



**National Health Authority (NHA)  
Government of India**

## ***REQUEST FOR EMPANELMENT (RFE)***

**“Empanelment of Service Providers for conducting  
Desk Medical Audit, Tele-Verification and Tele-  
Consultation”**

**RFE Number:** S-1206/08/2020–NHA

**Date of Publishing RFE:** 13<sup>th</sup> August 2020

## ***Disclaimer***

The information contained in this Request for Empanelment (RFE) 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 RFE: Request for Empanelment) 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 RFE.

This RFE 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 RFE 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 RFE. The assumptions, assessments, statements and information contained in the RFE 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 RFE and obtain independent advice from appropriate sources.

Information provided in this RFE 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 RFE or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFE and any assessment, assumption, statement or information contained therein or deemed to form part of this RFE 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 RFE.

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 RFE. The issue of this RFE 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

RFE: Medical Audit

incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

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# ***1. Invitation to Empanelment***

New Delhi

Date: August 13, 2020

The Government of India is committed to ensuring highest possible level of health and well-being for all, through a preventive and promotional health care orientation in developmental policies and universal access to good quality health care services without anyone having to face financial hardship. To fulfill this vision, the Government of India conceptualized 'Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana (AB-PMJAY)', a flagship initiative that attempts to move away from sectoral and segmented approach of service delivery to a comprehensive need-based healthcare service. AB-PMJAY adopts a two-pronged approach. Firstly, the creation of health and wellness centers to bring health care closer to homes. Secondly, the formulation of a National Health Protection Mission to protect poor and vulnerable families against financial risk arising out of catastrophic health episodes. For focused approach and effective implementation of AB-PMJAY, an autonomous entity, the National Health Agency was constituted. Established as a Society on 11th May 2018, the agency was registered under the Society Registration Act, 1860. Now the National Health Agency is reconstituted as the National Health Authority through a cabinet decision. Through the decision, the National Health Agency has been dissolved and has been replaced by National Health Authority (NHA) as an attached office to Ministry of Health & Family Welfare. NHA will provide overall vision and stewardship for design, roll-out, implementation and management of AB-PMJAY in alliance with state governments. Inter-alia, this will include, formulation of AB-PMJAY policies, development of operational guidelines, implementation mechanisms, coordination with state governments, monitoring and oversight of AB-PMJAY amongst other.

The objective of this RFE is to select two suitable qualified medical audit agencies and empaneling them for a period of three (3) years for medical audit and related works and services. The agencies shall be empaneled basis the evaluation criteria through a least cost system (L1) method as provided in this RFE.

The website for accessing the information related to this RFE is central public procurement portal (CPPP) i.e. <https://eprocure.gov.in/eprocure/app> and PMJAY website - [www.pmjay.gov.in](http://www.pmjay.gov.in). Interested bidders are requested to submit their proposals on CPPP to the "RFE" on or before 1700 hours 7<sup>th</sup> September 2020.

Thank you and we look forward to receiving your proposal.

Warm regards-

General Manager (Administration),  
National Health Authority

## 2. Fact Sheet and RFE Schedule

S.No.	Reference	Description
1.	RFE number	S-1206/08/2020–NHA
2.	Name of purchaser	Chief Executive Officer, National Health Authority, acting on behalf of the President of India
3.	Date of publishing of RFE	13 <sup>th</sup> August 2020
4.	RFE Title	Empanelment of Service Providers for conducting Desk Medical Audit, Tele-Verification and Tele-Consultation
5.	Availability of RFE document	NHA has published RFE on- a) Central Public Procurement Portal ( <a href="http://www.eprocure.gov.in">www.eprocure.gov.in</a> ) b) Website of PM-JAY ( <a href="http://www.pmjay.gov.in">www.pmjay.gov.in</a> )
6.	Method of selection	Three stage evaluation process comprising of: <ul style="list-style-type: none"> <li>• Pre-Qualification Evaluation,</li> <li>• Technical Evaluation, and</li> <li>• Commercial Evaluation</li> </ul> The selection of the agency shall be based on Least cost based selection. i.e L1 selection method.
7.	Date till which the RFE response/bid should be valid i.e. period of bid validity	The bid proposal shall remain valid for 180 (one hundred and eighty) days from the last date of bid submission.
8.	Earnest Money Deposit and validity	The Bidders shall submit, along with their bids, a Bid security/ Earnest Money Deposit (EMD) as per the details specified in section 5.4 (Bid Security/ EMD) of this RFE. EMD must remain valid for at least <b>45 days beyond</b> the final bid validity i.e. 180 + 45 days from the last date of bid submission.
9.	Pre-bid meeting	<b>Date-</b> 19 <sup>th</sup> August 2020, 1600 hours onwards <b>Venue-</b> National Health Authority Office Conference Room 9 <sup>th</sup> Floor, Tower-1 Jeevan Bharati Building Connaught Place New Delhi (Considering the current situation NHA may decide to conduct the pre-bid meeting through electronic mode, the details for the same shall be posted on PM-JAY website viz. ( <a href="http://www.pmjay.gov.in">www.pmjay.gov.in</a> ))
10.	Pre-Bid Queries	Queries/Clarification(s) must be requested on or before 21 <sup>st</sup> August 2020, up to 2359 hours. Bidders are required to send the queries/clarification request(s) in the manner specified in Annexure 1 (Template for Pre-Bid Queries) of the RFE. The e-mail address for requesting clarification is: <ul style="list-style-type: none"> <li>• <a href="mailto:bk.datta@nic.in">bk.datta@nic.in</a></li> </ul> e-mail must be marked to the above email id.
11.	Bid submission	The last date and time for submission of Proposal is 7 <sup>th</sup> September 2020, on or before 1700 hours. The bidder's proposal needs to be submitted online at <a href="http://www.eprocure.gov.in">www.eprocure.gov.in</a> on or before the last date and time of submission.
12.	Currency	The bidder to state all costs in Indian Rupees only (₹).
13.	Late Bids	Late bids i.e. bids received after the specified date and time of receipt will not be considered.



S.No.	Reference	Description
14.	Date, Time and venue for opening of pre-qualification bids of all bidders	<b>Date-</b> 8 <sup>th</sup> September 2020 from 1700 hours onwards <b>Mode-</b> Electronically on CPPP.
15.	Tentative date, time and venue for opening of technical bids (only of the bidders who have qualified in the pre-qualification stage)	Date- To be announced later. <b>Mode-</b> Electronically on CPPP.
16.	Date, Time and Venue for Technical presentation (only of the bidders who have qualified in the pre-qualification stage)	Date- From 5 days of opening of technical bids. (Considering the current situation NHA may decide to conduct the technical presentation through electronic mode, the details for the same shall be share with all the bidders qualified in pre-qualification stage) Soft copy of presentation to be shared on the below e-mail id: <a href="mailto:Bk.datta@nic.in">Bk.datta@nic.in</a>
17.	Date, Time and Venue for commercial bid opening (only of the bidders who have qualified in the technical evaluation stage)	Date- To be announced later. <b>Mode-</b> Electronically on CPPP.

Table 1: Fact sheet and RFE Schedule

## 3. About Us

### 3.1. Ayushman Bharat PM-JAY

Ayushman Bharat, a flagship scheme of Government of India was launched as recommended by the National Health Policy 2017, to achieve the vision of Universal Health Coverage (UHC). This initiative has been designed so as to meet SDG and its underlining commitment, which is "leave no one behind".

Ayushman Bharat is an attempt to move from sectoral and segmented approach of health service delivery to a comprehensive need-based health care service. Ayushman Bharat aims to undertake path breaking interventions to holistically address health (covering prevention, promotion and ambulatory care), at primary, secondary and tertiary level. Ayushman Bharat adopts a continuum of care approach, comprising of two inter-related components, viz:

- **Health and Wellness Centres (HWCs):** In February 2018, the Government of India announced the creation of 1,50,000 Health and Wellness Centres (HWCs) by transforming existing Sub Centres and Primary Health Centres. These centres would deliver Comprehensive Primary Health Care (CPHC) bringing healthcare closer to the homes of people covering both maternal and child health services and non-communicable diseases, including free essential drugs and diagnostic services. Health and Wellness Centers, are envisaged to deliver an expanded range of services to address the primary health care needs of the entire population in their area, expanding access, universality and equity close to the community. The emphasis of health promotion and prevention is designed to bring focus on keeping people healthy by engaging and empowering individuals and communities to choose healthy behaviors and make changes that reduce the risk of developing chronic diseases and morbidities.
- **Pradhan Mantri Jan Arogya Yojana (PM-JAY):** The second component under Ayushman Bharat is PM-JAY, which aims at providing health benefit cover of Rs. 5 lakhs per family per year for secondary and tertiary care hospitalization to over 10.74 crores poor and vulnerable families (approximately 50 crore beneficiaries) on cashless family floater basis. There is no cap on the family size under the scheme. This scheme was launched on 23rd September 2018 by the Hon'ble Prime Minister Shri Narendra Modi on PAN India basis. PM-JAY has been rolled out for the bottom 40% of poor and vulnerable population. The households included are based on the deprivation and occupational criteria of Socio-Economic Caste Census 2011 (SECC 2011) for rural and urban areas respectively. The scheme subsumed then existing Rashtriya Swasthya Bima Yojana (RSBY), launched in 2008 and Senior

Citizen Health Insurance Scheme, launched in 2017. Therefore, the coverage mentioned under PM-JAY also includes families that were covered in RSBY but were not present in the SECC 2011 database. PM-JAY is completely funded by the Government, and cost of implementation is shared between Central and State Governments.

### **Key features of PM-JAY**

- World's largest health insurance/ assurance scheme fully financed by the government.
- Provides benefit cover of Rs. 5 lakhs per family per year, for secondary and tertiary care hospitalization across public and private empaneled hospitals in India.
- Over 10.74 crore poor and vulnerable entitled families (approximately 50 crore beneficiaries) are eligible for these benefits.
- Provides cashless and paperless access to health care services for the beneficiary at the point of service.
- Will help reduce catastrophic expenditure for hospitalizations, which pushes 6 crore people into poverty each year, and will help mitigate the financial risk arising out of catastrophic health episodes.
- No restrictions on family size, age or gender.
- All pre-existing conditions are covered from day one.
- Covers up to 3 days of pre-hospitalization and 15 days post-hospitalization expenses such as diagnostics and medicines.
- Benefits of the scheme are portable across the country i.e. a beneficiary can visit any empaneled public or private hospital for cashless treatment.

### **3.2. National Health Authority**

National Health Authority is the apex body responsible for implementing India's flagship public health insurance/assurance scheme 'Ayushman Bharat Pradhan Mantri Jan Arogya Yojana'. NHA has been set-up to implement the PM-JAY at the national level. An attached office of the Ministry of Health and Family Welfare with full functional autonomy, NHA is governed by a Governing Board chaired by the Union Minister for Health and Family Welfare. Chief Executive Officer (CEO), an officer in the rank of Secretary to the Government of India manages its affairs. The CEO is the Ex-Office Member Secretary to the Governing Board. To implement the scheme in the State, State Health Agencies (SHAs) in the form of a society/trust have been set up by the States. SHAs have full operational autonomy over implementation of the scheme in the State including extending the coverage to non SECC beneficiaries.

**Key functions of NHA:**

- Formulation of various operational guidelines related to PM-JAY, model documents and contracts to ensure standardization and interoperability.
- Determine the central ceiling for premium (or maximum central contribution for trusts) per family per year to be provided to the States/ UTs and review it from time to time, based on the field evidence and actuarial analysis.
- Develop, and enforce compliance with, standards for treatment protocols, quality protocols, minimum documentation protocols, data sharing protocols, data privacy and security protocols, fraud prevention and control including penal provisions etc.
- Develop mechanisms for strategic purchasing of health care services through PM-JAY, so as to get best return of Government's investment. Create conducive conditions for strategic purchasing by preparing list of packages and their rates and updating those from time to time using a transparent, predictable and evidence-based process. Set up effective and efficient mechanisms to pay to the health care providers through electronic payment systems.
- Set up systems and processes for convergence of PM-JAY with other health insurance / assurance schemes. This will include schemes being implemented by both states and central governments. National Health Authority will also develop a path to converge PM-JAY with schemes targeting both formal and informal sector workers.
- Build a state-of-the-art health information technology ecosystem with requisite foundational components on which PM-JAY and other health systems can be hosted/ linked; Information Technology standards will be developed in consultation with MeitY.
- Explore options including ways to link PM-JAY with the larger health care system, especially primary care, in consultation with Ministry of Health and Family Welfare.
- Work closely with Insurance Regulatory and Development Authority (IRDA) on development and implementation of Health Insurance Regulations targeting insurance companies, Third Party Administrators, hospitals and other stakeholders.
- Effective implementation of PM-JAY across the country and its regular monitoring including taking course corrective actions, as and when required.
- Coordination with various State Governments on a regular basis for implementation of PM-JAY.
- Capacity building of State Health Agencies and other stakeholders continuously.
- Carrying out awareness activities for informing beneficiaries and other stakeholders about the schemes.
- Prevention, detection and control of frauds and abuse.
- Grievance redressal for all stakeholders at various levels.

- PM-JAY will act as Data fiduciary and will be responsible for security of the personal data and health records.
- Set up an efficient monitoring system for the scheme
- Stimulate cross learning, share of best practices amongst states and documentation of these practices.
- Ensure interoperability, standardization and convergence amongst schemes of central ministries.
- Conduct and facilitate policy relevant research and evaluation studies including knowledge sharing and information dissemination at national and international levels.
- Develop strategic partnerships and collaboration with central and state governments, other public and private institutions including not-for-profit institutions, banks, insurance companies, academic institutions including universities, missions, think tanks, and other national and international bodies of repute in areas relevant to the objectives of PM-JAY.
- Generate evidence for the policymakers from schemes data and other research/evaluations so as to facilitate evidence-based-decision making and policy formulation by the Government.
- Act as apex body for State Health Agencies that have been set up to implement PM-JAY.
- Take any decision related to the implementation of the scheme, recruitment rules and hiring of staff, disbursement of grant in aid to the states, and issue relevant directions from time to time, as required.
- Any other activities as assigned by the Government of India from time to time

Bidders are requested to visit <https://pmjay.gov.in/> for details.

### **3.3. Organizational Structure**

The National Health Authority is divided into seven verticals. These cover the operational as well as the support functions for the organization in implementing PM-JAY. Each vertical is headed by an Executive Director and staffed by personnel skilled and experienced in their specific area of work. These are Finance, Administration, Policy & Knowledge Management, Information Technology, Beneficiary Empowerment, Hospital Networking & Quality Assurance, and State Partnerships. Bidders may see the NHA organogram at <https://pmjay.gov.in/about/organogram>

## ***4. Detailed Scope of Work***

The following is the envisaged scope of work under this RFE. It is clarified that the scope of work is not exhaustive but indicative in nature and not limited to the scope provided here and empaneled agencies shall undertake such other tasks, within the scope of the RFE, as may be necessary to implement the scope and the project efficiently and effectively in order to achieve the desired objectives.

### ***4.1. Project Background***

#### ***4.1.1. Definition of Medical Audit***

A medical audit is a systematic review of an episode of medical care with a step-by-step analysis of the medical procedure performed by a provider against the explicit criteria of necessity, quality of care and cost. It includes an in-depth analysis of the procedure performed and verification of associated clinical notes, diagnostics, and documentation to validate if:

- Was the procedure actually carried out?
- If carried out, was it medically justified or necessary?
- Could the case have been treated more conservatively?
- Does the hospital have necessary infrastructure, facilities and manpower including specialists for carrying out said procedure?

#### ***4.1.1.1. Definition of Desk Medical Audit :***

During this process, the medical auditor conducts an audit from his desk, without visiting the hospital. S/he verifies case related documents (prescription, clinical notes, investigation reports, discharges summary, etc.) presented by the hospital at the time of pre-auth request or claim submission, with a purpose to ascertain the necessity of treatment, qualifications of treating doctor and authenticity of claim as evidenced by the documents.

#### ***4.1.2. Doctor Tele-consultation:***

As part of Doctor Teleconsultation, the doctors provided by the bidders shall assist in validating of the data being fed-in the 'Aarogya Setu' app by citizens or from other sources and also carry out high risk beneficiary calling to the Vulnerable Beneficiary identified from beneficiary data and their existing hospitalization data. Data validation from 'Aarogya Setu' app will be carried out in in three step process. Further bucketing of each case on 'Aarogya Setu' and high-risk beneficiary calling in different buckets depending upon outcome. Teleconsultation can also be carried out for any other group of individuals as per requirement including those not using Aarogya Setu app.

#### **4.1.3. Doctor Tele Audit/Verification:**

Doctors are also required to carry out tele audit/verification activity to verify the correctness & accuracy of claims information for high value/suspected claims of AB PM-JAY/convergence schemes as per need. Primary task of bidder in this regard is to carry out tele audit/verification of claims flagged by the authority.

### **4.2. Empanelment Terms**

To ensure continuous support to the projects undertaken by NHA, it proposes to empanel agencies having proven expertise for the scope of work.

The following are the Empanelment Terms: -

1. The detailed Terms of Reference/ Scope of Work, as per requirements, will be shared among the all empaneled agencies.
2. The agency engaged for scope of work defined above would be engaged for PAN India and cannot refuse work till the capacity for the same is available, else it may be terminated
3. Two qualified agencies will be engaged for a period of three (3) years, extension up to two (2) years will be renewed every year subject to satisfactory performance and feedback. Extension of contract will be at sole discretion of NHA.
4. In case the contract is terminated by NHA a notice of one (1) month will be provided. In case of performance issue, it may be reduced to 15 days.
5. In case the agency wants to terminate the contract, it has to give a notice of one (1) month to NHA.
6. Agencies will be empaneled by NHA for providing medical audit services for the defined scope of work in this RFE.
7. The rates finalized shall remain valid during empanelment/extended duration.
8. The empanelment will be initially for a period of three years, which can be extended through mutual consent between NHA and the empaneled agency for a further period of one year.
9. The professionals have to use their own laptops, mobile phone, data cards, development software licenses etc. for doing the project work.
10. In case any travel is required as part of the project, the same will be reimbursed on the actuals up to a limit of 15% of the cost of the work order for the travels approved by NHA.

### **4.3. Geographical Scope**

1. Desk audits can be conducted virtually, and the team can be based anywhere in India. However, team lead may be asked to come to NHA office for meetings or review as per the requirement of NHA.

2. Any work related to project may be done off site i.e. at Agency's location (anywhere in India). However, for requirement gathering, project discussions the resources may have to come to the NHA's office as may be desired by NHA.

## **4.4. Scope of Work**

### **4.4.1. Desk Medical Audit**

1. Conducting Desk Medical audits under PM-JAY
2. Submission of Audit findings in required standard format within stipulated time – 2 days for desk audit
3. Support in capacity building activities for various stakeholders to conduct desk medical audits. Re-imbursement of expenses shall be in addition as per actuals or as per rates/terms set out in the contract.
4. Support for defending litigation/grievances arising subsequent to desk medical audit report out comes in the form of documentation, court appearance, RTI/PIL response etc.as need be. Re-imbursement of expenses shall be in addition as per actuals or as per rates/terms set out in the contract.

### **4.4.2. Doctor Tele Consultation**

1. Provide tele consultation to citizens exhibiting COVID-19 like symptoms identified by Arogya Setu and NHA database, as per given guidelines and protocols
2. Triage callers into appropriate buckets based on the information gathered, using medical judgement and clinical acumen.
3. Medical professionals shall be abreast with COVID-19 protocols and guidelines issued by MoHFW and ICMR from time to time and shall provide information and/or take suitable action based on medical protocols and guidelines.
4. Cases requiring immediate attention shall be escalated as SOS cases to the concerned in the prescribed format with relevant information.
5. Direct caller to appropriate channel based on their need such as state helpline numbers.
6. Shall use simple language and good interpersonal skills in discussing and reviewing patients' medical history.

### **4.4.3. Doctor Tele Audit/ Verification**

1. Carrying out tele-verification of cases flagged by NHA as suspected/high value cases using developed protocols and guidelines
2. Triage callers into appropriate buckets using medical judgement and clinical acumen
3. Cases identified as fraud or red flagged should be handled as per given protocols



4. The language used by the doctor shall be easy to understand to the patients and EHCP representatives and the doctor should have good interpersonal skills

#### 4.4.4. Expected Volumes

Type	Annual Expected Volumes
Desk Audit	140,000
Tele-Verification	300,000
Tele-Consultation	150,000

The tender allows variation in the scope of work by up to 10% as per section 8.10 of the Manual of Procurement of Consultancy and Other Services, read with General Financial Rules 2017. Variation beyond 10% will require the approval of the Competent authority. Further, post-contract variation (if such an event occurs) carried out in the form of an amendment shall be published by NHA on CPPP.

#### 4.5. Resources

1. Empaneled agency to propose resources to be deployed on the project along with the CV format as prescribed in Annexure-3, section 12.5 at the time of on-boarding. Once the resources are approved by NHA then only the same shall be deployed on the project.
2. All resources deployed by the empaneled agency should be working with the agency and should not be a fresh hire i.e. hired in the last 2 months from the effective date of contract.
3. Different profiles need to be proposed against different roles.
4. The bidder shall ensure that the doctor should have
  - a. Laptop/desktop
  - b. Mobile phone with handsfree.
  - c. Good mobile network and internet connectivity
5. The doctor should be able to
  - a. Multitasking i.e. using laptop/desktop and mobile phone.
  - b. Flexibility to work on Weekends and Holidays.
  - c. Good interpersonal communication skills
  - d. Knowledge of Hindi / English is a must. Candidates with additional knowledge of other languages like Gujarati, Marathi, Malayalam, Tamil, Kannada etc. would be an added advantage
  - e. Should demonstrate patience and compassion towards the citizens.
6. All resources proposed by the empaneled agency must be deployed on the project.
7. NHA does not encourage replacement of resources unless it has been explicitly asked for by NHA. If, however, due to some pressing needs, the agency proposes a replacement of

resource(s), the proposed resource(s) shall have similar/ better profile as compared to the resource(s) being replaced with regards to academic profile, relevant work experience and relevant technical expertise. CV of such resources may be provided for approval to NHA two (2) weeks prior to relieving of resource to be replaced. In case a suitable replacement is not found within the stipulated time then penalties as outlined in section 9.2 will apply.

8. NHA shall reserve the right to interview resource(s) proposed by the empaneled agency.
9. The resources proposed shall necessarily be an Indian citizen.
10. The agency shall undertake necessary due diligence to ensure that the personnel deployed have a high level of integrity and high standard of trustworthiness.
11. Bidders should note that, during any subsequent stages of this procurement, NHA may ask for background check and/or security verification (Police verification) of resources proposed by the Bidder and Bidders needs to comply with the same. This is necessary considering the criticality of the Project.

## **5. Instructions to Bidders**

### **5.1. Objectives of this RFE**

The National Health Authority (hereinafter to be referred as NHA), through this RFE, invites Proposals from reputed firms (hereafter referred as 'Bidders or Service Providers') for empanelment of service providers which can meet the evaluation criteria specified in this RFE and deliver the scope. The project information and the broad scope of work is detailed below in Section 4 of this RFE.

### **5.2. General**

1. While every effort has been made to provide comprehensive and accurate information about requirements and specifications, bidders must form their own conclusions to meet the requirements specified in the RFE.
2. The requirements of the RFE shall prevail over any information in the Bid. However, all information supplied by the successful bidder will be treated as contractually binding on the bidder.
3. This RFE supersedes and replaces any previous public documentation and communications, and bidders should place no reliance on such communications.
4. No commitment of any kind, contractual or otherwise shall exist unless and until a formal written contract has been executed by or on behalf of NHA.
5. NHA may cancel this bid process at any time prior to a formal written contract being executed by or on behalf of NHA.
6. This RFE document is non-transferable.
7. The RFE should not be used to market the bidder's product or services.

### **5.3. Availability of RFE Document**

The Bid document can be downloaded for free from <https://eprocure.gov.in/cppp/> and <https://pmjay.gov.in>. The RFE document is available for download on all days and 24 x 7 till the last date of submission of bids.

### **5.4. Bid Security/EMD**

1. The Bidders shall submit, along with their bids, a Bid security/ Earnest Money Deposit (EMD) for an amount of ₹ 15,00,000 as bid security fee in the form of a bank guarantee issued by any nationalized or scheduled commercial bank (of India) in the format provided in Annexure II, section 11.2. The bidders may also submit bank guarantee in the form of account payee demand draft also.
2. The bid security/ EMD shall be submitted in a separately sealed envelope. Bids submitted without the EMD, or without adequate EMD, will be liable for rejection without providing any opportunity to the bidder concerned.

3. EMD in any other form will not be accepted.
4. EMD **must remain valid for at least 45 days** beyond the final bid validity period i.e (180 + 45) days and the validity of the EMD should be extended in the event the last date of bid validity is extended. No interest will be payable by the NHA on the EMD.
5. The EMD is required to protect NHA against the risk of Bidder's conduct which may warrant EMD's forfeiture pursuant to the instances mentioned in clause (9) below.
6. EMDs of all unsuccessful Bidders will be returned, without interest, at the earliest after expiry of the final bid validity and latest on or before the 30<sup>th</sup> day after the award of contract.
7. The EMD of the successful Bidder will be returned, without interest, upon submission of Performance Bank Guarantee (of the amount and in the format specified in Annexure IV) by the successful Bidder.
8. In case the EMD is not received within the stipulated deadline (provided in fact sheet) then NHA reserves the right to forthwith and summarily reject the Proposal of the concerned Bidder without providing any opportunity for any further correspondence by the concerned Bidder.
9. Submission of EMD is applicable to all bidders except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organization or the concerned Ministry or Department.
10. The EMD may be forfeited:
  - a) If a Bidder withdraws the proposal or increases the quoted prices after opening of the Proposal and during the period of Bid validity period or its extended period, if any.
  - b) In case of a successful Bidder, if the Bidder fails to sign the contract in accordance with the terms and conditions (including timelines for execution of the Agreement) of this RFE or fails to furnish the Performance Bank Guarantee in accordance with the terms and conditions (including timelines for furnishing PBG) of this RFE.
  - c) If the bidder is found indulging in any corrupt, fraudulent or other malpractice in respect of the bid;
  - d) If there is a discrepancy between words and figures quoted by the bidder and the bidder does not accept that the amount in words that would prevail over amount in figures.

### ***5.5. Bid Preparation Costs***

1. The bidder is responsible for all costs incurred in connection with participation in this process, including, but not limited to, costs incurred in conduct of informative and other diligence activities, participation in meetings/discussions/presentations, preparation of proposal, in providing any additional information required by NHA to facilitate the evaluation process.

2. NHA will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
3. This RFE does not commit NHA to award a contract or to engage in negotiations. Further, no reimbursable cost may be incurred in anticipation of award or for preparing this RFE.
4. All materials submitted by the bidder will become the property of NHA and may be returned completely at its sole discretion.

## ***5.6. Consortium/Sub-Contracting***

Bidding as a consortium under this RFE is **not allowed** for implementation of any component under the scope of this project. The bidder **shall not be permitted** to sub-contract any part of its obligations, duties, or responsibilities under this contract without the prior written approval of the NHA.

## ***5.7. Debarment from Bidding***

1. A bidder shall be debarred if he has been convicted of an offence –
  - a) under the Prevention of Corruption Act, 1988; or
  - b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.
2. A bidder debarred under Section 5.7 (1) (a) above or any successor of the bidder shall not be eligible to participate in this bidding process for a period not exceeding three years commencing from the date of debarment.

## ***5.8. Authorized Signatory and Authentication of Bids***

The “Authorized Signatory” shall mean the one who has signed the Bid document. The authorized signatory may be either the Principal Officer or the duly Authorized Representative of the Bidder, in which case Bidder **shall submit a power of attorney** authorizing the person to be authorized signatory or board resolution or letter of authorization.

The Authorized Signatory representing the Bidder shall digitally sign all bid documents uploaded on Central Public Procurement Portal (URL: <https://eprocure.gov.in/cppp/>) and attach a scanned copy of the physically signed and stamped Integrity Pact, Letter of Authorization/board resolution/power of attorney and the EMD.

## ***5.9. Language***

The Proposal must be filled by the bidders in English language only. If any supporting documents submitted are in any language other than English, translation of the same in English language is required and should be duly attested by the Bidder. For purposes of interpretation of the documents, the English translation shall govern.

## **5.10. Complete and Compliant Responses**

1. Bidders are advised to study all instructions, forms, requirements and other information in the RFE document carefully. Submission of the proposal shall be deemed to have been done after careful study and examination of the RFE document with full understanding of its implications.
2. The response to this RFE should be full and complete in all respects. Failure to comply with the requirements of this paragraph may render the Proposal non-compliant and the Proposal may be rejected. Bidders must:
  - a) Include all documentation specified in this RFE;
  - b) Follow the format of this RFE and respond to each element in the order as set out in this RFE;
  - c) Comply with all requirements as set out in this RFE.

## **5.11. Late Bids**

1. All Bidders are required to submit their bids (complete in all respects) within the time and date as specified in fact sheet. The Bids received after the due date and the specified time (including the extended period if any) for any reason whatsoever, shall not be entertained. The Bids submitted by telex/telegram/fax/e-mail etc. shall not be considered. No correspondence will be entertained on this matter. NHA shall not be responsible for any delay or non-receipt/non-delivery of the documents. No further correspondence on the subject will be entertained. NHA reserves the right to modify and amend any of the above-stipulated condition/criteria depending upon project priorities vis-à-vis urgent commitments.
2. Given that the bid submission to be made online, it is advised that the Bidder takes all necessary precaution for the same, including submitting the Bid well in advance to avoid any last-minute hassles. The NHA shall not entertain any bids which could not be submitted properly for whatsoever reasons.
3. NHA may, in exceptional circumstances and at its discretion, extend the deadline for submission of proposals by issuing an addendum/corrigendum or by intimating all bidders, in writing or through e-mail, in which case all rights and obligations of NHA and the bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.

## **5.12. Proposal Submission Format**

The entire proposal shall be strictly as per the format specified in this RFE and any deviation may result in the rejection of the RFE proposal. Refer Section 6.4 for the format for Proposal Submission.

### ***5.13. Amendment of the RFE***

At any time prior to the deadline for submission of the proposals, NHA, for any reason, may modify the RFE by amendment/corrigendum and it shall publish the same on the website. Such amendments shall be binding on the Bidders. In case of such modifications, the bidders who have submitted their responses, prior to such amendments, to the original invitation shall be provided with an opportunity to modify or re-submit or withdraw their bids. Bidders are requested to regularly visit the website and check for themselves regarding any addendum/corrigendum issued to the RFE. NHA shall, in no way, be responsible for any lapse of information on part of the concerned bidder(s) for non-checking the website for RFE related updates/information.

### ***5.14. Bid Validity***

Bids must remain valid up to 180 (One Hundred & Eighty) days from the last date of submission of the Bids. NHA may request the Bidder(s) for an extension of the period of validity of the bids which may suitably be extended post such requests. The validity of the EMDs as requested in Section 5.4 should also be suitably extended if called upon to do so by NHA.

### ***5.15. Right to the Content of Proposal***

All bids and accompanying documentation of the bid proposal will become the property of NHA and will not be returned after opening of the bid proposals. NHA is not restricted in its rights to use or disclose any or all of the information contained in the proposal and can do so without compensation to the bidders. NHA shall not be bound by any language in the proposal indicating the confidentiality of the proposal or any other restriction on its use or disclosure.

### ***5.16. Disqualification***

The Proposal is liable to be disqualified in, inter alia, any of the following cases or in case the Bidder fails to meet the bidding requirements as indicated in this RFE:

1. Bid not submitted in accordance with the terms, procedure and formats prescribed in this document or treated as non-conforming proposal;
2. During validity of the bid, or its extended period, if any, the Bidder increases its quoted price after the submission of the bid;
3. The Bidder's Proposal is conditional and has deviations from the terms and conditions of RFE.
4. The Proposal is received in incomplete form;
5. The Proposal is received after the due date and time;
6. The Proposal is not accompanied by all the requisite documents;
7. The Proposal is submitted with lesser validity period;
8. The information submitted in the Pre-qualification Proposal is found to be misrepresented, incorrect or false, accidentally, unwittingly or otherwise, at any time during the processing

of the contract (no matter at what stage) or during the tenure of the contract including the extension period, if any;

9. The Commercial Proposal is enclosed within the Pre-qualification Proposal;

### **5.17. Confidentiality**

Information relating to the examination, clarification and comparison of the RFE shall not be disclosed to any persons not officially concerned with such process until the process is over. Undue use of confidential information related to the process by any firm may result in rejection of its RFE.

### **5.18. Fraud and Corrupt Practices**

1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the selection process. Notwithstanding anything to the contrary contained in this RFE, the NHA shall reject a Proposal without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “Prohibited Practices”) in the selection process. In such an event, NHA shall, without prejudice to its any other rights or remedies, forfeit and appropriate the EMD and/or PBG, as the case may be.
2. Without prejudice to the rights of NHA under clause above and the rights and remedies which the NHA may have under the Agreement, if a Bidder is found by NHA to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the selection process, or after the issue of the Letter of Award (LOA) or the execution of the Agreement, such Bidder shall not be eligible to participate in any tender or RFE issued by NHA during a period of 3 years from the date such Bidder is found by NHA to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
3. For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:
  - a) “Corrupt Practice” means
    - i. the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the selection process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of NHA who is or has been associated in any manner, directly or indirectly with the selection process or the LOA or has dealt with matters concerning the Agreement or arising there from, before or after the execution thereof, at any



time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of NHA shall be deemed to constitute influencing the actions of a person connected with the selection process); or

- ii. save as provided herein, engaging in any manner whatsoever, whether during the selection process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the Award or the Agreement, who at any time has been or is a legal, financial or technical consultant/adviser of NHA in relation to any matter concerning the Project;
- b) “Fraudulent Practice” means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the selection process;
  - c) “Coercive Practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the selection process;
  - d) “Undesirable Practice” means
    - i. establishing contact with any person connected with or employed or engaged by NHA with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the selection process; or
    - ii. having a Conflict of Interest; and
  - e) “Restrictive Practice” means forming a cartel or arriving at any understanding or arrangement among the Bidders with the objective of restricting or manipulating a full and fair competition in the selection process.

## ***5.19. Right to Terminate the Process***

1. NHA may terminate the RFE process at any time and without assigning any reason. NHA makes no commitments, express or implied, that this process will result in a business transaction with anyone.
2. This RFE does not constitute an offer by NHA. The bidder's participation in this process may result in short listing the bidders.

## ***5.20. Conflict of Interest***

1. The Bidder shall not have a conflict of interest that may affect the selection process (the “Conflict of Interest”). Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the NHA shall forfeit and appropriate the EMD, if available, as mutually agreed genuine pre-estimated compensation and damages payable to the NHA for, inter alia, the time, cost and effort of the NHA including consideration of such

Bidder's Proposal, without prejudice to any other right or remedy that may be available to the NHA hereunder or otherwise.

2. NHA requires that the agency provides professional, objective, and impartial services and at all times hold the NHA's interest's paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The agency shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the NHA.
3. Without limiting the generality of the above, the Bidder shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
  - a) The Bidder, or Associates (or any constituent thereof) and any other Bidder, or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest;
  - b) Such Bidder or its Associate receives or has received any direct or indirect subsidy or grant from any other Bidder or its Associate; or
  - c) Such Bidder has a relationship with another Bidder, 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 Proposal of either or each of the other Bidder; or
  - d) There is a conflict among this and other assignments of the Bidder (including its personnel and other members, if any) and any subsidiaries or entities controlled by such Bidder or having common controlling shareholders. The duties of the agency will depend on the circumstances of each case. While providing services to the NHA for this particular assignment, the agency shall not take up any assignment that by its nature will result in conflict with the present assignment; or
  - e) A firm hired to provide similar 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. A Bidder eventually appointed to provide services for this Project shall be disqualified from subsequently providing goods or services related to 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 24 months from the completion of this assignment; provided further that this restriction shall not apply to services performed for the NHA in continuation of this project or to any subsequent services performed for the NHA where the conflict of interest situation does not arise.
5. In the event that the bidder, its Associates or affiliates are auditors or financial advisers to any of the Bidders for the Project, they shall make a disclosure to the NHA as soon as any

potential conflict comes to their notice but in no case later than 7 (seven) days from the receipt of such proposals and any breach of this obligation of disclosure shall be construed as Conflict of Interest. The NHA shall, upon being notified by the bidder under this Clause, decide whether it wishes to terminate this Consultancy or otherwise, and convey its decision to the bidder within a period not exceeding 15 (fifteen) days.

## **6. Bid Process**

### **6.1. Pre-Bid Queries**

Any clarification regarding the RFE can be submitted to NHA as per the submission mode and timelines mentioned in the Fact Sheet. The pre-bid queries should be submitted in the format as mentioned in Annexure I of this RFE, along with name and details of the Bidder submitting the queries. Any requests for clarifications received after the expiry of the due date and time mentioned in the fact Sheet shall not be entertained by NHA. Further, NHA reserves the right to issue or not issue any responses/clarifications/ corrigendum at its own discretion.

### **6.2. Pre-Bid Meeting**

NHA will organize a pre-bid meeting with the prospective bidders as per details provided in the Fact Sheet and may respond to any request for clarifications on, and/or modifications of this RFE. It may formally respond to the pre-bid queries after the pre-bid meeting as mentioned in the Fact Sheet. Only persons, duly authorized by the Bidder, will be allowed to participate in the pre-bid meeting. The authorized representatives should carry a valid proof of identification for verification before the commencement of the pre-bid meeting.

### **6.3. Responses to Pre-Bid Queries and Issue of Corrigendum**

1. NHA will endeavor to provide timely response to all the queries. However, NHA makes no representation or warranty as to the completeness or accuracy of any response made in good faith, nor does it undertake to answer all the queries that have been posed by the Bidders.
2. At any time prior to the last date for receipt of bids, NHA may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the RFE Document. Any modifications of this RFE, which may be necessary as a result of the pre-bid conference or for any other reason, shall be made available by NHA exclusively through a corrigendum/addendum. Any such corrigendum shall be deemed to be incorporated into this RFE.
3. The Corrigendum (if any) & clarifications to the queries from all bidders will be posted on the website or emailed to respective bidders.
4. In order to provide prospective bidders reasonable time for taking the corrigendum into account, NHA may, at its discretion, extend the last date for the receipt of RFE Proposals.

### **6.4. Bid submission format**

1. A three staged bid system will be followed for this RFE with least cost based selection method, i.e L1 method. The three bids to be submitted by bidders on CPPP are –
  - a) Pre-Qualification Bid and

- b) Technical Bid and
  - c) Commercial Bid
2. The bids are to be submitted electronically on CPPP on or before the last date of proposal submission. Bids received in any other form will not be accepted and may lead to rejection of the bid.
  3. The bid response of the Bidder to be submitted and uploaded on CPPP against this RFEP.
  4. This RFE process will be administered through the CPP portal. The bidders are required to submit soft copies of their bids electronically on the CPP Portal, using valid Digital Signature Certificates (DSC) of the officer duly authorized to submit the bid. The bidders are required to enroll on the e-procurement module of the CPP portal. Enrolment on the CPP portal is free of charge. Detailed instructions, FAQ, call center number details are mentioned on CPPP (please visit- <https://eprocure.gov.in/cppp/>). For understanding, bidders are thus advised to go through such instructions (as published on CPPP) and take necessary assistance through the CPPP call center (if required) in order to properly submit their bids on time.
  5. The Bidder should take into account any Corrigendum to this RFE document that may have been published before submitting their Proposals.
  6. The Proposal is to be submitted in four covers as mentioned below-

S. No.	Bid covers	Bid submission
1.	EMD (Fee)	Scan copy to be uploaded on CPPP and original to be submitted to NHA.
2.	Pre-qualification bid	To be uploaded on CPPP
3.	Technical bid	To be uploaded on CPPP
4.	Commercial bid	To be uploaded on CPPP

Table 2: Bid submission format

7. The contents of the bids should be as under-

S. no.	Document Name	Contents
1.	EMD	a) Scan copy of EMD (Original EMD to be submitted in a sealed cover at NHA office).
2.	Pre-qualification bid	a) Pre-Qualification Proposal as per <a href="#">section 7.2.1 (Pre-Qualification Criteria)</a> along with the specified documents/Forms at <a href="#">Annexure II (Pre-Qualification Proposal Format)</a> . b) Checklist of all documents submitted

S. no.	Document Name	Contents
		c) Signed pre-contract Integrity Pact as per <a href="#">Annexure VII (Pre-contract Integrity Pact)</a> d) Power of attorney/Board Resolution as per <a href="#">section 5.8 (Authorized Signatory and Authentication of Bids)</a>
3.	Technical bid	a) Technical Proposal as per <a href="#">section 7.2.2 (Technical Evaluation Criteria)</a> along with the required supporting documents/forms specified at <a href="#">Annexure III (Technical Proposal Format)</a> . b) Checklist of all documents submitted
4.	Commercial bid	a) Commercial Proposal as per the required supporting documents/forms specified at <a href="#">Annexure IV (Commercial Proposal Format)</a> . b) Check list of all documents submitted

*Table 3: Bid submission documents*

Note- Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway.

8. The response to pre-qualification bid, technical bid and commercial bid (as mentioned in the previous paragraph) should be placed in separate folders on the CPP as per the instructions.
9. As part of the bid, bidder should provide one (1) copy of the Pre-qualification bid, and the Technical bid in soft copy (both bids in MS word format and pdf format). In case of any discrepancy, the pdf version shall prevail over the MS word version (The soft copies- MS word to be uploaded in \*.rar extension files on CPP portal)
10. Please note that prices must not be indicated in the pre-qualification bid and technical bid and must only be indicated in the commercial bid. In case any bidder submits prices or any other commercial information in its pre-qualification and/or technical bid then the bids of such bidders will be summarily rejected by NHA.
11. The pre-qualification bid, technical bid and commercial bid should be complete documents and should be in separate single PDF documents. All the pages of the bid must be sequentially numbered and must contain the list of contents with page numbers. Bidders are required to submit all details as per the formats given in the RFE document only. Any deficiency in documentation may result in the rejection of the bid at the sole discretion of NHA.

12. Original EMD is required to be submitted manually at NHA's office in a sealed cover and a scan copy of EMD needs to be uploaded on CPPP by the bidders. While submitting the original EMD, the EMD should be placed in a sealed cover and EMD envelope be super scribed as "EARNEST MONEY DEPOSIT (EMD) FOR RFE # <.....> DATED <....>"- along with bidders name mentioned on the cover. Original EMD must be submitted on or before the last date of submission at the following address-

General Manager (Administration)  
National Health Authority  
9th Floor, Tower-I  
Jeevan Bharti Building  
Connaught Place  
New Delhi – 110001

13. The Bidders are requested to go through the RFE document carefully to understand the documents required to be submitted and the process to be followed as a part of the Proposal. Any deviations may lead to rejection of the Proposal.

14. The Bidder should try to submit the proposal well before the last date and hence to avoid any inconvenience at the last moment. The Bidder will not be allowed to submit the Proposal after the Bid submission time.

15. Each document submitted by the bidder in pre-qualification and technical and commercial proposals must be duly signed by the authorized signatory as per [section 5.8 \(Authorized Signatory and Authentication of Bids\)](#).

## **6.5. Selection of Bidders**

### **6.5.1. Opening of Proposals**

The Proposals will be opened by NHA in the presence of Bidders or their representatives who may be present at the time of opening. The representatives of the bidders are advised to carry the identity card or a letter of authority from the bidder firms to identify their bonafide for attending the opening of the proposal.

There will be three bid-opening events

1. Fee cover opening
2. Pre-Qualification Proposal opening
3. Technical Proposal opening
4. Commercial Proposal opening

The venue, date and time for opening the Pre-qualification Proposal, Technical Proposal and Commercial Proposal are mentioned in the Fact Sheet. The Technical Proposals of only those bidders will be opened who clears the Pre-qualification stage and the Commercial Proposals of only those bidders will be opened who clears the Technical evaluation stage

### ***6.5.2. Preliminary Examination of Proposals***

NHA will examine the Proposals to determine whether they are complete, whether the documents have been properly signed and the proposals are generally in order. Any proposals found to be non-responsive for any reason or not meeting any criteria specified in this RFE, will be rejected by the NHA and shall not be included for further consideration.

Initial proposal scrutiny will be held and the proposals will be treated as non-responsive, if they are:

1. Not submitted in the format as specified in this RFE document;
2. Received without the Letter of Authorization/Power of Attorney/Board Resolution;
3. Found with suppression of details;
4. Submitted with incomplete information;
5. Submitted without the documents required under this RFE;
6. Non-compliant to any of the clauses mentioned in this RFE;
7. Lesser validity period than that prescribed in this RFE

### ***6.5.3. Clarification on Proposals***

During the RFE evaluation, NHA may, at its discretion, ask the Bidder for a clarification of its Proposal. The request for clarification and the response shall be in writing, and no change in the substance of the Proposal shall be sought, offered, or permitted.



## **7. Evaluation Process and Criteria**

### **7.1. Evaluation process**

After the due date of bid submission, NHA shall open each of the bid proposals of bidders on CPPP in the presence of bidder's representatives present and attending. For the purpose of bid opening and proposal evaluation NHA, may constitute an 'Evaluation Committee', which shall evaluate bidders' proposals and may recommend the final bidder for offering the contract. Various phases related to bid evaluation process are outlined as under-

#### **7.1.1. Stage 1: Pre-Qualification**

1. NHA shall first open "Pre-Qualification Proposal" on CPPP in the presence of the bidder's representatives present and attending. The Pre-Qualification proposal MUST contain all the documents mentioned in the RFE. Each of the Pre-Qualification conditions mentioned in Section 7.2.1 (Pre-Qualification Criteria) is MANDATORY. In case the Bidder does not meet any one of the conditions, the bid will be disqualified.
2. Response to the Pre-Qualification Requirements shall be evaluated in accordance with the requirements specified in this RFE (Annexure II (Pre-Qualification Proposal Format)). A checklist has to be created with proper page-wise indexing of all supporting documents

#### **7.1.2. Stage 2: Technical Evaluation**

1. "Technical Proposal" will be opened on CPPP only for bidders who succeed in Stage 1, in the presence of the bidder's representatives present and attending.
2. NHA will review the technical proposals of the short-listed bidders to determine whether the technical proposals are substantially responsive. Proposals that are not substantially responsive are liable to be disqualified at NHA's discretion.
3. The bidder's technical proposal will be evaluated as per the requirements specified in the RFE and technical evaluation framework as mentioned in Section 7.2.2 (Technical Evaluation Criteria).

#### **7.1.3. Stage 3: Commercial Evaluation**

1. The Commercial Bids of only the technical qualified bidders will be opened on CPPP by the EC (Evaluation Committee – constituted by NHA) in the presence of the bidder's representatives.
2. If a firm quotes NIL charges / consideration, the bid shall be treated as unresponsive and will not be considered.
3. Any conditional bid would be rejected.

4. Only fixed price commercial bids indicating price mentioned in the table in section 13.2 of this RFE shall be considered (As per annexure IV).
5. The bid price will include all taxes and levies and shall be in Indian Rupees. Only GST shall be paid by the NHA.
6. If there is a discrepancy between words and figures, the amount in words will prevail.

#### **7.1.4. Opportunity to Represent**

Evaluation Committee may provide opportunity to the bidders (in writing) and seek written response from such bidders, whose proposals, in view of the evaluation committee, are not substantially response as per the evaluation criteria stated in this RFE stating the reason and asking the bidder to reply and represent against the stated rejection.

## **7.2. Evaluation Criteria**

NHA shall evaluate the responses of the bidders to this RFE and scrutinize the supporting documents / documentary evidence. Inability to submit the requisite supporting documents / documentary evidence by the bidders, may lead to rejection. The decision of NHA in the evaluation of proposals shall be final. No correspondence will be entertained outside the process of evaluation with NHA. NHA may ask for meetings with the Bidders or may issue in writing/email to seek clarifications or conformations on their proposals. During the Proposal Evaluation, NHA reserves the right to reject any or all the proposals. Each of the Proposals shall be evaluated as per the criteria and requirements specified in this RFE. NHA may constitute an RFE Evaluation Committee to evaluate the proposals of the bidders. The evaluation committee constituted by the NHA shall evaluate the responses to the RFE and all supporting documents & documentary evidence as mentioned in this section. NHA (or a nominated party) reserves the right to check/ validate the authenticity of the information provided in the Pre-qualification, Technical evaluation and Commercial evaluation and the requisite support must be provided by the Bidder.

The evaluation criteria are as follows-

#### **7.2.1. Pre-Qualification Criteria**

The Bidder's pre-qualification proposal will be evaluated as per the criteria specified in section 7.2.1 (Pre-Qualification Criteria) and section 7.2.2 (Technical Evaluation Criteria). Bidder is expected to comply with each of the clauses of the Pre-Qualification criteria to be eligible to be considered for Technical Evaluation. Failure to meet even one of the Pre-Qualification criteria as mentioned below may lead to rejection of the Bid. Definitions of key terms relating to pre-qualification criteria are given below-

Term	Definition
Net-worth (Consolidated)	Paid-up share capital + Reserves and surpluses (Excluding Revaluation Reserves), as per the Annual Audited financial statement report
Turnover	The total amount of net receipts, from activities in the normal course of business (as per specifications at #5 in the below table), as per the annual audited report
Financial Year	The 12-month period commencing from the 1st day of April of any year and ending on the 31st day of March of the following calendar year.
Auditor	Auditor shall mean the Statutory Auditor of a company/ bidder.

**Table 4 - Terms and Definitions for PQ Criteria**

S. No	Pre-qualification Criteria	Documents Required
1.	Agency should be - a) a registered private or public owned company incorporated under Companies Act 2013 or earlier, in India or b) a Limited Liability Partnership Company under Limited Liability Partnership Act, 2008, or c) A registered NGO, NPO, a society or trust registered under Indian Trusts Act, 1882 or incorporated under the Indian Societies Act, 1860 d) and Registered with the GST Authorities and e) Agency should have a valid PAN number	a) Certificate of Incorporation (copy); b) Certificate c) Certificate d) GST Registration certificate issued by GST authorities (copy) e) PAN Card (copy)
2.	The agency must have at least 30 MBBS doctors (of which at least 5 should be MS/ MD/DNB/ PG diploma in clinical subjects), all doctors must have minimum 3 years of clinical practice /auditing insurance claims in general and health insurance in particular, as on the date of application.	Educational Certificate of doctors and Certificate from HR confirming the same and offer letters issued to the doctors
3.	The Agency must have an annual turnover of at least ₹ 1 crore in the last financial year (2018-19).	Audited financial statements for last financial year or statutory auditor certificate specifying the turnover for the specified year.
4.	The agency should not have any conflict of interest.	Certificate as per format specified in Annexure-2
5.	Should not have been blacklisted by any central / state Government institution/Insurance company/ TPA and there should be no proven charges in a litigation with any government department on account of similar services must be submitted	Certificate as per format specified in as per Annexure-2
6.	The Bidder should not be involved in any litigation which may include but not limited to fraud, FEMA violations that may have an impact of affecting or	Certificate as per format specified in as per Annexure-2

S. No	Pre-qualification Criteria	Documents Required
	compromising the delivery of services as required under this contract	

**Table 5: Pre-qualification criteria**

### 7.2.2. Technical Evaluation Criteria

This section provides details on the technical evaluation criteria. While the Bidder will be evaluated on the technical evaluation criteria mentioned below, all the documents/forms specified in [Annexure III \(Technical Proposal Format\)](#) are also required to be mandatorily submitted and non-submission may lead to rejection of the Proposal.

Note-

- The overall technical cut-off will be 70%.
- To qualify in the technical evaluation stage, it is mandatory for the bidders to qualify in each of the sections and sub-sections specified against each sub evaluation criteria (provided in later sub-sections). It is clarified explicitly that if any bidder fails in any one sub-section but overall scores equal to or more than 70% score then the bidder will be disqualified.
- The bidders who qualify the minimum technical cut-off i.e. 70 % overall and in each sub-section of technical evaluation shall be assigned marks based on their proposals. The bidder with highest total marks shall be placed at T1 and subsequent bidder on T2 and so on.
- The following sections explain how the bidders will be evaluated on each of the evaluation criteria  
The Bidder's technical Proposal will be evaluated as per the evaluation criteria mentioned in the following sub-sections.

S No.	Evaluation Criteria	Total Marks	Minimum Cut-off (70%)
1	Proposed Resources	50	$\geq 35$
2	Approach and Methodology	40	$\geq 28$
3	Presentation	10	$\geq 7$
Total		100	$\geq 70$

**Table 6: Technical evaluation criteria (summary)**

#### 7.2.2.1. Proposed Resources

- For a project of such a scale and complexity, it is imperative that the bidder should deploy best in class professionals to ensure successful execution of this project.
- All proposed resources should be Indian citizens. NHA may at any point in time during the course of the project ask for a proof of the same.
- The bidder will, in its bid, include the names and detailed Curriculum Vitae (CV) of their key resources (as specified in the table below) in the CV format as given in section 12.5 of Annexure III of this volume of the RFE.

S.No	Criteria	Minimum Criteria	Max Marks	Scoring
1	Number of MBBS Doctors associated with the firm	30 MBBS doctors with minimum 3 years of experience	10	2 mark for each additional (over and above 30) MBBS doctor proposed,

S.No	Criteria	Minimum Criteria	Max Marks	Scoring
				subject to a maximum of 10 marks.
2	Proposed resources qualifications	5 doctors MD/MS/ DNB/ PG diploma in clinical subjects with min 3 years of experience	20	5 marks for each additional (over and above 5) MD/MS/ DNB/ PG diploma in clinical subject doctor, subject to a maximum of 20 marks
3	Resources with experience in Medical audits/tele verification of Mass health schemes/private Health Insurance		20	<ul style="list-style-type: none"> <li>• 1-3 years – 1 mark/resource</li> <li>• 3 – 7 Years – 2 marks/resource</li> <li>• 7 + Years – 3 marks/resource</li> </ul> Subject to a maximum of 20 marks.

#### **7.2.2.2. Approach and methodology**

Bidders are required to submit a write-up of the proposed Approach and Methodology as per the requirements specified in the scope of work.

#### **7.2.2.3. Presentation**

In addition to the technical bid documents, bidder will need to prepare a technical presentation covering all aspects. The focus of the presentation should be to showcase understanding of the requirements, approach and methodology proposed and technical support for the project. The technical presentation is not to be submitted along with the technical bid; bidder's will be notified separately for technical presentation (refer section 2 (Fact Sheet)).

#### **7.2.3. Commercial Evaluation Criteria**

1. The bidders are required to quote the Unified rate for one medical audit/ 3 tele verification/ 6 tele consultation as mention in Annexure III, section 13.2 of this RFE.
2. Bidder's needs to provide their commercial bid as per the format provided in the RFE (Annexure-III).

3. Commercial evaluation shall be conducted on the basis of the price rate quoted by the respective bidders and basis that bidders will be placed at L1 (i.e. at lowest cost), L2 and so on.

## **8. Award of Contract**

### **8.1. Award Criteria**

1. On discovery of lowest (L1) rate for the “Unified rate”, Bidder quoting L1 rate will be empaneled for that Resource Type. Initially empanelment will be for the period of 3 (three) years with possibility of extension for 2(two) years, renewed every year based on satisfactory performance and requirement of NHA. Any extension beyond initial duration (i.e. 3 years) will be for a term as may be mutually agreed between the Parties. However extension may be done at sole discretion of NHA.
2. Bidders quoting L2 (will be preferred first), L3, L4 and so on will be offered to match L1 rates and on receiving their willingness to match L1 rates and request for empanelment, only two bidders will be empaneled for the period mentioned above.
3. All agencies wishing to be empaneled by matching with L1 rates are required to submit their willingness in writing within 3 working days of discovery of L1 rates.
4. NHA shall issue a ‘Letter of Empanelment’ to the L1 bidder and one other agency who is willing to match L1 prices to empanel for provision of services.
5. Empanelment agreement will be signed with the qualified agencies.

### **8.2. Letter of Empanelment**

Prior to the expiration of the bid validity period, NHA will notify the successful bidder in writing or by fax or email through a letter of empanelment. In case the tendering process / public procurement process has not been completed within the stipulated period, NHA, may like to request the bidders to extend the validity period of the bid. The letter of empanelment will constitute the formation of the contract. Bid securities of the unsuccessful bidders shall be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30<sup>th</sup> day after the award of the contract to the successful bidder(s).

### **8.3. Allocation of work**

1. As this is a rate contract, quantity of work is not provided in this document. NHA will provide Work Order specifying quantity, delivery period and other details to empaneled agency on the basis of their wherever required. Agency shall comply with all work orders.
2. Work Orders will be issued by NHA at its sole discretion considering factors such as location, capacity and urgency of work. Decision to issue Work Order to the empaneled agency will be on the basis of proposed solution presented by all the empaneled agencies for the particular Work Order in their technical proposal and presentation before NHA. NHA

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may award the Work Order to the empaneled agency in 60:40 ratio (60% for L1 bidder).

3. If the agency provides reasons for its inability to carry out work in stipulated timelines or quantity (as mentioned in Work Order), then NHA, reserves a right to bifurcate the work and distribute amongst the empaneled agencies.
4. Work Order issued by NHA is binding and failure to comply with the same will be treated with penalty as mentioned in Section 9.2 of this RFE. This shall be applicable in the event all of the agencies amongst the empaneled agencies shows inability of executing the Work Order.

### **8.4. Performance Guarantee**

The NHA will require the selected bidder to provide a Performance Bank Guarantee/Performance security, within 7 days from the Notification of award, for a value equivalent to 10% of the total cost of work order. The Performance Guarantee shall be kept valid by the bidder till completion of the work order. The Performance Guarantee shall contain a claim period of three months from the last date of validity. The selected bidder shall be responsible for extending the validity date and claim period of the Performance Guarantee as and when it is due on account of non-completion of the work order. In case the selected bidder fails to submit performance guarantee within the time stipulated, the NHA at its sole discretion may cancel the work order without giving any notice. NHA shall invoke the performance guarantee in case the selected Bidder fails to discharge their contractual obligations during the period or NHA incurs any loss due to Bidder's negligence in carrying out the work order as per the agreed terms & conditions. The performance guarantee/security may either be submitted as per format indicated in Annexure IV of this RFE or through an account payee demand draft.

### **8.5. Contract Signing**

1. Within 5 days of receipt of the notification of award or letter of empanelment (LOA), the successful Bidder(s) shall communicate its acceptance to the said letter of intent.
2. Within 7 days of the acceptance, the successful bidder(s) shall execute the Services Agreement/contract and the Non-disclosure agreement.
3. If the successful bidder fails to execute the agreement within the stipulated time period (or such other extended timelines as agreed by the NHA in its sole discretion), the NHA shall have the right to forfeit the EMD of successful bidder(s).
4. The successful bidder is expected to commence its service within 5 days from its acceptance to notification of empanelment of contract by NHA.



***8.6. Failure to Agree with the Terms and Conditions of the RFE***

Failure of the successful bidder to agree with the Proposed Contract terms and Terms & Conditions of the RFE shall constitute sufficient grounds for the annulment of the empanelment.

## 9. *Payment Terms*

1. The undisputed payments shall be made to the empanelled agency on the basis of the amount specified in the work order i.e. the payments shall be made to the agency on the unified rate mentioned in section 13.2 of this RFP upon the completion of work order given to empanelled agency subject to service levels and penalties described in section 9.1 and 9.2 of this RFE.
2. The agency to get the assigned work reviewed from the NHA and once NHA accords its acceptance then only the undisputed payments shall be given to the agency for the work order. However, during review if any rework is required then the same shall be done by the agency at no extra cost to NHA.
3. The total cost shall include all kinds of costs/taxes except GST.
4. Cost of travels (if any) is required to be borne by the agency itself. The bidders are required to quote an all-inclusive cost in the commercial proposals.
5. Only GST (goods and services tax) shall be paid by the NHA. Any other cost (including tools/software/hardware) related to fulfilment of the requirements shall be exclusively borne by the agency.
6. The payments to the selected agency shall be made on a quarterly basis (or as applicable in case the work is to be completed within the quarter) subject to the terms and conditions stipulated herein.
7. Advance payments will not be made.
8. The agency to prepare a “work done report per quarter” and submit to NHA. Basis, the satisfaction of NHA on this report the payments shall be approved for the agency. The payment shall be made to the agency on quarterly basis.
9. The payments which are linked to acceptance of the deliverables will be released to Agency only on satisfactory acceptance of the deliverables for each Service as per Work Order. Each of the Services, as specified in the Scope of Work, to be rendered by the Agency under the terms of this Agreement, shall be provided in a accordance with the instructions and requirements of the Purchaser, as notified to Agency in writing The fee payable for Services as specified in the Purchase orders shall be paid in accordance with the payment schedule mentioned herein above; provided that the Purchaser shall have the right to require phased deployment of Services and personnel required for performance of such Services, and Agency shall ensure commissioning of such Services and deployment of the required personnel in accordance with such instructions of the Purchaser.
10. It is expressly agreed that the price/fees mentioned in the Proposal by the MSP shall be deemed to include all ancillary and incidental costs and charges that are necessary for accomplishment of the scope of work and obligations mentioned in the RFP and this Agreement. No invoice for extra work/charge order on account of change order will be submitted by the MSP unless the said extra work/change order

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has been authorized/approved by the Purchaser in writing in accordance with the clause on Change Order.

### 9.1. Service Levels on resource deviation

#	Parameter	Description	Penalty
1.	Substitution of resources whose CVs were provided before acceptance of work order	Substitution of such resources shall not be allowed unless approved by NHA. In all such scenarios the CVs of the replacement should be placed to NHA at least.	Penalty of ₹30,000/- per substitution of resources if approval of NHA is not taken
2.	Any further replacement of resources during the duration of the project	Resources initially deployed are not to be replaced during the tenure of the Project. In case resources are replaced, penalties will apply. In case of resignation, bidder to inform NHA at least 1 month before his/her release and deploy resource with similar profile with approval of NHA to avoid penalty. CV of such resources may be provided for approval to NHA two (2) weeks prior to relieving of resource to be replaced. In case a suitable replacement is not found within the stipulated time then penalties will apply.	Resource replaced before completion of work - ₹30,000/- penalty per resource replacement
3.	Resource replacement due to performance	If any resource is not performing as per business expectation to NHA, the same needs to be replaced immediately (within 4 weeks) at the request of NHA.	If any delay is caused, then a penalty of ₹2000 per day per resource would be applied.
4.	Resource replacement due to resignation	If any resource resigns or take leave (of >=15 days) from the project, then the same needs to be replaced with a similar resource, of same qualification and experience, by the agency (within 4 weeks) to ensure business continuity, after approval from NHA.	If any delay is caused beyond 30 days, then a penalty of ₹2000 per day per resource would be applied.

Table 7: Service Levels

- NHA shall reserve the right to interview resources proposed by the agencies.

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- The agency shall undertake necessary due diligence to ensure that the personnel deployed have a high level of integrity and high standard of trustworthiness.
- Agencies should note that, during any subsequent stages of this procurement, NHA may ask for background check and/or security verification (Police verification) of resources proposed by the Agency and they need to comply with the same. This is necessary considering the criticality of the Project.

## 9.2. Penalties

The following are the penalties pertaining to project delivery:

S. No	Type of Audit	Turnaround time	Penalty
1	Desk Medical Audit	Within 2 days	If any delay is caused beyond 2 days, then a penalty of ₹200 per day per desk audit would be applied.
2	Doctor Tele Consultation	Within 2 days	If any delay is caused beyond 2 days, then a penalty of ₹100 per day per desk audit would be applied.
3	Doctor Tele Verification	Within 2 days	If any delay is caused beyond 2 days, then a penalty of ₹100 per day per desk audit would be applied.

- I. In case any of the services performed by the appointed Agency fail to conform to the assigned work order or in the event of failure of the work order due to indifferent (such as inadequate interactions with NHA), negligent (such as quality of deliverables not up to the mark), non-supportive attitude (such as non-engagement of adequate resources in the prescribed time frame) of the appointed Agency, then NHA may decide to abort the contract because of such failure and shall encash the PBG for that work order.
- II. Limitation of Liability (LoL): The aggregate liability of the agency under this agreement, or otherwise in connection with the services to be performed hereunder, shall in no event exceed the total fees payable to the agency hereunder. The preceding limitation shall not apply to liability arising as a result of the agency's fraud or wilful misconduct in performance of the services hereunder.

# 10. Conditions of the Contract

## 10.1. Bank Guarantee

- i. The Agency shall furnish, within 15 days of issuance of Letter of Award by the Purchaser to the Agency, an unconditional, irrevocable and continuing Bank Guarantee, from a schedule bank in India, equivalent to 10% of Total value of Contract in a form and manner acceptable to the Purchaser, which should remain valid till 6 months after expiry of the Term of the Agreement (Performance Guarantee).
- ii. In the event of the Agency being unable to service the Agreement for the reasons attributable to the Agency, its subcontractors, 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 Agency, its subcontractors, 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 within 30 days, indicating the contractual obligation(s) for which the Agency is in default.
- iii. The Purchaser shall also be entitled to make recoveries from the Agency'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.
- iv. In case the Project is delayed beyond the Timelines as mentioned in RFP due to reasons attributable to Agency, its subcontractors, or any team members, the Performance Guarantee shall be accordingly extended by the Agency till completion of scope of work as mentioned in RFP.

## 10.2. Intellectual Property Rights

- i. Each Party acknowledges that the ownership of and all rights in relation to Intellectual Property of either Party or any third party on Pre-existing Work shall continue to remain property of that Party or the third party, as the case may be and that there is no change to any right, title or interest in Intellectual Property over such

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Pre-existing work by virtue of this Agreement. However, to the extent Agency's Pre-existing Work is embedded in the deliverables and/or work developed or prepared under the RFP/Agreement, Agency agrees that it shall grant to NHA non-exclusive, perpetual, fully paid-up license to use its Pre-existing Work in the form delivered to it in connection to the Agreement.

- ii. Neither Party may use the trademarks of the other Party without the prior written consent of the other Party.
- iii. Agency acknowledges that all deliverables / reports / work developed, prepared and completed including work-in-progress, during the Term of the Empanelment and extension thereof, shall belong to NHA and shall remain sole and exclusive property of NHA and all the Intellectual Property Rights in respect of the same shall vest with NHA. Agency acknowledges that all such deliverables / work shall be "work made for hire" by Agency for NHA.
- iv. Agency acknowledges that the deliverables / work prepared under this Agreement shall be considered as "work made for hire" by the Agency for NHA, and, therefore, deliverables shall remain the sole and exclusive property of NHA.
- v. Agency shall bear full responsibility for the intellectual property violation, and any compensation / fines / damages in this regard shall be fully borne by the Agency . If, as a result of such violation, NHA is enjoined from using such Third Party IPR or any part thereof or in is likely to be enjoined, Agency, at its expense, shall (i) modify the Third Party IPR (provided its functionality is not impaired) so that it is no longer infringing and obtains a certificate to the said effect from the third party claiming infringement, or (ii) obtain the right for NHA to continue use of such Third Party IPR.
- vi. Ownership of Documents: The Purchaser shall own all Documents provided by or originating from the Purchaser and all Documents produced by or from or for the Agency in the course of performing the Services. Forthwith upon expiry or earlier termination of this Agreement and at any other time on demand by the Purchaser, the Agency shall deliver to the Purchaser all Documents provided by or originating from the Purchaser and all Documents produced by or from or for the agency in the course of performing the Services, unless otherwise directed in writing by the Purchaser at no additional cost. The Agency shall not, without the prior written consent of the Purchaser store, copy, distribute or retain any such Documents.

## **10.3.Taxes & Duties**

The Agency is liable for all taxes and duties etc. as applicable. All prices quoted for the purpose of this RFP and the resultant agreement/contract shall be inclusive of all applicable taxes.

## **10.4.Liquidated Damages**

Time is the essence of the Agreement and the delivery dates are binding on the Agency. In the event of delay or any gross negligence in implementation of the project, for causes solely attributable to the Agency, in meeting the deliverables, NHA shall be entitled at its option to recover from the Successful Bidder as agreed, liquidated damages, a sum of <0.5%> of the value of the deliverable which suffered delay or gross negligence for each completed week or part thereof subject to a limit of <10%> of the total contract value. This right to claim any liquidated damages shall be without prejudice to other rights and remedies available to NHA under the contract and law. Once the maximum deduction is reached, NHA may consider termination of the Contract.

## **10.5.Events of Default, Termination and Suspension**

### **10.5.1. *Events of Default***

- i. The failure on the part of the Agency to perform any of its obligations or comply with any of the terms of this Agreement shall constitute an Event of Default on the part of the Agency . The events of default as mentioned above may include, inter-alia, the following:
  - a. the Agency has failed to perform the obligations under this Agreement; or
  - b. Agency has exceeded cap on any liquidated damages;
  - c. the Agency or its team has failed to conform with any of the service specifications as set out in the RFP or this Agreement;
  - d. the Agency has failed to demonstrate or sustain any representation or warranty made by it in this Agreement, with respect to any of the terms of its Proposal, the RFP and this Agreement;
  - e. There is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to the Agency ;
  - f. The Agency or Sub-contractor has failed to comply with or is in breach or contravention of any Applicable Laws;

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- g. There is an undue delay in achieving the agreed timelines for delivering the services under this Agreement due to reasons attributable to the Agency ;
  - h. Where it comes to the Purchaser's attention that the Agency or sub-Contractor is in a position of actual conflict of interest with the interests of the Purchaser, in relation to any of terms of the Agency's Proposal, the RFP or this Agreement;
  - i. not providing support for effecting data migration or not providing the certification of User Acceptance
  - j. If it comes to knowledge of the Purchaser that the Agency or any of their personnel or their sub-contractors or such sub-contractor's personnel have been involved in any fraudulent or corrupt practices or any other practice of similar nature.
- ii. Where there has been an occurrence of such Event of Defaults, inter alia, as stated above, the Purchaser shall issue a notice of default to the Agency , setting out specific defaults deviances omissions and providing a period of up to thirty (30) days to enable the Agency to remedy the default/deviances omissions committed.
- iii. Where despite the issuance of a default notice to the Agency by the Purchaser the Agency fails to remedy the default to the reasonable satisfaction of the Purchaser, the Purchaser may, where it deems fit, issue to the Agency another default notice or proceed to adopt such remedies as may be available to the Purchaser including but not limited to the remedies provided in clause 10.5.2 (Consequences for Events of Default) below.
- iv. The Purchaser may by giving a one month's written notice, terminate this Agreement if a change of control of the Agency has taken place. For the purposes of this Clause, in the case of Agency , change of control shall mean the events stated in Clause 10.8 (Change of Control), and such notice shall become effective at the end of the notice period as set out in Clause 10.8 (Change of control).
- v. In the event that Agency undergoes such a change of control, Purchaser may, as an alternative to termination, require a full Performance Guarantee for the obligations of Agency by a guarantor acceptable to Purchaser or its nominated agencies. If such a guarantee is not furnished within 30 days of Purchaser's demand, the Purchaser may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the Agency .

### **10.5.2. Consequences for Events of Default**

Where an Event of Default subsists or remains uncured even after expiry of 30 days as mentioned in clause 10.5.1 (ii) (Events of Default), the Purchaser shall be entitled to:



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- i. Impose any such reasonable obligations and conditions and issue any clarifications as may be necessary to, inter alia, ensure smooth continuation of the Services and the project which the Agency shall be obliged to comply with. The Agency shall in addition take all available steps to minimize loss resulting from such event of default.
- ii. Suspend all corresponding and relevant payments to the Agency under the Agreement (except for milestones which have been successfully achieved) by written notice of suspension to the Agency provided that such notice of suspension shall (a) specify the nature of failure; and (b) request the Agency to remedy such failure within a specified period from the date of receipt of such notice of suspension by the Agency .
- iii. Terminate this Agreement in full or in part.
- iv. Invoke the Performance Bank Guarantee and other Guarantees furnished hereunder, enforce indemnity provisions, recover such other costs/losses and other amounts from the Agency which may have resulted from such default and pursue such other rights and/or remedies that may be available to the Purchaser under law.

### **10.5.3. Termination for Breach**

The Purchaser may, terminate this Agreement by giving the Agency a prior and written notice of up to 30 days indicating its intention to terminate where the Purchaser is of the opinion that there has been such Event of Default on the part of the Agency which has not been cured within the 30 days' notice period provided under clause 10.5.1 (ii) (Events of Default). The Purchaser may, in its sole discretion, afford a further reasonable opportunity to the Agency to explain the circumstances leading to such a breach and may increase the time limit for curing such breach before terminating the Agreement.

### **10.5.4. Termination for Convenience**

10.4.4.1. The Purchaser may, by written notice of 90 (ninety) days sent to the Agency, terminate the Agreement, in whole or in part at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective. The Purchaser may, at its discretion, relax or absolve the Agency from following the timelines and/or Service Levels related to the part of the Agreement which is being terminated.

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

- i. Cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the Services already executed, or any work required to leave the site in a clean and safe condition
- ii. Terminate all subcontracts, except those to be assigned to the Purchaser pursuant to Clause 10.5.2 (iv) (b) (Consequences for Events of Default) below;
- iii. Remove all Agency's Equipment from the site, repatriate the Agency's, remove from the site any wreckage, rubbish, and debris of any kind (provided Agency personnel was operating from NHA Site);
- iv. In addition, the Agency shall:
  - a. Deliver to the Purchaser the parts of the Services executed by the Agency up to the date of termination;
  - b. To the extent legally possible, assign to the Purchaser all right, title, and benefit of the Agency to the Services, or documents, as at the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Agency and its Subcontractors;
  - c. Deliver to the Purchaser all non-proprietary drawings, specifications, and other documents prepared by the Agency or its Subcontractors as of the date of termination in connection with the Services.

### **10.5.5. *Effects of Termination***

- i. In the event that Purchaser terminates this Agreement pursuant to failure on the part of the Agency to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by Agency may be forfeited.
- ii. Upon termination of this Agreement, the Parties will comply as per the Schedule II (Exit Management Schedule) of this Agreement.
- iii. In the event that Purchaser or the Agency terminates this Agreement, the compensation will be decided in accordance with the Schedule V (Terms of Payments Schedule) of this Agreement.
- iv. Purchaser agrees to pay Agency for i) all undisputed charges for Services Agency provides and any Deliverables (or part thereof) Agency delivers through termination and any charges at the tendered rate, for extension period beyond termination as decided by the Nodal Agency as per Exit Management criteria notified by NHA at time of such termination and also ii) reimbursable expenses Agency incurs through termination.

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- v. If Purchaser terminates without cause, Purchaser also agrees to pay any applicable adjustment expenses (undisputed) to Agency incurs as a result of such termination (which Agency will take reasonable steps to mitigate).
- vi. In the event of termination of the Contract under Clause 10.5.4 (Termination for Convenience), the Purchaser shall pay such undisputed amounts to the Agency which are listed as follows:
  - a. The Contract Price, properly attributable to the parts of the Services executed by the Agency as of the date of termination;
  - b. Any amount to be paid by the Agency to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
  - c. The cost of satisfying all other obligations, commitments, and claims that the Agency may in good faith have undertaken with third parties in connection with the Contract and that are not covered by Clauses 10.5.5 (iv) (Effects of Termination) above.
  - d. Nothing herein shall restrict the right of the Purchaser to invoke the Bank Guarantee and other Guarantees furnished hereunder and pursue such other rights and/or remedies that may be available to the Purchaser under law.
  - e. Any and all payments under this clause shall be payable only after the Agency has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Purchaser. In case of expiry of the Agreement, the last due payment shall be payable to the Agency after the Agency has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Purchaser.

### ***10.5.6. Rights other than Termination***

- i. The termination hereof shall not affect any accrued right or liability of either Party nor affect the operation of the provisions of this Agreement that are expressly or by implication intended to come into or continue in force on or after such termination.
- ii. The termination provisions set out in this Clause 14 are in addition to any termination rights that the Purchaser may have under this Agreement/RFP and are in addition to, and without prejudice to, other rights that the Purchaser may have under law and this Agreement.

### ***10.5.7. Termination of this Agreement due to bankruptcy of Agency***

The Purchaser may serve written notice on Agency at any time to terminate this Agreement with immediate effect in the event that it is found that the Agency is reported as bankrupt and/or an apprehension of bankruptcy is reported to the Purchaser or its nominated agencies.

### **10.5.8. Suspension**

- i. The Agency shall, if ordered in writing by the Purchaser, temporarily suspend the performance of any Services or provision of any Goods or any part thereof under this Agreement for such specified/ ordered period and time. The Purchaser shall inform the Agency about such suspension at least 15 days in advance. The Agency shall not be entitled to claim compensation for any loss or damage incurred by the Agency by reason of such temporary suspension of the services for a continuous period of 30 days. The Purchaser may consider suitable compensation to the Agency in event of suspension extending beyond a continuous period of 30 days. An extension of time for completion, corresponding to the delay caused by any such suspension of the services as aforesaid shall be granted to the Agency, if written request for the same is made. In case the suspension of the Services / provision of the Goods lasts for a period of more than 3 months, the Agency shall have the right to request the Purchaser to pay reasonable immobilization and mobilization charges as may be consented to by the Purchaser.
- ii. In the event the Purchaser suspends the progress of work for a period in excess of 30 days in aggregate, rendering the Agency to extend the Agency's Performance Guarantee then the Purchaser shall bear only the cost of extension of such bank guarantee for such extended period restricted to the normal bank rates as applicable in the banking procedures subject to the Agency producing the requisite evidence from the concerned bank.

## **10.6. Indemnity**

Agency (the "Indemnifying Party") undertakes to indemnify the Purchaser and its nominated agencies (the "Indemnified Party") from and against all losses, claims, damages, compensation (including attorney fees) etc. on account of bodily injury, death or damage to tangible personal property arising in favor of any person, company or other entity (including the Indemnified Party) attributable to - the Indemnifying Party's negligence, willful default or lack of due care. The Indemnifying Party shall also indemnify Indemnified Party from and against all direct monetary losses, damages etc. suffered by Indemnifying Party or any third party arising out of any defect, fault, deficiency in the Services by the Indemnifying Party or any of its personnels.

## **10.7. Relationship**

- a. Nothing mentioned herein shall be construed as relationship of master and servant or of principal and agent as between the NHA (or the Government Department) and the "Agency". No partnership shall be constituted between NHA (or the Government Department) and the Agency by virtue of this registration nor shall either party have powers to make, vary or release

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their obligations on behalf of the other party or represent that by virtue of this or any other Registration a partnership has been constituted, or that it has any such power. Agency shall be fully responsible for the services performed by them or on their behalf.

b. Agency shall not use NHA /AB PMJAY name or any service or proprietary name, mark or logo of Associated with NHA over any media for promotional/or non-promotional purposes without first having obtained the NHA's prior written approval over the content and media for such release.

## **10.8.Change of Control and Updation of Service Levels:**

10.8.1 In the event of a change of Control of the Agency during the Term, the Agency shall promptly notify the Purchaser of the same. And any change shall be allowed as per prior written approval of NHA as per Change control Note and Schedule Annexed as Annexure X. and Schedule I. At no point in time this RFP is transferable.

10.8.2. The Parties anticipate that the Service Levels need to be re-evaluated and modified to account for changes in work environment and technology from time to time. Hence, they hereby agree to revise the Service Levels as and when required.

- i. The Parties hereby agree upon the following procedure for revising the Service Levels:
  - a. Any and all changes to the Service Levels will be initiated in writing between the Purchaser and the Agency, the Service Levels in this Agreement shall be considered to be standard for the Purchaser
  - b. Only the Purchaser or the AGENCY may initiate a revision to the Service Levels;
  - c. A notice of the proposed revision ("Service Levels Change Request") shall be served to the Purchaser or the Agency as the case may be;
  - d. In the event that agency approves of the suggested change the change shall be communicated to all the Parties and the Service Levels Change request would be appended to the Agreement;
  - e. The Purchaser shall update and republish the text of Agreement annually to include all the Service Levels Change Requests that have been appended to the Agreement during the course of the year. Such republished Agreement shall be circulated to all the Parties within days of such change taking place.

## **10.9.Representations and warranties of the Agency:**

The AGENCY represents and warrants to the Purchaser or its nominated agencies represents

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(such representations shall remain in force during the Term and extension thereto), the following:

- a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- b) it is a competent provider of a variety of information technology and business process management services;
- c) agrees to abide by NHA Information and Security Policy and other applicable guidelines as notified by NHA from time to time
- d) it has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- e) Agency agrees and acknowledges that at no time it shall store the data and/or information received during the term of this agreement for the purposes other than as specified hereunder;
- f) That all conditions precedent under the Agreement have been satisfied;
- g) That the selected Agency has the power and the authority that would be required to enter into this Agreement and the requisite experience, the technical know-how and the financial wherewithal required to successfully execute the terms of this Agreement and to provide services sought by the Purchaser under this Agreement;
- h) That the Agency and its team has the professional skills, personnel, infrastructure and resources/ authorizations that are necessary for providing all such services as are necessary to fulfil the scope of work stipulated in the tender and this Agreement;
- i) That the Agency shall ensure that all licenses, processes, documents, etc., developed, procured, deployed and created for the services during the term of this agreement are duly maintained and suitably updated, upgraded, replaced with regard to contemporary requirements for the purpose of its deliverables under the project;
- j) The Agency team shall use such assets of the Purchaser as the Purchaser may permit for the sole purpose of execution of its obligations under the terms of the Bid, Tender or this Agreement. The Agency shall however, have no claim to any right, title, lien or other

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interest in such property, and any possession of property for any duration whatsoever shall not create any right in equity or otherwise, merely by fact of such use or possession during or after the term thereof;

- k) from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- l) in providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to Purchaser's normal business operations
- m) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- n) the information furnished in the AGENCY 's response to the RFP and any subsequent clarification pertaining to the evaluation process, furnished on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement;
- o) That the representations made by the Agency in its Proposal and in this Agreement are and shall continue to remain true and fulfil all the requirements as are necessary for executing the obligations and responsibilities as laid down in the Agreement and the RFP and unless the Purchaser specifies to the contrary, the Agency shall be bound by all the terms of the Agreement;
- p) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- q) there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;

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- r) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- s) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement;
- t) That the Agency certifies that all registrations, recordings, filings and notarizations of the Contract and all payments of any tax or duty, including but not limited to stamp duty, registration charges or similar amounts which are required to be affected or made by the Agency which is necessary to ensure the legality, validity, enforceability or admissibility in evidence of the Contract have been made;
- u) no representation or warranty by it contained herein or in any other document furnished by it to Purchaser or its nominated agencies in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
- v) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of Purchaser or its nominated agencies in connection therewith.
- w) Where the Purchaser deems necessary, it shall have the right to require replacement of any personnel with other personnel and the Service Provider shall in such case find of the suitable replacement for such personnel to the satisfaction of the Purchaser at no additional charge. Failure on the part of the Service Provider to find a suitable replacement shall amount to a breach of the terms hereof and the Purchaser in addition to all other rights, have the right to claim damages and recover from the Service Provider all losses/ or other damages that may have resulted from such failure. In case the Service Provider replaces the personnel without appropriately appointing another without proper written and recorded knowledge transfer, the Service Provider shall ensure the smooth continuation of Services at its own costs and shall ensure to providing forthwith, a suitable personnel which is acceptable to the Purchaser at no additional charge. In case of a replacement of the personnel, the personnel shall have the qualification at least as good as the replaced subcontractor and/or as agreed by the Purchaser.



### **10.10. Audit Access and Reporting:**

The Agency shall allow access to the Purchaser or its nominated agencies to all information which is in the possession or control of the Agency and which relates to the provision of the Services as per this Agreement/RFP.

### **10.11. Severability and Waiver**

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

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

### **10.12. Assignment**

(a) All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the Purchaser, the Agency, the Sub-contractor and their respective permitted successors and permitted assigns.

(b) The Agency and Sub-contractor shall not be permitted to assign or transfer any or all of its rights and obligations under this Agreement to any third party without the prior written permission of the Purchaser.

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

**10.13. Publicity:**

Except as required by law or the rules and regulations Agency shall not publish or permit to be published either alone or in conjunction with any other person any press release, information, article, photograph, illustration or any other material of whatever kind relating to this Agreement, without prior reference to and approval in writing from NHA, such approval not to be unreasonably withheld or delayed .

**10.14. Notices**

a. Any notice or other document which may be given by either Party under this Agreement shall be given in writing in person or by pre-paid recorded delivery post, email or by facsimile transmission.

b. In relation to a notice given under this Agreement, any such notice or other document shall be addressed to the other Party's principal or registered office address as set out below:

<Insert address>

Tel:

Fax:

Email:

Contact:

With a copy to:

Agency

Tel:

Fax:

Email:

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Contact:

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

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

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

### **10.15. Variations and Further Assurance**

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

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

### **10.16. Approvals and Required Consents**

The AGENCY shall procure, maintain and observe all relevant and regulatory and Governmental licenses, clearances and applicable approvals (hereinafter the "Required Consents") necessary for the AGENCY to provide the Services. The costs of such Approvals shall be borne by the AGENCY for such costs in reference to the services as defined within the terms of this Agreement.

## **10.17. Compliance with Applicable Law**

- i. The Agency shall comply with the provision of all applicable laws including information technology laws, data protection guidelines, Privacy laws, labor laws, rules, regulations and notifications issued there under from time to time. All safety and laws enforced in India by statutory Bodies and/or by government order and by the Purchaser shall be applicable in the performance of this Agreement and the Agency shall abide by these laws. The Agency shall take all measures necessary or proper to protect the personnel, work and facilities and shall observe all reasonable safety rules and instructions. The Agency shall report as soon as possible any evidence, which may indicate or is likely to lead to an abnormal or dangerous situation and shall take all necessary emergency control steps to avoid such abnormal situations. The Agency shall also adhere to all security requirement/regulations of the Purchaser during the execution of the work.
- ii. Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to its business like the Agency as an information technology service provider) at all times comply with all laws, rules and regulations of government and other bodies having jurisdiction over the area in which the Services are undertaken provided that changes in such laws, rules and regulations which result in a change to the Services shall be dealt with in accordance with the Change Control Schedule set out in Schedule I of this Agreement. All legal disputes are subject to the exclusive jurisdiction of New Delhi, courts only.
- iii. During the tenure of this Agreement, the Agency shall comply with all Applicable Laws and shall obtain and maintain all statutory and other approvals required for the performance of the Services under this Agreement and nothing shall be done by the Agency or any of the Sub-contractor in contravention of any Applicable Law or any amendment thereof.

## **10.18. Professional Fees**

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

## **10.19. Ethics**

The Agency , for itself and on behalf of its subcontractors, agents, representatives, employees etc., represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of the Purchaser or its nominated agencies in connection with this Agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of the Purchaser's standard policies and may result in cancellation of this Agreement.

## **10.20. Amendment**

Any amendment to this Agreement shall be made by mutual written consent of all the Parties recorded and executed as an Amendment to this Agreement.

## **10.21. Limitation of Liability**

Except due to willful default and negligence the liability of either Party (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event exceed one time the total contract value payable under this Agreement. Thus, Agency's total liability shall be limited to the Total contract Value mentioned in all the SOWs (statement of Work Order's) entered between NHA and the Agency till the date on which such liability arises.

The liability cap given under this Clause shall not be applicable to the infringement of confidentiality obligation, indemnity obligations, Bodily injury (including death) and damage to real property and tangible personal property caused by Agency's act/ omission. For the purposes of this Section, "Contract Value" at any given point in time, means the aggregate value of purchase orders placed by NHA on the Agency under this project.

## **10.22. Conflict of Interest:**

i. The Agency shall disclose to the Purchaser in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the Agency or the SI's Team) in the course of performing the Services as soon as practical after it becomes aware of that conflict.

## **10.23. Fraud and Corrupt Practices:**

NHA requires that the Agency engaged through this process must observe the highest standards of ethics during the performance and execution of the awarded project(s). The following terms apply in this context:

4. NHA shall reject the application for Registration, if the Agency has been determined by NHA to having been engaged in corrupt, fraudulent, unfair trade practices, coercive or collusive.
5. These terms are defined as follows:
  - i. "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of NHA or any Government Department during the tenure of empanelment.
  - ii. "Fraudulent practice" means a misrepresentation of facts, in order to influence a procurement process or the execution of a contract, to NHA, and includes collusive practice among Agency s (prior to or after Proposal submission) designed to establish proposal prices at artificially high or non-competitive levels and to deprive NHA of the benefits of free and open competition.
  - iii. "Unfair trade practices" means supply of services different from what is ordered on, or change in the Scope of Work which was agreed to.
  - iv. "Coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation during the period of registration.
  - v. "Collusive practices" means a scheme or arrangement between two or more Agency s with or without the knowledge of the NHA, designed to establish prices at artificial, non-competitive levels;
  - c. NHA will reject an application for award, if it determines that the Agency recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, unfair trade, coercive or collusive practices in competing for any assigned project during the registration period.
6. In case, NHA does not find the work of the agency up to its satisfaction, NHA reserves the right to get it done from any other agency(s) for which the agency hereby gives its written consent and undertake not to raise any dispute in this context, at any point of time.

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7. Mere empanelment with NHA does not guarantee allocation of work. NHA shall have full rights to choose the best fit firm among the empaneled agencies for a specific work based on the techno commercial proposals. NHA may also empanel more firms at its discretion or requirement in future.
8. The Agency shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices.

## **10.24. Force Majeure:**

### **10.24.1. Definition of Force Majeure**

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

### **10.24.2. Force Majeure events**

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

- i. War, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
  - ii. 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;
  - iii. 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;
- 10.24.3. 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.
- 10.24.4. 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

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prevented, hindered, or delayed. The time for achieving Final Acceptance shall be extended.

- 10.24.5. 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 10.24.1 (Force Majeure).
- 10.24.6. No delay or nonperformance by either party to this Agreement caused by the occurrence of any event of Force Majeure shall:
- 10.24.7. Constitute a default or breach of the Contract;
- 10.24.8. 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.
- 10.24.9. 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.
- 10.24.10. In the event of termination pursuant to Clause 10.24 (Force Majeure), the rights and obligations of the Purchaser and the Supplier shall be as specified in the clause titled Termination.
- 10.24.11. Notwithstanding Clause 10.24, Force Majeure shall not apply to any obligation of the Purchaser to make payments to the Supplier under this Agreement.

For the avoidance of doubt, it is expressly clarified that the failure on the part of the Agency 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, Service Provider will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).



## 10.25. Confidentiality

- ii. The Purchaser or its nominated agencies shall allow the Agency to review and utilize highly confidential public records and the Agency shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- iii. Additionally, the Agency shall keep confidential all the details and information with regard to the Project, including services, facilities, operations, management and maintenance of the facilities.
- iv. The Purchaser or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Agency regarding any forbidden disclosure.
- v. The Agency shall ensure that all its employees, agents and sub-contractors involved in the project, execute individual non-disclosure agreements, in the format as provided by the Purchaser. The implementing agency may submit a declaration that it has obtained the NDA from its employees. Agency shall get NDAs signed from every resource involved in the project and submit it to purchaser.
- vi. For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:
  - Information already available in the public domain;
  - Information which has been developed independently by the Agency ;
  - Information which has been disclosed to the public pursuant to a court order.
- vii. Any handover of the confidential information needs to be maintained in a list, both by Purchaser & Agency , containing at the very minimum, the name of provider, recipient, date of generation of the data, date of handing over of data, mode of information, purpose and signatures of both parties.

## 10.26. Risk Purchase :

If the Agency fails to perform its obligations (or any part thereof) under this Agreement or if the Agreement is terminated by the Purchaser due to breach of any obligations of the Agency under this Agreement, the Purchaser reserves the right to procure the same or equivalent Goods / Services / Deliverables from alternative sources at the Agency's risk and responsibility. Any incremental cost borne by the Purchaser in procuring such Goods /Services/ Deliverables shall be

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borne by the Agency . Any such incremental cost incurred in the procurement of the such Goods /Services/ Deliverables from alternative source will be recovered from the undisputed pending due and payable Payments /Security Deposit / Bank Guarantee provided by the Agency under this Agreement and if the value of the Goods /Services/Deliverables under risk purchase exceeds the amount of Security Deposit and / or Bank Guarantee, the same may be recovered, if necessary, by due legal process The procurement from alternate source shall be done, as far as possible, through Central Government's procurement guidelines as deemed appropriate by the Purchaser.

# 11. Annexure I: Template for Pre-Bid Queries

Bidder shall submit all pre-bid queries in excel in the following format.

## **Sheet 1: Bidder's Information**

Information Sought	Details provided by the bidder
Name (Authorized Signatory)	
Designation	
Company	
Address	
Contact Number	
E-mail ID	
Date	

**Table 8: Pre bid queries (bidder's information)**

**Note:** Please paste the table 8 above in email body as well

## **Sheet2: Clarification Requested / Format for pre-bid query submission**

#	Page No	Section No.	Section Name	Statement as per RFE document	Query bidder	by

**Table 9: Format for pre bid queries**

- a) Page Number – Page Number of this RFE as reflected at the bottom right corner. The bidders to mention only the page number. Ex. '29' as page number and not '29 of 156'.
- b) Section No. – Example – '8' and not 'Section 8'
- c) Section Name – Example – Scope of Work (Should be exactly the same as provided in the RFE)

Notes –

1. The queries are to be submitted in the format provided above only and as per schedule (refer-fact sheet) only. The bidders to ensure that they enter correct details in the format. In case of any inappropriate details being mentioned the NHA shall not be responsible for the same and such queries may be discarded from providing any response.

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2. The bidders to ensure that no cell merging (in excel) is done by them while preparing the query.
3. The bidders to ensure that each of the query submitted by them is unique and no duplicate query is submitted by them as a result of copy-paste. It is expected from the bidder to carry out its own due-diligence before submitting the queries.
4. Bidders are expected to do a thorough check of the queries and ensure the completeness of the queries and spelling checks etc. before submitting the same to NHA.

## ***12. Annexure II: Pre-Qualification Proposal Format***

### ***12.1. Response to pre-qualification criteria***

Bidders are required to submit their compliances to the pre-qualification criteria, along with documents required:-

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S. No	Eligibility Criteria	Documents Required	Compliance (Yes/No)	Page no. in the proposal
1.	Agency should be - a) a registered private or public owned company incorporated under Companies Act 2013 or earlier, in India or b) a Limited Liability Partnership Company under Limited Liability Partnership Act, 2008, or c) A registered NGO, NPO, a society or trust registered under Indian Trusts Act, 1882 or incorporated under the Indian Societies Act, 1860 d) and Registered with the GST Authorities and e) Agency should have a valid PAN number	a) Certificate of Incorporation (copy); b) Certificate c) Certificate d) GST Registration certificate issued by GST authorities (copy) e) PAN Card (copy)		
2.	The agency must have at least 30 MBBS doctors (of which at least 5 should be MS/ MD/DNB/ PG diploma in clinical subjects), all doctors must have minimum 3 years of clinical practice /auditing insurance claims in general and health insurance in particular, as on the date of application.	Educational Certificate of doctors and Certificate from HR confirming the same and offer letters issued to the doctors		
3.	The Agency must have an annual turnover of at least ₹ 1 crore in the last financial year (2018-19).	Audited financial statements for last financial year or statutory auditor certificate specifying the turnover for the specified year.		
4.	The agency should not have any conflict of interest.	Certificate as per format specified in Annexure-2		
5.	Should not have been blacklisted by any central / state Government institution/Insurance company/ TPA and there should be no proven charges in a litigation with any government department on account of similar services must be submitted	Certificate as per format specified in as per Annexure-2		
6.	The Bidder should not be involved in any litigation which may include but not limited to fraud, FEMA violations that may have an impact of affecting or	Certificate as per format specified in as per Annexure-2		

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S. No	Eligibility Criteria	Documents Required	Compliance (Yes/No)	Page no. in the proposal
	compromising the delivery of services as required under this contract			

**Table 10: Pre-qualification compliance**

## ***12.2. Format for Bank Guarantee Earnest Money Deposit***

Bidders are required to submit bid security/EMD as mentioned in section 5.4 of this RFE in the below format-

(To be stamped in accordance with Stamp Act)

The non-judicial stamp paper should be in the name of issuing Bank

Ref.....

Bank Guarantee No.....

Date.....

To,

General Manager (Administration)

National Health Authority

9<sup>th</sup> Floor, Tower-I

Jeevan Bharti Building

Connaught Place

New Delhi – 110001

Dear Sir/s,

1. In accordance with Invitation to Bid under your Specification No..... M/s ..... having its Registered/Head Office at..... (hereinafter called the 'Bidder') wish to participate in the said Bid or..... and you, as a special favor have agreed to accept an irrevocable and unconditional Bank Guarantee for an amount of..... valid up to ..... on behalf of Bidder in lieu of the Bid deposit required to be made by the Bidder, as a condition precedent for participation in the said Bid.
2. We, the ..... Bank at ..... (local address) having our Head office at ..... guarantee and undertake to pay immediately on demand by National Health Authority (NHA), the amount of ..... (in words & figures) without any reservation, protest, demur and recourse. Any such demand made by said 'Owner' shall be conclusive and binding on us irrespective of any dispute or difference raised by the Bidder.
3. This guarantee will not be discharged due to the change in the constitution of the Bank or the Bidder.
4. Notwithstanding anything contained hereinabove:
  - a) Our liability under this guarantee is restricted to ₹. .... (in words & figures).
  - b) This Bank Guarantee will be valid up to .....; and



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c) We are liable to pay the guarantee amount or any part thereof under this Bank Guarantee only upon service of a written claim or demand by you on or before .....

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this..... day of.....2019.....at.....

WITNESS

.....

(Signature)

.....

(Name)

.....

.....

(Signature)

.....

(Name)

.....

(Official Address)      (Designation with Bank Stamp)

Attorney as per Power of Attorney No.....

Dated.....

### ***12.3. Format- Undertaking (no conflict of interest)***

The certificate below is to be provided by the bidder.

Certificate for undertaking for No Conflict of Interest

We hereby confirm that our company <insert name of the company> is not involved in any conflict of interest situation with one or more parties in this bidding process, including but not limited to –

1. Receive or have received any direct or indirect subsidy from any of them; or
2. Have common controlling shareholders; or
3. Have the same legal representative for purposes of this Bid; or
4. Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or
5. Influence the decisions of NHA regarding this bidding process; or
6. Participation in more than one bid in this bidding process. Participation in more than one Bid will result in the disqualification of all Bids. However, this does not limit the inclusion of the same product (commercially available hardware, software or network product manufactured or produced by the firm), as well as purely incidental services such as installation, configuration, routine training and ongoing maintenance/support, in more than one bid; or
7. Participation as a consultant in the preparation of the design or technical specifications of the goods and services that are the subject of the bid.
8. Association as Consultant/ Advisor/ Third party independent evaluating agency with any of the agencies taking part in the bid process.
9. We are not involved in processing and payments of claims under PM-JAY or any other scheme under NHA, in any state of India
10. We or none of our proposed resources has any ownership in hospitals empaneled under PMJAY.
11. We do not have on our role/contract an auditor who in his/her clinical or otherwise capacity has been found to be involved in unethical practices or has been associated with an entity involved in fraudulent activity or has been issued show cause notice under PMJAY or any other similar scheme, insurance contracts etc. during last 3 years.

(Signature of the Authorized signatory of the Bidder)

(Name, Designation, Seal, Date, Place, Business Address)

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### ***12.4. Details of litigation***

The certificate below is to be provided by the Bidder-

#### **Certificate for Pending Litigation on Fraud cases, FEMA Violations**

We confirm that our organization < insert name of organization> as on date of submission of the proposal for RFP # <.....> Dated <.....> for Selection of Program Management Consultant for National Digital Health Mission has not been involved in any litigation which may include but not be limited to fraud, FEMA violations that may have an impact of affecting or compromising the delivery of services as required under this RFP .

Sincerely,

(Signature of the Authorized signatory of the Bidder)

(Name, Designation, Seal, Date, Place, Business Address)

### ***12.5. Format – Self Declaration for non-black listing***

The certificate below is to be provided by the bidder.

<To be printed on Company letterhead>

We confirm that our company \_\_\_\_\_ as on date of submission of the proposal is not blacklisted by any Central/State Government/PSU entity in India for corrupt, fraudulent or any other unethical business practices.

Sincerely,

(Signature)

(Name and signature of Company Secretary)

## 12.6. Profile of bidder

Bidders are required to submit their details in the following format-

S. No.	Item	Bidder's Response
1.	Company Name	
2.	Year Established	
3.	Incorporated in India (Yes or No)	
4.	PAN	
5.	GST	
6.	CIN	
7.	Contact Name and position	
8.	Head Office Address	
9.	Mobile (of contact person)	
10.	Telephone (of contact person)	
11.	Fax Number (of contact person)	
12.	Email Address (of contact person)	
13.	Brief Description of the Organization	
14.	Office Address	

Table 11: Bidders profile

## 12.7. No Deviation Certificate

A certificate in the below format to be provided by the bidder-

**<To be printed on Company letterhead>**

This is to certify that our offer is exactly in consonance with your RFE no. \_\_\_\_\_ dated \_\_\_\_\_ issued by National Health Authority and subsequent amendments/corrigendum's etc. This is to expressly certify that our offer contains no deviation on the requirements and scope of work, Legal or Commercial aspects as specified in the RFE in either direct or indirect form.

(Signature of Authorized Signatory)

(Name, Designation, Seal, Date, Place, Business Address)

# **13. Annexure III: Technical Proposal**

## **Format**

### **13.1. Form Tech1: Technical bid covering letter**

<No.....>

<Location, Date>

To

General Manager (Administration)  
National Health Authority  
9th Floor, Tower-I  
Jeevan Bharti Building  
Connaught Place  
New Delhi – 110001

Subject: Submission of the Technical bid for RFE for <.....>

Dear Sir/Madam,

We, the undersigned, offer to provide services as per RFE for <.....> with reference to your Request for Empanelment dated <insert date> and our Proposal. We are hereby submitting our technical bid.

We hereby declare that all the information and statements made in this Technical bid are true and accept that any misinterpretation contained in it may lead to our disqualification.

We agree to abide by all the terms and conditions of the RFE document. We would hold the terms of our bid valid for 180 days from the last date of bid submission i.e. <insert last date> as stipulated in the RFE document.

We understand you are not bound to accept any Proposal you receive.

Yours sincerely,

(Authorized Signatory)

Signature:

Name:

Designation:

Address:

Seal:

Date:

### **13.2. Form Tech2: Proposed Approach and methodology**

Provide details of the entire approach and methodology (including details required as per scope of work section 4 of this RFE), along with the key differentiators covering all requirements as laid out in the RFE. Bidder must cover all aspects of the solution showcasing the suitability to meet all the requirements listed out in the RFE.

### **13.3. Form Tech3: No Deviation certificate**

A certificate in the below format to be provided **by the Bidder-**

<To be printed on Company letterhead>

This is to certify that our offer is exactly in consonance with your RFE no. \_\_\_\_\_ dated \_\_\_\_\_ issued by National Health Authority and subsequent amendments/corrigendum's etc. This is to expressly certify that our offer contains no deviation on the HR requirements and scope of work, legal or commercial aspects as specified in the RFE in either direct or indirect form.

(Signature of Authorized Signatory)

(Name, Designation, Seal, Date, Place, Business Address)

### **13.4. Form Tech4: Total Responsibility**

A certificate in the below format to be provided by the **Bidder -**

<To be printed on Company letterhead>

This is to certify that we [insert name of Bidder company] undertake the total responsibility for the defect free operation of the proposed solution as per the requirement of the RFE <Insert RFE #, Dated\_\_\_\_> issued by National Health Authority for the duration of the contract mentioned in RFE.

(Signature of Authorized Signatory)

(Name, Designation, Seal, Date, Place, Business Address)

### **13.5. Form Tech5: CV Format**

S. No.	Item	Bidder's Response
1.	Name of the Resource	
2.	Specify role to be played in the project	
3.	Name of Employer	

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S. No.	Item	Bidder's Response		
4.	Number of years with the Current Employer			
5.	Total Experience (in Years)			
Experience in yrs. (Provide details regarding name of organizations worked for, Designation, responsibilities, tenure etc. atleast for last 5 years)				
S. No.	Name of Employer	From	To	Designation/ Responsibilities
1				
2				
Educational Background, Training Certification including institutions, % of marks, specialization areas etc.				
S. No.	Degree	Year of Award of Degree	University	% of marks
1				
2				

# **14. Annexure IV: Commercial Proposal Format**

## **14.1. Commercial Proposal Cover Letter**

(To be submitted on the Letter head of the Bidder)

(Location, Date)

To,

General Manager (Administration)

National Health Authority

9<sup>th</sup> Floor, Tower-I

Jeevan Bharti Building

Connaught Place

New Delhi – 110001

**Ref:** Submission of Commercial proposal for Request for Empanelment (RFE) Notification  
No. \_\_\_\_\_ dated \_\_\_\_\_

Dear Sir,

1. Having examined the RFE document, we, the undersigned, herewith submit our response to your RFE Notified vide No. \_\_\_\_\_ dated \_\_\_\_\_ for NHA, in full conformity with the said RFE document.
2. We, the undersigned, offer to provide services to NHA in accordance with your RFE.
3. We have read the provisions of the RFE document, confirm our acceptance for the same and we are hereby submitting our commercial Bid.
4. We agree to abide by this RFE, consisting of this letter, commercial bid and all requisite supporting documents, for a period of 3 years from the closing date fixed for submission of bid as stipulated in the RFE document.
5. We would like to declare that we are not under a declaration of ineligibility for corrupt or fraudulent practices anywhere in India.
6. We hereby declare that we have not been charged with any fraudulent activities by any Central/State/UT Government, PSU or autonomous body under Government of India or any State Government.



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7. We have not been blacklisted or debarred by any Central/State/UT Government, PSU or autonomous body under Government of India or any State Government for failure to execute services as agreed upon/contracted for.
8. We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.
9. We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely "Prevention of Corruption Act, 1988" and its amendments.
10. We understand that NHA is not bound to accept any bid received in response to this RFE.
11. In case we are engaged by NHA for executing the services, we shall provide any assistance/cooperation required by NHA/auditing agencies appointed by it/NHA officials for performing auditing and inspection functions. We understand that our non-cooperation for the same shall be grounds for termination of service.
12. In case we are engaged as an agency, we agree to abide by all the terms & conditions of the Contract that will be issued by NHA.
13. The commercial bid includes the cost of setting up and operating the services, cost of providing additional services and performing all functions as per the 'Scope of Work' and 'Service levels' defined in this RFE.
14. We already have the technical and financial capability in India for carrying out the services as detailed in the 'Scope of Work'.
15. We also understand that in case of deficiencies in our services as per the requirement of RFE, NHA reserves the right to allocate our volume of work, in full or in part, to other agency/service provider for a limited period or on permanent basis.

Yours sincerely,

Signature of Authorized Signatory [*In full as well as initials*]: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

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**14.2. Commercial bid format**

Bidders are required to provide an all-inclusive total cost for Unified rate is requested for one (1) desk audit which would be applicable for six (6) tele consultation and three (3) Tele- verification as per the table indicated below-

1. The rates quoted must be inclusive of the following:
  - a) Cost for all the activities as mentioned in the RFE document and
  - b) No extra item will be considered for payment.
  - c) Cost of material, manpower, transportation, equipment's, tools etc.
  - d) Any other cost direct or hidden, not mentioned above.
  - e) All taxes and levies etc. applicable during duration of contract excluding GST.
  - f) GST shall be paid by NHA.

Rates entered into commercial rate page and duly signed by the authorized representative of the bidder shall only be considered.

Unified Rate for 1 Desk Audit/6 tele consultation/ 3 Tele-verification (INR) – (X)	Quote for 1 Tele Verification (INR)	Quote for 1 Tele Consultation (INR)
_____	X*33.33%	X*16.67%

**Table 12: Commercial template**

# 15. Annexure V: Format for Performance Bank Guarantee

(To be stamped in accordance with Stamp Act)

The non-judicial stamp paper should be in the name of issuing Bank

Ref..... Bank Guarantee No.....

Date.....

To  
General Manager (Administration)  
National Health Authority  
9<sup>th</sup> Floor, Tower-I  
Jeevan Bharti Building  
Connaught Place  
New Delhi – 110001

Dear Sir,

1. In consideration of the National Health Authority, Government of India, on behalf of the CEO, NHA on behalf of the Authority, (hereinafter referred to as the 'NHA' which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s..... with its Registered/Head office at ..... (hereinafter referred to as the "Agency" which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a Contract by issue of Notification of award No..... dated ..... and the same having been acknowledged by the Agency, resulting in a Contract, bearing No..... dated.....valued at.....for..... (scope of Contract) and the Agency having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract not exceeding ₹. .... (in words & figures).
2. We..... (Name & Address of Bank Branch) having its Head office at ..... (hereinafter referred to as the 'Bank', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the amounts due and payable under this guarantee without any demur, reservation, context, recourse or protest and/or without any

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reference to the Agency merely on a demand from the NHA stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the NHA by reason of breach by the said Agency(s) of any of the terms or conditions contained in the said Agreement or by reason of the Agency(s)' failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive and binding notwithstanding any difference between the NHA and the Agency or any dispute pending before

3. Any Court, Tribunal, Arbitrator or any other authority. We agree that the guarantee herein contained shall be irrevocable and shall continue to be enforceable till the NHA discharges this guarantee.
4. The NHA shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee, from time to time to extent the time for performance of the Contract by the Agency. The NHA shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Agency, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the NHA and the Agency or any other course or remedy or security available to the NHA. The Bank shall not be released of its obligations under these presents by any exercise by the NHA of its liberty with reference to the matters aforesaid or any of them or by reason of any other act of omission or commission on the part of the NHA or any other indulgences shown by the NHA or by any other matter or thing whatsoever which under law would, but for this provision have the effect of relieving the Bank.
5. The Bank also agrees that the NHA at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Agency and notwithstanding any security or other guarantee the NHA may have in relation to the Agency's liabilities.
6. This guarantee will not be discharged due to the change in the constitution of the Bank or the Agency.
7. Notwithstanding anything contained hereinabove:
  - a) Our liability under this guarantee is restricted to ₹. .... (in words & figures).
  - b) This Bank Guarantee will be valid up to .....; and
  - c) We are liable to pay the guarantee amount or any part thereof under this Bank Guarantee only upon service of a written claim or demand by you on or before .....

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this..... day of.....2019 at.....

WITNESS

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.....

(Signature)

.....

(Signature)

.....

(Name)

.....

(Name)

.....

(Official Address)

.....

(Designation with Bank Stamp)

Attorney as per Power of Attorney No..... Dated.....

## **16. Annexure VI: Integrity Pact**

### **INTEGRITY PACT**

#### **(To be executed on ₹ 100 stamp paper)**

This Agreement (hereinafter called the Integrity Pact) is made on \_\_\_\_\_ day of the month of \_\_\_\_\_ 20\_\_\_\_, between, on one hand, the President of India acting through Chief Executive Officer, National Health Authority, Government of India (hereinafter called the “The Principal”), which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part

#### **And**

M/s \_\_\_\_\_ represented by \_\_\_\_\_, Chief Executive Officer/ Authorized Signatory (hereinafter called the “Bidder/Contractor”, which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

#### **Preamble**

The principal intends to award, under laid down organizational procedures, contract for Empanelment of Service Providers for conducting Desk Medical Audit, Tele-Verification and Tele-Consultation for National Health Authority. The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/ transparency in its relations with its bidder(s) and contractor(s).

In order to achieve this the Principal will appoint Independent External Monitors (IEMs) who will monitor the tender process and the execution of the contract for compliance with the principal mentioned above.

Section 1 – Commitments of the Principal.

1. The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles :-
  - a) No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the personal is not legally entitled.
  - b) The Principal will during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/additional information through which the Bidder(s) could obtain an advantage in relation to the process or the contract execution.

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- c) The Principal will exclude from the process all known prejudiced persons.
- 2. If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

### **Section 2 – Commitments of the Bidder(s)/Contractor(s)**

- 1. The Bidder(s)/Contractor(s) commit himself to take all measures necessary to prevent corruption. The Bidder(s)/Contractor(s) commits themselves to observe the following principles during his participation in the tender process and during the contract execution.
  - a) The Bidder(s)/contractor(s) will not, directly or through any other persons or firm, offer promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage or during the execution of the contract.
  - b) The Bidder(s)/Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
  - c) The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s)/Contractors will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or documents provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
  - d) The Bidder(s)/Contractor(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly, the bidder(s)/contractor(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. All the payments made to the India agent/representative have to be in Indian Rupees only.
  - e) The Bidder(s)/Contractor(s) will, when presenting their bid, disclose any and all payments made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
  - f) Bidder(s)/Contractor(s) who have signed the Integrity pact shall not approach the courts while representing the matter to IEMs and shall wait for their decision in the matter.
- 2. The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

### **Section 3: Disqualification from tender process and exclusion from future contract**

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If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression through a violation of Section 2 above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or to terminate the contract, if already signed, for such reasons.

### **Section 4: Compensation for Damages**

1. If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/Bid Security.
2. If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, The Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

### **Section 5: Previous Transgression**

1. The Bidder declares that no previous transgressions occurred in the last three years with any other company in any country conforming to the anti-corruption approach or with any other government (Central/State/PSU's) in India that could justify his exclusion from the tender process.
2. If the bidder makes incorrect statement on this subject, he can be disqualified from the tender process and appropriate action can be taken including termination of the contract, if already awarded, for such reasons.

### **Section 6: Equal treatment of all Bidders/Contractors/Subcontractors.**

1. In case of sub-contracting, the principal contractor shall take the responsibility of the adoption of Integrity pact by the sub-contractors.
2. The Principal will enter into agreements with the identical conditions as this one with all bidders, contractors and sub-contractors.
3. The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

### **Section 7: Criminal charges against violating Bidder(s) / Contractor(s) / Sub-contractors(s).**

If the Principal obtains knowledge of conduct of a Bidder(s)/ Contractor(s) or sub-contractor, or of an employee or a representative or an associate of a bidder, contractor or sub-contractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

### **Section 8: Independent External Monitor/Monitors**

1. The Principal appoints competent and credible Independent External Monitor for this Pact after approval by Central Vigilance Commission. The task of the Monitor is to review independently



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and objectively, whether and to what extent the parties comply with the obligations under this agreement.

2. The Monitor is not subject to instructions by the representatives of the parties and performs his/her functions neutrally and independently. The Monitor would have access to all contract documents, whenever required. It will be obligatory for him/her to treat the information and documents of bidders /contractors as confidential. He reports to the CEO, NHA.
3. The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction to all project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his/her request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors.
4. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s) / Contractor(s) / Subcontractor(s) with confidentiality. The Monitor has also signed declarations on 'Non-disclosure of Confidential Information' and of 'Absence of Conflict of Interest'. In case of any conflict of interest arising at a later date, the IEM shall inform CEO, NHA and recuse himself/herself from that case.
5. The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
6. As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
7. The Monitor will submit a written report to the CEO, NHA within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should be occasion arise, submit proposals for correcting problematic situations.
8. If the Monitor has reported to the CEO, NHA, a substantiated suspicion of an offence under relevant IPC/PC Act, and the CEO, NHA has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
9. The word "**Monitor**" word includes both singular and plural.

## Section 9: Pact Duration

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This pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidder 6 months after the contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

If any claim is made/lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/determined by CEO, NHA.

**Section 10: Other Provisions**

1. This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal i.e. New Delhi.
2. Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
3. If the contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
5. Issues like Warranty / Guarantee etc. shall be outside the purview of IEMs.
6. In the event of any contradiction between the Integrity pact and its annexure, the clause of the Integrity pact will prevail.

\_\_\_\_\_

(For & on behalf of the Principal)

(Office Seal)

Place \_\_\_\_\_

Date \_\_\_\_\_

Witness 1:

(Name & Address)

Witness 2:

(Name & Address)

\_\_\_\_\_

(For & on behalf of Bidder/Contractor)

(Office Seal)

# 16. Annexure VII: Empanelment Agreement

THIS EMPANELMENT AGREEMENT (hereinafter referred to as the “AGREEMENT”) made on this \_\_\_ day of 2020 at Delhi, India by and between National Health Authority of India through its \_\_\_\_\_, (hereinafter referred to as “NHA/ the Purchaser”) which expression shall unless repugnant to the context or meaning thereof mean and deemed to include its authorized representatives and permitted assigns of the FIRST PART

and

\_\_\_\_\_havingits Office at

(hereinafter referred to as “the Vendor”/ “Agency”) which expression shall

unless excluded by or repugnant to the context, includes their Heirs, Executors, Administrators, Legal Representatives and permitted Assigns of the SECOND PART.

Whereas:

- A. Purchaser issued an RFP Dated \_\_\_\_\_2020, since purchaser was desirous to empanel qualified Service Providers for providing the Services as defined in the Scope of Work as specified in RFP Clause \_\_\_\_\_ at contracted rates for provisioning of related services.
- B. \_\_\_\_\_has been selected as the successful Bidder and has agreed to \_\_\_\_\_provide Services as listed in RFP Document No \_\_\_\_\_ dated \_\_\_\_\_ 2020.

## NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. Definition and Interpretations

In this Empanelment (as defined hereinafter) the following words and expressions shall have the meaning hereby assigned to them, except where the context requires otherwise:

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- i. "Agreement" or "Empanelment" shall mean this agreement together with all its Schedules and appendices and any amendments thereto made in accordance with the provisions herein read with terms of RFP
- ii. "Applicable Laws" means laws of India and includes all applicable statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental authority, tribunal, board, court or other quasi-judicial authority.
- iii. "Confidential Information" shall mean information, whether orally, visually, or in tangible form, that is proprietary and confidential to the Party disclosing the information, including without limitation information with respect to list of clients, strategies or other technical or business information or trade secrets; sensitive concepts, techniques, processes, methods, systems, designs, clients, personal data, sensitive personal data, cost data, computer programs, personally identifiable information, applications programs, operating systems, formulae, development or experimental work, work in progress, customers and suppliers as well as information related to Intellectual Property Rights regardless of whether or not same are designated as confidential, that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure and all personal data and sensitive personal data within the meaning of the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011.
- iv. "Empanelled Organization(s)" shall mean all the organizations who have been empanelled by NHA under the RFP
- v. "Fees" shall have the meaning as ascribed in RFP
- vi. "Intellectual Property Rights / IPR" shall mean all rights, titles and interest in the patents, copyrights, trade secrets, operating practices / procedures, design rights, domain names, registered designs, trade and service marks (registered and unregistered), rights in know-how, rights in relation to databases, trade secrets, rights in relation to Confidential Information and all other intellectual property rights throughout the world including.
  1. All registrations and pending registrations relating to any such rights and the benefit of any pending applications for any such registration; and
  2. All reversions, extensions and renewals of any such rights.

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vii. "Pre-existing work" shall mean any material / information which is:

1. Created, developed and/or provided prior to the Effective Date of the Agreement by either Party; or
2. Created, developed and / or obtained independently from third party by either Party, as the case may be, and such material / information pre-exist this Agreement and has no relation / connection with this Agreement.

viii. "Project" shall mean provision of services to NHA.

2. In this Agreement words and expressions not defined herein shall have the same meanings as are respectively assigned to them in the RFP and Conditions of Contract.

3. The following documents shall be deemed to form and be read and construed as part of this Agreement viz:

- A. This Agreement read with Service Levels
- B. Non-Disclosure Agreement
- C. Schedules and Annexures to this Agreement
- D. RFP Document No \_\_\_\_\_ 2020 along with subsequently issued Corrigendum
- E. 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.

4. **Term:** The Agreement with empaneled firm shall be applicable for a period of \_\_\_\_\_ from date of start of Project which may be extended for a further term as may be mutually agreed.

5. **Consideration:** In consideration of the payments to be made by the Purchaser to the Agency as hereinafter mentioned, the Agency hereby covenants with the Purchaser to provide the services and to remedy therein in conformity in all aspects with the provisions of the aforesaid Bid under reference. The Purchaser hereby covenants to pay the Agency in consideration of the provision of Services in the manner prescribed in the Payment Clause \_\_\_\_\_ of the RFP.

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6. The Terms and Conditions as specified in the RFP shall be construed as part of this Agreement. In contradiction of any clause of this Agreement and RFP, the terms of RFP shall supersede this agreement to the extent the same has not been modified in terms of this Agreement or any amendment thereto executed in writing between the Parties.

7. No variation to the Agreement shall be effective unless it is documented in writing and signed by authorized representatives of both parties. No person who is not a party to this Agreement shall be entitled to enforce any of its terms.

8. **Governing Law Jurisdiction:** This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and parties agree that the courts at New Delhi, India shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

9. **Dispute Resolution:**

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

9.2. Parties shall use all reasonable efforts to amicably resolve and settle any dispute arising out of or in relation to or in connection with this Agreement by firstly referring the dispute to Senior Authorized representatives of both Parties.

9.3. In the case of dispute arising out of or in relation to or in connection with the Agreement between the Purchaser and the Agency, which has not been settled in accordance with Clause 9.2 above within 30 days from date of reference of the dispute to such committee, any Party can submit any dispute or difference whatsoever arising between the parties to this Agreement out of or relating to the construction, meaning, scope, operation or effect of this Agreement or the validity of the breach thereof to the Sole Arbitrator appointed by two Arbitrators [two Arbitrators so chosen by both Agency and Purchaser (one each)] in accordance with and in full satisfaction of the qualifications to be prescribed for such arbitrator, including but not limited to qualifications as to technical experience, nationality and legal experience, by the Purchaser and the Agency, at the time of appointment. Arbitration Proceedings shall be conducted in English Language. The Arbitration proceedings with its seat and venue will be held at New Delhi, India.

9.4. 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 New Delhi, India.

9.5. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable on the Arbitration Proceedings and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings with its seat and venue will be held at New Delhi, India. Any legal

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dispute will come under the sole jurisdiction of New Delhi, India / state jurisdiction of Delhi, India.

9.6. Compliance with laws: Each party will comply with all applicable laws of India along with applicable export and import laws and regulations.

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

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

IN WITNESS WHEREOF, both the parties have set and subscribed their respective hands to this Memorandum of Understanding on the date and place first mentioned above, in the presence of following witnesses

For National Health Authority (NHA)

Mr. <Name>

<Designation>

Seal

For Agency

Mr. <Name>

<Designation>

Seal

---

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Witness 1 (Name, Address, Ph: Designation):

Witness 2 (Name, Address, Ph: Designation):



# 17. Annexure VIII: Non-Disclosure Agreement

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

BETWEEN

----- having its office at -----  
----- India hereinafter referred to as 'Purchaser' or '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 Agency/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 implement the project of -----.
2. The Purchaser and AGENCY have entered into a Empanelment agreement in furtherance of the Project.
3. Whereas in pursuing the Project (the "Business Purpose"), a Party ("Disclosing Party) recognizes that they will disclose certain Confidential Information (as defined hereinafter) to the other Party ("Receiving Party").

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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 this Agreement (including the Introduction) shall have the same meanings set out in Empanelment Agreement read with RFP.

#### ***2. Interpretation***

In this Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs and Schedules are to clauses, subclauses, paragraphs of and schedules to this Agreement;
- (b) use of any gender includes the other genders;
- (c) references to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a 'person' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or 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;

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

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

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

### **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 this Agreement, the following principles shall apply:

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

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

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

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

### **5. *Term***

This Agreement will remain in effect for perpetuity from the date of execution of this Agreement and/or Empanelment 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

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otherwise as confidential after disclosure to the Receiving Party (“Confidential Information”). Such Confidential Information consists of certain specifications, documents, software, prototypes and/or technical information, and all copies and derivatives containing such Information that may be disclosed to the Disclosing Party for and during the Business Purpose, which a party considers proprietary or confidential.

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

### **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 this Agreement and get an individual NDA signed from such employees which replicates the provisions of confidentiality as dealt in this Agreement;

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

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

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

(g) upon the Disclosing Party's request, the Receiving Party shall either return to the disclosing party all Confidential Information or shall certify to the disclosing party that all media containing Confidential Information have been destroyed. Provided, however, that an archival copy of the Confidential Information may be retained in the files of the Receiving Party's counsel, solely for the purpose of proving the contents of the Confidential Information.

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(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

### **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 this Agreement, Disclosing Party does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right. The Disclosing Party disclaims all warranties

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regarding the information, including all warranties with respect to infringement of intellectual property rights and all warranties as to the accuracy or utility of such information.

(c) Access to Confidential Information hereunder shall not preclude an individual who has seen such Confidential Information for the purposes of this Agreement from working on future projects for the Disclosing Party which relate to similar subject matters, provided that such individual does not 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 this Agreement.

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

## **10. Dispute resolution**

(a) If a dispute arises in relation to the conduct of this 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 this Agreement out of or relating to the construction, meaning, scope, operation or effect of this 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

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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 this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

### **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 this Agreement: -

(a) shall be in writing

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

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

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

### **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

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

### **15. Severability**

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

### **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 this 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 this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### **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 this Agreement shall be in writing and shall be given by hand delivery, recognized courier, registered post, email or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Purchaser:

Attn: <\*\*\*>



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Tel:

Fax:

Email:

Contact:

With a copy to:

If to the AGENCY :

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 this 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 this Agreement.

**22. Mitigation**

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

**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 this Agreement. The Parties agree and covenant that they shall mutually discuss such difficulties and problems in

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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 AGENCY by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

***18. Annexure IX. Non-Disclosure Agreement (Individual)***

---

Information plays an important role in providing a competitive edge. The intangible assets of an organization, such as know-how, contacts, technical information, and employee information, are often more valuable than most tangible assets.

In consideration of being employed by <> (hereinafter called the Company), I agree with the Company as follows-

I abide that during my employment; I may come in contact with highly classified projects and information. I, as an employee, certify that I will not disclose, publish or advertise (through print media or electronic media), divulge, release, or make known (through mere discussion or communication), in any manner or to any extent, to any individual (including friends, relatives or acquaintances) other than an intended recipient.

I hereby agree that, during my employment or thereafter, I will not use or disclose to others, without the written consent of the Company-

1. Any confidential or proprietary technical or other technical or classified information or trade secrets,

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2. Third party information: Any information Company has received from others, which Company is obligated to treat as confidential,
3. Any confidential or proprietary information which is circulated within Company via its internal electronic mail system, intranet or otherwise.

Upon leaving the services of the Company, I shall surrender all confidential data and shall not reproduce such data thereof or information obtained by me as the result of my employment.

I hereby certify that I have read the non-disclosure agreement described above and I agree to the policies governing the disclosure of confidential information. I will fully and completely observe this directive and will not disclose such information to any unauthorized person, or use any information obtained for private use or gain at any time which otherwise may attract Indian Penal Sections applicable under the Indian Law.

Name

Signature

Date

SIGNED, SEALED AND DELIVERED

For and on behalf of the Purchaser by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

- 1.
- 2.

**19. ANNEXURE X – FORMAT FOR CHANGE CONTROL NOTICE**

<b>Change Control Note</b>		<b>CCN</b>
<b>Part A: Initiation</b>		
Title:		
Originator:		
Sponsor:		
Date of Initiation:		
<b>Details of Proposed Change</b>		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)		
Authorized by Purchaser	Date	
Name:		
Signature:	Date	
Received by the AGREEMENT	:	
Name:		
Signature:		
<b>Change Control Note</b>		<b>CCN</b>
		<b>Number:</b>
<b>Part B: Evaluation</b>		
(Identify any attachments as B1, B2, and B3 etc.)		
Changes to Services, charging structure, payment profile, documentation, training, Service Levels and component working arrangements and any other contractual issue.		
<b>Brief Description of Solution:</b>		
<b>Impact:</b>		

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<b>Deliverables:</b>
----------------------

***SCHEDULE I – CHANGE CONTROL SCHEDULE***

This Schedule describes the procedure to be followed in the event of any proposed change to the Empanelment Agreement, Project Implementation Phase, Service Levels and Scope of Work and Functional Requirement Specifications. Such change shall include, but shall not be limited to, changes in the scope of services provided by the AGREEMENT and changes to the terms of payment as stated in the Terms of Payment Schedule.

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

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

**CHANGE MANAGEMENT PROCESS**

**a. CHANGE CONTROL NOTE ("CCN")**

- i. Change requests in respect of the AGREEMENT, the Project Implementation, the operation, the Service Levels or Scope of work and Functional Requirement specifications will emanate from the Parties' respective Project Manager who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached as Annexure X (Format for Change Control Notice) hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- ii. The AGREEMENT and the Purchaser or its nominated agencies, during the Project Implementation Phase and the Purchaser or its nominated agencies during the Operations and Management Phase and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the RFP and is suggested and applicable only after the testing, commissioning and certification of the Pilot Phase and the Project Implementation

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Phase as set out in this Agreement.

- iii. It is hereby also clarified here that any change of control suggested beyond 25 % of the value of this Project will be beyond the scope of the change control process and will be considered as the subject matter for a separate bid process and a separate contract. It is hereby clarified that the 25% of the value of the Project as stated in herein above is calculated on the basis of bid value submitted by the AGREEMENT and accepted by the Purchaser or its nominated agencies or as decided and approved by Purchaser or its Nominated Agencies. For arriving at the cost / rate for change up to 25% of the project value, the payment terms and relevant rates as specified in Annexure D (BID) shall apply.

### **b. Quotation**

The AGREEMENT shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN the MS shall provide as a minimum:

1. a description of the change
2. a list of deliverables required for implementing the change;
3. a time table for implementation;
4. an estimate of any proposed change
5. any relevant acceptance criteria
6. an assessment of the value of the proposed change;
7. material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work

Prior to submission of the completed CCN to the Purchaser, or its nominated agencies, the Service Provider will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the AGREEMENT shall consider the materiality of the proposed change in the context of the AGREEMENT and the Project Implementation affected by the change and the total effect that may arise from implementation of the change.

### **c. Costs**

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the AGREEMENT meets the obligations as set in the CCN. In case of recertification due to

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proposed changes, required cost will be borne by the party that initiated the change. In the event the AGREEMENT is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party will be borne by the AGREEMENT.

**d. Obligations**

The AGREEMENT shall be obliged to implement any proposed changes once approval in accordance with above provisions has been given, with effect from the date agreed for implementation and within an agreed timeframe. AGREEMENT will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact.