

**Request for Proposal (RFP)
for**

“NHA Call Center”

**Volume-II
(Contractual and Legal Specifications)**

RFP No: S-12017/81/2020-NHA

Date of Publishing: 27th August 2020

Disclaimer

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

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

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

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

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

About this RFP

This RFP is meant to invite proposals from interested organizations capable of delivering ‘**scope of work**’ for “NHA call center” provided in this RFP. The content of this RFP has been documented as a set of two (II) volumes explained below.

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

This is Volume II of the RFP

Table of Contents

Disclaimer.....	2
About this RFP	3
1. Contractual and Legal Specifications:.....	6
1.1 Definitions:.....	6
1.2 Approvals and Required Consents:.....	9
1.3 Scope of Work:.....	10
1.4 Payment Terms	10
1.5 Sub- contracting and Consortium	10
1.6 Intellectual Property Rights	12
1.7 Taxes & Duties	13
1.8 Liquidated Damages.....	14
1.9 Termination.....	14
1.10 Indemnity	17
1.11 Relationship	17
1.12 Obligations under the Service Levels and Change Control.....	17
1.13 Obligations, Representations and warranties of the Service Provider:.....	19
1.14 Audit Access, Reporting and Inspection:	22
1.15 Assignment	22
1.16 Trademarks and Publicity:	22
1.17 Notices	22
1.18 Variations and Further Assurance	23
1.19 Severability and Waiver:	23
1.20 Compliance with Applicable Law	23
1.21 Professional Fees	24
1.22 Ethics.....	24
1.23 Amendment	24
1.24 Limitation of Liability	24
1.25 Conflict of Interest:	25
1.26 Fraud and Corrupt Practices:	25
1.27 Force Majeure:.....	25
1.28 Performance Bank Guarantee	27
1.29 Insurance:.....	27
1.30 Adherence to Rules & Regulations:	29
1.31 Risk Purchase:	29
1.32 Right to Vary :	30
Annexure I: Service Agreement	32

Annexure II: Non-Disclosure Agreement	36
1. Definitions.....	36
2. Interpretation.....	37
3. Measurements and Arithmetic Conventions.....	37
4. Ambiguities within Agreement	37
5. Term	38
6. Scope of the agreement.....	38
7. Obligations of the receiving party.....	38
8. Exceptions to confidential information	39
9. Ownership of the confidential information	39
10. Dispute resolution.....	39
11. Variation.....	40
12. Waiver	40
13. Exclusion of Implied Warranties	40
14. Entire agreement	40
15. Severability.....	41
16. No partnership.....	41
17. Third parties.....	41
18. Successors and assigns.....	41
19. Notices	41
20. Language	42
21. Counterparts	42
22. Mitigation.....	42
23. Removal of difficulties	42
Annexure III: Individual Confidentiality Undertaking	44
Annexure IV– Format for Change Control Notice.....	45
SCHEDULES.....	46
Schedule: I Change Control Schedule	47
<i>Schedule: II Audit, Access and Reporting</i>	49

1. Contractual and Legal Specifications:

1.1 Definitions:

Term	Meaning
Adverse Effect	means material adverse effect on (a) the ability of the Successful Bidder/ Service Provider to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of the Agreement and/or RFP (b) the legal validity, binding nature or enforceability of the Agreement;
Agreement	means the Agreement as stated at Annexure I including Service Levels and Non-Disclosure Agreement, Integrity Pact together with all Articles, Annexures, Schedules and the contents and specifications of the RFP;
Applicable Law(s)	means applicable laws of India including any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision as may be in effect on the date of the execution of the Agreement (and amended from time to time) during the subsistence thereof, becomes applicable to the Project;
Business Hours	shall mean the working time from ___ 9:30 AM to 6:30 PM in 3 shifts i.e. from _____. Again for Web Server and other components which enable successful usage of web portals of Purchaser the working time should be considered as 24X7X365 .It is desired that IT maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance;

<p>Confidential Information</p>	<p>Means all information including Purchaser Data (whether in written, oral, electronic or other format) which relates to the information or data, whether electronic, written or oral, relating to NHA and/or AB PMJAY/ and/or NDHM/ convergence schemes business, operations, financials, services, facilities, processes, methodologies, technologies, intellectual property, trade secrets, research and development, trade names, know-how, Personal Data, Sensitive Personal Data, plans, budget, methods and procedures of operation, business or marketing plans, licensed document know-how, ideas, concepts, designs, drawings, flow charts, diagrams, quality manuals, checklists, guidelines, processes, formulae, source code materials, specifications, programs, software packages/ codes, clients and suppliers, partners, principals, employees, consultants and authorized agents and any information which is of a manifestly confidential nature and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with the Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with the Agreement/RFP);</p> <p>Confidential Information may also include the Confidential Information of NHA's/ other NHA's clients, licensors, alliances, contractors and advisors.</p> <p>“Personal Data” shall mean any data / information that relates to a natural person which, directly or indirectly, in combination with other information available or likely to be available with, is capable of identifying such natural person and “Sensitive Personal Data” shall mean personal data revealing, related to, or constituting, as may be applicable— (i) passwords; (ii) financial data; (iii) health data; (iv) official identifier; (v) sex life; (vi) sexual orientation; (vii) biometric data; (viii) genetic data; (ix) transgender status; (x) intersex status; (xi) caste or tribe; 6 (xii) religious or political belief or affiliation; or (xiii) any other category of data as per applicable laws of India as amended from time to time.</p> <p>All such information in whatever form or mode of transmission, which is disclosed by NHA to Service Provider in connection with the Project during</p>
--	---

Control	<p>Means, in relation to any business entity, the power of a person to secure</p> <p>(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or</p> <p>(ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person’s wishes and in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the</p>
Deliverables	<p>Means the products, infrastructure and services agreed to be delivered by the Service Provider in pursuance of the agreement as per the Scope defined more elaborately in the RFP Volume 1.</p>
Purchaser Data	<p>Means all proprietary data of the department or its nominated agencies generated out of operations and transactions, documents all taxpayers data and related information including but not restricted to user data which the Service Provider obtains, possesses or processes in the context of</p>
Material Breach	<p>Means a breach by either Party (Service Provider) of any of its obligations under the Agreement which has or is likely to have an Adverse Effect on the Project which such Party shall have failed to cure;</p>
Parties	<p>means Purchaser and Service Provider collectively for the purposes of the Agreement and individually as defined and/or as “Party” shall be interpreted accordingly;</p>
Performance Security Deposit /Performance Bank Guarantee	<p>Means the guarantee provided by a Nationalized Bank in favour of the Service Provider as per the terms stated in RFP and Agreement.</p>
Service Levels	<p>Means the level of service and other performance criteria which will apply to the Services delivered by the Service Provider and includes the Performance and Maintenance of SERVICE LEVELS.</p>

Required Consents	means the consents, waivers, clearances and licenses to use purchaser's Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the software and other items that Purchaser or their nominated agencies are required to make available to Service Provider
Third Party Systems	means systems (or any part thereof) in which the Intellectual Property Rights are not owned by the Purchaser or Service Provider and to which Service Provider has been granted a license to use and which are used in the provision of Services;
Safety and Security	shall imply NHA Information Security and Privacy Policies and guidelines as amended from time to time.
Service Provider	Shall mean the successful Bidder selected in terms of the RFP (Term "Agency" and "Service Provider" shall mean the selected Bidder only)
NDHM	National Digital Health Mission was launched by Hon'ble Prime Minister on 15th August 2020 which is a technology based initiative envisaged to deliver the necessary digital healthcare infrastructure for our country including digital building blocks such as Health ID, DigiDoctor, Health Facility Registry, Personal Health Records, e-Pharmacy, telemedicine etc.

1.2 Approvals and Required Consents:

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

1.3 Scope of Work:

Detailed scope of work for the Service Provider shall be read as per section 4 of Volume 1 of the RFP.

1.4 Payment Terms

- i. Payments to Service Provider will be linked to the conformation of Service Levels as stated in this RFP. All payments shall be made in Indian Rupees (INR). The undisputed payments will be made to Service Provider as per section 8.1.6 of volume 1 of RFP) by NHA.
- ii. The Purchaser shall not be responsible / obligated for making any payments or any other related obligations under this Agreement to the Service Provider's subcontractor, if any. The Service Provider shall be fully liable and responsible for meeting all such obligations and all payments to be made to sub-contractors (if any) and any other third party engaged by the Service Provider in any way connected with the discharge of the Service Provider's obligation under the Agreement and in any manner whatsoever. All undisputed and eligible payments will be made by the Purchaser in favour of the Service Provider only.
- iii. The release of payments will be Performance (output) based, where the payments are made for measured deliverables and outputs.
- iv. Service Provider shall obtain sign-off for each milestone completed from the Purchaser and raise invoice against the same.
- v. Power to withhold: Notwithstanding anything contained in the payment schedule, if in the opinion of the Purchaser, any work done or supply made or service rendered by Service Provider is deficient in any manner in comparison to the prescribed standards, Purchaser shall be at liberty to withhold a reasonable portion of the payments due to the Service Provider, till such work/ supply/ service is made conforming to the prescribed standards. These powers to withhold payments shall be without prejudice to any other power/ right of the purchaser under this contract.
- vi. The Service Provider shall submit the invoice for payment when the payment is due as per the agreed terms on 'Calendar month' basis" along with the penalties in line with Service Levels.
- vii. The invoices submitted and Service Levels imposed will be verified by NHA. In the event of any wrong payment to Service Provider, the difference shall be adjusted from the subsequent payments/ dues / performance bank guarantee as the case may be.
- viii. In case of early termination of the Agreement, the payment shall be made to the Service Provider as mentioned here with:
Assessment will be made about work done from the previous payment period, for which the payment is made or to be made till the date of the termination. The Service Provider shall provide the details of the output/services performed during this period with supporting documents. Based on such details, NHA will evaluate the submissions and if satisfied shall make such undisputed payment calculated based on the specified rate/s subject to Service Levels/penalties as laid down in the terms of the RFP.

1.5 Sub- contracting and Consortium

- 1.5.1. Bids received from Consortiums will not be considered.
- 1.5.2.

- i. Subcontracting of any work as entailed in the Scope of the RFP is allowed as detailed in Section 5.6 "Consortium and Sub-Contracting" of Volume 1 of the RFP subject to the stated terms and Conditions. It is further clarified that the Service Provider shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors.
- ii. The Service Provider undertakes to indemnify the Purchaser or its nominated agencies from any claims on the grounds stated hereinabove.
- iii. Prior to executing any contract or entering into any contract or understanding with a sub-contractor, the Service Provider shall ensure that each sub-contractor appointed by the Service Provider executes a non-disclosure agreement. Execution of Non-Disclosure Agreement by the subcontractor shall not in any way relieve the Service Provider from any of its obligations and liabilities under this Agreement.
- iv. The Service Provider shall ensure that the subcontractor proposed by Service Provider is competent and professional and possess the requisite qualifications and experience appropriate to the tasks they will perform under this Agreement and as stated in Scope of work.
- v. Any change of the sub-contractor(s), after the arrangement is firmed up, will be made by the Service Provider only with the prior written approval of the Purchaser.
- vi. The Service Provider shall be responsible and shall ensure the proper execution and performance of the services or tasks so sub-contracted and shall be liable for any non-performance or breach by such sub-contractor. The Service Provider indemnifies and shall keep indemnified the Purchaser against any losses, damages, claims or such other implications arising from or out of the acts and omissions of such sub-contractor. The Service Provider shall be responsible for making all payments to the sub-contractor as may be necessary, in respect of any work performed or task executed, and the Purchaser shall not be responsible for any part or full payment, which is due to such sub-contractor.
- vii. All rights of use of any process, service or facility developed or any other task performed by the subcontractor for the Service Provider or the Purchaser for the purposes of this Agreement, under a subcontract agreement would lie exclusively with the Purchaser in perpetuity free from all liens, encumbrances and other third party rights and the Service Provider shall, wherever required take all steps that may be necessary to ensure the use of such rights by the Purchaser. Ownership and all rights of use of all deliverables / documents/ reports etc. supplied by the Service Provider and/or by authorized subcontractor for the Service Provider for the purposes of this Agreement, under a subcontract agreement would lie exclusively with the Purchaser in perpetuity free from all liens, encumbrances and other third party rights and the Service Provider shall, wherever required take all steps that may be necessary to ensure the ownership and use of such rights by the Purchaser. Purchaser shall own and have a right in perpetuity to use all newly created Intellectual Property Rights which have been developed by the subcontractor solely during execution of this Agreement. The Service Provider will provide the undertakings given by the subcontractor within 30 days from the date of appointment of subcontractor to disclose all such Intellectual Property Rights arising in performance of the Services to the Purchaser and execute all such agreements/documents and file all relevant applications, effect transfers and obtain all permits and approvals that may be necessary in this regard to effectively transfer and conserve the Intellectual Property Rights of the Purchaser.
- viii. Nothing in this Agreement or any subcontract agreement hereunder shall relieve the Service Provider from its liabilities or obligations under this Agreement to provide the Services in

accordance with this Agreement.

- ix. Where the Purchaser deems necessary, it shall have the right to require replacement of any sub-contractor with another sub-contractor and the Service Provider shall in such case find of the suitable replacement for such sub-contractor 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 terminates any contract/arrangement or agreement with a sub-contractor for any reason whatsoever, the Service Provider shall ensure the smooth continuation of Services by providing forthwith, a suitable replacement which is acceptable to the Purchaser at no additional charge. In case of a replacement of the sub-contractor, the new sub-contractor shall have the qualification at least as good as the replaced subcontractor.
- x. The Service Provider along with the Sub-Contractors/third parties shall be bound by all undertakings and representations made by the authorized representative of the Service Provider and any covenants stipulated hereunder, with respect to this Agreement/RFP, for and on their behalf.
- xi. The Purchaser's Representative may at any time request the Service Provider to remove from the Services any employee of the Service Provider or its sub-contractor or any person(s) deployed by the Service Provider or its sub-contractor for professional incompetence or negligence or for being deployed for work for which he is not suited or for unethical, corrupt, fraudulent behavior. The Service Provider shall consider the Purchaser's Representative request and may accede to or disregard it except that in case of unethical, corrupt, fraudulent behavior the Service Provider shall remove the person immediately. The Purchaser's Representative, having made a request, as aforesaid in the case of any person, which the Service Provider has disregarded, may in the case of the same person at any time but on a different occasion, and for a different instance of one of the reasons referred to above in this Clause object to and require the Service Provider to remove that person from deployment on the work, which the Service Provider shall then forthwith do and shall not again deploy any person so objected to on the work or on the sort of work in question (as the case may be) without the written consent of the Purchaser's Representative. The Purchaser's Representative shall state to the Service Provider in writing his reasons for any request or requirement pursuant to this clause. The Service Provider shall promptly replace every person removed, pursuant to this section, with a competent substitute. The change or revision of resources shall be subject to levy of penalties/service Levels as provided in the RFP.

1.6 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 (subject to valid third party license), as the case may be and that there is no change to any right, title or interest in Intellectual Property over such Pre-existing work by virtue of the Agreement . However, to the extent Service Provider's Pre-existing Work is embedded in the deliverables and/or work developed or prepared under the RFP/Agreement, Service Provider agrees

that it shall grant to NHA non-exclusive, perpetual license to use its Pre-existing Work in the form delivered to it in connection to the Agreement.

Service Provider acknowledges that all deliverables / reports / work developed, prepared and completed including work-in-progress, during the Term of the Agreement 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. It is clarified that the Service Provider shall not outsource/sub-contract the solution as required for the scope of the RFP.

Service Provider acknowledges that the deliverables / work prepared under the Agreement shall be considered as “work made for hire” by the Service Provider for NHA, and, therefore, deliverables shall remain the sole and exclusive property of NHA for ownership and any future use.

Service Provider shall bear full responsibility for the intellectual property violation, and any compensation / fines / damages in this regard shall be fully borne by the Service Provider. 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, Service Provider, 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 at its own cost and expense from the third party claiming infringement, and/or (ii) obtain the right for NHA to continue use of such Third Party IPR, at its own cost and expense.

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 Service Provider in the course of performing the Services. Forthwith upon expiry or earlier termination of the Agreement and at any other time on demand by the Purchaser, the Service Provider shall deliver to the Purchaser all Documents provided by or originating from the Purchaser and all Documents produced by or from or for the Service Provider in the course of performing the Services, unless otherwise directed in writing by the Purchaser at no additional cost. The Service Provider shall not, without the prior written consent of the Purchaser store, copy, distribute or retain any such Documents.

1.7 Taxes & Duties

Subject to as specified in Section 8.1.6 of Volume 1 of the RFP, The Service Provider is liable for all taxes and duties etc. as applicable such as, but not limited to duties, fees, levies etc. on amounts payable by the Purchaser under the Contract. All prices quoted for the purpose of this RFP and the resultant agreement/contract shall be inclusive of all applicable taxes. The Service Provider shall be entirely responsible for all taxes, duties and license fees, etc. incurred on the contracted Services to the Purchaser. The Service Provider agrees to reimburse and hold the Purchaser or its nominated agencies harmless from any deficiency including penalties and interest relating to taxes that are its responsibility. If there is any reduction or increase in duties and taxes due to statutory and /or applicable laws whatsoever after submission of Bid by the Bidder, the same shall be passed on to the Purchaser accordingly.

The Service Provider shall bear all personnel taxes levied or imposed on its personnel, sub-contractor’s personnel, Service Providers consultants etc. on account of payment received under this Agreement. The Service Provider shall bear all corporate taxes, levied or imposed on the Service Provider on account of payments received by it from the Purchaser for the work done under this Agreement.

The Service Provider shall also be responsible for having his sub-contractors under its sub-contract(s) to pay all applicable taxes on account of payment received by the sub-contractors from the Service Provider for works done under the sub-contracts in relation to this Agreement and the Purchaser will in no case bear any responsibility for such payment of taxes. It shall be the responsibility of the Service Provider to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. The Service Provider shall also provide the Purchaser such information, as it may be required in regard to the Service Provider's details of payment made by the Purchaser under the Agreement for proper assessment of taxes and duties. The Service Provider and his sub-contractors or their personnel shall bear all the taxes if any, levied on the Service Provider's, sub-contractors' and the Service Provider's personnel.

If, after the date of the Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by the Purchaser for providing the goods and services i.e. service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the Service Provider in performing the Services, then the remuneration and reimbursable expense otherwise payable to the Service Provider under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made. However, in case of any new or fresh tax or levy imposed after submission of the proposal the Service Provider shall be entitled to reimbursement on submission of proof of payment of such tax or levy.

Bidder shall provide the cost of the services and all applicable taxes separately as per the format provided in the RFP.

1.8 Liquidated Damages and Penalties

Time is the essence of the Agreement and the delivery dates are binding on the Service Provider. In the event of delay and/or any gross negligence in implementation of the project before Go-Live, for causes solely attributable to the Service Provider, in meeting the deliverables/service levels, NHA shall be entitled at its option to recover from the Service Provider as agreed, liquidated damages/penalties, as specified under clause 8.1.7 of Volume 1 of the RFP. This right to claim any liquidated damages shall be without prejudice to other rights and remedies available to NHA under the terms and conditions of the RFP, contract and as per applicable law including the right of forfeiture of PBG. Once the maximum percentage of liquidated damages/penalties as stated in the said clause in Volume 1 reaches/ cross the cap so stated, the Purchaser shall have the right and may at its discretion terminate the Agreement for default and consequences/effects for such termination as stated in Section 1.9 hereinbelow and in the Agreement shall become applicable. Each of the Parties shall ensure that the range of the Services/Deliverables under the Service Levels shall not be varied, reduced or increased except with the prior written agreement between the Purchaser and the Service Provider in accordance with the provisions of Change Control set out in this Agreement

1.9 Termination

1.9.1 FOR MATERIAL BREACH

i. In the event that NHA believes that the Service Provider is in Material Breach of its obligations under the Agreement, NHA may terminate the Agreement upon giving a one month's notice for curing the

Material Breach to the Service Provider. In case the Material Breach continues, post expiration of 30-day cure period, the Purchaser will have the option to terminate the Agreement without any further notice. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events and the termination will become effective:

- (a) If the Service Provider is not able to deliver the services as per the SERVICE LEVELS defined in RFP which translates into Material Breach, then the Purchaser may serve 30 days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the Purchaser will have the option to terminate the Agreement. Further, the Purchaser may offer a reasonable opportunity to the Service Provider to explain the circumstances leading to such a breach.
- (b) If the Service Provider any of their personnel or their sub-contractors or such sub-contractor's personnel, in the judgement of the NHA, has engaged in fraudulent and corrupt practices or acted with mala-fide intentions in competing for or in execution of the Contract and/or have been involved in any fraudulent or corrupt practices or any other practice of similar nature.
- (c) The Purchaser may by giving a one month's written notice, terminate the Agreement if a change of control of the Service Provider has taken place. For the purposes of this Clause, in the case of Service Provider, change of control shall mean as stated hereinbelow in Clause 1.12 of this Volume read with change management Schedule.
- (d) In the event that Service Provider undergoes such a change of control, Purchaser may, as an alternative to termination, require a full Performance Guarantee for the obligations of Service Provider 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 the Agreement in accordance with this Clause by giving 15 days further written notice to the Service Provider.
- (e) If the Service Provider becomes or any of its Sub-Contractor becomes (which has substantial bearing on providing Services under this contract) insolvent or go into liquidation or receivership whether compulsory or voluntary.
- (f) If the Service Provider submits to the Purchaser a false statement which has a material breach/adverse effects on the rights, obligations or interests of the Purchaser.
- (g) If the Service Provider and/or Sub- Contractor places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to the Purchaser.
- (h) If the Service Provider fails to provide the quality services as envisaged under this Contract. The Purchaser may make judgment regarding the poor quality of services, the reasons for which shall be recorded in writing.
- (i) In the event of Service Provider found :
 - i. Sub-contracting of work/services without the prior written approval of NHA
 - ii. Provided incorrect information to NHA

1.9.2 TERMINATION FOR CONVENIENCE

- i. The Purchaser may at any time terminate the Contract for any reason by giving the Service Provider a notice of termination that refers to this clause.
- ii. Upon receipt of the notice of termination under this clause, the Service Provider shall either as soon as reasonably practical or upon the date specified in the notice of termination:
 - a. deliver to the Purchaser the parts of the System executed by the Service Provider up to the date of termination;
 - b. to the extent legally possible, assign to the Purchaser all right, title, and benefit of the Service Provider to the System, or Subsystem, as at the date of termination, and, as may be required by the Purchaser, in any Contracts concluded between the Parties for this RFP
 - c. deliver to the Purchaser all non-proprietary drawings, specifications, and other documents prepared by the Service Provider as of the date of termination in connection with the System and/or Solution.

1.9.3. Effects of termination

- i. In the event that Purchaser terminates the Agreement pursuant to failure on the part of the Service Provider to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by Service Provider shall be forfeited
- ii. Upon termination of the Agreement, the Service Provider will comply with the Exit Management procedure as laid down by NHA at time of such termination and provide all the requisite support for smooth transition and handover of the operations and assets.
- iii. In the event that Purchaser terminates the Agreement, the compensation will be decided in accordance with the Terms of Payment set out in terms of RFP and the Agreement.
- iv. Purchaser agrees to pay such undisputed amount to Service Provider for all charges for Services, Service Provider provides and any Deliverables and/or system (or part thereof) Service Provider delivers through termination and any charges at the tendered rate, for extension period beyond termination as decided as per Exit Management.

1.9.4 Termination of the Agreement due to Insolvency and /or bankruptcy of Service Provider

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

1.9.5. In the event Purchaser terminates the Agreement in whole or in part, as per the above excluding for convenience, Purchaser may procure and install, upon such terms and in such manner as it deems appropriate, similar setup. It will be done at the risk and cost of the Service Provider. However, the Service Provider shall continue performance of the Contract to the extent not terminated. All data /reports collected /received by the Service Provider shall be returned to NHA in its original form upon such terminations. Bidder shall not have any right on this database, which is proprietary to NHA.

1.10 Indemnity

1.10.1. Service Provider (the "Indemnifying Party") undertakes to indemnify, hold harmless the Purchaser (the "Indemnified Party") from and against all claims, liabilities, losses, expenses (including reasonable attorneys' fees), fines, penalties, taxes or damages (Collectively "Loss") caused/claimed to/from NHA due to any act and/or omission leading to breach of obligations of Service Provider under the agreement or on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or willful default in performance or lack of due care or non-performance under the Agreement .

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

1.11 Relationship

a. Nothing mentioned herein shall be construed as relationship of master and servant or of principal and agent, employer employee as between the NHA (or the Government Department) and the "Service Provider". No partnership shall be constituted between NHA (or the Government Department) and the Service Provider by virtue of this registration nor shall either party have powers to make, vary or release 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. Service Provider shall be fully responsible for the services performed by them or on their behalf.

b. Service Provider shall not use NHA / PMJAY/NDHM/other convergence schemes 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.

1.12 Obligations under the Service Levels and Change Control

1.12.1. The service levels to be met by the Service Provider are specified in section 8.1.7 of Volume 1 of the RFP. Each party shall observe and perform the obligation stated herein pertaining to service level.

- (i) The Parties hereby expressly agree that for the purpose of giving full and proper effect to the Service Levels, the Agreement and the Service Level shall be read together and construed harmoniously.
- (ii) Subject to clause 1.10, The Service Provider will deliver the service levels in accordance with the service level metrics as set out in detail in section 8.1.7of Volume 1 of the RFP.
- (iii) This Service Levels shall also govern the provision of the contracted professional services of the Service Provider to NHA and its nominated agencies after the effective date.
- (iv) The Service Levels shall ensure the following:
 - a) Establishment of accountability of the Service Provider;
 - b) Definition of NHA's expectations in terms of services provided;

- c) Establishment of the relevant performance measurement criteria;
 - d) Definition of the service level expectations;
 - e) Definition of the escalation process;
 - f) Establishment of the framework for Service Levels change management
- (v) For the avoidance of doubt, it is expressly clarified that NHA may also calculate a financial sum and debit the same against the terms of payment as defined in the terms of payment schedule of this agreement or as defined in section 8.1.6 of Volume 1 of the RFP, as a result of the failure of the Service Provider to meet the service levels set out in the RFP.

1.12.2. Change of Control

- (a) In the event of a change of control of the Service Provider during the Term, the Service Provider shall promptly notify Purchaser and/or its nominated agencies of the same in the format set out as Annexure IV of the Agreement.
- (b) In the event that the net worth of the surviving entity is less than that of Service Provider prior to the change of control, the Purchaser or its nominated agencies may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the Service Provider from a guarantor acceptable to the Purchaser or its nominated agencies (which shall not be Service Provider or any of its associated entities).
- (c) If such a guarantee is not furnished within 30 days of the Purchaser or its nominated agencies requiring the replacement, the Purchaser may exercise its right to terminate the Agreement within a further 30 days by written notice, to become effective as specified in such notice.
- (d) Pursuant to termination, the effects of termination as set out in Clause 1.9 shall follow.

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

1.12.3. Updating of the Service Levels:

(a) 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 terms of the Agreement on an annual basis.

(b) The Parties hereby agree upon the following procedure for revising the Service Levels:

- i. Any and all changes to the Service Levels will be initiated in writing between the Buyer and the Service Provider, The service levels in the Agreement shall be considered to be standard for the Buyer and shall only be modified if both Parties agree to an appended set of terms and conditions;
- ii. Only the Buyer or the Service Provider may initiate a revision to the Service Levels; (iii) A notice of the proposed revision ("Service Level Change Request") shall be served to the Buyer or the Service Provider as the case may be;
- iii. The Service Level Change request would be deemed to be denied in case it is not approved by NHA within a period of 15 days and/or as intimated at time of such request;

- iv. In the event that Buyer/ Service Provider approves of the suggested change the change shall be communicated to all the Parties and the Service Level Change request would be appended to the Agreement;
- v. The Buyer shall update and republish the text of Agreement annually to include all the Service Level Change Requests that have been appended to the Agreement during the year. Such republished Agreement shall be circulated to all the Parties within days of such change taking place.

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

1.13 Obligations, Representations and warranties of the Service Provider:

1.13.1. The SERVICE PROVIDER represents and warrants to the Purchaser or its nominated agencies (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 the 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. acknowledges to have read and agrees to abide by NHA Information and Security Policy and Privacy guidelines as amended 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 the Agreement and to validly exercise its rights and perform its obligations under the Agreement;
- e. Service Provider 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 Service Provider has the power and the authority that would be required to enter into the Agreement and the requisite experience, the technical know-how and the financial wherewithal required to successfully execute the terms of the Agreement and to provide services sought by the Purchaser under the Agreement ;
- h. That the Service Provider 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 the Agreement;

- i. That the Service Provider shall ensure that all assets/ components including but not limited to equipment, software, licenses, processes, documents, etc. installed, developed, procured, deployed and created during the term of this agreement are duly maintained and suitably updated, upgraded, replaced with regard to contemporary requirements;
- j. The Service Provider 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 the Agreement. The Service Provider shall however, have no claim to any right, title, lien or other 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 the Agreement;
- l. in providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to Purchaser's normal business operations
- m. the 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 the Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- n. the information furnished in the SERVICE PROVIDER 's response to the RFP and any subsequent clarification pertaining to the evaluation process, furnished on or before the date of the Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of the Agreement ;
- o. That the representations made by the Service Provider in its Proposal and in the 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 Service Provider shall be bound by all the terms of the Agreement;
- p. the execution, delivery and performance of the 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 the 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 the Agreement ;
- 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 the Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under the 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 the Agreement;

- t. That the Service Provider 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 Service Provider 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 the Agreement or for influencing or attempting to influence any officer or employee of Purchaser or its nominated agencies in connection therewith.
- w. Service Provider agrees and acknowledges that data in terms of the Agreement shall always remain within territorial jurisdictions of India. And it shall at all time abide by the Data Privacy and Protection laws in reference to the services required in terms of RFP and Agreement.
- x. Service Provider shall not assign the project to any other agency, in whole or in part, to perform its obligation under the agreement.
- y. Service Provider 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, and employ appropriate technology safe and effective equipment, machinery, materials and methods.
- z. Keep all system software i.e. OS, antivirus, office applications etc., as per the terms of the RFP up to date by installing regular upgrades / patches.
- aa. Deploy and maintain the requisite Software Solution as per the requirements of RFP
- bb. Ensure adequate security of software system from viruses, Trojan horses, spyware, worms, Denial of Service (DoS) attack, fire, flood, power outage, natural disaster/ natural calamity etc.

1.13.2. Obligations of the Service Provider

- a. It shall provide to the Purchaser or its nominated agencies, the Deliverables as set out Scope of work
- b. It shall perform the Services as set out in the RFP and in a good and workman like manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, and so as to comply with the applicable Service Levels set out with this Agreement.
- c. It shall ensure that the Services are being provided as per the Project Timelines set out in the RFP.
- d. It shall carry out all the regulatory obligations enjoined by the applicable laws relating to information security and privacy of personal data, sensitive personal data and health data
- e. It shall comply with NHA's Information Security and Privacy policy as amended from time to time.

1.14 Audit Access, Reporting and Inspection:

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

1.15 Assignment

(a) All terms and provisions of the Agreement shall be binding on and shall inure to the benefit of the Purchaser and the Service Provider.

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

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

1.16 Trademarks and Publicity:

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party. Service Provider 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 the Agreement , without prior reference to and approval in writing from NHA, such approval not to be unreasonably withheld or delayed.

1.17 Notices

a. Any notice or other document which may be given by either Party under the 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 the 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:

Service Provider

Tel:

Fax:

Email:

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

1.18 Variations and Further Assurance

(a) No amendment, variation or other change to the 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 the Agreement. Such amendment shall be made in writing and signed by the duly authorized representatives of the Parties to the Agreement or the Service Levels.

(b) Each Party to the 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 the Agreement.

1.19 Severability and Waiver:

(a) If any provision of the 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 the 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.

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

1.20 Compliance with Applicable Law

i. The Service Provider 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 the Agreement and the Service Provider shall abide by these laws. The Service Provider shall take all measures necessary or proper to protect the personnel, work and facilities and shall observe all reasonable safety rules and instructions. The Service Provider 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 Service Provider shall also adhere to all security requirement/regulations of the Purchaser during the execution of the work.

ii. Each Party to the Agreement accepts that its individual conduct shall (to the extent applicable to its business like the 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 the Agreement . All legal disputes are subject to the exclusive jurisdiction of New Delhi, courts only.

iii. During the tenure of the Agreement , the Service Provider shall comply with all Applicable Laws and shall obtain and maintain all statutory and other approvals required for the performance of the Services under the Agreement and nothing shall be done by the Service Provider or any of the Sub-contractor in contravention of any Applicable Law or any amendment thereof.

1.21 Professional Fees

All expenses incurred by or on behalf of each Party to the 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 the Agreement shall be borne solely by the Party which incurred them.

1.22 Ethics

The Service Provider , 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 the 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 the Agreement .

1.23 Amendment

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

1.24 Limitation of Liability

Notwithstanding anything contrary contained in this RFP/Agreement, Service Provider's total liability shall be limited to the contract Value mentioned in all the SOWs/Work Orders entered between NHA and the Service Provider till the date on which such liability arises.

This section shall not be applicable in case of breach of confidentiality and security obligations provided that such a breach is caused by Service Provider's act and/or omission.

1.25 Conflict of Interest:

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

1.26 Fraud and Corrupt Practices:

NHA requires that the Service Provider 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:

- i. NHA shall reject the application for Registration, if the Service Provider has been determined by NHA to having been engaged in corrupt, fraudulent, unfair trade practices, coercive or collusive.
- ii. These terms are defined as follows:
 - a) "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 Agreement.
 - b) "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 Service Providers (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.
 - c) "Unfair trade practices" means supply of services different from what is ordered on or change in the Scope of Work which was agreed to.
 - d) "Coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation during the period of registration.
 - e) "Collusive practices" means a scheme or arrangement between two or more Service Providers with or without the knowledge of the NHA, designed to establish prices at artificial, non-competitive levels;
- iii. NHA will reject an application for award, if it determines that the Service Provider 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.
- iv. The Service Provider 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, and employ appropriate technology safe and effective equipment, machinery, materials and methods.

1.27 Force Majeure:

- i. "Force Majeure" shall mean any event beyond the reasonable control of the Purchaser or of the Service Provider as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected.
- ii. A Force Majeure shall include, without limitation, the following:
 - a. war, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;

- b. strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
 - c. fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, and pressure waves, or other disaster;
- iii. If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.
 - iv. The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The time for achieving Final Acceptance shall be extended provided that the Party seeking for invocation of Force Majeure has taken all reasonable measures and that such event is not occurred due to Party's willful and negligent act and/or omission.
 - v. The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under Clause 1.7.
 - vi. Subject to provisions of this Clause. No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:
 - (a) constitute a default or breach of the Contract;
 - (b) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance, if, and to the extent that, such delay or nonperformance is caused by the occurrence of an event of Force Majeure.
 - v. If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.
 - vi. In the event of termination pursuant to Clause 1.7, the rights and obligations of the Purchaser and the Service Provider shall be as specified in the clause titled Termination
 - vii. For the avoidance of doubt, it is expressly clarified that the failure on the part of the Service Provider under the Agreement to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of the 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).

- viii. Notwithstanding anything stated in this RFP, Parties agree and acknowledge that current situation of outbreak of Covid-19 will not be considered as a force Majeure for purposes of Services under this Agreement. Service Provider at all time will ensure to deliver its services as per the Scope of Work. Service Provider will be responsible for any failure to perform its obligations under this contract, unless if it is prevented in performing of those obligations by an event of Government Order subject to written instruction and approval from NHA in this regard.

1.28 Performance Bank Guarantee

The Service Provider shall submit a Performance Bank Guarantee in the form of unconditional, unequivocal and irrevocable Bank Guarantee (BG) from any Scheduled Indian Bank as per the manner and form prescribed in section 8.1.3 of Volume 1 of the RFP.

NHA may invoke the performance guarantee in case the Service Provider fails to discharge its contractual obligations during the agreement term. In the event of the Service Provider is being unable to service the Agreement for the reasons attributable to the Service Provider, 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 Service Provider, or any team members to perform/comply its obligations under the contract. The Purchaser shall notify the bidder in writing of the exercise of its right to receive such compensation, indicating the contractual obligation(s) for which the Service Provider is in default.

The Purchaser shall also be entitled to make recoveries from the Service Provider's bills, guarantees, or from any other amount due to him, an equivalent value of any payment made to him due to inadvertence, error, collusion, misconstruction or misstatement in terms of RFP and/or contract.

1.29 Insurance:

1.29.1. Obligation to maintain insurance:

In connection with the provision of the Services, the Service Provider must have and maintain for the Agreement Period, valid and enforceable insurance coverage. The risks and the coverage shall be as follows:

- (a) Third Party motor vehicle liability insurance in respect of motor vehicles operated in

India by the Service Provider or its Personnel, with a minimum coverage as per Motor Vehicles Act 1988;

- (b) Third Party liability insurance, with a minimum coverage of the value of the contract
- (c) Professional liability insurance, with a minimum coverage of the value of the contract
- (d) Purchaser's liability and workers' compensation insurance in respect of the Personnel of the Service Provider and in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and
- (e) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Service Provider's property used in the performance of the Services, and (iii) any outputs prepared by the Service Provider in the performance of the Services.

1.29.2. for 01 year <one> year following the expiry or termination of the Agreement, valid and enforceable insurance. The amount shall be in Indian Rupees (INR)

1.29.3. In the event of any failure by the Service Provider to comply with the insurance requirements set out in the agreement, Purchaser may, without in any way compromising or waiving any right or remedy, at law or in equity, upon five (5) days' written notice to the Service Provider, purchase such insurance, at the Service Provider expense, provided that Purchaser shall have no obligation to do so and if Purchaser shall do so, the Service Provider shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such reasonable costs incurred by Purchaser shall be promptly reimbursed by the Service Provider and/or may be withheld from any payment due to Service Provider. None of the requirements contained herein as to types, limits or Purchaser's approval of insurance coverage to be maintained by the Service Provider are intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by the Service Provider under the agreement, or otherwise provided by law.

1.29.4. The Service Provider shall not use these documents for purposes unrelated to the Agreement without the prior written approval of the Purchaser and shall produce the same as and when required. The Service Provider agrees to replace any insurance coverage prior to the date of expiry/cancellation. Purchaser or its nominated agencies may, at its election, terminate the Agreement, upon the failure of Service Provider or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve Service Provider of its obligations under the Agreement.

1.30 Adherence to Rules & Regulations:

- a. Compliance with laws: Each party will comply with all applicable laws of India along with applicable export and import laws and regulations.
- b. The Service Provider shall comply with the provisions of all laws including employment and labour laws, rules, regulations and notifications issued there under from time to time (such as minimum wages Act, Payment Wages Act, EPF Act, ESI, shop and establishment act and contract labour act etc.) All safety and labour laws enforced by statutory agencies and by Purchaser shall be applicable in the performance of this Contract and the Service Provider shall abide by these laws and agrees to provide the relevant proof of compliance as and when demanded by Purchaser subject to relevant Scope of Work. Subject to Clause 1.10, At no point in time shall Purchaser be held liable for any claims relating to such issues.
- c. The Service Provider shall take all measures necessary or proper to protect the personnel and facilities and shall observe all reasonable safety rules and instructions. The Service Provider shall adhere to all security requirement/regulations of the Purchaser during the execution of the work.
- d. The Service Provider shall take all measures to ensure compliance with all applicable laws and shall ensure that the Personnel are aware of consequences of non-compliance or violation of laws including Information Technology Act, 2000, Right to Privacy and Data Protection Laws etc.
- e. The Service Provider 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.
- f. Service Provider will provide all third-party components solely on a pass-through basis in accordance with the relevant third-party terms and conditions.

1.31 Risk Purchase:

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

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

1.32 Right to Vary :

Subject to as stated in Scope of Work in Volume 1,

- i. If the Purchaser does not procure or procures less than the quantity specified in the Volume 1 of the RFP due to change in circumstances, the bidder shall not be entitled for any claim or compensation.
- ii. Additional requirement may be placed by the procuring entity as specified bidding documents.

Repeat orders or additional quantities may be placed on the rates and conditions given in the contract. Delivery or completion period and/or other terms and conditions shall accordingly be extended on the same terms and conditions as stated in the RFP.

Annexures

Annexure I: Service Agreement

THIS AGREEMENT (hereinafter referred to as the “AGREEMENT”) made on this ___ day of 2020 at Delhi, India by and between

National Health Authority 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

_____ having its Office at _____ represented by its Authorized Signatory (hereinafter referred to as “the Vendor”/ “Service Provider/”) 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.

- A. WHEREAS Purchaser issued an RFP Dated _____2020 “RFP”, since purchaser was desirous to procure Service Provider for providing the Services as defined in the Scope of Work as specified in RFP Volume 1 Section 4 at contracted rates for provisioning of related services.
- B. AND WHEREAS _____ 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 the Agreement the following words and expressions shall have the meaning hereby assigned to them, except where the context requires otherwise:

- i. “Agreement” 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. “Service Provider shall mean organization who is selected as the successful Bidder under in terms of RFP.
- iii. “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.
 - a. All registrations and pending registrations relating to any such rights and the benefit of any pending applications for any such registration; and
 - b. All reversions, extensions and renewals of any such rights.

“Pre-existing work” shall mean any material / information which is: Created, developed and/or provided prior to the Effective Date of the Agreement by either Party; or Created, developed and / or obtained independently from third party by either Party and such material / information pre-exist the Agreement and has no relation / connection with the Agreement.

- iv. "Project" shall mean provision of services to NHA as per Volume 1 of the RFP.
2. In the 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. Interpretation:

In the Agreement, unless otherwise specified:

- a. references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to the Agreement and to RFP
- b. use of any gender includes the other genders;
- c. references to a 'company' shall be construed to include any company, corporation or other body corporate, wherever and however incorporated or established;
- d. References to a 'person' shall be construed 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 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 from time to time;
- 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 as per English Calendar Month (other than National Holiday on which banks in the state of ___ are generally close for business);
- h. references to times are to Indian Standard Time;
- i. a reference to any other document referred to in the Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- j. all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of the Agreement.
- k. Service Provider/ Successful Bidder/Agency has been used for the same entity i.e. bidder selected for the project under terms of the RFP
- l. All measurements and calculations shall be in the metric system and calculations done to two decimal places, with the third digit of five or above being rounded up and below five being rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

3. Ambiguities

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

- (i) as between two Clauses of the Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- (ii) as between the provisions of the Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures;
- (iii) As between the provisions of RFP and any corrigendum issued thereafter, the provisions of the corrigendum shall, to that extent only, prevail over the corresponding earlier provision of the RFP;
- (iv) As between any value written in numerals and that in words, the value in words shall

prevail

4. Priority of Documents:

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

- (i) This Agreement read with Service Levels
- (ii) Non-Disclosure Agreement
- (iii) Schedules and Annexures to the Agreement
- (iv) RFP Document No _____ 2020 along with subsequently issued Corrigendum
- (v) 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.

5. Term:

5.1. This Agreement shall come into effect on <***> 2020 (hereinafter the 'Effective Date') and will be for a duration of _____ years, from the date of GO-LIVE, extendable to a further period of _____ at the discretion of NHA. The decision of contract extension shall be solely at the option and discretion of NHA and will be binding upon the Service Provider. Service Provider shall continue till operation and maintenance completion date which shall be the date of the completion of the operation and maintenance to the Purchaser or its nominated agencies, unless terminated earlier (as per clause 1.9 of the RFP), in which case the contract will get terminated on fulfillment of all obligations mentioned as per clause 1.9.

6. Consideration:

In consideration of the payments to be made by the Purchaser to the Service Provider as hereinafter mentioned, the Service Provider 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 Vendor in consideration of the provision of Services in the manner prescribed in the RFP.

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

8. Variation: 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 the Agreement shall be entitled to enforce any of its terms.

9. Dispute Resolution: Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a Arbitration Tribunal comprising of three arbitrators, wherein each party shall appoint one arbitrator, and the two such appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator to decide dispute between the Parties. If the parties cannot agree on the appointment of the Arbitrator within a period of one

month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of New Delhi/ -----, India. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at Delhi, India. Any legal dispute will come under the sole jurisdiction of New Delhi, India / state jurisdiction of Delhi, India.”

10. Governing Law and 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 the Agreement.

11. 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, both the parties have set and subscribed their respective hands to this Agreement on the date and place first mentioned above, in the presence of following witnesses

For National Health Authority (NHA)

Mr. <Name>

<Designation>

Seal

For Service Provider

Mr. <Name>

<Designation>

Seal

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

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

Annexure II: 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 Service Provider/Receiving Party' which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

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

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

DEFINITIONS AND INTERPRETATION

1. Definitions

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

2. Interpretation

In the Agreement, unless otherwise specified:

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

3. Measurements and Arithmetic Conventions

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

4. Ambiguities within Agreement

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

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

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

5. Term

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

6. Scope of the agreement

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

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

7. Obligations of the receiving party

The Receiving Party shall:

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

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

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

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

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

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

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

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

(i) exercise extreme care in protecting the confidentiality of any Confidential Information which is removed, only with the Disclosing Party's prior written approval, from the Disclosing Party's premises. Each Party agrees to comply with any and all terms and conditions the disclosing party may impose

upon any such approved removal, such as conditions that the removed Confidential Information and all copies must be returned by a certain date, and that no copies are to be made off of the premises.

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

8. Exceptions to confidential information

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

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

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

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

9. Ownership of the confidential information

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

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

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

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

10. Dispute resolution

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

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

(c) During the 14 days after a notice is given under clause 7(b) (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to the Agreement out of or relating to the construction, meaning, scope, operation or effect of the Agreement or the validity of the breach thereof shall be referred to a sole arbitrator to be appointed as mutually decided between the Parties. If the parties cannot agree on the appointment of the arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of the jurisdiction specified in this agreement. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The seat and venue of Arbitration proceedings will be held at New Delhi.

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

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

11. Variation

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

12. Waiver

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

(a) shall be in writing

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

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

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

13. Exclusion of Implied Warranties

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

14. Entire agreement

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

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

15. Severability

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

16. No partnership

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

17. Third parties

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

18. Successors and assigns

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

19. Notices

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

If to Purchaser:

Attn: <***>

Tel:

Fax:

Email:

Contact:

With a copy to:

If to the SERVICE PROVIDER:

Attn. <***>

Phone: <***>

Fax No. <***>

20. Language

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

21. Counterparts

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

22. Mitigation

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

23. Removal of difficulties

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the SERVICE PROVIDER by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of the Purchaser by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

- 1.
- 2.

Annexure III: Individual Confidentiality Undertaking

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

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

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

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

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

Signature: _____

Name (in block letters): _____

Telephone #: _____ Date: _____

Annexure IV– Format for Change Control Notice

Change Control Note		CCN Number:
Part A: Initiation		
Title:		
Originator:		
Sponsor:		
Date of Initiation:		
Date of Proposed Change		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)		
Authorised by Purchaser	Date:	
Name:		
Signature:	Date:	
Received by IA		
Name:		
Signature:		
Change Control Note		CCN Number:
Part B: Evaluation		
(Identify any attachments as B1, B2, and B3 etc.)		
Changes to Services, charging structure, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue.		
Brief Description of Solution:		
Impact:		
Deliverables:		
Timetable:		
Charges for Implementation:		

(including a schedule of payments)	
Other Relevant Information:	
(including value-added and acceptance criteria)	
Authorised by the Service Provider	
Name:	
Signature:	

SCHEDULES

Schedule: I Change Control Schedule

CHANGE CONTROL SCHEDULE

This Schedule describes the procedure to be followed in the event of any proposed change to the 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 Service Provider and changes to the terms of payment as stated in the Terms of Payment Schedule.

The Purchaser and Service Provider 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 Service Provider will endeavor, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and Purchaser or its nominated agencies will work with the Service Provider 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.

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 share Part A of the Change control Note as attached as Annexure I hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.

ii. The Service Provider and the Purchaser or its nominated agencies, during the term of the Agreement 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.

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 Service Provider and accepted by the Purchaser or its nominated agencies or as decided and approved by Purchaser or its Nominated Agencies.

b. Quotation

i. The Service Provider shall assess the CCN and complete Part B of the CCN, in completing the Part B of

the CCN the Service Provider shall provide as a minimum:

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

ii. Prior to submission of the completed CCN to the 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 Service Provider shall consider the materiality of the proposed change in the context of the Agreement and the Project affected by the change and the total effect that may arise from implementation of the change.

c. Costs

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the Service Provider meets the obligations as set in the CCN. In case of recertification due to proposed changes, required cost will be borne by the party that initiated the change. In the event the Service Provider 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 Service Provider.

d. Obligations

The Service Provider 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. Service Provider will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact. The cost associated with any services should not exceed the price quoted in the bidders proposal.

Schedule: II Audit, Access and Reporting

AUDIT, ACCESS AND REPORTING

1 PURPOSE

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

2 AUDIT NOTICE AND TIMING

2.1 As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavours to agree to a timetable for routine audits during the Project Implementation Phase and the Operation and Management Phase. Such timetable during the Implementation Phase, the Purchaser or its nominated agency and thereafter during the operation Phase, the Purchaser or its nominated agency shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Service Provider any further notice of carrying out such audits.

2.2 The Purchaser or its nominated agency may conduct non-timetabled audits at his/ her own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Service Provider , a security violation, or breach of confidentiality obligations by the Service Provider , provided that the requirement for such an audit is notified in writing to the Service Provider a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the Service Provider considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Governance Schedule.

2.3 The frequency of audits shall be a (maximum) half yearly, provided always that the Purchaser or its nominated agency shall endeavour to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Service Provider. Any such audit shall be conducted by with adequate notice of 2 weeks to the Service Provider.

2.4 Purchaser will ensure that any 3rd party agencies (except CAG) appointed to conduct the audit will not be the competitor of Service Provider and will be bound by obligations.

3 ACCESS

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

4 AUDIT RIGHTS

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

(i) The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of Purchaser and documentation related thereto;

(ii) That the actual level of performance of the services is the same as specified in the Service Levels;

(iii) That the Service Provider has complied with the relevant technical standards, and has adequate internal controls in place; and

(iv) The compliance of the Service Provider with any other obligation under the Agreement and Service Levels.

(v) Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the Service Provider.

(vi) For the avoidance of doubt the audit rights under this Schedule shall not include access to the Service Provider's profit margins or overheads, any confidential information relating to the Service Provider's employees, or (iii) minutes of its internal Board or Board committee meetings including internal audit, or (iv) such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the Agreement .

5 AUDIT RIGHTS OF SUB-CONTRACTORS, SUPPLIERS AND AGENTS

5.1 The Service Provider shall use reasonable endeavours to achieve the same audit and access provisions as defined in this Schedule with sub-contractors who supply labour, services in respect of the services. The Service Provider shall inform the Purchaser or its nominated agency prior to concluding any sub-contract or supply agreement of any failure to achieve the same rights of audit or access.

5.2 REPORTING: The Service Provider will provide quarterly reports to the Chairperson, PIU / Steering committee regarding any specific aspects of the Project and in context of the audit and access information as required by the Purchaser or its nominated agency.

6 ACTION AND REVIEW

6.1 Any change or amendment to the systems and procedures of the Service Provider, or subcontractors, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.

6.2 Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the Purchaser or its nominated agency and the Service Provider Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the Agreement.

7 TERMS OF PAYMENT

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

8 RECORDS AND INFORMATION

For the purposes of audit in accordance with this Schedule, the Service Provider shall maintain true and accurate records in connection with the provision of the services and the Service Provider shall handover all the relevant records and documents upon the termination or expiry of the Agreement.
