CONTACT LIST

In the event that there is any change in the listed contacts, the same shall be communicated and updated prior to such change occurring. The Single Point of Contact (“**POC**”) for the Implementation Agency shall be <***> and will be available 24X7.

Name	Title	Location	Telephone
Buyer	Authorized Representative, Purchaser	<***>	<***>
Implementation Agency	<***>	<***>	<***>

7. PRINCIPAL CONTACTS

The Buyer and the Implementation Agency will nominate a senior staff member to be the principal contact regarding operation of this Agreement. At the date of signing of this Agreement, the nominated principal contacts are:

Buyer principal contact: _____

Implementation Agency principal contact: _____

8. COMMENCEMENT AND DURATION OF THIS AGREEMENT

Agreement shall commence on the date of Go-Live (hereinafter the “**SLA Effective Date**”) and shall, unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties, expire on the date on which this Agreement expires or terminates, which shall be a period of <insert period of O&M> years starting from <the date of the Final Acceptance Test.>

9. TERMS OF PAYMENT AND PENALTIES

- (a) In consideration of the Services and subject to the provisions of the MSA and this Agreement, the Buyer shall pay the amounts in accordance with the Terms of Payment

Schedule of the MSA.

- (b) For the avoidance of doubt, it is expressly clarified that the Buyer and/or its nominated agencies may also calculate a financial sum and debit the same against the terms of payment as defined in the Terms of Payment Schedule of the MSA as a result of the failure of the Implementation Agency to meet the Service Levels as set out in Annexure B of this Agreement, such sum being determined in accordance with the terms of the Service as set out in Annexure B of this Agreement.

10. UPDATING OF THIS AGREEMENT

- (a) The Parties anticipate that this Agreement shall need to be re-evaluated and modified to account for changes in work environment and technology from time to time. Hence they hereby agree to revise the terms of the Agreement on an annual basis.
- (b) The Parties hereby agree upon the following procedure for revising this Agreement:
 - (i) Any and all changes to this Agreement will be initiated in writing between the Buyer and the Implementation Agency, The service levels in this Agreement shall be considered to be standard for the Buyer and shall only be modified if both Parties agree to an appended set of terms and conditions;
 - (ii) Only the Buyer or the Implementation Agency may initiate a revision to this Agreement;
 - (iii) A notice of the proposed revision ("**SLA Change Request**") shall be served to the Buyer or the Implementation Agency as the case may be;
 - (iv) The SLA Change request would be deemed to be denied in case it is not approved within a period of <***> days;
 - (v) In the event that Buyer/Implementation Agency approves of the suggested change the change shall be communicated to all the Parties and the SLA Change request would be appended to the Agreement;
 - (vi) The Buyer shall update and republish the text of Agreement annually to include all the SLA Change Requests that have been appended to the Agreement during the course of the year. Such republished Agreement shall be circulated to all the Parties within <***> days of such change taking place.

11. DOCUMENT HISTORY

All revisions made to this Agreement shall be listed in chronological order as per the format set out below and a copy of the same shall be provided to the Parties:

Version	Date	Description of changes
<***>	<***>	<***>

12. SCOPE OF SERVICES

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(a) The Implementation Agency shall ensure that Services are available at various

locations as per the requirements of the project;

- (b) The Implementation Agency shall provide support services for addressing problems related to the provision of services of the selected bidder through the POC. Such POC shall be available over telephone on <***> number 24 hours a day, 7 days a week
- (c) The Implementation Agency guarantees that he shall achieve the Service Levels for the Project;
- (d) The Implementation Agency shall be liable to Service Credits in case of failure to comply with the Service Levels. However any delay not attributable to the Implementation Agency shall not be taken into account while computing adherence to the Service Levels.

13. PERFORMANCE REVIEW

The POC's of both the Buyer and the Implementation Agency shall meet on a quarterly basis to discuss priorities, service levels and system performance. Additional meetings may be held at the request of either the Implementation Agency or the Buyer. The agenda for these meetings shall be as follows:

- (a) Service performance;
- (b) Review of specific problems/exceptions and priorities; and
- (c) Review of the operation of this Agreement and determine corrective action to overcome deficiencies.

14. REPRESENTATIONS AND WARRANTIES OF BUYER

The Buyer hereby represents and warrants to the Implementation Agency as follows:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- (b) it has taken all necessary actions under Applicable Law to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms thereof;
- (e) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its

- properties or assets is bound or affected;
- (f) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;
 - (g) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Implementation Agency's ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement.

15. REPRESENTATIONS AND WARRANTIES OF THE IMPLEMENTATION AGENCY

The Implementation Agency hereby represents and warrants to the Buyer as follows:

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement has been duly executed by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (e) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- (f) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any government instrumentality

which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (g) it has complied with Applicable Law in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (h) no representation or warranty by it contained herein or in any other document furnished by it to the Buyer or to any government instrumentality in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
- (i) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the Buyer in connection therewith.

16. INDEMNITIES

The IA agrees that it will indemnify the purchaser/buyer under this Agreement in accordance with the terms and principles set out in the MSA.

17. DISPUTE RESOLUTION

Any dispute, difference or claim arising out of or in connection with the Agreement which is not resolved amicably shall be decided in accordance with the dispute resolution procedure as set out in the MSA.

18. MISCELLANEOUS

(a) Assignment and charges

This Agreement shall be binding on and ensure for the benefit of each Party's successors in title. No Party shall assign, or declare any trust in favor of a third party over, all or any part of the benefit of, or its rights or benefits under, this Agreement.

(b) Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at the State of ----- shall have jurisdiction over matters arising out of or relating to this Agreement.

(c) Variation

This Agreement may only be varied in writing and signed by both Parties.

(d) Waiver

- (i) Waiver including partial or conditional waiver, by either Party of any default by the other Party

in the observance and performance of any provision of or obligations under this Agreement:-

- shall be in writing
- shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- shall not affect the validity or enforceability of this Agreement in any manner.

(e) Exclusion of implied warranties

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

(f) Survival

(i) Termination or expiration of the Term shall:

- not relieve the Implementation Agency or the Buyer, as the case may be, of any obligations hereunder which expressly or by implication survive hereof; and
- except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or expiration or arising out of such termination or expiration.

(ii) All obligations surviving termination or expiration of the Term shall cease to exist at least 2 year post termination or expiration of the Term or as communicated by Purchaser.

(g) Entire Agreement

This Agreement and the Annexure together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

(h) Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the dispute resolution procedure set forth under this Agreement or otherwise.

(i) No partnership

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This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as expressly provided under the terms of this Agreement.

(j) Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

(k) Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by hand delivery, recognized courier, registered post, email or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Purchaser:

Attn: <***>

Tel:

Fax:

Email:

Contact:

With a copy to:

If to the Implementation Agency:

Attn. <***>

Phone: <***>

Fax No. <***>

(l) Language

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

(m) Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

(n) Mitigation

Without prejudice to any express provisions of this Agreement on any mitigation obligations of the Parties, each of the Buyer and the Implementation Agency shall at all times take all reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

(o) Removal of Difficulties

The Parties acknowledge that it is conceivable that the Parties may encounter difficulties or problems in the course of implementation of the Project and the transactions envisaged under this Agreement. The Parties agree and covenant that they shall mutually discuss such difficulties and problems in good faith and take all reasonable steps necessary for removal or resolution of such difficulties or problems.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of the Implementation Agency by:

For and on behalf of the Buyer by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

In the presence of:

- 1.
- 2.

ANNEXURE A – DEFINITIONS

Agreement	means this Service Level agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP;
Applicable Law(s)	means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of the Purchaser as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;

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Business Hours	shall mean the working time for Purchaser users which is 9:30 AM to 5:30 PM daily. Again for Web Server and other components which enable successful usage of web portals of, Purchaser, the working time should be considered as 24 hours for all the days of the week. It is desired that IT maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance;
Effective Date	shall have the same meaning ascribed to it in Clause 8;
MSA	shall have the same meaning ascribed to it in Recital 2;
Parties	means the Buyer and Implementation Agency for the purposes of this Agreement; " Party " shall be interpreted accordingly;
POC	shall have the same meaning ascribed to it in Clause 6
Project	shall have the same meaning ascribed to it in Recital 1;
SLA Change Request	shall have the same meaning ascribed to it in Clause 11 (b) (iii);
Service Level	means the level of service and other performance criteria which will apply to the Services as set out in the SLA parameters effective during the Term of this Agreement;
Term or Agreement Period	Means the duration of this Agreement as set out in Clause 8 of this Agreement.
Application Response Time	Defined as time the system takes to fetch requested (a form or a report) from the server.
Uptime	<p>Uptime refers availability of application/system as per terms of SLA. "% Uptime" means ratio of 'up time' (in minutes) in a month to Total time(in minutes) in a month multiplied by 100;</p> <p>Time lost due to following reasons shall NOT BE counted in Uptime or TOTAL TIME while calculating Uptime requirement:</p>

	<ul style="list-style-type: none">(1) the scheduled outages planned in advance for the Purchaser(2) time lost due to power or environment failures(in case the back-up power is not within the scope of work of the SI)(3) time lost due to damage or malfunction of the equipment or any of the units thereof due to causes attributable to the Purchaser, such as attachment of additional devices without permission of SI. <p>The Implementation Agency shall not be responsible for failure of any Service Levels in accordance with this Agreement if such failure is caused due to reasons attributable to, or failure of the Purchaser to perform its or their obligations or for force majeure event.</p>
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ANNEXURE B – SERVICE LEVELS

Additional input clause for SI agreement:

The penalty for non-achievement of SLA requirements shall be calculated on a <quarterly/periodic> basis as indicated below for all services to be provided:

S. No.		SLA non-compliance Range 1	Penalty Amount 1	SLA non-compliance Range 2	Penalty Amount 2	SLA non-compliance Range 3	Penalty Amount 3	n	n
1	SLA parameter #1								
2	SLA parameter #2								
3	SLA parameter #3								
4	SLA parameter #4								
...									
N									

The <quarterly> penalty indicated above should not exceed <12%> of the value of services (i.e. each line item) provided for that performance period.

The overall penalty for a service performance period should be limited to <10%> of the value of services provided for that performance period.

ANNEXURE C- Sample Model Tripartite Agreement for Resale of Network Bandwidth

DRAFT MODEL TRIPARTITE AGREEMENT (amongst (PURCHASER) (SUPPLIER) & (NETWORK SERVICE PROVIDER / SUB CONTRACTOR)

For providing network services and Internet Bandwidth

NOTE

- a. *This agreement is between three parties, Purchaser, Supplier and Network Service Provider for providing network services/ Internet Bandwidth when, the Purchaser/Nodal Agency is using the services of Network Provider under the contract with Supplier/ SI. This agreement is required in such case to abide with TRAI guidelines , which doesn't permit resale of network bandwidth*
- b. *This is a draft agreement format; final agreements needs to be signed between Purchaser, Supplier and Network Service Provider*
- c. *It is to be ensured by PURCHASER that:*
 - *Prior to this agreement Contract agreement between PURCHASER and SUPPLIER has been signed.*
 - *The Purchase Order on the same price and work, as quoted by SUPPLIER against the 'Network services, Internet Bandwidth) and Related Services' component of SUPPLIER LOA/CONTRACT has been/is to be signed between PURCHASER and NETWORK SERVICE PROVIDER.*
- d. *SLA format for including in the PURCHASER's Purchase Order to NETWORK SERVICE PROVIDER is given at the end of this document.*
- e. *This agreement does not endorse any agreement between NETWORK SERVICE PROVIDER and SUPPLIER*
- f. *The Responsibility Matrix may be modified depending upon specific works.*

MODEL TRIPARTITE AGREEMENT

This Agreement is entered onday of 20....<year> among<name of PURCHASER> constituted by and having its registered office at...
..... (hereinafter called the “PURCHASER”), of the one part

AND

..... <name of SUPPLIER>, a company incorporated under the Companies Act 1956 and having its corporate office at
..... SELECTED IT IMPLEMENTATION AGENCY (SUPPLIER) FORPROJECT i.e., Party engaged by
..... vide LOI No:..... and detailed order no(herein referred to as the “Contract”) for
Supply, installation, integration, testing, commissioning and facility management service of System Integration Project covering software, hardware,
field survey and networking (Network services, Internet Bandwidth) and Related Services incidental thereto as specified in the Services/ Scope of
Work at Section 4 of the said Contract (hereinafter referred to as “**SUPPLIER or** (name of SUPPLIER) which expression
shall unless excluded by or repugnant to the meaning or context thereof be deemed to include its successors and assigns) of the second Part.

AND

.....<name of NETWORK SERVICE PROVIDER (NSP)> a company incorporated under the Companies Act 1956 and having its
corporate office at....., being a TELECOM SERVICE PROVIDER/NETWORK BANDWIDTH SERVICE PROVIDER for the referred
..... PROJECT engaged for Providing....., Network services, Internet Bandwidth and connectivity incidental thereto as
specified in the Services/ Scope of Work in the agreement between (SUPPLIER) and(PURCHASER) (hereinafter referred to as
“NETWORK SERVICE PROVIDER (NSP)”) which expression shall unless excluded by or repugnant to the meaning or context thereof be deemed to
include its successors and assigns) of the third Part.

“.....(PURCHASER)”, “(SUPPLIER)” and “ NETWORK SERVICE PROVIDER (NSP)”) are individually referred as “Party”
and collectively as “Parties”.

WHEREAS (PURCHASER), the party of the first part has contracted(SUPPLIER), the second party, for Turn Key
Implementation of<Name of Solution> at.....<name of SUPPLIER> (hereinafter referred to as “The Project”) vide its

Contract No.....

WHEREAS as per the requirements of the project,.....(PURCHASER) requires these services for successful implementation of the project.

WHEREAS(SUPPLIER), in order to service its obligation under the above mentioned RFP to the full satisfaction of the PURCHASER, had proposed “(NETWORK SERVICE PROVIDER (NSP))” as a service provider vide their letter/ offer no dated and now agrees to associate with(NETWORK SERVICE PROVIDER (NSP)) for execution of the part of the order, to provide support services as detailed in the purchase Order (SUPPLIER) and/or indicated in<section> of this agreement to be the responsibility of ...(NETWORK SERVICE PROVIDER (NSP)), namely, related to required Bandwidth services for the project.

WHEREAS SUPPLIER has done the due diligence with respect to the capabilities, technical or otherwise, of.....(NETWORK SERVICE PROVIDER (NSP)) for providing the required type of connectivity and services within time frame, quality, security and reliability level as envisaged in the RFP / SRS before recommending their name.

WHEREAS the bid price quoted by(SUPPLIER) for networking (Network services, Internet Bandwidth and connectivity) and Related Services ("Service") at locations as specified in CONTRACT (hereinafter referred to as the "Locations") for the purpose of utilization by the(PURCHASER) and their respective subsidiaries and affiliates as specified in the CONTRACT No.....to (SUPPLIER) placed by(PURCHASER), is passed through to.....(NETWORK SERVICE PROVIDER (NSP)) in accordance with the bid proposal datedsubmitted to(PURCHASER) by(SUPPLIER), and the Terms & Conditions and SLA of(PURCHASER) with (NETWORK SERVICE PROVIDER (NSP)), for carrying out the networking and Related Services.

WHEREAS(NETWORK SERVICE PROVIDER (NSP)) has Category 'A' ISP license having its network spread across India.

The Purchase Order placed vide/to be placed by (PURCHASER) to..... (NETWORK SERVICE PROVIDER (NSP)) shall form an integral part of this agreement.....(SUPPLIER), shall be responsible for (i) coordinating /entering into a tripartite agreement with the NSP along with the Purchaser (ii) getting the work executed by the NSP as per the Contract for Bandwidth as well as SLA's (iii) the replacement, if any, of the NSP without changing any penalty/LD criteria. However the new NSP has to meet the qualification criteria. Any breach or failure to fulfil the obligations as mentioned in the Tripartite Agreement which has a material impact on the performance of the Contract shall be treated as a breach of the terms of 'The Contract'.

WHEREAS by virtue of this agreement, the parties..... (SUPPLIER) and.....(NETWORK SERVICE PROVIDER (NSP)) bind themselves to the terms & conditions that are embedded in the contract between the first two parties.

Now these presents witness and it is hereby agreed by and between the parties hereto as follows:

1. APPLICATION

This Agreement details the general terms and conditions for the provision of the Services to be rendered by (NETWORK SERVICE PROVIDER (NSP)) [as per CONTRACT placed vide.../to be placed by PURCHASER] and by(SUPPLIER) [as per CONTRACT No.

.....with.....(PURCHASER)]. Upon signing the scope, duration and other services to be so rendered under this Agreement the parties agree to accept and be bound by these terms and conditions.

2. PROVISION OF SERVICE

i. The provision of the Services is subject to these terms and conditions stated in this Agreement. Where (NETWORK SERVICE PROVIDER) shall accept the Order from..... (PURCHASER), (NETWORK SERVICE PROVIDER) shall provide the Services

required by..... (PURCHASER), and by (SUPPLIER) on behalf of.....(PURCHASER), within a timeframe, quality, security and reliability level agreed with between (PURCHASER), (NETWORK PROVIDER) and.....(SUPPLIER). The SUPPLIER shall provide.....(NETWORK PROVIDER) with a complete network diagram of the set-up along with the details of connectivity at the Locations and services will be provisioned to the..... (PURCHASER) accordingly. It is the responsibility of SUPPLIER, to ensure and of (NETWORK SERVICE PROVIDER) to provide proper network monitoring and network management as per SLA like uptime, proper bandwidth etc. and to submit the SLA performance report of the (NETWORK SERVICE PROVIDER) to the (PURCHASER) on monthly/as and when required basis.

ii. The network links will be provided by.....(NETWORK SERVICE PROVIDER) and the SUPPLIER will monitor and report any problems on behalf of(NETWORK SERVICE PROVIDER) to (PURCHASER).

iii. Where it is necessary, due to materiel breach by the NETWORK SERVICE PROVIDER, the PURHASER shall instruct the SUPPLIER to replace the (NETWORK SERVICE PROVIDER) with another NETWORK SERVICE PROVIDER. In case of replacement of NETWORK SERVICE PROVIDER, the SUPPLIER shall terminate forthwith all agreements/contracts other arrangements with such NETWORK PROVIDER and find suitable replacement for such NETWORK PROVIDER to the satisfaction of the (PURCHASER) at no additional charge. The SUPPLIER has to execute the contract as per agreed schedule and SLA and as per contractual provision entered between PURCHASER and SUPPLIER.

iv. (SUPPLIER) shall ensure that Requisite Services from(NETWORK SERVICE PROVIDER) for project area (town) are available on time when its own system/works that are to be installed/ executed/implemented under PO no.with (PURCHASER), are ready for testing & commissioning.

v. The(NETWORK SERVICE PROVIDER) shall not use the establishments and services installed under this agreement for organizations other than.....(PURCHASER).

3. SERVICE TERM

The term of the Services is initially for..... years (as per CONTRACT) from the date of commencement of service, and if required, thereafter,

Contract Agreement for Model RFP Templates for Implementation Agencies

shall be extended from time to time by written consent of the parties. The Service Commencement Date shall be set forth in accordance with the Purchase Order placed vide...../to be placed by(PURCHASER) on..... (NETWORK SERVICE PROVIDER).

4. TERMINATION OF SERVICE

The Termination of this Agreement and Services shall be as per provisions of Termination clause as appearing in main CONTRACT

5. RESPONSIBILITIES OF THE PARTIES

Responsibility of(PURCHASER)	Responsibility of(SUPPLIER)	Responsibility of(SUB-CONTRACTOR)
<p>To monitor the project progress against time frame & quality and performance with , quality, security and reliability levels of required services as per agreement with..... (SUPPLIER) and (NETWORK SERVICE PROVIDER). To disburse the payment to the (NETWORK SERVICE PROVIDER) upon achievement of the SLA on the basis of performance reports/ SLA reports. To provide safe access and conditions to (SUPPLIER) and (NETWORK SERVICE PROVIDER)'s employees or appointed personnel while in the premises</p>	<p>To arrange through a licensed network service provider, Network services, Internet Bandwidth and connectivity, incidental thereto as specified in the Scope of Work in the agreement between (SUPPLIER) and (PURCHASER). The Suppliers overall liabilities and responsibilities shall in no case be less or more than the liabilities as mentioned in the contract, with respect to 'The Project', executed between the Supplier and the Purchaser. Ensuring Timely execution of the part of the order related to required Bandwidth for the project. To provide (NETWORK SERVICE PROVIDER) with a complete network diagram of the set-up along with the details of connectivity at the Locations and services provisioned to the..... (PURCHASER) Proper network monitoring and</p>	<p>To provide Network services, Internet Bandwidth and connectivity, incidental thereto as specified in the Scope of Work as per CONTRACT placed by PURCHASER to (SUPPLIER) and (NETWORK SERVICE PROVIDER). To provide the Services (as per SLA) required by..... (PURCHASER), and by(SUPPLIER) on behalf of (PURCHASER), within the timeframe, quality, security and reliability level agreed with between (PURCHASER), (NETWORK SERVICE PROVIDER) and(SUPPLIER). Not to use the establishments and services installed under this agreement for organizations other than (PURCHASER). To raise direct invoices against the works/services performed, as per the terms of the Purchase Order with PURCHASER.</p>

	<p>network management as per SLA like uptime, proper bandwidth etc. and submit SLA report to the PURCHASER on monthly/as and when required basis.</p> <p>To monitor and report any problems on behalf of (NETWORK SERVICE PROVIDER).</p> <p>To ensure that the (NETWORK SERVICE PROVIDER) comply with all relevant and applicable provisions of the Contract.</p> <p>To obtain and arrange for the maintenance in full force and effect of all applicable government approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary and advisable for the performance of all of the terms and conditions of this Agreement.</p>	<p>To ensure compliance of Indian Telecom regulation & statutory requirements while performing the works/services under this agreement.</p> <p>To obtain and arrange for the maintenance in full force and effect of all government approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary and advisable for the performance of all of the terms and conditions of this Agreement.</p>
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6. INVOICE AND PAYMENT

- i..... (NETWORK SERVICE PROVIDER) shall raise direct invoices against the Requisite Services so rendered, as per the terms of the Contract and (PURCHASER) shall directly make the payment to (NETWORK SERVICE PROVIDER) based on the SLA report and confirmation made by (SUPPLIER).

- ii. The other terms and conditions shall remain applicable as per(PURCHASER’s) CONTRACT No..... with..... (SUPPLIER).

7. DISPUTES WITH REGARDS TO INCORRECT INVOICING

Disputes with regard to incorrect Invoicing shall be governed by (PURCHASER's) CONTRACT No.with..... (SUPPLIER).

8. ACCESS TO PREMISES

..... (PURCHASER) shall allow or obtain the required permission to enable (NETWORK SERVICE PROVIDER) employees or authorized personnel, appointed distributors, agents or subcontractors to enter at all times during the normal working hours of

(PURCHASER) into the premises where the Services are provided for periodical inspection with seven (7) days prior notice, installing, maintaining, replacing and removing equipment hardware and/or software prior to, during and after the provision of the Services, as well as to inspect the network and/or to the CPE or any other equipment used in or in connection with the Services. The.....(PURCHASER) shall render all assistance in this regard and shall provide safe access and conditions for.....(NETWORK SERVICE PROVIDER)'s employees or appointed personnel whilst in the premises(NETWORK SERVICE PROVIDER)'s employees or appointed personnel shall comply with security and confidentiality policies and procedures while on the (PURCHASER)'s premises.

9. NOTICES

Any party may deliver notices to the other by personal delivery or by postal delivery at -
(PURCHASER)

.....

(SUPPLIER)

.....

(NETWORK SERVICE PROVIDER)

.....

Notices shall be deemed delivered on the date of actual receipt.

10. ENTIRE UNDERSTANDING

This Agreement constitutes the entire understanding of the parties related to the subject matter hereof. The agreement may be amended only in writing when it is signed by (NETWORK SERVICE PROVIDER),(SUPPLIER) and (PURCHASER).

11. MISCELLANEOUS

- a. The terms of this Agreement shall not be construed to constitute a partnership, joint venture or employer/employee relationship between the parties. This Agreement along with any other relevant document constitutes the whole of the agreement and understanding between the parties about the subject matter.
- b. In the event of any provision of this Agreement being held or becoming invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from the said provision which will be deemed deleted. The parties shall however attempt to

replace the deleted provision with a legally valid provision that reflects the same purpose of the deleted provision to the greatest extent possible.

- c. Headings used in this Agreement are for the convenience and ease of reference only, and shall not be relevant to or affect the meaning or interpretation of this Agreement.
- d. No forbearance, relaxation or inaction by any party at any time to require the performance of any provision of this Agreement shall in any way affect, diminish, or prejudice the right of such party to require the performance of that or any other provision of this Agreement or be considered to be a waiver of any right, unless specifically agreed in writing.
- e. Each Party shall obtain and arrange for the maintenance in full force and effect of all government approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary and advisable for the performance of all of the terms and conditions of this Agreement.
- f. The (NETWORK SERVICE PROVIDER) and..... (SUPPLIER) shall ensure compliance of Indian Telecom regulation & all other statutory requirements while performing the works/ services under this agreement.

12. APPLICABLE LAW

The Agreement shall be governed by and construed in accordance with Indian Law. Subject to arbitration provision stated hereinafter the Courts at Delhi shall have the jurisdiction.

13. ARBITRATION

Any disputes which may arise out of this Agreement, and which cannot be settled in discussions or negotiations between the Parties, shall be referred to the appropriate management or higher authorities of the respective parties to resolve such dispute in good faith. In case no settlement is reached the parties shall refer it to a sole arbitrator appointed and selected by both parties. If both parties fail to appoint sole arbitrator within thirty (30) days, then each party shall appoint one arbitrator and both the appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any other subsequent modifications or enactments thereof. The venue for Arbitration proceedings shall be The Arbitration shall be conducted in English Language and the award shall be binding upon all Parties.

14. LIMITATION OF LIABILITY

Limitation & liability with respect to Main Agreement and also this Agreement shall be governed by (PURCHASER's) Contract with (SUPPLIER). For the sake of clarity the parties agree that this Limitation of Liability shall be a part of overall limitation of liability for the entire scope of work under the contract, with respect to 'The Project', executed between the Supplier and the Purchaser.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first above written.

SIGNED AND DELIVERED BY (on behalf of PURCHASER)

Signature

Name & Designation

Address

ARTICLE IV.....

SIGNED AND DELIVERED BY (on behalf of SUPPLIER)

Signature

Name & Designation

Address

ARTICLE VI.....

ARTICLE VIII

in the presence of

Signature

Name & Designation.....

Address

ARTICLE V.....

in the presence of

Signature

Name & Designation

Address

ARTICLE VII.....

ARTICLE IX

SIGNED AND DELIVERED BY (on behalf of SUB-CONTRACTOR)

Signature

Name & Designation

Address

ARTICLE X.....

in the presence of

Signature

Name & Designation

Address

ARTICLE XI.....

