



Corrigendum No. 1

to

Request for Proposal (RFP)

**“Selection of agency to conduct beneficiary feedback survey for
PMJAY”**

RFP Number: S.12017/48/2019-NHA

Date of Publishing RFP: 29th May 2019

Date of Publishing Corrigendum: 10th June 2019

Corrigendum No. 1 dated 10.06.2019

Basis the pre-bid meeting and pre-bid queries received on the RFP the National Health Authority (NHA) has decided to make the following changes in the RFP as described in the table below-

S. No.	RFP section reference	RFP clause	Modification/Change/Insertion
1.	Section 4.3.2 Conduct of survey Page #17	The field staff will be required to undertake adequate consent from the beneficiary before the conduct of the survey. The purpose of collecting information shall be clearly be read out by the field staff to the beneficiaries and make sure that the same is understood by them.	<u>This clause shall now be read as under-</u> The field staff will be required to undertake adequate consent from the beneficiary before the conduct of the survey. The consent form needs to be translated by the agency in the respective vernacular language of the State/U.T. and shall get the same approved from NHA before implementation. Translation of consent forms in various vernacular languages of all states/UT's is a onetime activity that should be completed before initiating surveys/work orders. The purpose of collecting information shall be clearly read out by the field staff to the beneficiaries and make sure that the same is understood by them. Additionally, the field staff shall clearly read out the questionnaire to the beneficiaries in their respective vernacular language and ensure the same is understood by them.

S. No.	RFP section reference	RFP clause	Modification/Change/Insertion
2.	Section 4.3.2 Conduct of Survey Page #17	New clauses inserted	<p><u>New clauses inserted-</u></p> <p>11. Different work orders for conducting surveys for different states shall be issued by NHA to the selected agency over the contract period of one year. All surveys needs to be completed as per timeline of 45 days.</p> <p>12. NHA will provide verified data/contact details of beneficiaries to the selected agency.</p> <p>13. If the beneficiary age is below 18 years or he/she is differently (physically/mentally) abled or any similar issue then the field staff (deployed by the agency) must get both the consent form and survey completed by the beneficiary's parent or legal guardian.</p> <p>14. The field staff shall get the consent form (hard copy) signed by the respective beneficiary (parents/guardian – w.r.t to para 13 above) and shall also upload it on the IT application. The signed hard copy of consent form shall be officially submitted to NHA by the agency.</p> <p>15. The agency shall ensure adequate quality measures while taking surveys such as (but not limited to the following)-</p> <ol style="list-style-type: none"> Getting it right the first time i.e. No error Accuracy – The survey should be accurate. Relevance Coherence Interpretability
3.	Section 7.2.2.1 Relevant experience Page #36	The Bidder should have experience of working with government (center/state/PSU) on similar work during the last three financial years (2015-16, 2016-17, 2017-18) for PSU/Central Govt./State Govt.	<p><u>The clause on left side to be read as under (change highlighted in bold- remaining section shall remain as-is specified in the RFP)-</u></p> <p>The Bidder should have experience of working with government (Center/State/PSU) and/or multi-lateral/donor agencies on similar work during the last three financial years (2016-17, 2017-</p>

S. No.	RFP section reference	RFP clause	Modification/Change/Insertion
		Marks shall be awarded as under- If project value > 10 crores then 20 marks to each project. Maximum 4 citations to be submitted.	18, 2018-19) for PSU/Central Govt./State Govt. and/or multi-lateral/donor agencies. Marks shall be awarded as under- If project value > 10 crores then 20 marks to each project. Maximum 2 citations to be submitted.
4.	Section 8.1 Award Criteria Page #39	New clause inserted	<u>New clauses inserted-</u> In case after selection L1 bidder withdraws before signing the contract with NHA then- L2 bidder will be offered to match the L1 price (discovered price) and execute the contract. In case L2 refuses the offer then L3 bidder will be offered to match the L1 price (discovered price) and so on.
5.	Draft Contract	New clause inserted	The draft master services agreement (MSA) and non-disclosure agreement (NDA) is provided at annexure I of this corrigendum. The selected agency shall sign this MSA and NDA with NHA.

Annexure I – Draft Master Services Agreement

Draft Contract Agreement

MASTER SERVICES AGREEMENT

THIS MASTER SERVICE AGREEMENT (“Agreement”) is made on this ___ day of _____2019 at, India by and BETWEEN

----- having its office at -----
----- India hereinafter referred to as ‘NHA’ or “Department”, 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 “Service Provider” or “Bidder” or “Agency” or “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’ and/or as defined hereinabove.

WHEREAS:

1. NHA is desirous to implement the project for _____.
2. In furtherance of the same, NHA undertook the selection of a suitable Service Provider through a competitive bidding process for implementing the Project and in this behalf issued Request for Proposal (RFP) dated _____.
3. The successful bidder has been selected as the Service Provider on the basis of the representations made in the bid response set out as Annexure _____ of this Agreement, to undertake the Project.

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

1.1 Definitions, Interpretations and Other Terms

- i. **Bid** means the tender process conducted by NHA and the pre-qualification, technical and commercial proposals submitted by the successful bidder, along with the subsequent clarifications and undertakings, if any;
- ii. **Confidential Information** as used in this Agreement shall mean any and all technical and non-technical information to be disclosed by the Disclosing Party being NHA to the Recipient, Technology details, Network Architecture, Information security policy and processes, software codes, internal reports, Personal Data, Sensitive Personal Data audit and assessment reports, applications details, asset details, contractual agreements, present and future planned infrastructure details, protection services, and capabilities of the system, written, representational, electronic, verbal or other form, whether or not expressly marked as “Confidential”, relating directly or indirectly to inventions, processes, products,

methodologies, algorithms, beneficiary data, risk matrices, thresholds, parameters, reports, data, models, deliverables, work products, specifications, architecture, project information, money laundering typologies, related computer programs, systems, trend analysis, risk plans, strategies, operating techniques, source codes, object codes, “know how”, drawings, designs, patents, copyright, trademarks, trade secrets, unpublished records and information communicated or obtained through meetings, documents, correspondence or inspection of items, facilities or inspection at any site to which access is permitted by NHA (including without limitation such information received during negotiations, location visits and meetings in connection with this agreement);

“Personal Data” shall mean any data / information that relates to a natural person which, directly or indirectly, in combination with other information available or likely to be available with, is capable of identifying such natural person and

“Sensitive Personal Data” shall mean personal data revealing, related to, or constituting, as may be applicable— (i) passwords; (ii) financial data; (iii) health data; (iv) official identifier; (v) sex life; (vi) sexual orientation; (vii) biometric data; (viii) genetic data; (ix) transgender status; (x) intersex status; (xi) caste or tribe; (xii) religious or political belief or affiliation; or (xiii) any other category of data as per applicable laws of India as amended from time to time.

- iii. **Customers** mean all citizens and business organization and users who use the NHA services.
- iv. **Deliverables** means all the activities related to the Beneficiary Feedback Survey (as per scope of service) , as defined in the Bid Document & subsequent Corrigendum (if any), based on which the proposal was submitted by the Bidder and as required as per this agreement;
- v. **Effective Date** means the date on **which the Work Order or Letter of Acceptance/Letter of Award is issued** and accepted ;
- vi. This Agreement, together with the recitals and all schedules and the contents, requirements, specifications and standards of the Bid Document (as may be amended, supplemented or modified in accordance with the provisions hereof) and the Bid shall constitute the entire Agreement between the Parties. **In the event of a conflict between this agreement and the Schedules, the terms of the Agreement shall prevail; with overriding effect** to the extent they are not inconsistent with any terms of the agreement which are specifically laid down **Performance Security** means the irrevocable and unconditional Bank Guarantee provided by the Service provider from any Nationalized/Scheduled bank in favor of General Manager, National Health Authority, 9th Floor, LIC Jeevan Bharti Building, Connaught Lane, Janpath, Connaught Place, New Delhi, Delhi 110001 for an amount equivalent to 10% of the **TOTAL CONTRACT VALUE**.
- vii. **Proprietary Information** means processes, methodologies and technical and business information, videos, survey form, photographs, including drawings, designs, formulae, flow charts, data and computer

programs already owned/licensed by either Party or granted by third parties to a Party hereto prior/ subsequent to the execution of this contract;

- viii. **Required Consents** means the written consents, clearances and licenses, rights and other authorizations as may be required to be obtained by the Service Provider, for all tasks/activities/software/hardware and communication technology for this project; from all the concerned departments/agencies, etc. as the case may be.
- ix. Beneficiary means the Beneficiary as defined under AB PM-JAY (Ayushman Bharat Jan Arogya Yojana)
- x. **Bid Document** means the Request for Proposal released vide Bid Document number <<>> and include all clarifications/addendums, explanations and amendments issued by the department in respect thereof;
- xi. **Services** means the content and services delivered and to be delivered to the customers or the offices of NHA by the Service Provider, and includes but not limited to the services specified in the Bid Document or as may be specified and incorporated in the subsequent Agreement.
- xii. **Applicable Law(s)** means the laws of India as amended from time to time and shall mean and not be limited to 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;
- xiii.

1.2 Interpretations

- i. references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement
- ii. use of any gender includes the other genders;
 - iii. 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; references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
 - iv. 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);
 - v. any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight; The words "day" and "month" mean "calendar day" and "calendar month" as per English Calendar unless otherwise stated.
 - vi. 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;

- vii. references to times are to Indian Standard Time;
- viii. 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
- ix. 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.

- x. Words denoting the singular shall include the plural and vice-versa
- xi. Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this agreement as a whole and not to any particular Article, Schedule. The term Articles, refers to Articles of this agreement. The words "include" and "including" shall not be construed as terms of limitation.. The words "writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated;
- xii. The headings and use of bold type in this agreement are for convenience only and shall not affect the interpretation of any provision of this agreement;
- xiii. The Schedules to this agreement form an integral part of this agreement and will be in full force and effect as though they were expressly set out in the body of this agreement;
- xiv. Reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to such agreement, deed, instrument, license or other document as the same may be amended, varied, supplemented, modified or suspended at the time of such reference;
- xv. References to "construction" or "roll out" includes, unless the context otherwise requires, design, development, implementation, engineering, procurement, delivery, transportation, installation, processing, fabrication, acceptance testing, certification, commissioning and other activities incidental to the construction or roll out, and "construct" or "roll out" shall be construed accordingly;
- xvi. Any word or expression used in this agreement shall, unless defined or construed in this agreement, bear its ordinary English language meaning;
- xvii. This agreement shall operate as a legally binding agreement specifying the master terms, which apply to the Parties under this agreement and to the provision of the services by the Bidder;
- xviii. The department may conduct acceptance testing of the various requisite equipment/infrastructure to ensure a smooth, trouble free and efficient functioning of the scheme or carry out these tasks itself;

xix. The documents forming this Agreement are to be taken as mutually explanatory of one another. The following order shall govern the priority of documents constituting this Agreement, in the event of a conflict between various documents, the documents shall have priority in the following order:

- This Agreement along with Service Levels as specified in Section 9 of the RFP
- Non-Disclosure Agreement,
- Integrity pact – to be signed by the successful bidder/agency
- Schedules and Annexures;
- the RFP along with subsequently issued corrigendum/addendum including Scope of Services
- Letter of award issued by NHA to the successful Bidder and
- Pre-qualification, technical and commercial proposal submitted by the successful bidder to the extent they along with subsequently issued clarifications furnished in response to the RFP, to the extent they are not inconsistent with any terms of the RFP and to the extent the same are accepted by the NHA.

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1.3 Term of the Agreement

- i. The term of this agreement shall be a period of 1 year (One year) starting from _____ 2019 being the “Effective Date”. This section to be read in conjunction with section 4.1 of the RFP.
- ii. NHA reserves the right to extend the term of this Agreement by One more year on the mutual terms and conditions as agreed in this agreement. The sole right to extend the term of the Contract shall be with NHA only.

1.4 Work Completion & Payment Terms shall be read in terms of the Work Order issued by NHA:

Disbursement of payment to the Bidder is as defined in section 9 of the RFP (payment terms).

Notes:

1. Adherence to timelines is critical for the success of the project.
2. No advance payment shall be made for any activity
3. NHA will release the payment upon submission of valid invoice subject to the condition that invoice and all supporting documents produced are in order and work is performed as per the scope of the project and meeting the service levels Criteria. NHA shall be entitled to delay or withhold the payment of a disputed invoice or part of it delivered by Bidder, when NHA disputes such invoice or part of it, provided that such dispute is bonafide.
4. No payment made by NHA herein shall be deemed to constitute acceptance by NHA of the system or any service
5. If the Service Provider is liable for any penalty/liquidated damages as per the service levels, the same shall be adjusted from quarterly payments due to the service provider.
6. All payments shall be made for the corresponding to the services actually delivered.

1.5 Service Levels

1. The purpose of the Service Levels is to clearly define the levels of service which shall be met by the agency for the entire duration of this contract period of the Project.
2. Timelines specified in the above section (Work Completion Timelines and Payment Terms) shall form the Service Levels for delivery of Services specified there-in.
3. All the payments to the Bidder are linked to the compliance with the SERVICE LEVELS metrics specified in this document.

Commencement of SERVICE LEVELS: The service levels shall commence from on-boarding of the agency.

1.6 Professional Project Management

Bidder shall execute the project with complete professionalism and full commitment to the scope of work and the prescribed service levels. Bidder shall attend regular Project Review Meetings scheduled by NHA and shall adhere to the directions given during the meeting. Following responsibilities are to be executed by the Bidder in regular manner to ensure the proper management of the project:

- a) Finalization of the Project plan in consultation with NHA. Project Plan should consist of work plan, communication matrix, timelines, Quality Plan etc.
- b) Submission of Weekly Project Progress Reports
- c) Compliance report, which will cover compliances to Timelines, service levels, etc.

1.7 Use & Acquisition of Assets during the term

The Bidder shall:

1. 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 owned by the Bidder exclusively in terms of the delivery of the services as per this CA (hereinafter the "Assets") in proportion to their use and control of such Assets which will include all upgrades/enhancements and improvements to meet the needs of the project arising from time to time
2. Term "Assets" also refers to all the hardware / Software / data / documentations / manuals/ or any other material procured, created or utilized by the Bidder for NHA for implementation of the project.
3. Keep all the tangible Assets in good and serviceable condition (reasonable wear and tear excepted) suitably upgraded subject to the relevant standards as stated in the bid to meet the service levels mentioned in the contract and during the entire term of the Agreement
4. Ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of Assets and which are provided to the Bidder will be followed by the Bidder and any person who will be responsible for the use of the Asset
5. Take such steps as may be recommended by the manufacturer of the Assets and notified to the Bidder or as may be necessary to use the Assets in a safe manner

6. To the extent that the Assets are under the control of the Bidder, keep the Assets suitably housed and in conformity with any statutory requirements from time to time applicable to them
7. 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 law
8. Use the Assets exclusively for the purpose of providing the Services as defined in the contract
9. Bidder shall not save and use NHA data for any other purpose

1.8 Security and safety

1. The Bidder will comply with the directions issued from time to time by NHA and the standards related to the security and safety in so far as it applies to the provision of the Services.
2. Adherence to basic e-Governance Guidelines and Standards for data structure (if any) shall be adhered to.
3. Bidder shall at all times comply with NHA's information Security and Privacy Policies and standard policies in force from time to time as applicable. NHA shall share the relevant guidelines and standards to the Bidder upon signing of the CA.
4. Bidder shall use reasonable endeavors to report forthwith in writing to all the partners / contractors about the civil and criminal liabilities accruing due to any unauthorized access (including unauthorized persons who are employees of any Party) or interference with NHA's data, facilities or Confidential Information.
5. The Bidder shall upon reasonable request by NHA or his/her nominee(s) participate in regular meetings when safety and information security measures are communicated
6. Bidder shall promptly report in writing to NHA any act or omission which they are aware that could have an adverse effect on the proper conduct of safety, information security and Privacy at NHA.
7. Bidder shall comply and meet any security requirements published by Meityor any standard body setup/recognized by Government of India from time to time and notified to the Bidder by NHA as a mandatory standard.
8. The Bidder shall meet all the security and privacy requirements indicated in the IT Act 2000 and Amendments 2008, international security standards including ISO 27001 and other applicable laws as amended from time to time.
9. Data privacy is considered under varied terms of Right to Privacy Judgement as a right under Article 21 of the Constitution. The Judgment was pronounced by Constitution Bench of Supreme Court of India dated 24-08-2018. Thus Bidder represent that it shall abide by the statutory laws pertaining to Data Privacy as applicable in India. Bidder also represents that any applicable Laws and any other obligations of Bidder to maintain the *confidentiality* under this Agreement are extendable in accordance with applicable *Laws* of India as amended from time to time. Bidder affirms that the Data as per terms of this Agreement shall at all times remain within the territorial Jurisdiction of India only. Bidder also agrees to abide by NHA's

Information Security and Privacy Policy. Any breach of Privacy by the Bidder shall make Bidder liable to penalties and actions under the terms and conditions of this Agreement and as per applicable laws.

1.9 Performance Bank Guarantee

The Bidder shall at its own expense, deposit with department, within 7 days of the notification of award (done through issuance of the Purchase Order/Letter of Acceptance), an unconditional and irrevocable Performance Bank Guarantee (PBG) from Nationalized/Scheduled Bank as per the format included in this RFP and in the manner specified in section 8.3 of the RFP, payable on demand, for the due performance and fulfilment of the contract by the Bidder. This Performance Bank Guarantee will be for an amount equivalent to 10% of contract value. All charges whatsoever such as premium, commission, etc. with respect to the PBG shall be borne by the Bidder.

The Performance Bank Guarantee shall be kept valid till completion of the project and Warranty period. The Performance Guarantee shall contain a claim period of three months from the last date of validity. The selected bidder shall be responsible for extending the validity date and claim period of the Performance Guarantee as and when it is due on account of non-completion of the project and Warranty period. In case the selected Bidder fails to submit performance guarantee within the time stipulated, the NHA at its discretion may cancel the order placed on the selected Bidder without giving any notice. NHA shall invoke the performance guarantee in case the selected Vendor fails to discharge their contractual obligations during the period or NHA incurs any loss due to Selected Bidders negligence in carrying out the project as per the agreed terms & conditions. The PBG may be discharged/ returned by NHA upon being satisfied that there has been due performance of the obligations of the Bidder under the contract. However, no interest shall be payable on the PBG. In the event, Bidder being unable to service the contract for whatever reason, NHA would evoke the PBG. Notwithstanding and without prejudice to any rights whatsoever of department under the Contract in the matter, the proceeds of the PBG shall be payable to department as compensation for any loss resulting from the Bidder's failure to complete its obligations under the Contract. Department shall notify the Bidder in writing of the exercise of its right to receive such compensation within 14 days, indicating the contractual obligation(s) for which the Bidder is in default.

Department shall also be entitled to make recoveries from the Bidder's bills, PBG, or from any other amount due to him, the equivalent value of any payment made to him due to inadvertence, error, collusion, misconception or misstatement.

1.10 Indemnification and Limitation of Liability

1.10.1 Subject to Clause 1.10.2 below, the Bidder (the "Indemnifying Party") undertakes to indemnify NHA and its nominated agencies (the "Indemnified Party") from and against all losses, claims, damages, compensation etc. 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, willful default, lack of due care or breach of terms of this Agreement.

1.10.2 IPR Indemnity: If the Indemnified Party promptly notifies the Indemnifying Party in writing of a third party claim against the Indemnified Party that any Goods / Deliverables/ Services provided by the Indemnifying Party infringes a copyright, trade secret, patent or other intellectual property rights of any third party, the Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the Indemnified Party.

1.10.3 Conditions for Indemnity: Without prejudice to the rights of the NHA in respect of indemnification for any claim:

- i. NHA shall notify the Bidder upon receipt of any notice of claim setting out in reasonable particulars, the details of such notice of claim;
- ii. Immediately upon receipt of notification of any claim from NHA, the Bidder within a period of 5 days from date of receipt of such notice, notify the NHA whether the Bidder wish to assume the defence in relation to such claim (including settlement or resolution thereof). Thereafter, the Bidder shall be entitled in consultation with NHA, and only to the extent such action does not in any manner compromise, prejudice or adversely affect the interests of the NHA, to take such action as mutually agreed upon by Bidder and the NHA to avoid, dispute, deny, resist, appeal, compromise or consent such claim, within a period of 30 days from the date of receipt of such claim notification;
- iii. Notwithstanding anything contained herein, the Bidder and NHA agree and covenant that a notice by the NHA to the Bidder in relation to the claim as aforesaid shall amount to express acceptance and consent by the Bidder to indemnify the NHA for all losses in relation to such claim. Upon notice by the Bidder, NHA shall reasonably co-operate with the Bidder at the sole costs of the Bidder, only to the extent the same does not in any manner compromise, prejudice or adversely affect the rights of the NHA. The NHA shall have the right, at its option, to participate in the defense of such claim;
- iv. If the Bidder fails to take any action as per the above clause within the time period as specified therein, the NHA shall have the right, in its absolute discretion, to take such action as it may deem necessary to avoid, dispute, deny, resist, appeal, compromise or contest or settle any claim (including without limitation, making claims or counterclaims against third parties). If the SI does not assume control of the defense of such claims (as mentioned above), the entire defense.
- v. Risk Purchase: If the Bidder fails to perform its obligations (or any part thereof) under this Agreement or if the Agreement is terminated by the NHA due to breach of any obligations of the Bidder under this Agreement, the NHA reserves the right to procure the same or equivalent Goods / Services / Deliverables from alternative sources at the Bidder's risk and responsibility. Any incremental cost borne by the NHA in procuring such Goods /Services/ Deliverables shall be borne by the Bidder. Any such

incremental cost incurred in the procurement of the such Goods /Services/ Deliverables from alternative source will be recovered from the undisputed pending due and payable Payments /Security Deposit / Bank Guarantee provided by the Bidder under this Agreement and if the value of the Goods /Services/Deliverables under risk purchase exceeds the amount of Security Deposit and / or Bank Guarantee, the same may be recovered, if necessary, by due legal process.

1.10.4 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 1.11 and breach of Clause 1.27 and 1.22. This limit shall not apply to damages for bodily injury (including death) and damage to real property and tangible personal property for which the Bidder is legally liable.

vi. 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 1.10) even if it has been advised of their possible existence.

1.10.5 The allocations of liability in this Clause 1.10 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.

1.11 Third Party Claims

a. Subject to Sub-clause (b) below, the Bidder shall indemnify the "Indemnified Party" from and against all losses, claims litigation and damages on account of bodily injury, death or damage to tangible personal property arising in favor or any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's performance or non-performance under this Agreement or the service levels.

b. The indemnities set out in Sub-clause (a) above shall be subject to the following conditions:

i. Bidder hereby indemnify and hold indemnified NHA harmless from and against any and all damages, losses, liabilities, expenses including legal fees and cost of litigation in connection with any action, claim, suit, proceedings as if result of claim made by the third party directly or indirectly arising out of or in connection with this agreement.

ii. All settlements of claims subject to indemnification under this Article will: (a) be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant for all liability in respect of such claim; and (b) include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;

iii. 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; and

iv. 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;

v. In the event that the Indemnifying Party is obligated to indemnify the Indemnified Party pursuant to this Article, the Indemnified Party will be entitled to invoke the Performance Bank Guarantee (PBG), if such indemnity is not paid, either in full or in part, and on the invocation of the Performance Bank Guarantee, the Indemnifying Party shall be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates.

vi. Bidder will defend or settle third party claims against NHA solely attributable to the Bidder's infringement of any copyrights, trademarks or industrial design rights alleged to have occurred in respect of Bidder branded hardware/software/deliverables etc. (together "deliverables") supplied by the Bidder. The Bidder shall pay all costs, damages and attorney's fees that a court finally awards.

vii. NHA shall provide the Bidder with prompt notice of such claim and extend full cooperation and assistance, information and authority reasonably necessary to defend or settle such claim. The Bidder will have adequate opportunity to control the response thereto and the defense thereof.

1.12 Warranties

1. The Bidder warrants and represents to NHA that:

- a. It has full capacity and authority and all necessary approvals to enter into and to perform its obligations under this Agreement;
- b. This Agreement is executed by a duly authorized representative of the Bidder;
- c. It shall discharge its obligations under this Agreement with due skill, care and diligence so as to comply with the service levels
- d. Bidder to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve Implementation Agency of its obligations under this Agreement.
- e.

2. In the case of the service levels, the Bidder warrants and represents to NHA, that:

- a. The Bidder has full capacity and authority and all necessary approvals to enter into and perform its obligations under the service levels and to provide the Services;
- b. The service levels shall be executed by a duly authorized representative of the Bidder;

- c. The Services will be provided and rendered by appropriately qualified, trained and experienced personnel as mentioned in the bid;
 - d. Bidder has and will have all necessary licenses, approvals, consents of third Parties free from any encumbrances and all necessary technology, hardware and software to enable it to provide the Services;
 - e. The Services will be supplied in conformance with all laws, enactments, orders and regulations applicable from time to time;
 - f. Bidder will warrant that the solution provided under the contract is new, of the most recent higher version /models and incorporate all recent improvements in design and materials unless provided otherwise in the contract.
 - g. The Bidder shall ensure defect free operation of the entire solution and shall replace any such device/components, equipment, software and hardware which are found defective and during the entire contract period the Bidder shall apply all the latest upgrades/releases for the software after appropriate testing of device.
3. Notwithstanding what has been stated elsewhere in this Agreement and the Schedules attached herein, in the event the Bidder is unable to meet the obligations pursuant to scope of work as stated in this Agreement and the Schedules attached herein, NHA will have the option to invoke the Performance Guarantee after serving a written notice of thirty (30) days to the Bidder.

The 30 day notice period shall be considered as the 'Cure Period' to facilitate the Bidder to cure the breach.

The PBG shall be evoked only if the breach is solely attributable to the bidder and the bidder fails to rectify the breach within the 'Cure Period'.

1.13 Force Majeure

i. Definition of Force Majeure

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

ii. 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, lockout (Strike and Lockout not caused due to either Party's default), sabotage 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;

iii. 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.

iv. 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.

iv. 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 1.26.

v. 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.

vi. 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.

vi. In the event of termination pursuant to Clause 1.26, the rights and obligations of the Bidder and NHA shall be as specified in the clause titled Termination.

vii. Notwithstanding Clause 16.v, Force Majeure shall not apply to any obligation of the NHA to make payments to the Bidder under this Contract.

viii. For the avoidance of doubt, it is expressly clarified that the failure on the part of the Selected Bidder under this Agreement or the service levels to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the service levels 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).

ix.

For the Bidder to take benefit of this clause it is a condition precedent that the Bidder must promptly notify NHA, in writing of such conditions and the cause thereof within five calendar days of the arising of the Force

Majeure event. NHA, or the consultant / committee appointed by NHA shall study the submission of the Bidder and inform whether the situation can be qualified one of Force Majeure. Unless otherwise directed by NHA in writing, the Bidder shall continue to perform its obligations under the resultant Agreement as far as it is reasonably practical, and shall seek all reasonable alternative means for performance of services not prevented by the existence of a Force Majeure event.

x. In the event of delay in performance attributable to the presence of a force majeure event, the time for performance shall be extended by a period(s) equivalent to the duration of such delay. If the duration of delay continues beyond a period of 30 days, NHA and the Bidder shall hold consultations with each other in an endeavor to find a solution to the problem.

Notwithstanding anything to the contrary mentioned above, the decision of NHA shall be final and binding on the Bidder.

1.14 Audit, Access and Reporting

AUDIT, ACCESS AND REPORTING: The Selected Bidder shall allow access to the NHA or its nominated agencies to all information which is in the possession or control of the Selected Bidder 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 NHA to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule III of this Agreement.

1.15 Intellectual Property Rights

i. 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. Selected Bidder would be responsible for arranging any licenses associated with products.

ii. 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 NHA 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.

iii. Bespoke development: Subject to the provisions of Sub-Clause iii and iv below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie exclusively with the NHA.

iv. 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 Selected Bidder should grant NHA a non-exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to NHA 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. NHA'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 NHA at the conclusion of performance of the services.

v. Residuals: In no event shall Selected Bidder 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, Selected Bidder 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.

1.16 Liquidated Damages

Time is the essence of the Agreement and the delivery dates are binding on the Selected bidder. In the event of delay or any gross negligence by the Agency for causes solely attributable to the Selected Bidder, in meeting the deliverables, NHA shall be entitled at its option to recover from the Selected Bidder 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 NHA under the contract and law.

1.17 Sub-Contractors, Assignment and Change Control

i Sub-contractors:

Bidder shall not subcontract any work related to <Insert details> without NHA 's prior written consent. However the Bidder 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 Bidder shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The Bidder undertakes to indemnify the NHA or its nominated agencies from any claims on the grounds stated hereinabove.

ii. Assignment :

(a) All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the NHA and their respective successors and permitted assigns.

(b) the Bidder shall not be permitted to assign its rights and obligations under this Agreement to any third party.

(c) The NHA may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Bidder shall be a party to such novation, to any third party contracted to provide outsourced services to NHA or any of its nominees.

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

1.18 Trademarks and Publicity:

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that Bidder 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 service levels 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 Bidder may include NHA or its client lists for reference to third parties subject to the prior written consent of NHA not to be unreasonably withheld or delayed. Such approval shall apply to each specific case and relate only to that case.

1.19 Notices :

(a) Any notice or other document which may be given by either Party under this Agreement or under the service levels 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:

Bidder

Tel:

Fax:

Email:

Contact:

In relation to a notice given under the MSA / service levels, 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 service levels may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

1.20 Governing Law and Dispute Resolution:

i. 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.

ii. Any dispute arising out of or in connection with this Agreement or the service levels shall in the first instance be dealt by and between the Senior Officials of both the parties within 30 days of such party notifying the other of the existence of the Dispute.

iii. 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 appointed NHA. 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 venue and seat of Arbitration proceedings shall be *Delhi*, India. Any legal dispute will come under the sole jurisdiction of New Delhi, India / state jurisdiction of *Delhi*, India.

iv. **Compliance with laws:** Each party will comply with all applicable export and import laws and regulations.

v. **Third party components:** Bidder will provide all third party components solely on a pass-through basis in accordance with the relevant third party terms and conditions.

1.21 Deleted

1.22 Data Ownership

All the data created as the part of the project shall be owned by NHA. The Bidder shall take utmost care in maintaining security, confidentiality and backup of this data. NHA shall retain ownership of any user created/loaded data and applications hosted on Bidder's infrastructure and maintains the right to request (or should be able to retrieve) full copies of these at any time.

1.23 Fraud and Corruption

NHA requires that Bidder must observe the highest standards of ethics during the execution of the contract. In pursuance of this policy, NHA defines, for the purpose of this provision, the terms set forth as follows:

- "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of NHA in contract executions.
- "Fraudulent practice" means a misrepresentation of facts, in order to influence a procurement process or the execution of a contract, to NHA, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificially high or non-competitive levels and to deprive NHA of the benefits of free and open competition.
- "Undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by NHA with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- "Restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Selection Process.
- "Coercive Practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the execution of contract.
- If it is noticed that the Bidder has indulged into the Corrupt / Fraudulent / Undesirable / Coercive practices (as be decided by a court or competent authority with appropriate jurisdiction), it will be a sufficient ground for NHA for termination of the contract and initiate black-listing of the vendor.

1.24 Conflict of Interest

- The Bidder shall disclose to NHA in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the Bidder or its team) in the course of performing the Services as soon as it becomes aware of such a conflict. Bidder shall hold NHA's interest paramount, without any consideration for future work, and strictly avoid conflict of interest with other assignments.
- In the event of any question, dispute or difference arising under the agreement or in connection there-with, the same shall be referred to the sole arbitration of the CEO, NHA or in case his designation is changed or his office is abolished, then in such cases to the sole arbitration of the officer for the time being entrusted (whether in addition to his own duties or otherwise) with the functions of the CEO, NHA or by whatever designation such an officer may be called (hereinafter referred to as the said officer), and if the CEO or the said officer is unable or unwilling to act as such, then to the sole arbitration of some other person appointed by the CEO or the said officer. The agreement to appoint an arbitrator will be in accordance with the Arbitration and Conciliation Act 1996. There will be no objection to any such appointment on the ground that the arbitrator is a Government Servant or that he has to deal with the matter to which the agreement relates or that in the course of his duties as a Government Servant he has expressed his views on all or any of the matters in dispute. The award of the arbitrator shall be final and binding on both the parties to the agreement. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the CEO, NHA or the said officer shall appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.
- The arbitrator may from time to time with the consent of both the parties enlarge the time frame for making and publishing the award. Subject to the aforesaid, arbitration and Conciliation Act, 1996 and the rules made there under, any modification thereof for the time being in force shall be deemed to apply to the arbitration proceeding under this clause.
- The venue of the arbitration proceeding shall be the office of the CEO, NHA, or such other places as the arbitrator may decide.

1.25 Exit Management

(i) Exit Management Purpose

This clause sets out the provisions, which will apply during Exit Management period. The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Clause.

The exit management period starts, in case of expiry of contract, at least 3 months prior to the date when the contract comes to an end or in case of termination of contract, on the date when the notice of termination is sent to the Bidder. The exit management period ends on the date agreed upon by NHA or Three months after the beginning of the exit management period, whichever is earlier.

(ii) Confidential Information, Security and Data

Bidder will promptly, on the commencement of the exit management period, supply to NHA or its nominated agencies the following:

- a. Information relating to the current services rendered and performance data relating to the performance of the services; documentation relating to the project, project's customized source code; any other data and confidential information created as part of or is related to this project;
- b. Project data as is reasonably required for purposes of the project or for transitioning of the services to its replacing successful Bidder in a readily available format.
- c. All other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable NHA and its nominated agencies, or its replacing vendor to carry out due diligence in order to transition the provision of the Services to NHA or its nominated agencies, or its replacing vendor (as the case may be).
- d. The Bidder shall retain all of the above information with them for 30 days after the termination of the contract, post which the provider has to wipe/purge/delete all information created or retained as part of this project.
- e. Bidder will sign a Non-Disclosure Agreement with NHA IT Department as per the format provided by NHA.

(iii) Employees

Promptly on reasonable request at any time during the exit management period, the Bidder shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to NHA a list of all employees (with job titles and communication address) of the Successful Bidder, dedicated to providing the services at the commencement of the exit management period; To the extent that any Transfer Regulation does not apply to any employee of the Successful Bidder, NHA or Replacing Vendor may make an offer of contract for services to such employee of the Successful Bidder and the Successful Bidder shall not enforce or impose any contractual provision that would prevent any such employee from being hired by NHA or any Replacing Vendor.

(iv) Rights of Access to Information

At any time during the exit management period, the Bidder will be obliged to provide an access of information to NHA and / or any Replacing Vendor in order to make an inventory of the Assets (including hardware / Software / Active / passive), documentations, manuals, catalogs, archive data, Live data, policy documents or any other material related to implementation of IT Infrastructure Solution for NHA.

(v) Exit Management Plan

Successful Bidder shall provide NHA with a recommended "Exit Management Plan" within 90 days of signing of the contract, which shall deal with at least the following aspects of exit management in relation

to the service levels as a whole and in relation to the Project, the Operation and Management service levels and Scope of work definition.

- a) A detailed program of the transfer process that could be used in conjunction with a Replacement Vendor 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;
- b) Plans for the communication with such of the Successful Bidder, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on Project's operations as a result of undertaking the transfer;
- c) Plans for provision of contingent support to the implementation of IT Infrastructure Solution for a reasonable period (minimum one month) after transfer.
- d) Exit Management Plan shall be presented by the Bidder to and approved by NHA or its nominated agencies.
- e) The terms of payment as stated in the Terms of Payment Schedule include the costs of the Bidder complying with its obligations under this Schedule.
- f) During the exit management period, the Bidder shall use its best efforts to deliver the services.
- g) Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.

1.26 Events of Default and Termination of contract

1.26.1. Events of Default by Service Provider

- i. The failure on the part of the **Service Provider** to perform any of its obligations or comply with any of the terms of this Agreement shall constitute an Event of Default on the part of the **Service Provider**. The events of default as mentioned above may include, inter-alia, the following:
 - a. the **Service Provider** has failed to perform any instructions or directives issued by the NHA which it deems proper and necessary to execute the scope of work under the Agreement; or
 - b. the **Service Provider** has failed to remedy a failure to perform its obligations in accordance with the specifications issued by the NHA, despite being served with a default notice which laid down the specific deviance on the part of the SERVICE PROVIDER to comply with any stipulations or standards as laid down by the NHA; or
 - c. the **Service Provider** or its team has failed to conform with any of the service specifications as set out in the RFP or this Agreement or has failed to adhere to any amended direction, modification or clarification as issued by the NHA during the term of this Agreement and which the NHA deems proper and necessary for the execution of the scope of work under this Agreement;

- d. the **Service Provider** has failed to demonstrate or sustain any representation or warranty made by it in this Agreement, with respect to any of the terms of its Proposal, the RFP and this Agreement;
- e. There is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or Service Provider milar official against or in relation to the **Service Provider**;
- f. The **Service Provider** or its team has failed to comply with or is in breach or contravention of any Applicable Laws;
- g. The **Service Provider** has failed to comply with any terms and conditions of the this Agreement;
- h. Undue delay in achieving the agreed timelines for delivering the services under this Agreement;

- i. Quality of Deliverables and services conService Provider stently not being to the satisfaction of the NHA.
- ii. Where there has been an occurrence of such Event of Defaults, inter alia, as stated above, the NHA shall issue a notice of default to the **Service Provider**, setting out specific defaults / deviances / omisService Provider ons and providing a notice of up to thirty (30) days to enable the **Service Provider** to remedy the default/ deviances / omisService Provider ons committed.
- iii. Where despite the issuance of a default notice to the **Service Provider** by the NHA the **Service Provider** fails to remedy the default to the satisfaction of the NHA, the NHA may, where it deems fit, issue to the **Service Provider** another default notice or proceed to adopt such remedies as may be available to the NHA including but not limited to the remedies provided in clause 1.26.2 below.

1.26.2 Consequences for Events of Default

Where an Event of Default subService Provider sts or remains uncured, the NHA shall be entitled to:

- i. Impose any such obligations and conditions and issue any clarifications as may be necessary to, inter alia, ensure smooth continuation of the Services and the project which the **Service Provider** shall be obliged to comply with, which may include unilateral re-determination of the consideration payable to the **Service Provider** under this Agreement. The **Service Provider** shall in addition take all available steps to minimize loss resulting from such event of default.
- ii. Suspend all payments to the **Service Provider** under the Agreement by written notice of suspension to the SERVICE PROVIDER provided that such notice of suspension shall (a) specify the nature of failure; and (b) request the SERVICE PROVIDER to remedy such failure within a specified period from the date of receipt of such notice of suspension by the SERVICE PROVIDER
- iii. Where the NHA deems it necessary, it shall have the right to require replacement of any of the sub-contractors with another suitable sub-contractor. The sub-contractor/ SERVICE PROVIDER shall in such case terminate forthwith all their agreements/contracts, other arrangements with such sub-contractor and find out the suitable replacement for such outgoing subcontractor with another subcontractor to the satisfaction of the NHA, who shall execute such contracts with the NHA as the NHA may require. Failure on the part of the SERVICE PROVIDER to find a suitable replacement and/or terminate all agreements/contracts with such member, shall amount to a breach of the terms hereof and the NHA in addition to all other rights, have the right to claim damages and recover from the SERVICE PROVIDER all losses/ or other damages that may have resulted from such failure.
- iv. Terminate this Agreement in full or in part.
- v. Retain such amounts from the payment due and payable by the NHA to the SERVICE PROVIDER as may be required to offset any losses caused to the NHA as a result of such event of default and the SERVICE PROVIDER shall compensate the NHA for any such loss, damages or other costs, incurred by the NHA in this regard. Nothing herein shall effect the continued obligation of the subcontractor / other members of its Team to perform all their obligations and responsibilities under this Agreement in an identical manner as were being performed before the occurrence of the

default.

- vi. Invoke the Performance Bank Guarantee and other Guarantees furnished hereunder, enforce indemnity provisions, recover such other costs/losses and other amounts from the SERVICE PROVIDER which may have resulted from such default and pursue such other rights and/or remedies that may be available to the NHA under law.

1.26.3 Termination for Breach

The NHA may, terminate this Agreement by giving the SERVICE PROVIDER a prior and written notice of up to 30 days indicating its intention to terminate the Agreement under the following circumstances:

- i. Where the NHA is of the opinion that there has been such Event of Default on the part of the SERVICE PROVIDER which would make it proper and necessary to terminate this Agreement and may include failure on the part of the SERVICE PROVIDER to respect any of its commitments with regard to any part of its obligations under its Proposal, the RFP or under this Agreement.
- ii. Where it comes to the NHA's attention that the SERVICE PROVIDER (or the SERVICE PROVIDER's Team) is in a position of actual conflict of interest with the interests of the NHA, in relation to any of terms of the SERVICE PROVIDER's Proposal, the RFP or this Agreement.
- iii. NHA may terminate this Agreement due to reason specified in clause 1.26.3;
- iv. NHA may terminate the Agreement if it comes to knowledge of the NHA that the SERVICE PROVIDER or any of the SERVICE PROVIDER's personnel or the SERVICE PROVIDER's sub-contractors or such subcontractor's personnel have been involved in any fraudulent or corrupt practices or any other practice of Similar nature.

1.26.4 Termination for Convenience

The NHA may, by written notice of 30 (Thirty) days sent to the SERVICE PROVIDER , terminate the Agreement, in whole or in part at any time for its convenience. The notice of termination shall specify that termination is for the NHA's convenience, the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective.

1.26.5 Effects of Termination

- i. In the event of termination of this Agreement due to any cause whatsoever, (whether consequent to the stipulated Term of the Agreement or otherwise) the NHA shall be entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective business continuity of the project which the SERVICE PROVIDER shall be obliged to comply with and take all available steps to minimize loss resulting from that termination/breach, and further allow the successor SERVICE PROVIDER to take over the obligations of the erstwhile SERVICE PROVIDER in relation to the execution/continued execution of the scope of this Agreement.
- ii. In the event that the termination of this Agreement is due to the expiry of the Term of this Agreement / a decision not to grant any (further) extension by the NHA, or where the termination is prior to the expiry of the stipulated term due to the occurrence of any Event of Default on the part of the SERVICE PROVIDER , the SERVICE PROVIDER herein shall be obliged to provide all such assistance to the successor SERVICE PROVIDER or any other person as may be required and as the NHA may specify including training, where the successor(s) is a representative/personnel of the NHA to enable the successor to adequately provide the Services hereunder, even where such assistance is required to be rendered for a reasonable period that may extend beyond the Term/earlier termination hereof. Without prejudice to the foregoing, upon termination (or upon expiry of the Term) of this Agreement, the Parties will comply with the Exit Management Schedule/ Plan set out as Schedule ___ of this Agreement (and as revised from time to time).
- iii. Where the termination of the Agreement is prior to its stipulated term on account of a Default on the part of the SERVICE PROVIDER or due to the fact that the survival of the SERVICE PROVIDER as an independent corporate entity is threatened/has ceased, the NHA shall pay the SERVICE PROVIDER for that part of the Goods and the Services which have been authorized by the NHA and satisfactorily delivered / performed by the SERVICE PROVIDER up to the date of termination. Without prejudice any other rights, the NHA may retain such amounts from the payment due and payable by the NHA to the SERVICE PROVIDER as may be required to offset any losses caused to the NHA as a result of any act/omissions of the SERVICE PROVIDER . In case of any loss or damage due to default on the part of the SERVICE PROVIDER in performing any of its obligations with regard to executing the scope of work under this Agreement, the SERVICE PROVIDER shall compensate the NHA for any such loss, damages or other costs, incurred by the NHA. Additionally, the subcontractor / other members of its team shall perform all its obligations and responsibilities under this Agreement in an identical manner as were being performed before the collapse of the SERVICE PROVIDER as described above in order to execute an effective transition and to maintain business continuity. All third parties shall continue to perform all/any functions as stipulated by the NHA and as may be proper and necessary to execute the scope of work under the Agreement in terms of the SERVICE PROVIDER 's Proposal, the RFP and this Agreement.
- iv. Nothing herein shall restrict the right of the NHA to invoke the Bank Guarantee and other Guarantees furnished hereunder and pursue such other rights and/or remedies that may be available to the NHA under law.
- v. Any and all payments under this clause shall be payable only after the SERVICE PROVIDER

has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the NHA. In case of expiry of the Agreement, the last due payment shall be payable to the SERVICE PROVIDER after the SERVICE PROVIDER has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the NHA.

1.27.6 Termination of Agreement due to bankruptcy of the SERVICE PROVIDER

- i. Where the SERVICE PROVIDER 's ability to survive as an independent corporate entity is threatened or is lost owing to any reason whatsoever, including inter-alia the filing of any bankruptcy proceedings against the SERVICE PROVIDER , any failure by the SERVICE PROVIDER to pay any of its dues to its creditors, the institution of any winding up proceedings against the SERVICE PROVIDER or the happening of any such events that are adverse to the commercial viability of the SERVICE PROVIDER , the NHA shall reserve the right to take any steps as may be necessary, to ensure the effective transition of the project to a successor SERVICE PROVIDER , and to ensure business continuity provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the NHA.

1.27.7 Rights other than Termination

The termination hereof shall not affect any accrued right or liability of either Party nor affect the operation of the provisions of this Agreement that are expressly or by implication intended to come into or continue in force on or after such termination. The termination provisions set out in this Clause are in addition to any termination rights that the NHA may have under this Agreement/RFP and are in addition to, and without prejudice to, other rights that the NHA may have under law and this Agreement.

1.27 Confidentiality

- i. The NHA or its nominated agencies shall allow the Bidder to review and utilize highly confidential public records and the Bidder shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- ii. Additionally, the Bidder shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- iii. The NHA or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Bidder regarding any forbidden disclosure.
- iv. The Bidder 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 NHA 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 NHA (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 Bidder;

(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.

v To the extent the Bidder shares its confidential or proprietary information with the NHA for effective performance of the Services, the provisions of **the Sub-Clause 9.28 (i to iii)** shall apply mutatis mutandis on the NHA or its nominated agencies.

vi Any handover of the confidential information needs to be maintained in a list, both by NHA & 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.

vii. The provisions of this Article shall survive the expiration or any earlier termination of this Agreement shall survive the expiration or any earlier termination of this Agreement

1.28 Miscellaneous

a) Standards of Performance

The Bidder shall provide the services and carry out their obligations under the Contract with due diligence, efficiency and professionalism/ethics in accordance with generally accepted professional standards and practices. The Bidder shall always act in respect of any matter relating to this contract. The Bidder shall abide by all the applicable provisions / Acts / Rules / Regulations, Standing orders, etc. of Information Technology standard as prevalent in the country. The Bidder shall also conform to the standards laid down by or Government of India from time to time. Such standards and guidelines shall be shared with the Bidder by NHA up on signing of the Contract.

b) Care to be taken while working at NHA Office

Bidder should follow instructions issued by concerned Competent Authority from time to time for carrying out work at designated places. Bidder should ensure that there is no damage caused to any private or public property. In case such damage is caused, Bidder shall immediately bring it to the notice of concerned organization and NHA in writing and pay necessary charges towards fixing of the damage.

Bidder shall ensure that its employees/representatives don't breach privacy of any citizen or establishment during the course of execution or maintenance of the project.

c) Compliance with Labour regulations

The Bidder shall pay fair and reasonable wages to the workmen employed, for the contract undertaken and comply with the provisions set forth under the Minimum wages Act and the Contract Labour Act 1970. The salary of the manpower working on NHA project should be paid using ECS / NEFT / RTGS. A record of the payments made in this regard should be maintained by the Bidder. Upon request, this record shall be produced to the appropriate authority in NHA and/or Judicial Body. If complaints are received by NHA (or any appropriate authority) appropriate action (Liquidation of Security Deposit, Blacklisting, etc.) may be initiated as deemed necessary against the Bidder.

d) Independent Contractor

Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture or employment relationship between the Parties to this Agreement. Except as expressly stated in this Agreement nothing in this Agreement shall be deemed to constitute any Party as the agent of any other Party or authorizes either Party (i) to incur any expenses on behalf of the other Party, (ii) to enter into any engagement or make any representation or warranty on behalf of the other Party, (iii) to pledge the credit of or otherwise bind or oblige the other Party, or (iv) to commit the other Party in any manner whatsoever in each case without obtaining the other Party's prior written consent.

e) Severability and Waiver

f) a) If any provision of this Agreement , 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 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.

g)

h) (b) No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement of any right, remedy or provision of this Agreement or the service levels 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.

i) Personnel/Employees

Personnel/employees assigned by Bidder to perform the services shall be employees of Bidder, and under no circumstances will such personnel be considered as employees of NHA. Bidder shall have the sole responsibility for supervision and control of its personnel and for payment of such personnel's employee's entire compensation, including salary, legal deductions withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all employer obligations under all laws as applicable from time to time. NHA shall not be responsible for the above issues concerning to personnel of Bidder.

Bidder shall use its best efforts to ensure that sufficient Bidder personnel are employed to perform the Services, and that, such personnel have appropriate qualifications to perform the Services. NHA or its nominated agencies shall have the right to require the removal or replacement of any Bidder personnel performing work under this Agreement. In the event that NHA requests that any Bidder personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule and upon clearance of the personnel based on profile review and personal interview by NHA or its nominated agencies as per defined service levels. The Bidder shall depute quality team for the project and as per requirements NHA shall have the right to ask Bidder to change the team.

a. Management (Regional Head / VP level officer) of Bidder needs to be involved in the project monitoring and should attend the review meeting at least once in a month.

- b. The profiles of resources proposed by Bidder in the technical bid, which are considered for Technical bid evaluation, shall be construed as 'Key Personnel' and the Bidder shall not remove such personnel without the prior written consent of NHA. For any changes to the proposed resources, Bidder shall provide equivalent or more experienced resources in consultation with NHA.
- c. Except as stated in this clause, nothing in this Agreement will limit the ability of Bidder freely to assign or reassign its employees; provided that Bidder shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. NHA shall have the right to review and approve Bidder's plan for any such knowledge transfer. Bidder shall maintain the same standards for skills and professionalism among replacement personnel as in personnel being replaced.
- d. Each Party shall be responsible for the performance of all its obligations under this Agreement and shall be liable for the acts and omissions of its employees and agents in connection therewith.

j) Variations & Further Assurance

- a. No amendment, variation or other change to this Agreement or the service levels shall be valid unless made in writing & signed by the duly authorized representatives of the Parties to this Agreement.
- b. Each Party to this Agreement or the service levels agree to enter into or execute, without limitation, whatever other agreement, document, consent & waiver & to do all other things which shall or may be reasonably required to complete & deliver the obligations set out in the Agreement or the service levels.

k) Survival

The termination or expiry of this Agreement or the service levels for any reason shall not affect or prejudice any terms of this Agreement, or the rights of the Parties under them which are either expressly or by implication intended to come into effect or continue in effect after such expiry or termination.

1.29 Applicable Law and Privacy

The contract shall be governed by the laws and procedures prescribed by the Laws prevailing and in force in India and/or as amended from time to time, within the framework of applicable legislation and enactment made from time to time concerning such commercial dealings/processing. The terms and conditions of this Agreement shall at all times be construed in harmony with the Aadhaar Act, 2016 and Regulations, IT Act and Regulations and Privacy laws thereunder as amended from time to time. All such conditions, liabilities, responsibilities, obligations, rights, duties etc. contained therein shall continue to apply during the currency of this Agreement. All legal disputes are subject to the exclusive jurisdiction of New Delhi, courts only.

Attachments to the Agreement:

- i) RFP issued by NHA
- ii) Scope of Services for the bidder
- iii) Detail Commercial proposal of the Bidder accepted by NHA
- iv) Corrigendum Document published by NHA subsequent to the Bid Document for this work
- v) Work Order issued by NHA to the successful bidder
- vi) The successful bidder's "Technical Proposal" and "Commercial Proposal" submitted in response to the Bid Document

1.30 Annexures

1.30.1 Annexure A Non- Disclosure Agreement

1.30.2 Annexure B : Integrity Pact

1.31 Schedules I , II and III

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 , Services Levels and Scope of Work. Such change shall include, but shall not be limited to, changes in the scope of services provided by the Agency and changes to the terms of payment as stated in the Terms of Payment Schedule.

The NHA 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 endeavour, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and NHA 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 Service Levels for which a separate process has been laid out in Service Levels.

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 , the Service Levels or Scope of work 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 NHA or its nominated agencies, during the Project and the NHA 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 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 NHA or its nominated agencies or as decided and approved by NHA 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;
7. 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 NHA, 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 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 NHA.

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..

1.2 In the case of termination of the Project, 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 NHA 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 NHA with a complete and up to date list of the Assets within 30 days of such notice. NHA 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 NHA 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 NHA, NHA 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 NHA.

(ii) All risk in and title to the Assets to be transferred / to be purchased by the NHA pursuant to this Article shall be transferred to NHA, on the last day of the exit management period.

(iii) NHA 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 NHA and/or to the Replacement IA, the subsisting rights in any leased properties/ licensed products on terms not less favorable to NHA/ 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 NHA 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 NHA to assess the existing services being delivered;

(ii) promptly on reasonable request by the NHA, 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 NHA 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 NHA 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 NHA 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 NHA or its nominated agencies transitioning the services to its Replacement Implementation Agency in a readily available format nominated by the NHA, its nominated agency;
- (v) all other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable NHA or its nominated agencies, or its Replacement Implementation Agency to carry out due diligence in order to transition the provision of the Services to NHA 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 NHA 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 NHA 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 NHA 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 NHA 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 NHA 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 NHA 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 NHA 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 NHA 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 NHA 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 NHA 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 NHA 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 NHA 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, 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 NHA'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 NHA and identification of specific security tasks necessary at termination;

(iv) Plans for provision of contingent support to NHA, 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 NHA 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 MSA, and Project, 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 NHA or its nominated agencies within 90 days from the Effective Date of this Agreement.

SCHEDULE III

AUDIT, ACCESS AND REPORTING

1 PURPOSE

This Schedule details the audit, access and reporting rights and obligations of the NHA 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. Such timetable during the Implementation Phase, the NHA or its nominated agency and thereafter during the operation Phase, the NHA 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 NHA 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 NHA or its nominated agency shall endeavour 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 NHA 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 obligations.

3 ACCESS

The Implementation Agency shall provide to the NHA 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 NHA 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 NHA 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 endeavours 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 NHA 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 NHA or its nominated agency.

6 ACTION AND REVIEW

6.1 Any change or amendment to the systems and procedures of the Implementation Agency, or subcontractors, 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 NHA 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 NHA 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, Service Levels 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.

FORMAT FOR CHANGE CONTROL NOTICE

Change Control Note		CCN Number:
Part A: Initiation		
Title:		
Originator:		
Sponsor:		
Date of Initiation:		
Date of Proposed Change		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)		
Authorised by NHA	Date:	
Name:		
Signature:	Date:	
Received by 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	
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 NHA and its nominated agencies	For the Implementation Agency
Signature	Signature

Name	Name
Title	Title
Date	Date