



Request for Proposal (RFP)

Selection of Program Management Consultant (PMC) for National Digital Health Mission (NDHM)

Volume III: Contractual and Legal Specifications

RFP No: S-12019/85/2020

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Disclaimer

The information contained in this Request for Proposal (RFP) Document is being provided to interested bidders on the terms and conditions set out in this Tender. The purpose of this Tender Document (**hereinafter called RFP: Request for Proposal**) is to provide interested parties with information that may be useful to them in making their pre-qualification, technical and financial offers pursuant to this RFP.

This RFP includes statements, which reflect various assumptions and assessments arrived at by the NHA (National Health Authority) in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the NHA, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the RFP may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidders is on a wide range of matters, some of which may depend upon the interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The NHA accepts no responsibility for the accuracy or otherwise of any interpretation or opinion on law expressed herein. The NHA, its employees and advisors, make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, costs or expenses which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP Document or arising in any way for participation in this Bid Process. The NHA also accepts '**no liability**' of any nature, whether resulting from negligence or otherwise howsoever caused, arising from the reliance of any Bidder upon the statements contained in this RFP.

The NHA may, at its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP. The issue of this RFP does not imply that the NHA is bound to select or appoint a Bidder, as the case may be, for the Project and the NHA reserves the right to reject all or any of the Bidder or Bids without assigning any reason whatsoever.

The Bidders shall bear all costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the NHA or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the NHA shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

About this RFP

This RFP is meant to invite proposals from interested organizations capable of delivering ‘**scope of work**’ of Program Management Consultant as prescribed in this document. The content of this RFP has been documented as a set of three (III) volumes explained below.

- **RFP Volume I: Scope of Work:** Volume I of RFP provides details on the proposed scope of work and other requirements that NHA deems necessary to share with the potential bidders.
- **RFP Volume II: Evaluation and Bidding Process:** Volume II of RFP provides details that may be needed by the potential bidders to understand their eligibility, bidding process and formats for preparing the bids.
- **RFP Volume III: Contractual and Legal Specifications:** Volume III of RFP provides the contractual and legal terms that NHA wishes to specify at this stage.

This is Volume III.

Abbreviations

Abbreviation	Description
API	Application Program Interface
APM	Application Performance Management
APT	Advanced Persistent Threat
AYUSH	Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy
AYUSH-CCIM	AYUSH- Central Council of Indian Medicine
CDN	Content Delivery Network
CDS	Clinical Decision Support System
CEO	Chief Executive Officer
COTS	Commercial off the Shelf
CPPP	Central Public Procurement Portal
DAM	Database Activity Monitoring
DDOS	Distributed Denial of Service
DLP	Data Leak Prevention
DPR	Detailed Project Report
DR	Disaster Recovery
DSS	Digital Service Standards
DSC	Digital Signature Certificates
EMD	Earnest Money Deposit
EMR	Electronic Medical Record
GIS	Geographical Information System
GSTN	Goods and Services Tax Network
HFR	Health Facility Registry
HIE	Health Information Exchange
HIPS	Host Intrusion Prevention System
HIS	Hospital Information System
HSM	Hardware Security Module
IAM	Identity and Access Management
ICT	Information and Communication Technology
IPC	Indian Penal Code
IPR	Intellectual Property Rights
IT	Information Technology
KT	Knowledge Transfer
LMS	Learning Management System
LoA	Letter of Award
LoI	Letter of Intent
MoHFW	Ministry of Health and Family Welfare
MSP	Managed Service Provider
NCD Registry	Non-Communicable Diseases Registry
NDA	Non-Disclosure Agreement

RFP: Selection of PMC for NDHM

Abbreviation	Description
NDHB	National Digital Health Blueprint
NDHE	National Digital Health Ecosystem
NDHM	National Digital Health Mission
NHA	National Health Authority
NHP	National Health Policy
NHS-UK	National Health Service- United Kingdom
OSS	Open Source Software
PBG	Performance Bank Guarantee
PFMS	Public Financial Management System
PHR	Personal Health Record
PIM/PAM	Privileged Identity Management/ Privileged Access Management
PMC	Program Management Consultant
PM-JAY	Pradhan Mantri Jan Arogya Yojana
PMU	Program Management Unit
POC	Privacy Operations Center
QCI	Quality Council of India
RFP	Request for Proposal
SECC	Socio-Economic Caste Census
SHA	State Health Agency
SLA	Service Level Agreement
SMS	Short Message Service
SOC	Security Operations Center
SSL VPN	Secure Sockets Layer Virtual Private Network
UAT	User Acceptance Testing
UHID	Unique Health ID
UIDAI	Unique Identification Authority of India
UT	Union Territory
VAS	Value Added Service

Table of Contents

Consulting Services Agreement	8
1 Definitions and Interpretations	9
2 Priority of Contract Documents	17
3 Duration of Contract	17
4 Services to Other Agencies	18
5 General Obligations of the Parties.....	18
6 Provision of Services	18
7 Documentation	20
8 Varying the Services.....	20
9 Co-operation with Personnel and Purchaser’s	21
10 Monitoring Progress	21
11 Performance Assessment	22
12 Personnel	23
13 Intellectual Property Rights	24
14 Moral Rights.....	25
15 Payment	26
16 Taxes	27
17 Indemnity.....	27
18 Liability and Insurance:	29
19 Confidentiality and Liability	30
20 Protection of personal information	32
21 Conflict of Interest	32
22 Security	35
23 Books and Records.....	35
24 Audit and Access	36
25 Unforeseen Events/ Force Majeure.....	38
26 Dispute Resolution.....	39
27 Termination.....	41
28 Notices and Other Communications.....	44
29 Miscellaneous	45
Schedule 1: Contract Details.....	48
Schedule 2: Scope of Work	50
Schedule 3: Payment	50
Schedule 4: Designated Confidential Information.....	50
Schedule 5: Change Order and Change Control Schedule.....	51

Schedule 6: Governance Schedule 52

Annexure A: Request for Proposal (RFP) 54

Annexure B: Non-Disclosure Agreement (Service Provider and Personnel) 54

B.1. Non-Disclosure Agreement (Service Provider) 54

B.2. Non-Disclosure Agreement (Individual)..... 64

Annexure C: Proposal submitted by the Consultant to NHA on <> 65

Annexure D: NHA 's Letter of Award (LoA) dated <> accepting the Proposal of Consultant 65

INTEGRITY PACT 65

Consulting Services Agreement

This Consulting Services Agreement (“Agreement “is made on this the <> day of <>20 at New Delhi, India- “hereinafter to be referred as “Commencement Date”)

Between

National Health Authority having its office at _____, India represented by _____ designated as _____ (hereinafter referred to as “**Purchaser**” which expression shall unless be excluded by or repugnant to the context deemed to include its successor/s in office or assigna) of the FIRST PART;

And

_____ a Company incorporated under the **Companies Act, 1956** having its registered office at <_____> (hereinafter referred to as “**Consultant**” or “**Service Provider**” or “**Program Management Consultant (PMC)**” which expression shall, unless the context otherwise requires, include its permitted successors and permitted assignees).

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 National Digital Health Mission (“NDHM”) and is desirous for Selection of a Consulting Agency/PMC which shall assist NHA in supporting the project development, management and implementation of NDHM by MSP.
2. In furtherance of the same, NHA undertook the selection of a suitable consultant through a competitive bidding process and in this regard issued a Request for Proposal number <....> dated <**RFP Date**>.
3. The successful bidder has been selected as the Program Management Consultant on the basis of the requirements as set out in Volume I and Volume II of the RFP and this Agreement, to undertake the project of providing Program Management Consultant services
4. The successful bidder has been selected as the Consultant on the basis of the bid response set out as **Annexure C** of this Contract.

5. NHA intends to enter into this agreement to allow the PMC/Consultant to undertake and implement the PMC for NDHM Project on the terms and conditions set forth below.

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

1 Definitions and Interpretations

1.1 Definitions

In this Contract, except where the contrary intention is expressed, the following definitions are used:

Contract/Agreement	shall mean this agreement together with all its Schedules and appendices, annexures and any amendments thereto made in accordance with the provisions herein read with stated terms of RFP
Auxiliary Material	any material, other than Contract Material, which is made available by a party for the purpose of this Contract, on or following the Commencement Date, and includes: <ul style="list-style-type: none">• Third Party Material;• Any modifications that may be required;• error corrections or translations to that Material; or• Derivatives of that Material where such derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.
Business Day	any day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and, for all other purposes, any day that is not a Saturday or Sunday or a national public holiday throughout India promulgated in the official gazette
Business Hours	From 09.00 am to 5.30 pm on a Business Day at the place where the Services are to be provided, unless specified otherwise
Change Order	The form set out in Schedule 5: Change Order.

<p>Commencement Date</p>	<p>The date on which this Contract commences.</p>
<p>Confidential Information</p>	<p>Means all information including Purchaser Data (whether in written, oral, electronic or other format) which relates to the information or data, whether electronic, written or oral, relating to NHA and/or NDHM business, operations, financials, services, facilities, processes, methodologies, technologies, intellectual property, trade secrets, research and development, trade names, know-how, Personal Data, Sensitive Personal Data, plans, budget, methods and procedures of operation, business or marketing plans, licensed document know-how, ideas, concepts, designs, drawings, flow charts, diagrams, quality manuals, checklists, guidelines, processes, formulae, source code materials, specifications, programs, software packages/ codes, clients and suppliers, partners, principals, employees, consultants and authorized agents and any information which is of a manifestly confidential nature and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with the Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with the Agreement/RFP);</p> <p>Confidential Information may also include the Confidential Information of NHA's/ other NHA's clients, licensors, alliances, contractors and advisors.</p>

	<p>“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; 6 (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.</p> <p>All such information in whatever form or mode of transmission, which is disclosed by NHA to Service Provider in connection with the Project during its implementation and is described in Schedule 4: Designated Confidential Information of this Contract; or a party knows or ought to know is confidential, but does not include: Information which is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation.</p>
Contract Details	The details set out in Schedule 1: Contract Details.
Contract Material	Any Material created by the Consultant on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Contract and includes any modifications that may be required under
Contract Period	The Contract Period plus any extension as specified in clause 3 (duration of contract) of this agreement/contract.

Consultant	the party specified in item of the Contract Details and its Personnel.
Consultant Representative	The person identified in item 4 of the Contract Details.
Companies Act	Shall mean the Indian Companies Act, 2013 read with Companies (Amendment) Act, 2019 as amended from time to time
Purchaser	The party specified in item 1 of the Contract Details.
Purchaser Data	all data and information relating to the Purchaser , and its operations, facilities, customers, Personnel, assets and programs (including personal information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Purchaser .
Purchaser Material	Any Auxiliary Material provided to the Consultant by the Purchaser , including the Material (if any) specified in item 15 of the Contract Details.
Purchaser Representative	The person identified in item 3 of the Contract Details.
Deliverable	Any Contract Material or other item to be supplied by the Consultant under this Contract.
Documentation	The documentation to be provided by the Consultant under clause 7.

Harmful Code	Any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any software.
Initial Contract Period	The period of time for which this Contract is intended to continue, as specified in item 7 of the Contract Details.
Intellectual Property Rights	<p>a) In relation to this contract of Consultancy, all intellectual property rights, including but not limited to, the following rights:</p> <p>patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names;</p> <p>any application or right to apply for registration of any of the rights referred to above in paragraph (a); and</p> <p>all rights of a similar nature to any of the rights in paragraphs (a) and (b) Which may subsist in India or elsewhere, whether or not such rights are registered or capable of being registered.</p>
Applicable Law	means applicable laws of India including 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 as may be in effect on the date of the execution of the Agreement (and amended from time to time) during the subsistence thereof, becomes applicable to the Project;
Losses	Liabilities, expenses, losses, damages and costs (whether incurred by or awarded against a party).
Material	any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

Milestone	Any fixed date to be met by the Consultant in performing any of its obligations under this Contract, as specified in the Scope of Work.
Moral Rights	The right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the Copyright Act.
Nominated Agency	An Agency, listed in item 10 of the Contract Details, which may require the provision of Services under this Contract.
Notice	A notice, demand, consent, approval or communication issued under this Contract.
Performance Criteria	The requirements set out in the Scope of Work for each Service and Deliverable and shall also include service levels prescribed in volume I of the RFP
Personnel	in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party or, in the case of the Consultant
Project Directors	Project Directors appointed by each Party are authorized personnel who provide the interface between the executive management of the respective Parties.
Schedules	The schedules to this Contract.

Service charges	The charges payable to the Consultant in accordance with Volume I Section 3 and Schedule 3: Payment.
Services	The consultancy services to be provided by the Consultant, as specified in the Scope of work in Volume I and includes the supply of the Deliverables.
Specified Personnel	The Consultant's Personnel specified in item 14 of the Contract Details.
Scope of Work	The details of the Services to be performed under this Contract, as set out in section 2, Volume I of the RFP
Third Party Material	Auxiliary Material in which a third party holds Intellectual Property Rights.
Warranted Materials	the Auxiliary Material provided by the Consultant, the Deliverables and Contract Material

1.2 Interpretation

In this Contract, except where the contrary intention is expressed:

1. The singular includes the plural and vice versa, and a gender includes other genders;
2. Another grammatical form of a defined word or expression has a corresponding meaning;
3. A reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure;

4. A reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
5. A reference to rupee or Indian rupees to the Indian currency;
6. A reference to time is to the time as per Indian Standard Time
7. A reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors, and permitted assignees and substitutes;
8. A reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
9. A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them as per the applicable laws of India
10. A word or expression defined in the Companies Act has the meaning given to it in the Companies Act ;
11. The meaning of general words is not limited by specific examples introduced by including, for example, or similar expressions;
12. Any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
13. Any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
14. A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
15. If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day; and
16. Headings are for ease of reference only and do not affect interpretation.

1.3 Completion of Schedule

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the schedule, that item will be taken to be 'not applicable' for the purpose of this Contract.

2 Priority of Contract Documents

If there is any inconsistency between any of the documents forming part of this Contract, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

1. Agreement read with NDA and Integrity Pact;
2. Annexures and Schedules;
3. Any attachments to the Schedules; and
4. Documents incorporated by reference in this Contract.
5. RFP Doc. No. _____ 2020 along with subsequently issued Corrigendum
6. Technical and financial 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.

3 Duration of Contract

1. Contract Duration:

This Contract shall begin on the Commencement Date and shall continue for the duration of the Contract Period (refer section 2 of volume I of the RFP) unless terminated in accordance with clause 27 as stated hereunder read with terms of the RFP.

2. Option to extend Contract Period:

- a. The Contract Period may be extended by the Purchaser (refer section 2 of volume I) for further period(s), specified in item 2 of the Contract Details (each an Option Period), on the same terms and conditions, by giving written notice to the Consultant. Such notice must –
 - i. Be at least 30 days; or

- ii. Such other period as specified in item 3 of the Contract Details (Option Notice Period), before the end of the current Contract Period.
3. Any extension exercised in accordance with this clause takes effect from the end of the then current Contract Period.

4 Services to Other Agencies

1. Obligation to provide Services

The Consultant offers to provide the Services to any Nominated Agency of/by NHA in accordance with the requirements set out in this clause 4

2. Separate contracts

Each Agency Order Form agreed with the Consultant in accordance with this Contract will create a separate contract between the Consultant and the NHA for the supply by the Consultant of the requested Services to NHA. For the sake of clarity, the terms and conditions governing each such separate contract will be the same as the provisions of this Contract.

5 General Obligations of the Parties

The parties will, at all times-

1. Act reasonably in performing their obligations and exercising their rights under this Contract;
2. Diligently perform their respective obligations under this Contract; and
3. Work together in a collaborative manner

6 Provision of Services

6.1 Services Obligations

The Consultant must supply the Services-

1. With due skill and care and to the best of the Consultant's knowledge and experience;
2. In accordance with the Performance Criteria;

3. In accordance with relevant Indian industry standards, good industry practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines, including any specified in item 11 of the Contract Details;
4. Using the Specified Personnel (if any);
5. In accordance with all applicable Laws;
6. In accordance with any reasonable directions in relation to the Services given by the Purchaser from time to time;
7. So as to meet the Milestones and other project plan requirements, and where no Milestones or project plan requirements are specified, promptly and without delay; and
8. Otherwise in accordance with the provisions of this Contract

6.2 Consultant Warranties

The Consultant represents and warrants that:

1. It has the right to enter into this Contract;
2. It has all rights, title, licences, interests and property necessary to lawfully perform the Services;
3. It and its Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge and competence to perform the Services;
4. The Services will be complete, accurate and free from material faults; and
5. It will not, nor will it suffer or permit any third party under its direction or control to negligently introduce into the Purchaser 's systems or any Deliverables any Harmful Code.

6.3 Access to Purchaser 's premises

The Purchaser will cooperate with the Consultant by providing access to its premises and facilities as reasonably necessary to enable the Consultant to provide the Services.

6.4 Conduct at Purchaser 's Premises

The Consultant must, if using or accessing the Purchaser 's premises or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in

operation at those premises or facilities whether specifically drawn to the attention of the Consultant or as might reasonably be inferred from the circumstances.

6.5 Subcontracting

Subcontracting is not permitted for this Agreement.

7 Documentation

7.1 Provision of Documentation

The Consultant must give the Purchaser the Documentation specified in the Scope of Work in the format and at the times specified in the Scope of Work.

7.2 Documentation Requirements

The Documentation must at the time of delivery:

1. Be current and accurate;
2. Adequately explain key terms and symbols; and
3. Unless specified otherwise in item 13 of the Contract Details, be in English.

8 Varying the Services

1. Variations proposed by Purchaser If the Purchaser wants to vary the Services:

- a. The Purchaser must request the Consultant in writing setting out the proposed variations;
- b. Within 14 days after receiving the Purchaser 's request or within another period agreed by the parties, the Consultant must respond in writing to the Purchaser specifying what impact those variations will have on: the Service Charges; the Services or Deliverables, including any particular Deliverable; the Consultant's ability to perform its obligations under this Contract (including its ability to meet Milestones); and this Contract; and
- c. Within 14 days after receiving the Consultant's response, or within another period agreed by the parties, the Purchaser must give the Consultant a written notice accepting or rejecting the response.

2. Variations proposed by Consultant

If the Consultant wants to vary the Services:

- a. The Consultant must request the Purchaser in writing setting out the proposed variations and specifying what impact those variations will have on: the Service Charges ; the Services or Deliverables, including any particular Deliverable; the Consultant's ability to perform its obligations under this Contract (including its ability to meet Milestones); and this Contract; and
- b. Within 14 days after receiving the request or within another period agreed by the parties, the Purchaser must give the Consultant a written notice accepting or rejecting the Consultant's request.

3. Changes to Service Charges

Changes to Service Charges associated with a variation in the Services must:

- a. Not exceed any reasonable additional cost; and
- b. Take fully into account any reduction in cost.

4. Effective date of variation

Any variation in the Services takes effect from the date on which the parties execute a Change Order. This Contract will be amended to give effect to the Change Order.

9 Co-operation with Personnel and Purchaser's

The Consultant must in the performance of the Services under the Contract:

- a. Fully co-operate with the Purchaser's Personnel and other contractors; and
- b. Use its best efforts to coordinate its activities so as to support and facilitate, in the Purchaser 's best interests, the timely and efficient completion of all work and other activities to be performed for the Purchaser by any person.

10 Monitoring Progress

1. Progress meetings

The parties will meet at the times set out in the Scope of Work (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. The Consultant must ensure that the Consultant Representative and the Purchaser must ensure the Purchaser Representative is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

2. Reporting

The Consultant must provide the Purchaser with reports in accordance with the Scope of Work.

11 Performance Assessment

11.1 Assessment of Services

Each element of the Services is subject to assessment by the Purchaser against the relevant Performance Criteria.

11.2 Notice of non-compliant Services

- a. If the Purchaser considers that all or part of the Services do not meet the Performance Criteria and/or service levels, the Purchaser must notify the Consultant within Business Days (or such other period as specified in item 14 of the Contract Details) of assessing the Services against the Performance Criteria.
- b. The Purchaser must include reasons for the Services not meeting the Performance Criteria in the notice given under clause a.

11.3 Rectification of non-compliant Services

If the Purchaser notifies the Consultant that all or part of the Services do not meet the Performance Criteria, the Consultant must:

1. Take all necessary steps to ensure that the Services are promptly corrected;
2. Give notice to the Purchaser when the Services have been corrected; and
3. Allow the Purchaser to repeat the assessment of all or part of the Services against the Performance Criteria, within five Business Days after the date of the notice or such other time as agreed between the parties in writing.

11.4 Right to Terminate

If any parts of the Services do not meet the Performance Criteria on more than two occasions, the Purchaser may (in addition to its other remedies) shall have the right to terminate the contract immediately under clause 27 by giving the Consultant written notice.

12 Personnel

12.1 Use of Specified Personnel

The Consultant -

1. Shall deploy personnel as provided in the RFP
2. Shall provision for personnel from additional manpower list as and when requested by NHA
3. Provide the Services or any part of the Services to which their particular experience relates, with the active involvement of, and using the skill of the Specified Personnel; and
4. Ensure that each of the Specified Personnel is aware of and complies with the Consultant's obligations in providing the Services.

12.2 If the Specified Personnel are not available

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in providing the Services, the Consultant must notify the Purchaser immediately. The Consultant must-

1. If requested by the Purchaser, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and
2. Obtain the Purchaser 's written consent prior to appointing any such replacement person. The Purchaser 's consent will not be unreasonably withheld.

12.3 Purchaser may request replacement of Personnel

The Purchaser may at any time request the Consultant to remove from work in respect of this Contract any of the Specified Personnel or the Consultant's Personnel. The Consultant must promptly arrange for the removal of such Personnel and provide for its replacement as per the terms stated in this clause read with clause 17.

13 Intellectual Property Rights

13.1 Auxiliary Material

This clause 13 does not affect the ownership of the Intellectual Property Rights in any Auxiliary Material.

13.2 Third Party Material

The Consultant must obtain all necessary copyright and other Intellectual Property Right permissions before making any third Party Material available as Auxiliary Material for the purpose of this Contract.

13.3 Purchaser ownership of Intellectual Property Rights in Contract Material

1. All Intellectual Property Rights in the Contract Material vest in the Purchaser.
2. Unless otherwise specified in item 16 of the Contract Details, to the extent that: the Purchaser needs to use any of the Auxiliary Material provided by the Consultant to receive the full benefit of the Services (including the Contract Material), the Consultant grants to, or must obtain for, the Purchaser for the period specified in item 6 of the Contract Details, a world-wide, royalty free, nonexclusive license (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Auxiliary Material; the Consultant needs to use any of the:
3. Purchaser Material; or Contract Material, for the purpose of performing its obligations under this Contract, the Purchaser grants to the Consultant, subject to any conditions or restrictions specified in item 7 of the Contract Details and any direction by the Purchaser, a world-wide, royalty-free, non-exclusive, non-transferable license (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate such Material solely for the purpose of providing the Services.
4. The license granted to the Purchaser under clause 2 (section 13.4) does not include a right to exploit the Auxiliary Material for the Purchaser's commercial purposes.

13.4 IPR Warranty

The Consultant warrants that:

1. The Warranted Materials and the Purchaser 's use of those Warranted Materials, will not infringe the Intellectual Property Rights of any person; and
2. It has the necessary rights to vest the Intellectual Property Rights and grant the licenses as provided in this clause 13

13.5 Remedy for breach of warranty

If someone claims, or the Purchaser reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights the Consultant must, in addition to the indemnity under clause 17 and to any other rights that the Purchaser may have against it, promptly, at the Consultant's expense:

1. Use its best efforts to secure the rights for the Purchaser to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
2. Replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person

14 Moral Rights

14.1 Obtaining Consent

To the extent permitted by applicable Laws and for the benefit of the Purchaser, the Consultant must-

1. Give, where the Consultant is an individual; and
2. Use its best endeavours to ensure that each of the Personnel used by the Consultant in the production or creation of the Contract Material gives, genuine consent in writing, in a form acceptable to the Purchaser , to the use of the Contract Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights

14.2 Specified Acts

1. In this clause, unless otherwise specified in item 18 of the Contract Details, Specified Acts means- Falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the Copyright Act, 1957);

2. Materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
3. Reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
4. Adding any additional content or information to the Contract Material.

15 Payment

15.1 Obligations to pay charges

Subject to this clause and the Services meeting the Performance Criteria, the Purchaser must pay to the Consultant the Service Charges as set out in Schedule 3: Payment.

15.2 Consultants to provide invoice

The Consultant must provide a correctly rendered invoice to the Purchaser for the Service Charges in accordance with the requirements specified in Schedule 3: Payment.

15.3 Due date for payment

Unless otherwise specified in Schedule 3: Payment, the Purchaser must make payment of a correctly rendered invoice within 30 days after receiving the invoice. If the payment is not made by the Purchaser within 30 days [or any shorter period specified in the Contract] of receipt of a correctly rendered invoice, the Purchaser will pay simple interest @12 % per annum (or any other higher rate allowed under law) on the undisputed invoice amount.

15.4 Incorrect invoices, under/over payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Consultant, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Purchaser to the Consultant under this Contract.

15.5 Expenses

Unless specified otherwise in Schedule 3: Payment, the Consultant must not charge the Purchaser for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges. The Purchaser is under no obligation to pay any amount in excess of the Service Charges.

16 Taxes

1. NHA or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the Consultant wherever applicable. The Consultant shall pay for all other taxes (except GST) in connection with this Agreement required to be undertaken as a part of this Agreement. GST shall be payable to Consultant by NHA on invoices.
2. NHA or its nominated agencies shall provide Consultant with the original tax receipt of any withholding taxes paid by NHA or its nominated agencies on payments under this Agreement. The Consultant agrees to reimburse and hold the NHA or its nominated agencies harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among NHA or its nominated agencies, the Consultant
3. After the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by the NHA for providing the services i.e. service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expense otherwise payable to the NHA under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the contract price specified in the Contract. However, in case of any new or fresh tax or levy imposed after submission of the proposal the Consultant shall be entitled to reimbursement on submission of proof of payment of such tax or levy. It is clarified that only GST shall be payable by NHA as part of its compliance and all other taxes shall be borne by the consultant itself.
4. The parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible.
5. GST shall be paid additionally by NHA

17 Indemnity

17.1. Subject to Clause 17.2. below, The Consultant undertakes to indemnify NHA (indemnified Party) from and against all losses on account of bodily injury, death or damage to tangible

personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or wilful default in performance or non-performance under this Agreement. If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or Indian patents of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Indemnified Party. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by (a) Indemnified Party's misuse or modification of the Service; (b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party; (c) Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party; (d) Indemnified Party's distribution, marketing or use for the benefit of third parties of the Service; or (e) information, direction, specification or materials provided by Indemnified Party or any third party contracted to it. If any Service is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either (i) procure the right for Indemnified Party to continue using it, (ii) replace it with a no infringing equivalent, (iii) modify it to make it no infringing. The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.

17.2. The indemnities set out in Clause 17.1. shall be subject to the following conditions:

1. The Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
2. The Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defence of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense;
3. If the Indemnifying Party does not assume full control over the Defense of a claim as provided in this Article, the Indemnifying Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses;
4. The Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;

5. All settlements of claims subject to indemnification under this Clause will:
 - a. Be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and
 - b. Include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
6. The Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
7. 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;
8. In the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and
9. If a Party makes a claim under the indemnity Clause above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).

18 Liability and Insurance:

18.1. Liability:

- i. The liability of Consultant (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 in the aggregate exceed the fees and expenses received under this Agreement. The liability cap given under this Clause 18 shall not be applicable to the indemnification obligations set out in Clause 17
- ii. 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) even if it has been advised of their possible existence.

iii. The allocations of liability in this clause 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.

18.2. Insurance :

- i. In connection with the provision of the Services, the Consultant must have and maintain:
 - i for the Contract Period, valid and enforceable insurance policies for: public liability; either professional indemnity or errors and omissions; workers' compensation as required by law.
 - ii. The Consultant must, on request by the Purchaser, provide current relevant confirmation of insurance documentation certifying that it has insurance as required by this clause

19 Confidentiality and Liability

19.1 Confidential information not to be disclosed

1. Subject to clause 19.3., a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
2. In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

19.2 Written Undertakings

1. A party may at any time require the other party to arrange for: its Advisers; or any other third party, other than a Purchaser 's employee, to whom information may be disclosed pursuant to clause 1, to give a written undertaking in the form set out in this Agreement (Individual confidentiality Undertaking).

19.3 Exceptions to obligations

The obligations on the parties under this clause will not be taken to have been breached to the extent that Confidential Information:

1. Is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
2. Is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Contract related activities;
3. Is disclosed by the Purchaser;
4. Is disclosed by the Purchaser, in response to a request by a House or a Committee of the Parliament/Assembly;
5. Is shared by the Purchaser within the Purchaser 's organisation, or with another Agency, where this serves the country's legitimate interests;
6. Is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed; or
7. Is in the public domain otherwise than due to a breach of this clause 19.

19.4 Obligations on disclosure

Where a party discloses Confidential Information to another person:

1. Pursuant to clauses 19.3 (1,2 or 5) the disclosing party must: notify the receiving person that the information is Confidential Information; and not provide the information unless the receiving person agrees to keep the information confidential; or
2. Pursuant to clauses 19.3 (3 and 4), the disclosing party must notify the receiving party that the information is Confidential Information.

19.5 Additional Confidential Information

1. The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.

2. Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of the Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.

19.6 Period of Confidentiality

The obligations under this clause 19 continue, notwithstanding the expiry or termination of this Contract:

1. In relation to an item of information described in Schedule 4: Designated Confidential Information, for the period set out in that Schedule in respect of that item; and
2. In relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the parties in writing in respect of that information

20 Protection of personal information

20.1 Application of the clause

This clause applies only where the Consultant deals with personal information when, and for the purpose of, providing Services under this Contract.

20.2 Obligations

The Consultant acknowledges that it will use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract.

20.3 Subcontracts

Sub-contracting is not permitted for any part of scope of work.

21 Conflict of Interest

Warranty that there is no conflict of interest

The Consultant warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

1. An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the "Conflict of Interest"). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, NHA shall forfeit and appropriate the EMD, if available, as mutually agreed genuine pre-estimated compensation and damages payable to NHA for, inter alia, the time, cost and effort of NHA including consideration of such Applicant's Proposal, without prejudice to any other right or remedy that may be available to NHA hereunder or otherwise.
2. NHA requires that the Consultant provides professional, objective, and impartial advice and at all times hold NHA's interest's paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other Purchaser s, or that may place it in a position of not being able to carry out the assignment in the best interests of NHA .
3. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
 - a. The Applicant, its consortium member (the "Member") or Associates (or any constituent thereof) and any other Applicant, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof. For the purposes of this Clause, indirect shareholding held through one or more intermediate persons shall be computed as follows:
 - where any intermediary s controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to Sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on
 - a proportionate basis; provided, however, that no such shareholding shall be reckoned under this Sub-clause (bb) if the shareholding of such person in the intermediary is less

than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or

- b. A constituent of such Applicant is also a constituent of another Applicant; or
 - c. Such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
 - d. Such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - e. Such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Application of either or each of the other Applicant; or
 - f. There is a conflict among this and other consulting assignments of the Applicant (including its personnel and other members, if any) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing consultancy services to NHA for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
 - g. A firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project;
4. An Applicant eventually appointed to provide Consultancy for this Project, its Associates, affiliates and the Financial Expert, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of <12 months> from the completion of this assignment; provided further that this restriction shall not apply to consultancy/ advisory services performed for NHA in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for NHA in accordance with the rules of NHA .

Notification of a conflict of interest

In the event that the Consultant, its Associates or affiliates are auditors or financial advisers to any of the bidders for the Project, they shall make a disclosure to NHA as soon as any potential conflict comes to their notice but in no case later than 7 (seven) days from the opening of the

RFP applications for the Project and any breach of this obligation of disclosure shall be construed as Conflict of Interest. NHA shall, upon being notified by the Consultant under this Clause, decide whether it wishes to terminate this Consultancy or otherwise, and convey its decision to the Consultant within a period not exceeding 15 (fifteen) days.

22 Security

22.1 Compliance with Purchaser requirements

1. The Consultant must, and must ensure that its Personnel comply with:
2. All relevant security and other requirements specified in the Purchaser 's Privacy and Data Information Security Policy, if the same has been made aware by the Purchaser;
3. Any additional security requirements specified in item 22.3 of the Contract Details; and
4. Any other security procedures or requirements notified, in writing, by the Purchaser to the Consultant. The Consultant must comply with such a security procedure or requirement, from the date specified in the notice, or if none is specified, within five Business Days of receipt of the notice.

22.2 Security clearance

1. The Purchaser may, from time to time, notify the Consultant of the level of security or access clearance applicable to the Consultant's Personnel, and the date from which, or the period during which, that clearance will be effective and the Consultant must comply with and ensure its Personnel act in accordance with that notice.

22.3 Removal of Purchaser Data

The Consultant must not, and must ensure that its Personnel do not:

1. Remove Purchaser Data or allow Purchaser Data to be removed from the Purchaser 's premises; or
2. Take Purchaser Data or allow Purchaser Data to be taken outside of India, without the Purchaser 's prior written consent.

23 Books and Records

1. The consultant must-

- a. Keep adequate books and records, in accordance with Indian Accounting Standards, in sufficient detail to enable the amounts payable by the Purchaser under this Contract to be determined; and
 - b. retain books and records as mandated by law and the same would be made available to the Purchaser and will terminate upon expiry / termination of this Agreement
2. Costs

The Consultant must bear its own costs of complying with this clause.

24 Audit and Access

The Consultant shall:

1. Right to Conduct Audits

The Purchaser or a representative may conduct audits relevant to the performance of the Consultant's obligations under this Contract. Audits may be conducted of:

- a. The Consultant's operational practices and procedures as they relate to this Contract, including security procedures;
- b. The accuracy of the Consultant's invoices and reports in relation to the provision of the Services under this Contract;
- c. The Consultant's compliance with its confidentiality, privacy and security obligations under this Contract;
- d. Material (including books and records) in the possession of the Consultant relevant to the Services or Contract; and
- e. Any other matters determined by the Purchaser to be relevant to the Services or Contract.

2. Access by Purchaser

- a. The Purchaser may, at reasonable times and on giving reasonable notice to the Consultant: access the premises of the Consultant to the extent relevant to the performance of this Contract; require the provision by the Consultant, its employees, agents, of records and information in a data format and storage medium accessible by

the Purchaser by use of the Purchaser's existing computer hardware and software; inspect and copy documentation, books and records, however stored, in the custody or under the control of the Consultant, its employees, agents; and require assistance in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to NHA), any request for information directed to the Purchaser, and any inquiry conducted by Parliament or any Parliamentary committee.

- b. The Consultant must provide access to its computer hardware and software to the extent necessary for the Purchaser to exercise its rights under this clause, and provide the Purchaser with any reasonable assistance requested by the Purchaser to use that hardware and software provided that any proprietary information including confidential information like profit margins, overheads and other such confidential information about its employees, organization would not be made available.

3. Conduct of audit and access

The Purchaser must use reasonable endeavours to ensure that-

- a. Audits performed pursuant to clause 24 subclause 1 ; and
- b. The exercise of the general rights granted by the Purchaser, do not unreasonably delay or disrupt in any material respect the Consultant's performance of its obligations under the Contract.

4. Costs

- a. Except as set out in clause b, each party must bear its own costs of any reviews and/or audits.
- b. If the Consultant is able to substantiate that it has incurred direct expenses in the Purchaser's exercise of the rights granted under RFP and contract Document which, having regard to the value of this Contract, are substantial, the Purchaser and the Consultant will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

5. Comptroller and Auditor-General of India

The rights of the Purchaser under the instant clause apply equally to the Comptroller and Auditor-General of India or a delegate, for the purpose of performing the statutory functions or powers.

6. Consultant to comply with Comptroller and Auditor-General of India's requirements

The Consultant must do all things necessary to comply with the Comptroller and Auditor-General of India's or his or her delegate's requirements, , provided such requirements are legally enforceable and within the power of the Comptroller and Auditor-General of India, or his or her respective delegate.

7. No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Consultant's responsibility to perform its obligations in accordance with the Contract.

8. Subcontractor requirements

No sub-contracting allowed for any part of scope under this agreement.

9. No restriction

Nothing in this Contract reduces limits or restricts in any way any function, power, right or entitlement of the Comptroller and Auditor-General of India or a delegate. The rights of the Purchaser under this Contract are in addition to any other power, right or entitlement of the Comptroller and Auditor- General of India or a delegate.

10. Survival

This clause applies for the Contract Period or till the termination or expiry of this Contract.

25 Unforeseen Events/ Force Majeure

25.1 Definition of Force Majeure

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

25.2 Force Majeure events

1. A Force Majeure shall include, without limitation, the following:
 - a. War, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
 - b. Strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
 - c. Earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;

2. 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.
3. 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 deliverables/milestones shall be extended.
4. 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 25 (Force Majeure).
5. No delay or non-performance by either party to this Agreement 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.
6. 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.
7. In the event of termination pursuant to Clause 25 (Force Majeure), the rights and obligations of the Purchaser and the Consultant shall be as specified in the clause titled Termination.
8. Notwithstanding Clause 25.2 (4), Force Majeure shall not apply to any obligation of the Purchaser to make payments to the Consultant under this Agreement.
9. For the avoidance of doubt, it is expressly clarified that the failure on the part of the Consultant under this Agreement to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement 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 etc. 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, Consultant 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).

26 Dispute Resolution

26.1 Reconciliation Process

If a dispute arises in relation to the conduct of this Contract (Dispute), parties must comply with this clause 26 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief).

26.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute

26.3 Parties to resolve dispute

During the 14 days after a notice is given under clause 26.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a Arbitration Tribunal comprising of three arbitrators, wherein each party shall appoint one arbitrator, and the two such appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator to decide dispute between the Parties. If the parties cannot agree on the appointment of the arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of the jurisdiction at New Delhi, Delhi. 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. Arbitration Proceedings shall be conducted in English. The Arbitration proceedings, its seat and venue will be held at the jurisdiction at New Delhi, Delhi. Any legal dispute will come under the sole and exclusive jurisdiction of courts at New Delhi, Delhi.

26.4 Confidentiality

Any information or documents disclosed by a party under this clause 26 :

1. Must be kept confidential; and
2. May only be used to attempt to resolve the Dispute.

26.5 Costs

Each party to a Dispute must pay its own costs of complying with this clause 26. The parties to the Dispute must bear their own legal costs and comply to bear such costs as may be ordered by Presiding Arbitrator in its award

27 Termination

27.1 Termination and reduction for convenience

1. The Purchaser may, at any time, by a prior written notice of 60 days, terminate this Contract or reduce the scope of the Services, including for a machinery of government change.
2. On receipt of a notice of termination or reduction the Consultant must stop work as specified in the notice; take all available steps to minimise loss resulting from that termination and to protect Purchaser Material and Contract Material; and continue work on any part of the Services not affected by the notice.
3. If this Contract is terminated under this clause, the Purchaser is liable only for payments for Services rendered before the effective date of termination; and reasonable costs incurred by the Consultant and directly attributable to the termination.
4. If the scope of the Services is reduced, the Purchaser 's liability to pay the Service Charges or to provide Purchaser Material abates in accordance with the reduction in the Services.
5. The Purchaser is not liable to pay compensation under clause for an amount which would, in addition to any amounts paid or due, or becoming due, to the Consultant under this Contract, exceed the total Service Charges payable under this Contract except where such costs in incurred with due approvals.
6. The Consultant is not entitled to compensation for loss of prospective profits

27.2 Termination by Purchaser for Default

1. Without limiting any other rights or remedies the Purchaser may have against the Consultant arising out of or in connection with this Contract, the Purchaser may terminate this Contract effective immediately by giving written notice to the Consultant if: the Consultant breaches a material provision of this Contract where that breach is not capable of remedy; the Consultant breaches any provision of this Contract and fails to remedy the breach within 30 days after receiving notice requiring it to do so; or an event specified in clause 27.2 Subclause 3 happens to the Consultant.
2. Without limitation, for the purposes of this clause, each of the following constitutes a breach of a material provision –

- a. Breach of warranty under clause 6.2 (Consultant warranties);
 - b. A failure to comply with clause 12 (Personnel);
 - c. A failure to comply with clause 13 (Intellectual Property Rights);
 - d. A failure to comply with clause 19 (Confidentiality and privacy);
 - e. A failure to comply with clause 20 (Protection of personal information);or
 - f. A failure to notify the Purchaser of a conflict of interest under clause 21 (Conflict of interest).
3. The Purchaser can terminate the contract under the scenarios mentioned below. The Consultant must notify the Purchaser immediately if any of these situations arise –
- a. The Consultant being a corporation, there is any change in the direct or indirect beneficial Ownership or control of the Consultant;
 - b. The Consultant disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - c. The Consultant ceases to carry on business;
 - d. The Consultant ceases to be able to pay its debts as they become due;
 - e. The Consultant being a company enters into liquidation or has a controller or liquidator or administrator appointed;
 - f. The Consultant being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
 - g. Where the Consultant is a partnership, any step is taken to dissolve that partnership.

In this clause, controller and administrator have the same meanings as in the Companies Act.

27.3 Termination by Consultant for Default

Without limiting any other rights or remedies the Consultant may have against the Purchaser arising out of or in connection with this Contract, the Consultant may terminate this Contract by giving at least 60 days' notice to the Purchaser if the Purchaser :

- i. Has not paid a correctly rendered invoice or has not notified the Consultant that it disputes the charges specified under an invoice within 60 days of receipt of that invoice; and
- ii. the Consultant has given the Purchaser: a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Purchaser at least 30 days to pay the invoice; and a second notice 15 days after the first notice, referring to the first notice and giving the Purchaser at least 15 days to pay the invoice.

27.4 After Termination

On termination of this Contract the Consultant must:

1. Stop work on the Services;
2. Deal with Purchaser Material as reasonably directed by the Purchaser; and
3. Return all the Purchaser 's Confidential Information to the Purchaser and/or destroy such documents and/or reports as may be directed by Purchaser on such termination

27.5 Survival

The following clauses survive the termination and expiry of this Contract:

1. Clause 13 (Intellectual Property);
2. Clause 17 (Indemnity);
3. Clause 19 (Confidentiality and liability);
4. Clause 20 (Protection of personal information);
5. Clause 22 (Security);
6. Clause 24 (Audit and access); and
7. Clause 27.7 (Knowledge transfer).

27.6 Termination does not affect accrued rights

Termination of this Contract does not affect any accrued rights or remedies of a party.

27.7 Knowledge transfer, Exit Management and Payment upon Termination

Subject to any qualification or provision to the contrary in the Scope of Work, the Consultant must provide the following assistance to the Purchaser on termination or expiration of this Contract:

1. Transferring or providing access to the Purchaser to all information stored by whatever means held by the Consultant or under the control of the Consultant in connection with this Contract; and
2. Making Specified Personnel and Consultant Personnel available for discussions with the Purchaser. Provided that any matter discussed is not considered to reveal any 'Commercial-in-Confidence' information of the Consultant.

28 Notices and Other Communications

28.1 Service of Notice

A Notice must be:

1. In writing, in English and signed by a person duly authorised by the sender; and
2. Hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in item 26 of the Contract Details, as varied by any Notice given by the recipient to the sender

28.2 Effective on receipt

A Notice given in accordance with clause 28 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

1. If hand delivered, on delivery;
2. If sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside India);
3. If sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 6.00pm on a Business Day, the Notice is taken to be received at 10.00am on the next Business Day.

29 Miscellaneous

1. **Varying the Contract:** No amendment, variation or other change to the Agreement or the Service Levels shall be valid unless authorized in accordance to amendment which shall be made in writing and signed by the duly authorized representatives of the Parties to the Agreement or the Service Levels.
2. Approvals and consents except where this Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.
3. **Assignment and novation:** a party may only assign its rights or novate its rights and obligations under this Contract with the prior written consent of the other party only.
4. **Costs:** Each party must pay its own costs of negotiating, preparing and executing this Contract.
5. **Counterparts:** This Contract may be executed in counterparts. All executed counterparts by both parties shall constitute one document.
6. No merger the rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.
7. **Entire agreement:** This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
8. Further action each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.
9. **Severability:** A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.
10. **Waiver:** Waiver of any provision of or right under this Contract:

- a. must be in writing signed by the party entitled to the benefit of that provision or right; and
- b. is effective only to the extent set out in any written waiver.

11. Relationship:

- a. The parties must not represent themselves, and must ensure that their officers, employees, agents do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- b. This Contract does not create a relationship of employment, agency or partnership between the parties.

12. Announcements:

- a. The Consultant must, before making a public announcement in connection with this Contract or any transaction contemplated by it, obtain the Purchaser 's agreement to the announcement, except if required by law or a regulatory body (including a relevant stock exchange).
- b. If the Consultant is required by law or a regulatory body to make a public announcement in connection with this Contract or any transaction contemplated by this Contract the Consultant must, to the extent practicable, first consult with and take into account the reasonable requirements of the Purchaser .
- c. Where reasonably practicable, the Govt. Agency must, on or before making a public announcement in connection with this Contract or any transaction contemplated by it, provide notice to the Consultant of the general nature of the announcement. For the avoidance of doubt, the Govt. Agency does not require the consent of the Consultant to the making of the announcement.

- 13. Governing law and jurisdiction:** 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.

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Delhi, India.

14. Performance Bank Guarantee/Performance Security:

- a. The Consultant shall, within 15 days after the receipt of letter of award from NHA, furnish unconditional, irrevocable and continuing Performance Securities/Guarantees to NHA, for an amount equal to as specified in section 4.3 of volume II of the RFP in the format as specified in annexure V of volume II of the RFP.
- b. The Performance Guarantee shall contain a claim period of three months from the last date of validity of the contract executed with the successful bidder. The agency 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.
- c. If the performance security is liquidated/encashed, in whole or in part, during the currency of the performance security, the Consultant shall top up the performance security or if the Total Contract Value is increased with the same amount as has been encashed within 15 days of such encashment without or prorated increase.
- d. NHA may invoke the performance guarantee in case the consultant fails to discharge its contractual obligations during the agreement term. In the event of the consultant is being unable to service the Agreement for the reasons attributable to the consultant or any team members, the Purchaser shall have the right to invoke the Performance Guarantee. Notwithstanding and without prejudice to any rights whatsoever of the Purchaser under the Agreement in the matter, the proceeds of the guarantees shall be payable to the Purchaser as compensation for any loss resulting from the failure of Service Provider, or any team members to perform/comply its obligations under the contract. The Purchaser shall notify the bidder in writing of the exercise of its right to receive such compensation, indicating the contractual obligation(s) for which the Service Provider is in default.
- e. The Purchaser shall also be entitled to make recoveries from the consultant's bills, guarantees, or from any other amount due to him, an equivalent value of any payment made to him due to inadvertence, error, collusion, misconstruction or misstatement in terms of RFP and/or contract.
- f. Notwithstanding and without prejudice to any rights whatsoever of NHA under the Agreement in the matter, the proceeds of the PBG shall be payable to NHA as compensation for any loss resulting from the failure of Consultant or any team members to perform/comply its obligations under the contract.
- g. NHA shall notify the Consultant in writing of the exercise of its right to receive such compensation within 30 days, indicating the contractual obligation(s) for which the Consultant is in default.

SIGNED, SEALED AND DELIVERED

For and on behalf of the Consultant and Govt. Agency

SIGNED, SEALED AND DELIVERED:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

In the presence of Witness:

In the presence of Witness:

1

1

2

2

Schedule 1: Contract Details

Item number	Description	Details
1.	Purchaser details	<i>National Health Authority</i>
2.	Consultant details	<i>[insert name of Consultant] [insert street address]</i>
3.	Purchaser Representative	<i>[insert position and/or name of the Purchaser 's representative]</i>
4.	Consultant Representative	<i>[insert position and/or name of Consultant's representative]</i>
5.	Business Hours	<i>As defined in clause 1.1</i>
6.	Commencement Date	<i>[insert date Contract is to commence eg, dd/mm/yy]</i>
7.	Initial Contract Period	<i>As per clause 3</i>
8.	Option Period	<i>NA</i>
9.	Option Notice Period	<i>NA</i>

10.	Nominated Agency	<i>[insert name(s) of any Nominated Agencies. Otherwise insert 'not applicable']</i>
11.	Relevant Industry Standards	NA
12.	Language of Documentation	NA
13.	Period for notification	NA
14.	Specified Personnel	<i>[insert names and positions of Specified Personnel. Otherwise insert 'not applicable']</i>
15.	Intellectual Property Rights – Ownership of Contract Material	<ul style="list-style-type: none"> • <i>clause 13.33.3 (Purchaser Ownership of and license to Intellectual Property Rights in Contract Material) is to apply or;</i>
16.	Intellectual Property Rights – licenses	NA
17.	Purchaser Material	<i>To be decided</i>
18.	Moral Rights – Specified Acts	NA
19.	Additional insurance	NA
20.	Insurance quantum	NA

21.	Security	NA
22.	Costs of security clearances	NA
23.	Unforeseen events termination period	NA
24.	Address for Notices	<i>National Health Authority, 3rd 7th and 9th floor, Jeevan Bharati Building, Connaught Place, , New Delhi</i>

Schedule 2: Scope of Work

Services and Deliverables to be provided under this Contract shall be read in reference to Section 2 of Volume I of the RFP.

Schedule 3: Payment

1. Payments as specified in section 3 of volume I of the RFP
2. Liquidated Damage: Time is the essence of the Agreement and the completion of deliverables within the given timeframe are binding on the Consultant. In the event of delay, for causes attributable to the Consultant, in meeting the deliverables, NHA shall be entitled at its option to recover from the Consultant as provided in section 3 of volume I of the RFP
3. Invoicing requirements as per clause 15.2
4. Payment Period as per clause 15.3

Schedule 4: Designated Confidential Information

1. Confidential information of Purchaser
 - a. Contract provisions/Schedules

- b. Contract-related material
- 2. Confidential information of consultant
 - a. Contract provisions/Schedules
 - b. Contract-related material

Schedule 5: Change Order and Change Control Schedule

Change Order: This Change Order (including its attachments, if any) serves to vary the Contract in accordance with the terms set out below. Unless specifically stated in this Change Order, all terms and conditions of the Contract continue unaffected.

1.	Change Order number	
2.	Raised by	
3.	Details of change (use attachments if required)	
4.	Implementation date of Change Order	
5.	Effect on Services	
6.	Plan for implementing the change	
7.	Effect on Service Charges	
8.	Effect on Performance Criteria	
9.	Effect on Documentation	

10.	Other relevant matters (e.g. transitional impacts)	
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Purchaser

Consultant

Name (print)

Name (print)

Position

Position

Signature

Signature

Date

Date

Schedule 6: Governance Schedule

Purpose

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

Governance Structure

1. The Program Governance Structure to be put in place by NHA will have the following units: i. Steering Committee ii. Program Management Unit The composition of each of the above units will be in line with the approach described in the RFP or as decided by NHA.

2. Project Directors: The relationship under this Agreement will be operated by the Project Directors appointed by each Party, who will provide the interface between the executive management of the respective Parties.
3. Before the signing of this agreement, NHA and the Consultant shall each appoint a Project Director. In the event that either Party wishes to substitute its Project Director it will notify the other Party of such substitution as soon as reasonably practicable but at the latest within seven days of the substitution.
4. The Project Directors shall have responsibility for maintaining the interface and communication between the Parties.
5. Steering Committee: NHA will appoint a Steering Committee before the signing of this agreement.
6. The Steering Committee will meet formally on, at least, a monthly basis at a time and location to be agreed within the Committee. These meetings will cover, as a minimum, the following agenda items: (i) consideration of monthly Performance Reports; (ii) consideration of matters arising out of the Change Control Schedule; (iii) issues escalated in accordance with the escalation procedure as set out in this Schedule; (iv) matters to be brought before the Steering Committee in accordance with this agreement and the Schedules; (v) any matter brought before the Steering Committee by the Consultant under this Article; and (vi) any other issue which either Party wishes to add to the agenda.
7. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in the Terms of Payment Schedule (Schedule III of this Agreement), the Parties agree to discuss in the Steering Committee meeting any appropriate amendment in the MSA or the SLA or Scope of work including any variation to the terms of payment as stated in the Terms of Payment Schedule. Any variation so agreed shall be implemented through the change control procedure as set out in the Change Control Process.

Governance Procedures

1. The Consultant shall document the agreed structures in a procedures manual.
2. The agenda for each meeting of the Steering Committee shall be set to reflect the discussion items referred to above and extraordinary items may be added either with the agreement of the Parties or at the request of either Party. Copies of the agenda for

meetings of the Steering Committee, along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.

3. All meetings and proceedings will be documented; such documents to be distributed to both Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.
4. The Parties shall ensure as far as reasonably practicable that the Steering Committee shall resolve the issues and resolve the objectives placed before them and that members representing each Party are empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achieve this.

Annexure A: Request for Proposal (RFP)

Request of Proposal dated <>, read with all Corrigendum and response to pre bid queries dated <> (collectively referred herein as, 'RFP').

Annexure B: Non-Disclosure Agreement (Service Provider and Personnel)

B.1. Non-Disclosure Agreement (Service Provider)

[Printed on stamp paper value of INR 100/-]

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

BETWEEN

----- having its office at -----
----- India hereinafter referred to as 'Purchaser' or 'NHA' or 'Disclosing Party', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

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

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

WHEREAS:

1. Purchaser is desirous to _____.
2. The Purchaser and SERVICE PROVIDER have entered into an agreement in furtherance of the Project dated _____.
3. Whereas in pursuing the Project (the "Business Purpose"), a Party ("Disclosing Party") recognizes that they will disclose certain Confidential Information (as defined hereinafter) to the other Party ("Receiving Party").
4. Whereas such Confidential Information (as defined hereinafter) belongs to Receiving Party as the case may be and is being transferred to the Disclosing Party to be used only for the Business Purpose and hence there is a need to protect such information from unauthorized use and disclosure.

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

DEFINITIONS AND INTERPRETATION

1. Definitions

Terms and expressions used in the Agreement (including the Introduction) shall have the same meanings set out in Agreement read with RFP.

2. Interpretation

In the Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs and Schedules are to clauses, subclauses, paragraphs of and schedules to the Agreement;
- (b) use of any gender includes the other genders;
- (c) references to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;

(d) references to a 'person' shall be construed so as to include any individual, firm, company, government, state or Service Provider of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);

(e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted;

(f) any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;

(g) references to a 'business day' shall be construed as a reference to a day (other than a Sunday) on which banks in the state of <***> are generally open for business;

(h) references to times are to Indian standard time;

(i) a reference to any other document referred to in the Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and

(j) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of the Agreement.

3. Measurements and Arithmetic Conventions

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

4. Ambiguities within Agreement

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

(a) as between two Clauses of the Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;

(b) as between the provisions of the Agreement and the Schedules, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules; and

(c) as between any value written in numerals and that in words, the value in words shall of agreements

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

5. Term

This Agreement will remain in effect for perpetuity from the date of execution of the Agreement and/or Agreement (“Term”).

6. Scope of the agreement

(a) This Agreement shall apply to all confidential and proprietary information disclosed by Disclosing Party to the Receiving Party and other information which the disclosing party identifies in writing or otherwise as confidential after disclosure to the Receiving Party (“Confidential Information”). Such Confidential Information consists of certain specifications as specified in the RFP and such Information that may be disclosed to the Disclosing Party for and during the Business Purpose, which a party considers proprietary or confidential.

(b) Such Confidential Information may be in any form or medium, tangible or intangible, and may be communicated/disclosed in writing, orally, or through visual observation or by any other means to the Receiving Party.

7. Obligations of the receiving party

The Receiving Party shall:

(a) use the Confidential Information only for the Business Purpose and shall hold the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, considering the nature of the Confidential Information, and

(b) grant access to Confidential Information only to its employees on a ‘need to know basis’ and restrict such access as and when not necessary to carry out the Business Purpose.

(c) cause its employees to comply with the provisions of the Agreement and get an individual undertaking signed from its employees and/or associates as placed at Annexure B.2 and such employees and/or associates shall be instructed, directed and guided by Service Provider to deal with Confidential Information in the same manner as stated in this Non- Disclosure Agreement and RFP. Service Provider shall promptly provide copies of such Individual Undertakings to Purchaser as and when demanded;

(e) prevent disclosure of Confidential Information to third parties;

(f) disclose the Confidential Information to its consultants/contractors on a need to know basis; provided that by doing so, the Receiving Party agrees to bind such consultants/ contractors to terms at least as restrictive as those stated herein. The Receiving Party upon making a disclosure under this Clause shall:

(i) advise the consultants/contractors of the confidentiality obligations imposed on them by this Clause.

(g) upon the Disclosing Party's request, the Receiving Party shall either return to the disclosing party all Confidential Information or shall certify to the disclosing party that all media containing Confidential Information have been destroyed.

(h) not to remove any of the other Party's Confidential Information from the premises of the Disclosing Party without prior written approval.

(i) exercise extreme care in protecting the confidentiality of any Confidential Information which is removed, only with the Disclosing Party's prior written approval, from the Disclosing Party's premises. Each Party agrees to comply with any and all terms and conditions the disclosing party may impose upon any such approved removal, such as conditions that the removed Confidential Information and all copies must be returned by a certain date, and that no copies are to be made off of the premises.

(j) Upon the Disclosing Party's request, the Receiving Party shall promptly return to the Disclosing Party all tangible items containing or consisting of the disclosing party's Confidential Information all copies thereof.

8. Exceptions to confidential information

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

(a) was independently developed by or for the Receiving Party without reference to the Information provided by Disclosing Party.

(b) has become generally available in public domain without breach of confidentiality obligations of the Receiving Party; or

(d) is the subject of a subpoena or other legal or administrative demand for disclosure; provided, however, that the Receiving Party has given the disclosing party prompt notice of such demand for disclosure and the Receiving Party reasonably cooperates with the disclosing party's efforts to secure an appropriate protective order; or

(e) is disclosed with the prior consent of the disclosing party; or

(f) was its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing party and was not previously acquired by the Receiving Party from the Disclosing Party under and obligation of confidence; or

(g) the Receiving Party obtains or has available from a source other than the disclosing party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the disclosing party.

9. Ownership of the confidential information

(a) Each Party recognizes and agrees that all of the disclosing Party's Confidential Information is owned solely by the Disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain.

(b) By disclosing the Confidential Information or executing the Agreement, Disclosing Party does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right. The Disclosing Party disclaims all warranties regarding the information, including all warranties with respect to infringement of intellectual property rights and all warranties as to the accuracy or utility of such information.

(c) Access to Confidential Information hereunder shall not preclude an individual who has seen such Confidential Information for the purposes of the Agreement from working on future projects for the Disclosing Party which relate to similar subject matters, provided that such individual does not refer to the Confidential Information and does not copy the substance of the Confidential Information during the Term. Furthermore, nothing contained herein shall be construed as imposing any restriction on the Receiving Party's disclosure or use of any general learning, skills or know-how developed by the Receiving Party's personnel under the Agreement.

(d) Execution of the Agreement and the disclosure of Confidential Information pursuant to the Agreement do not constitute or imply any commitment, promise, or inducement by either Party to make any purchase or sale, or to enter into any additional agreement of any kind.

10. Dispute resolution

(a) If a dispute arises in relation to the conduct of the Agreement (Dispute), a party must comply with this clause 7 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 7.

(b) A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

(c) During the 14 days after a notice is given under clause 7(b) (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to the Agreement out of or relating to the construction, meaning, scope, operation or effect of the Agreement or the validity of the breach thereof shall be referred to a sole arbitrator to be appointed as mutually decided between the Parties. If the parties cannot agree on the appointment of the arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by

the High Court of the jurisdiction specified in this agreement. 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 seat and venue of Arbitration proceedings will be held at New Delhi.

The validity and interpretation of this agreement shall be governed by the applicable laws of India and Parties shall be subject to the exclusive jurisdiction of the Courts of New Delhi to entertain any disputes.

(b) The Receiving Party agrees that the Disclosing Party shall have the right to obtain an immediate injunction enjoining any breach of the Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

11. Variation

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

12. Waiver

Waiver including partial or conditional waiver, by either Party of any default by the other Party in the

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

(a) shall be in writing

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

(c) shall be executed by a duly authorized representative of the Party; and

(d) shall not affect the validity or enforceability of the Agreement in any manner.

13. Exclusion of Implied Warranties

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

14. Entire agreement

This Agreement and the Annexure together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by

the respective Parties. All prior written or oral understandings offers or other communications of every kind pertaining to the Agreement are abrogated and withdrawn.

15. Severability

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

16. No partnership

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

17. Third parties

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

18. Successors and assigns

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

19. Notices

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

If to Purchaser:

Attn: <***>

Tel:

Fax:

RFP: Selection of PMC for NDHM

Email:

Contact:

With a copy to:

If to the SERVICE PROVIDER:

Attn. <***>

Phone: <***>

Fax No. <***>

20. Language

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

21. Counterparts

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

22. Mitigation

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

23. Removal of difficulties

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the SERVICE PROVIDER by:

RFP: Selection of PMC for NDHM

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of the Purchaser by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

- 1.
- 2.

B.2. Non-Disclosure Agreement (Individual)

I, [Insert Name], the undersigned, having [Insert Staff Number] acknowledge that as an employee/ staff of _____, I will be working as a team member of the _____ project team which is providing, or shall provide (as applicable), certain [Insert services to be provided] ("Services") to National Health Authority("NHA"). I confirm that I have fully read and understood all the terms and conditions of the Non-Disclosure Agreement and Agreement dated [_____] ("Agreement") executed between _____ and NHA in particular to the contents below. With effect from [Insert the effective date of the NDA], I undertake to strictly abide by this undertaking and the Agreement.

To the extent not defined in this undertaking itself, the capitalised terms contained in this letter shall have the meaning attributed to them under the Agreement and/or RFP.

Without prejudice to the generality of the foregoing paragraphs, I agree to the following:

1. Save as required by law or professional regulation (in which case I will immediately inform the _____ to the extent not prohibited by law or regulation), I will not discuss/ disclose, at any time during my work on the Services or at any time thereafter, any Confidential Information with/ to any third party or any employee of _____ or other associated organizations and/or subsidiaries, other than those who need to access such information on a strict need to know basis.
2. If approached by any third party or employee/staff (where such employee/ staff do not require access to the Confidential Information on a need to know basis) to provide any Confidential Information relating to the Services, I will immediately inform the Project Manager and will not disclose any such information without his/ her written consent.
3. I will not remove or destroy any documents, data, files or working papers in whatsoever form (including and not restricted to any in electronic form) in respect of the Services, without the written consent of Project Manager.
4. I will not divulge or make known to any other person, either the password or the unique security password that is assigned to me
5. I will not leave my computer/laptop unattended while still connected in a remote session.
6. I will not discuss any information, status or condition of any NHA / NDHM related information with anyone, including another employee or staff of NHA, in a place or in a manner which may compromise the confidential nature of the information being provided from the NHA.
7. I understand that I am liable to be prosecuted if I publish anything without any official sanction any information that I may have acquired in the course of my tenure of an official appointment or retain without any official sanction any data, sketch, plan, model, article or official documents etc. which are not needed as part of my official duties.
8. In the event that I leave the employment of _____ or my association with _____ gets terminated, I will not discuss/ disclose thereafter any Confidential Information with/ to any other party.

I understand that strict compliance with this undertaking and the Agreement is a condition of my involvement with the Services and a breach hereof may be regarded as an infringement of my terms of employment/ association with _____. I acknowledge that I will be personally liable for any breach of this undertaking and/or the Agreement and that the confidentiality obligations hereinunder shall survive the tenure of my employment/ association with _____. By my signature below, I acknowledge (i) receiving and understanding all the aspects and conditions of this declaration (ii) acceptance of my obligations arising out of this declaration and my agreement to fulfill the same.

Signature: _____

Name (in block letters): _____

Telephone #: _____ Date: _____

Annexure C: Proposal submitted by the Consultant to NHA on <>

Annexure D: NHA 's Letter of Award (LoA) dated <> accepting the Proposal of Consultant

INTEGRITY PACT

As per the Format given in Annexure VI (Pre-contract Integrity Pact) of Volume II of the RFP