



Request for Proposal (RFP)
for
Selection of a CERT-In empaneled agency to provide
Security Assessment Services
for
National Health Authority
Volume II

RFP No: S-12019/85/2020-NHA

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Disclaimer

The information contained in this Request for Proposal (RFP) Document is being provided to Service Providers 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 Document 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 Document 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 Document. The issue of this RFP Document 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 Service Provider 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 Security Assessment Services described herein. 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:** Scope of Work: Volume I of RFP provides details on the proposed scope of work and other requirements that NHA deems necessary to share with the potential bidders. Evaluation and Bidding Process details that may be needed by the potential bidders to understand their eligibility, bidding process and formats for preparing the bids.
- **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

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A. Master Services Agreement

THIS AGREEMENT (“Agreement”) is made on this the <***> day of <***>2020 at New Delhi, India

BY AND BETWEEN

National Health Authority having its office at _____ India represented by _____ designated as _____ (herein after referred to as “**Purchaser**”, which expression shall unless excluded by or repugnant to the context deemed to include its successor/s in office or assign) of the First Part;

AND

<***>, a Company incorporated under the Companies Act, 1956, having its registered office at <***> represented by _____ designated as _____ (hereinafter referred to as ‘**Security Assessment Services Provider**’ or ‘**SASP**’ which expression shall, unless the context otherwise requires, include its successors and permitted assigns) of the Second Part.

1 WHEREAS:

- i. The Purchaser had invited bids vide its RFP F. No. _____ - (hereinafter referred to as ‘RFP’, which term shall include all corrigendum, addendums, modifications issued with reference to the RFP) for Selection of Managed Services Provider (SASP) to design, develop, implement, operate and maintain PM-JAY IT 2.0 Solution
- ii. The SASP had submitted its proposal dated (hereinafter referred to as the ‘Proposal’) for the said RFP.
- iii. The successful bidder has been selected as the SASP on the basis of the bid response, to undertake the Project of the development and implementation of the solution, its roll out and sustained operations.
- iv. The Purchaser has agreed to appoint the SASP for the _____ and has issued a letter of award dated _____ notifying the SASP of its selection as successful bidder (‘Letter of Award’);
- v. The SASP has accepted the Letter of Award vide its acceptance letter dated (‘Acceptance of Letter of Award’) and has agreed to provide goods and services as are represented in the Proposal, including the terms of this Agreement, the Schedules attached hereto and in accordance with the terms of the RFP, and in terms of the clarifications issued by the Purchaser in relation to the implementation of the Scope of Work.
- vi. In consideration of the foregoing and the mutual covenants and promises contained herein and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties intend to be bound legally by the terms and conditions agreed in this Agreement, for implementation of the Project.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS

2 Definitions and Interpretations

2.1 Definitions

- i. 'Acceptance Certificate' - means that document issued by the Purchaser signifying Acceptance of a hardware, software, solution, or any other deliverable pursuant to the successful completion of the Acceptance Test of the System
- ii. 'Adverse Effect' means material adverse effect on the ability of the SASP to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or the legal validity, binding nature or enforceability of this Agreement;
- iii. 'Agreement' means this Master Services Agreement and Non-Disclosure Agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP corrigendum issued if any;
- iv. 'Applicable Law(s)' means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
- v. 'Assets' shall have the same meaning ascribed to it in Clause 10.1 (i) (Use of Assets by SASP);
- vi. 'Bespoke Development' means development of custom-built software for some specific organization.
- vii. 'Business Hours' shall mean the working time for Purchaser users which is 9:30 AM to 6:30 PM. Again, for Web Server and other components which enable successful usage of web portals of Purchaser the working time should be considered as 24 hours for all the days of the week. It is desired that IT maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance;
- viii. 'NHA' means National Health Authority
- ix. 'Locations' or 'NHA Locations' - means the offices of NHA
- x. 'Change Order' or 'Alteration' or 'Variation' shall have the meaning given in Volume 1 of the RFP hereof.
- xi. 'Commissioning of System' - The System shall be deemed to have been commissioned, when all the activities as defined in section 2 & 7 (Scope of work, Deliverables, and Payment Terms) in Volume 1 of the RFP have been successfully executed and completed
- xii. 'Deliverable' means the products, infrastructure and services agreed to be delivered by the SASP in pursuance of the agreement as defined more elaborately in the RFP, Implementation and the Maintenance phases and includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related), inter alia payment and/or process related etc., source code and all its modifications;
- xiii. 'Confidential Information' means all information including Purchaser Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how, personal data, sensitive personal data plans, budgets Contract Agreement for Model RFP Templates for Implementation Agencies and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement); All such information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly

marked as “confidential”, or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days from oral disclosure at the latest as confidential information by the Disclosing Party, is ‘Confidential Information’. This does not include information which is available lawfully in the public domain.

- xiv. ‘Control’ means, in relation to any business entity, the power of a person to secure:
 - a. 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
 - b. by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person’s wishes and in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;
- xv. ‘Delivery’ of Goods/ Solutions’ - shall be deemed to have completed when the Delivery of all the Goods/Solutions under the proposed bill of material has reached the respective designated Datacenter Sites or Locations for installation and has been duly acknowledged by the Purchaser's Representative.
- xvi. ‘Document’ means any embodiment of any text or image however recorded and includes any data, text, images, sound, voice, codes or any databases or microfilm or computer-generated micro fiche.
- xvii. ‘Effective Date’ shall have the same meaning ascribed to it in Clause 4 (Term and Duration of Agreement);
- xviii. ‘Force Majeure’ shall have the same meaning ascribed to it in Clause 16 (Force Majeure);
- xix. ‘Goods’ means all of the equipment, sub-systems, hardware, software, products, accessories and / or other material / items mentioned in the Scope of Work which the SASP is required to supply, install and maintain under the terms of this Agreement.
- xx. ‘Intellectual Property Rights / IPR’ means any patent, copyright, trademark, trade name, design, trade secret, permit, service marks, brands, proprietary information, knowledge, technology, licenses, databases, computer programs, software, know-how or other form of intellectual property right, title, benefits , interest, moral rights, rights in databases other identified IPR as per applicable laws and Bespoke Software / Pre-existing work including its upgradation systems and compilation rights (whether or not any of these are registered and including application for registration);
- xxi. ‘Notice’ means:
 - a. a notice; OR
 - b. a consent approval or other communication required to be in writing under this Agreement, to be served at the addresses as given under Clause 23.10 (Notices)
- xxii. ‘OEM’ means the Original Equipment Manufacturer of any equipment/system/software/product appointed by the SASP with the consent of the Purchaser for providing the Goods to the Purchaser under the scope of this Agreement.
- xxiii. ‘OEM-ES’ means OEM of high-end Enterprise class server
- xxiv. ‘Parties’ means the Purchaser, the SASP, OEM-ES, and the term ‘Party’ means either of the Parties.
- xxv. ‘Project’ or “Engagement” means Appointment of Managed Service Provider for maintenance and support of existing IT Infrastructure and Networks of NHA on “as is and where is basis”, and for implementing necessary augmentations in the Infrastructure
- xxvi. ‘Project Implementation’ means Project Implementation as per the testing standards and acceptance criteria prescribed by Purchaser or its nominated agencies;
- xxvii. ‘Project Implementation Phase’ shall be from the Effective Date of the Agreement to the date of final acceptance testing & certification as set out in Clause 5.7 (Final Testing and Acceptance) of this Agreement;

- xxviii. 'Project Implementation Unit' (PIU) shall be constituted by Purchaser to monitor the activities, deliverables and progress of the Project. PIU will comprise of the staff members of the Purchaser, other officials from concerned department and external experts (as defined in the RFP);
- xxix. 'Proposal' shall have the meaning ascribed to such term in Recital Clause [1.1. (ii)] of this Agreement.
- xxx. 'Purchaser' shall have the meaning ascribed to such term in Description of Parties clause of this Agreement;
- xxxi. 'Purchase Order' means the purchase order(s) issued from time to time by the Purchaser to the SASP to provide Goods and Services as per the terms and conditions of this Agreement.
- xxxii. 'Purchaser's Representative / Project Coordinator' means the person and/or the persons appointed by the Purchaser from time to time to act on its behalf for overall coordination, supervision and project management.
- xxxiii. 'RFP' shall have the meaning ascribed to such term in the Recital [1.1.(i)] clause of this Agreement.
- xxxiv. 'Software' means the software designed, developed / customized, tested and deployed by the SASP for the purposes of the Project and includes the source code (in case of Bespoke development) along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products (including the COTS products used for the product), proprietary software components and tools deployed by the SASP ;
- xxxv. 'Scope of Work' means all Goods and Services, and any other deliverables as required to be provided by the SASP as specified in section 2 (Scope of Work) of Volume I of the RFP.
- xxxvi. 'SASP' shall have the meaning ascribed to such term in Parties clause of this Agreement and shall be deemed to include the SASP's successors, representatives (approved by the Purchaser), heirs, executors, administrators and permitted assigns, as the case may be, unless excluded by the terms of the contract. The word SASP when used in the pre-award period shall be synonymous with parties bidding against this RFP
- xxxvii. 'SASP's Team' means the SASP and include any and/or all of the employees of the SASP, authorized partners/agents and representatives or other personnel employed or engaged either directly or indirectly by the SASP for the purposes of this Agreement who have to provide Goods and Services to the Purchaser under the scope of this Agreement.
- xxxviii. 'Services' means the services to be provided as per the requirements / conditions specified in the Scope of Work and the Agreement. In addition to this, the definition would also include other related / ancillary services that may be required to execute the Scope of Work under this Agreement.
- xxxix. 'Service Level(s)' means the service level parameters and targets and other performance criteria which will apply to the Services and Deliverables as described in Annexure III (Service Level Metrics) of Volume 1 of the RFP;
 - xl. 'Service Specifications' means and includes detailed description, statements to technical data, performance characteristics, and standards (Indian as well as International) as applicable and as specified in the Agreement, as well as those specifications relating to industry standards and codes applicable to the performance of work, work performance quality and specifications affecting the work, or any additional specifications required to be produced by the SASP to meet the design criteria.
 - xli. 'System' means integrated system/solution emerging out of all the Goods indicated in the Scope of Work and covered under the scope of each Purchase Order issued by the Purchaser
 - xl.ii. 'Term' shall have the same meaning ascribed to it in Clause 4 (Term and Duration of Agreement);
 - xl.iii. 'Timelines' means the project milestones for performance of the Scope of Work and delivery of the Services as described in section 2 & 7 (Scope of work, Deliverables and Payment Terms) of Volume 1 of the RFP;

- xliv. 'Total Value of Contract' means [_____] i.e. the amount quoted by the SASP (inclusive of taxes) in its commercial proposal.
- xlv. 'Application' means the software application developed as a part of scope of work
- xlvi. 'Application Downtime' means the time for which user/s is not able to access the application. However, in calculating downtime, scheduled downtime (for example, backup time, batch processing time, routine maintenance time) would not be considered;
- xlvii. 'Unplanned Application Downtime' means the total time for all the instances where services in the software requirement specification document prepared by the Implementation Agency are not available for more than 5 consecutive minutes;
 - a) 'unplanned network outage' means the total time for all the instances where services in the software requirement specification document prepared by the Implementation Agency are not available for more than 5 consecutive minutes
 - b) 'Network uptime' Network Uptime refers to network availability between Purchaser's Head Quarters to Data center. "%Uptime" means ratio of 'up time' (in minutes) in a month to Total time in the month (in minutes) multiplied by 100;
 - c) EQI shall mean Equal Quarterly Instalments

2.2 Interpretation

In this Agreement, unless a contrary is evident:

- i. Unless otherwise specified, a reference to a clause, sub-clause or section is a reference to a clause, sub-clause or section of this Agreement including any amendments or modifications to the same from time to time;
- ii. Words denoting the singular include the plural and vice versa and use of any gender includes the other genders;
- iii. References to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- iv. Words denoting a person shall include an individual, corporation, company, body corporate, partnership, or a trust;
- v. a reference to legislation includes legislation repealing, replacing or amending that legislation;
- vi. Unless otherwise specified a reference to a clause number is a reference to all its sub-clauses;
- vii. Where a word or phrase is given a particular meaning, it includes the appropriate grammatical forms of that word or phrase having corresponding meanings;
- viii. A reference to the Agreement shall, unless the context otherwise requires, includes a reference to its Annexures, Schedules and every other document forming part of this Agreement. If a term of this Agreement requires things to be done, undertaken or completed under the Agreement, the same, if relevant, shall, unless the context otherwise require, mean to include such things to be done, undertaken or completed under the relevant Schedules, Annexures of this Agreement.
- ix. 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;
- x. any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- xi. 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 Delhi are generally open for business; references to times are to Indian Standard Time;
- xii. a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and

- xiii. All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- xiv. SASP has been used for the same entity i.e. bidder selected for the project.
- xv. 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.

2.3 Priority of Documents

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

- i. This Agreement
- ii. NDA agreement and Integrity Pact,
- iii. Schedules and Annexures;
- iv. The RFP along with subsequently issued corrigendum
- v. Technical and financial/commercial proposal submitted by the successful bidder, along with subsequently issued clarifications furnished by the SASP in response to the RFP, to the extent they are not inconsistent with any terms of the RFP.

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

2.4 Ambiguities within Agreement

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

- i. As between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- ii. As between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures;
- 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

3 Scope of Work

3.1. In consideration of the award of the work under the RFP to the SASP and payments to be made by the Purchaser to the SASP as hereinafter mentioned, the SASP hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein and to perform all obligations mentioned in the RFP in conformity in all the respects with the provisions of the Agreement.

- 3.2. The Purchaser hereby covenants to pay the SASP in consideration of the provision of the Goods and Services and the remedying of defects therein and for performance of all obligations mentioned in the RFP, the Total Contract Value or such other sum as may become payable under the provisions of the Agreement at the times and in the manner prescribed under the Agreement.
- 3.3. Scope of Work under this Agreement shall mean as defined in section 2 (Scope of Work) of Volume 1 of the RFP and clarifications, annexures, schedules etc. thereof.

4 Term and Duration of Agreement

- 4.1. This Agreement shall come into effect on 201- (hereinafter the 'Effective Date') and will be for a duration of _____ years, from the date of GO-LIVE, extendable to a further period of _____ year(s) as may be mutually decided by and between the Parties. However right to grant such an extension will be at the discretion of NHA." The Purchaser reserves the right to extend the Term for a period or periods of up to with a maximum of such extension or extensions on the same terms and conditions, subject to the Purchaser's obligations at law. SASP shall continue till operation and maintenance completion date which shall be the date of the completion of the operation and maintenance to the Purchaser or its nominated agencies, unless terminated earlier (as per clause 14 – Events of Default, Termination and Suspension), in which case the contract will get terminated on fulfillment of all obligations mentioned as per Clause 14 (Events of Default, Termination and Suspension), and Schedule-II (Exit Management Schedule)
- 4.2. Implementation of this project shall be as per scope of work defined in Volume I of the RFP.

5 Conditions Precedent

5.1 Payment obligations to take effect upon fulfilment of Conditions Precedent

Subject to express terms to the contrary, the rights and obligations under this Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out below. The Purchaser reserves the right to waive any or all of the conditions specified in clause 5.1 (i). below in writing and no such waiver shall affect or impair any right, power or remedy that the Purchaser may otherwise have.

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

- i. The SASP shall be required to fulfil the Conditions Precedent which are as follows:**
- a. Furnishing by the SASP, within 15 days of issuance of Letter of Award by the Purchaser to the SASP, an unconditional, irrevocable and continuing Bank Guarantee equivalent to 10% of the Total Contract Value, in a form and manner acceptable to the Purchaser which would remain valid from the date of issuance till 6 months after expiry of the Term of the Agreement;
 - b. Obtaining of all statutory and other approvals required for the performance of the Services under this Agreement;
 - c. Furnishing of such other documents, including the copy of sub-contracts, Corporate Non-Disclosure Agreement and any other documents as the Purchaser may specify prior to the signing of this Agreement.

- d. to provide the Purchaser or its nominated agencies certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement

ii. Conditions Precedent of the Purchaser

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

- a. Necessary clearances associated with the execution of the project, unless specified to be performed by the SASP
- b. Approval of the Project

iii. Extension of time for fulfillment of Conditions Precedent

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

iv. Non-fulfillment of the SASP 's Conditions Precedent

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

5.2 Key Performance Management

- i. Unless specified by the Purchaser to the contrary, the SASP shall provide the Goods and perform the Services and carry out the Scope of Work in accordance with the terms of this Agreement, the Scope of Work and the Service Level(s) as laid down in section 2 (Scope of Work) and Annexure V (Service Level Agreement) of Volume 1 of the RFP.
- ii. Unless otherwise specified, If the Goods and Services specifications include more than one document, then unless the Purchaser specifies to the contrary, the document submitted later in time shall prevail over a document of an earlier date to the extent of any inconsistency.
- iii. The Purchaser reserves the right to amend any of the terms and conditions in relation to the Agreement / Goods and Services specifications/ Service Level(s) and may issue any such directions which are not necessarily stipulated therein if it deems necessary for the fulfilment of the Scope of Work. If the suggested amendments or new directions require the SASP to provide more resources, outside the agreed scope of work, the Purchaser shall bear mutually agreed additional expenses for the same.
- iv. The SASP shall commence the performance of its obligations under the Agreement from Effective Date and shall proceed to provide Goods and carry out the Services with diligence and expedition in accordance with any stipulation as to the time, manner, mode, and method of execution contained in this Agreement. The SASP shall be responsible for and shall ensure that all the Goods and Services are performed in accordance with the specifications and that the SASP's Team complies with such specifications and all other standards, terms and other stipulations/conditions set out hereunder.
- v. The Goods supplied under this Agreement shall conform to the standards mentioned in the technical specifications given in the RFP, and, when no applicable standard is mentioned, to the authoritative standards, such standards shall be the latest issued by the concerned institution. Delivery of Goods

shall be made by the SASP in accordance with the Agreement and the terms specified by the Purchaser in Purchaser Order. In case if it is found that the Goods provided by SASP do not meet one/more criteria, the SASP shall remain liable to provide a replacement for the same which meets all the required specifications and as per choice of SASP, at no additional cost to SASP.

5.3 Commencement and progress

- i. The SASP shall commence the performance of its obligations in a manner as specified in the Scope of Work, Service Levels and other provisions of the Agreement from the Effective Date.
- ii. The SASP shall proceed to carry out the activities / services with diligence and expedition in accordance with any stipulated as to the time, manner, mode, and method of execution contained in this Agreement.
- iii. The SASP shall be responsible for and shall ensure that all activities / services are performed in accordance with the Agreement, Scope of Work, Services Specifications and Service Levels and that the SASP's Team complies with such specifications and all other standards, terms, and other stipulations / conditions set out hereunder.
- iv. The SASP shall perform the activities/ services and carry out its obligations under the Agreement with due diligence, efficiency and economy, in accordance with generally accepted techniques and practices used in the industry and with professional engineering and consulting standards recognized by international professional bodies and shall observe sound management, engineering and security practices. It shall employ appropriate advanced technology and engineering practices and safe effective equipment, machinery, material and methods. The SASP shall always act, in respect of any matter relating to this Agreement, as faithful advisors to the Purchaser and shall, at all times, support and safeguard the Purchaser's legitimate interests in any dealings with SASP's Team and Third parties.
- v. The Goods supplied under this Agreement shall conform to the Standards mentioned in the technical specifications given in the RFP, and, when no applicable standard is mentioned, to the authoritative standards, such standard shall be the latest issued by the SASP in accordance with the Agreement and the terms specified by the Purchaser in the Purchase Order.

5.4 Change of Control

- i. In the event of a change of Control of the SASP during the Term, the SASP shall promptly notify the Purchaser of the same in the format set out as Annexure A (Format for Change Control Notice) of this Agreement.
- ii. In the event that the net worth of the surviving entity is less than that of the SASP prior to the Change of Control, the Purchaser may within 30 days of becoming aware of such change in control, require a replacement of the existing Performance Guarantee (with same or higher value) furnished by the SASP from a guarantor acceptable to the Purchaser (which may or may not be the SASP or any of its associated entities).
- iii. If such a guarantee is not furnished within 30 days of the Purchaser requiring the replacement, the Purchaser may exercise its right to terminate this Agreement within a further period of 30 days by written notice, to become effective as specified in such notice.
- iv. Pursuant to termination, the effects of termination as set out in clause 14 (Events of Default, Termination and Suspension) of this Agreement shall follow.
- v. For the avoidance of doubt, it is expressly clarified that the internal reorganization of the SASP shall not be deemed to be an event of a change of control for purposes of this Clause unless the surviving entity is of less net worth than the predecessor entity.

5.5 Updating of the Service Levels

- i. The Parties anticipate that the Service Levels need to be re-evaluated and modified to account for changes in work environment and technology from time to time. Hence, they hereby agree to revise the Service Levels as and when required.
- ii. The Parties hereby agree upon the following procedure for revising the Service Levels:
 - a. Any and all changes to the Service Levels will be initiated in writing between the Purchaser and the SASP, the Service Levels in this Agreement shall be considered to be standard for the Purchaser and shall only be modified if both Parties agree to an appended set of terms and conditions;
 - b. Only the Purchaser or the SASP may initiate a revision to the Service Levels;
 - c. A notice of the proposed revision (“Service Levels Change Request”) shall be served to the Purchaser or the SASP as the case may be;
 - d. The Service Levels Change request would be deemed to be denied in case it is not approved by NHA within a period of ___ days;
 - e. In the event that Buyer/SASP approves of the suggested change the change shall be communicated to all the Parties and the Service Levels Change request would be appended to the Agreement;
 - f. The Buyer shall update and republish the text of Agreement annually to include all the Service Levels Change Requests that have been appended to the Agreement during the course of the year. Such republished Agreement shall be circulated to all the Parties within days of such change taking place.

5.6 Scope of Services

- i. The SASP shall ensure that Services are available at Contract Agreement locations as per the requirements of the project;
- ii. The SASP shall provide support services for addressing problems related to the provision of services of the selected bidder through the POC (Point of contact). Such POC shall be available over telephone on number 24 hours a day, 7 days a week
- iii. The SASP guarantees that he shall achieve the Service Levels for the Project;
- iv. The SASP shall be liable to Service Credits in case of failure to comply with the Service Levels. However, any delay not attributable to the SASP shall not be considered while computing adherence to the Service Levels.
- v. Performance Review: The POC’s of both the Buyer and the SASP shall meet on a quarterly basis to discuss priorities, Service Levels and system performance. Additional meetings may be held at the request of either the SASP or the Buyer. The agenda for these meetings shall be as follows: (i) Service performance; (ii) Review of specific problems/exceptions and priorities; and (iii) Review of the operation of this Agreement and determine corrective action to overcome deficiencies.

6 Representations and Warranties

6.1 Representations and warranties of the SASP

The SASP represents and warrants to the Purchaser or its nominated agencies represents (such representations shall remain in force during the Term and extension thereto), the following:

- i. It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- ii. It is a competent provider of a variety of information technology and business process management services;
- iii. It has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- iv. That all conditions precedent under the Agreement have been satisfied;
- v. That the selected SASP has the power and the authority that would be required to enter into this Agreement and the requisite experience, the technical know-how and the financial wherewithal required to successfully execute the terms of this Agreement and to provide services sought by the Purchaser under this Agreement;
- vi. That the SASP and its team has the professional skills, personnel, infrastructure and resources/ authorizations that are necessary for providing all such services as are necessary to fulfil the scope of work stipulated in the tender and this Agreement;
- vii. That the SASP 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;
- viii. The SASP's team shall use such assets of the Purchaser as the Purchaser may permit for the sole purpose of execution of its obligations under the terms of the Bid, Tender or this Agreement. The SASP 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;
- ix. from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- x. in providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to Purchaser's normal business operations
- xi. this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- xii. the information furnished in the SASP 's response to the RFP and any subsequent clarification pertaining to the evaluation process, furnished on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement;
- xiii. That the representations made by the SASP in its Proposal and in this Agreement are and shall continue to remain true and fulfil all the requirements as are necessary for executing the obligations and responsibilities as laid down in the Agreement and the RFP and unless the Purchaser specifies to the contrary, the SASP shall be bound by all the terms of the Agreement;
- xiv. the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- xv. there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;

- xvi. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- xvii. it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement;
- xviii. That the SASP 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 SASP which is necessary to ensure the legality, validity, enforceability or admissibility in evidence of the Contract have been made;
- xix. 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
- xx. no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of Purchaser or its nominated agencies in connection therewith.

6.2 Representations and Warranties of the Purchaser or its nominated agencies

The Purchaser represents to the SASP that:

- i. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- ii. It has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- iii. It has the financial standing and capacity to perform its obligations under the Agreement;
- iv. It is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- v. This Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;
- vi. The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- vii. It has complied with Applicable Laws in all material respects;
- viii. All information provided by it in the RFP in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- ix. Upon the SASP performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the SASP, in accordance with this Agreement.

7 Purchaser's Obligations

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

- i. To provide any support through personnel to test the system during the Term;
- ii. To provide any support through personnel and/or test data during development, rollout, steady state operation, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- iii. Purchaser shall provide the data (including in electronic form wherever available) to be migrated.
- iv. To authorize the SASP to interact for implementation of the Project with external entities such as the state treasury, authorized banks, trademark database etc.
- v. The Purchaser's Representative may interface with the SASP to provide the required information, clarifications and to resolve any issues as may arise during the execution of the Agreement. The Purchaser will provide adequate cooperation in providing details, coordinating and obtaining of approvals from various governmental agencies, in cases, where the intervention of the Purchaser is proper and necessary.
- vi. Provide prompt Deliverable feedback: Within _____ days from the submission of a deliverable/ Service Level and performance reports, the Purchaser shall provide a sign offs on the deliverable or its comments for changes.
- vii. In case the purchaser fails to respond and provide feedback on above stated submission, the deliverables or Service Level and performance reports will be deemed accepted post __ days . Post <xx working days> there will be no rework of the said deliverable except, in case the purchaser has provided an alternate date for acceptance. Any subsequent rework post acceptance would form the subject of a formal change request under the provisions of this Agreement.

8 Obligations of the SASP

- 8.1. It shall provide to the Purchaser or its nominated agencies, the Deliverables as set out in Volume I of the RFP read with Annexure E (Roles and Responsibilities of the Parties) of this Agreement.
- 8.2. It shall perform the Services as set out in Section 2 of this Agreement 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.
- 8.3. It shall ensure that the Services are being provided as per the Project Timelines set out in the RFP.
- 8.4. 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
- 8.5. It shall comply with NHA's Information Security and Privacy policy as shall be amended from time to time.

9 Approvals and Required Consents

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

9.2. The Purchaser or its nominated agencies may assist SASP to obtain the Required Consents or vice versa, depending on the Scope of work defined in the RFP. In the event that any Required Consent is not obtained, the SASP and the Purchaser or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the Purchaser or its nominated agencies to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Required Consent is obtained, provided that the SASP shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the Required Consents are obtained if and to the extent that the SASP 's obligations are not dependent upon such Required Consents.

10 Use of Assets by the SASP

10.1. During the Term the SASP shall:

- i. Take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the SASP exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the "Assets") in proportion to their use and control of such Assets; and
- ii. Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the SASP takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- iii. Ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the SASP will be followed by the SASP and any person who will be responsible for the use of the Assets;
- iv. Take such steps as may be properly recommended by the manufacturer of the Assets and notified to the SASP or as may, in the reasonable opinion of the SASP, be necessary to use the Assets in a safe manner;
- v. Ensure that the Assets that are under the control of the SASP, are kept suitably housed and in conformity with Applicable Law;
- vi. Procure permission from the Purchaser or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third-party requirements;
- vii. Not knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.
- viii. Use best efforts to ensure that no lien, mortgage, hypothecation or any other charge is created over the Assets. The SASP agrees that the SASP will inform the Purchaser immediately if the SASP feels or comes to know that a charge may be / has been created over any of the Asset(s). In the event a charge is created over any of the Assets (owned by the Purchaser) due to reasons attributable to the SASP or any of its ,team members or subcontractors etc., the Purchaser shall have the right to get the charge removed at the risk, cost, expense of the SASP and the SASP shall make good all losses, damages, costs, fees, cess, duties, etc. borne or suffered by the Purchaser due to creation of such charge and/or in removal of such charge and/or in discharging the obligations for removal of such charge.
- ix. The Strategic Control of the information assets shall be exercised by the Purchaser. It shall be the obligation of the SASP to establish the infrastructure, tools and organizational structure to ensure the same.

11 Access to the Purchaser or its nominated agencies locations

- 11.1. Access to locations: For so long as the SASP provides services to the Purchaser or its nominated agencies location, as the case may be, on a non-permanent basis and to the extent necessary, the Purchaser as the case may be or its nominated agencies shall, subject to compliance by the SASP with any safety and security guidelines, NHA Information Security and Privacy guidelines which may be provided by the Purchaser as the case may be or its nominated agencies and notified to the SASP in writing, provide the SASP with:
- i. Reasonable access, in the same manner granted to the Purchaser or its nominated agencies employees, to the Purchaser as the case may be location twenty-four hours a day, seven days a week;
 - ii. Subject to (i) above, reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other the Purchaser as the case may be location, if any, as may be reasonably necessary for the SASP to perform its obligations hereunder and under the Service Levels
- 11.2. Limitation on access to locations: Access to locations, office equipment and services shall be made available to the SASP on an “as is, where is” basis / in appropriate working condition (as per scope of work defined in the tender) by the Purchaser as the case may be or its nominated agencies. The SASP agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in RFP for the following purposes:
- i. for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
 - ii. in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality) or
 - iii. For their own purpose or for conducting their own business or for providing services to any third party.

12 Management Phase

- 12.1. Governance: The review and management process of this Agreement shall be carried out in accordance with the Schedule V (Governance Schedule) of this Agreement and /or in Section 2 (Scope of Work) of Volume 1 of the RFP and shall cover all the management aspects of the Project.
- 12.2. Use of Services
- i. The Purchaser as the case may be or its nominated agencies, will undertake and use the Services in accordance with any instructions or procedures as per the acceptance criteria as set out in the Service Levels or this Agreement or any agreement that may be entered into between the Parties from time to time;
 - ii. The Purchaser as the case may be or its nominated agencies shall be responsible for the operation and use of the Deliverables resulting from the Services.
- 12.3. Changes: Unless expressly dealt with elsewhere in this Agreement, any changes under or to this Agreement or under or to the Service Levels shall be dealt with in accordance with the Schedule I (Change Control Schedule) of this Agreement.
- 12.4. Security and Safety
- i. The SASP shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act or Telegraph Act including

the regulations issued by dept. of telecom (wherever applicable), IT Security Manual, Information Security and Privacy guidelines of the Purchaser as specifically stated in the RFP and follow the industry standards related to safety and security (including those as stated in the RFP), insofar as it applies to the provision of the Services.

- ii. SASP shall also comply with NHA's Information Security and Privacy policy.
- iii. Each Party to this Agreement shall also comply with Purchaser or the Government of India, and the respective State's security standards and policies in force from time to time at each location of which Purchaser or its nominated agencies make the SASP aware in writing insofar as the same apply to the provision of the Services.
- iv. The Parties to this Agreement shall use reasonable endeavors to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Purchaser as the case may be or any of their nominee's data, facilities or Confidential Information.
- v. The SASP shall upon reasonable request by the Purchaser as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- vi. As per the provisions of this Agreement, the SASP shall promptly report in writing to the Purchaser or its nominated agencies, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of Purchaser as the case may be.

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

- i. Does not require material expenditure by the Providing Party to provide the same;
- ii. Is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement
- iii. Cannot be construed to be Confidential Information; and
- iv. Is capable of being provided by the Providing Party.

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

13 Financial Matters

13.1 Terms of Payment

- i. Purchaser shall make payments only to the SASP at the time and in the manner set out in Payment Schedule in section 2 & 7 (Scope of work, Deliverables and Payment Terms) of Volume 1 of the RFP subject always to the fulfilment by the SASP of its obligations herein.
- ii. The payments which are linked to acceptance of the deliverables will be released to SASP only on satisfactory acceptance of the deliverables for each Service as per the said schedule. Each of the Services, as specified in the Scope of Work, to be rendered by the SASP under the terms of this Agreement, shall be provided in a phased manner in accordance with the instructions and requirements of the Purchaser, as notified to SASP in writing ("Phased Services"). The fee payable for Services as specified in the Purchase orders shall be paid in accordance with the payment schedule mentioned herein above; provided that the Purchaser shall have the right to require phased deployment of Services and personnel required for performance of such Services, and SASP shall

ensure commissioning of such Services and deployment of the required personnel in accordance with such instructions of the Purchaser.

- iii. Save and except as otherwise provided for herein or as agreed between the Parties in writing, the Purchaser shall not be responsible obligated for making any payments or any other related obligations under this Agreement to the SASP' s subcontractor(s). The SASP 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 SASP in any way connected with the discharge of the SASP's obligation under the Agreement and in any manner whatsoever.
- iv. All payments agreed to be made by Purchaser to the SASP in accordance with the Proposal shall be inclusive of all statutory levies, duties, taxes and other charges whenever levied/applicable including costs of maintenance, if any and Purchaser shall not be liable to pay any such levies/other charges under or in relation to this Agreement and/or the goods and Services.
- v. Notwithstanding the foregoing, Service Tax or GST (as applicable) shall be paid by the Purchaser on actuals as per applicable laws/rate and all other taxes are to be borne by the SASP
- vi. In case of change in taxes under change in law, appropriate parties shall pass the benefit of the same to the other Party. In case of such change, SASP shall submit a formal request with necessary supporting documents to the Purchaser. The Purchaser shall verify these documents and if applicable and approved in writing by the Purchaser, the SASP shall incorporate such changes into subsequent regular invoice for payment.
- vii. Unless otherwise provided in this Agreement or as mutually agreed between the Parties, prices fees as mentioned in the Commercial Proposal shall remain firm and shall not be subject to any upward revision on any account whatsoever throughout the Term.
- viii. It is expressly agreed that the price/fees mentioned in the Proposal by the SASP shall be deemed to include all ancillary and incidental costs and charges that are necessary for accomplishment of the scope of work and obligations mentioned in the RFP and this Agreement. No invoice for extra work/charge order on account of change order will be submitted by the SASP unless the said extra work/change order has been authorized/approved by the Purchaser in writing in accordance with the clause on Change Order.
- ix. In the event of the Purchaser noticing at any time that any amount has been disbursed wrongly to the SASP or any other amount is due from the SASP to the Purchaser, the Purchaser may without prejudice to its rights to recover such amounts by other means, after notifying the SASP deduct such amount from any payment falling due to the SASP. The details of such recovery, if any, will be intimated to the SASP. The SASP shall receive the payment of undisputed amount under subsequent invoice for any amount that has been omitted in the previous invoice by mistake on the part of the Purchaser or the SASP.
- x. All Payments shall be subject to the application of liquidated damages (for period prior to "Go Live") or Service Level penalties and its adjustments/corrections (for post "Go-Live") as may be provided for in the Agreement .For the avoidance of doubt, it is expressly clarified that the Purchaser will calculate a financial sum and debit the same against the terms of payment as set out in Clause 21 (Liquidated Damages) of this Agreement as a result of the failure of the SASP to meet the Timelines and/or Service Level.

13.2 Invoicing and Settlement

- i. Subject to the specific terms of the Agreement and the Service Levels, the SASP shall submit its invoices in accordance with the following principles:
- ii. The Purchaser shall be invoiced by the SASP for the Services. Generally, and unless otherwise agreed in writing between the Parties or expressly set out in the Service Levels, the SASP shall raise an invoice as per Schedule V (Terms of Payment Schedule) of this Agreement; and

- iii. Any invoice presented in accordance with this Clause shall be in a form agreed with the Purchaser.
- iv. The SASP alone shall invoice all payments after receiving due approval of completion of payment milestone from the competent authority. Such invoices shall be accurate with all adjustments or changes in the terms of payment as stated in Schedule V (Terms of Payment Schedule) of this Agreement. The SASP shall waive any charge for a Service that is not invoiced within six months after the end of the month in which the change relating to such Service is (i) authorized or (ii) incurred, whichever is later.
- v. Payment shall be made within 30 working days of the receipt of invoice along with supporting documents by the Purchaser subject to deduction of applicable liquidated damages (till "Go Live") or Service Levels penalties (post "Go Live"). The penalties are imposed on the vendor as per the Service Levels criteria specified in the Service Levels. In the event of delay in payment of undisputed amount beyond 30 working days, SASP shall be entitled to a late payment interest of 10% per annum of the total Contract value from the date of completion of 30 working days after submission of invoice. This interest is subject to a limit of 10% of the total contract value.
- vi. The Purchaser shall be entitled to delay or withhold payment of any invoice or part of it delivered by the SASP under Schedule V (Terms of Payment Schedule) of this Agreement where the Purchaser disputes/withholds such invoice or part of it provided that such dispute is bona fide., The withheld amount shall be limited to that which is in dispute. The disputed / withheld amount shall be settled in accordance with the escalation procedure as set out in Schedule V (Terms of Payment Schedule) of this Agreement. Any exercise by the Purchaser under this Clause shall not entitle the SASP to delay or withhold provision of the Services.

13.3 Tax and Deductions

- i. The Purchaser or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the SASP wherever applicable. The SASP shall pay for all other taxes in connection with this Agreement, Service Levels, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.
- ii. The Purchaser or its nominated agencies shall provide SASP with the original tax receipt of any withholding taxes paid by Purchaser or its nominated agencies on payments under this Agreement if may be required. The SASP agrees to reimburse and hold the Purchaser or its nominated agencies harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among the Purchaser or its nominated agencies, the SASP and third-party subcontractors.
- iii. If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by the Purchaser for providing the services i.e. any applicable tax from time to time, which increase or decreases the cost incurred by the SASP in performing the Services, then the remuneration and reimbursable expense otherwise payable to the SASP under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule V (Terms of Payment Schedule). However, in case of any new or fresh tax or levy imposed after submission of the proposal the SASP shall be entitled to reimbursement on submission of proof of payment of such tax or levy if the same was liable to be paid by Purchaser as per applicable laws and as per the terms of this agreement.
- iv. The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with the following:

- a. any resale certificates;
 - b. any relevant information regarding out-of-state or use of materials, equipment or services; and
 - c. any direct pay permits, exemption certificates or information reasonably requested by the other Party.
- v. Should the SASP fail to submit returns/pay taxes in times as stipulated under the Indian Income Tax Act as amended from time to time and consequently any interest or penalty is imposed by the Indian Income Tax authority, the SASP, as the case may be shall pay the same.

14 Events of Default, Termination and Suspension

14.1 Events of Default

- i. The failure on the part of the SASP to perform any of its obligations or comply with any of the terms of this Agreement shall constitute an Event of Default on the part of the SASP. The events of default as mentioned above may include, inter-alia, the following:
 - a. the SASP has failed to perform the obligations under this Agreement; or
 - b. SASP has exceeded cap on any liquidated damages;
 - c. the SASP or its team has failed to conform with any of the service specifications as set out in the RFP or this Agreement;
 - d. the SASP has failed to demonstrate or sustain any representation or warranty made by it in this Agreement, with respect to any of the terms of its Proposal, the RFP and this Agreement;
 - e. There is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to the SASP;
 - f. The SASP or Sub-contractor has failed to comply with or is in breach or contravention of any Applicable Laws;
 - g. There is an undue delay in achieving the agreed timelines for delivering the services under this Agreement due to reasons attributable to the SASP;
 - h. Where it comes to the Purchaser's attention that the SASP or sub-Contractor is in a position of actual conflict of interest with the interests of the Purchaser, in relation to any of terms of the SASP's Proposal, the RFP or this Agreement;
 - i. not providing support for effecting data migration or not providing the certification of User Acceptance
 - j. If it comes to knowledge of the Purchaser that the SASP or any of their personnel or their sub-contractors or such sub-contractor's personnel have been involved in any fraudulent or corrupt practices or any other practice of similar nature.
- ii. Where there has been an occurrence of such Event of Defaults, inter alia, as stated above, the Purchaser shall issue a notice of default to the SASP, setting out specific defaults deviances omissions and providing a period of up to thirty (30) days to enable the SASP to remedy the default/deviances omissions committed.
- iii. Where despite the issuance of a default notice to the SASP by the Purchaser the SASP fails to remedy the default to the reasonable satisfaction of the Purchaser, the Purchaser may, where it deems fit, issue to the SASP another default notice or proceed to adopt such remedies as may be available to the Purchaser including but not limited to the remedies provided in clause 14.2 (Consequences for Events of Default) below.
- iv. The Purchaser may by giving a one month's written notice, terminate this Agreement if a change of control of the SASP has taken place. For the purposes of this Clause, in the case of SASP, change of control shall mean the events stated in Clause 5.4 (Change of Control), and such notice shall become effective at the end of the notice period as set out in Clause 5.4 (iii) (Change of control).

- v. In the event that SASP undergoes such a change of control, Purchaser may, as an alternative to termination, require a full Performance Guarantee for the obligations of SASP by a guarantor acceptable to Purchaser or its nominated agencies. If such a guarantee is not furnished within 30 days of Purchaser's demand, the Purchaser may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the SASP.

14.2 Consequences for Events of Default

Where an Event of Default subsists or remains uncured even after expiry of 30 days as mentioned in clause 14.1 (ii) (Events of Default), the Purchaser shall be entitled to:

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

14.3 Termination for Breach

The Purchaser may, terminate this Agreement by giving the SASP a prior and written notice of up to 30 days indicating its intention to terminate where the Purchaser is of the opinion that there has been such Event of Default on the part of the SASP which has not been cured within the 30 days' notice period provided under clause 14.1 (ii) (Events of Default). The Purchaser may, in its sole discretion, afford a further reasonable opportunity to the SASP to explain the circumstances leading to such a breach and may increase the time limit for curing such breach before terminating the Agreement.

14.4 Termination for Convenience

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

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

- i. Cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition

- ii. Terminate all subcontracts, except those to be assigned to the Purchaser pursuant to Clause 14.4.2 (iv) (b) (Consequences for Events of Default) below;
- iii. Remove all SASP's Equipment from the site, repatriate the SASP's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
- iv. In addition, the SASP shall:
 - a. Deliver to the Purchaser the parts of the System executed by the SASP up to the date of termination;
 - b. To the extent legally possible, assign to the Purchaser all right, title, and benefit of the SASP to the System, or Subsystem, as at the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the SASP and its Subcontractors;
 - c. Deliver to the Purchaser all non-proprietary drawings, specifications, and other documents prepared by the SASP or its Subcontractors as of the date of termination in connection with the System.

14.5 Effects of Termination

- i. In the event that Purchaser terminates this Agreement pursuant to failure on the part of the SASP to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by SASP may be forfeited.
- ii. Upon termination of this Agreement, the Parties will comply as per the Schedule II (Exit Management Schedule) of this Agreement.
- iii. In the event that Purchaser or the SASP terminates this Agreement, the compensation will be decided in accordance with the Schedule V (Terms of Payments Schedule) of this Agreement.
- iv. Purchaser agrees to pay SASP for i) all charges for Services SASP provides and any Deliverables and/or system (or part thereof) SASP delivers through termination and any charges at the tendered rate, for extension period beyond termination as decided by the Nodal Agency as per Schedule II (Exit Management Schedule), Clause 2.2 and ii) reimbursable expenses SASP incurs through termination.
- v. If Purchaser terminates without cause, Purchaser also agrees to pay any applicable adjustment expenses (undisputed) to SASP incurs as a result of such termination (which SASP will take reasonable steps to mitigate).
- vi. In the event of termination of the Contract under Clause 14.4 (Termination for Convenience), the Purchaser shall pay such undisputed amounts to the SASP which are listed as follows:
 - a. The Contract Price, properly attributable to the parts of the System executed by the SASP as of the date of termination; the costs reasonably incurred by the SASP in the removal of the SASP's Equipment from the site and in the repatriation of the SASP's and its Subcontractors' personnel;
 - b. Any amount to be paid by the SASP to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
 - c. Costs incurred by the SASP in protecting the System and leaving the site in a clean and safe condition pursuant to 14.4 (Termination for Convenience); and
 - d. The cost of satisfying all other obligations, commitments, and claims that the SASP may in good faith have undertaken with third parties in connection with the Contract and that are not covered by Clauses 14.5 (iv) (Effects of Termination) above.
 - e. Nothing herein shall restrict the right of the Purchaser to invoke the Bank Guarantee and other Guarantees furnished hereunder and pursue such other rights and/or remedies that may be available to the Purchaser under law.
 - f. Any and all payments under this clause shall be payable only after the SASP has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Purchaser. In case of expiry of the Agreement, the last due payment shall be payable to the SASP after the SASP has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Purchaser.

14.6 Rights other than Termination

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

14.7 Termination of this Agreement due to bankruptcy of SASP

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

14.8 Suspension

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

15 Indemnification, Risk Purchase and Limitation of Liability

15.1 General Indemnity

Subject to Clause 15.2 (IPR Indemnity) below, the SASP (the "Indemnifying Party") undertakes to indemnify the Purchaser and its nominated agencies (the "Indemnified Party") from and against all losses, claims, damages, compensation (including attorney fees) etc. on account of bodily injury, death or damage to tangible personal property arising in favor of any person, company or other entity (including the Indemnified Party) attributable to - the Indemnifying Party's negligence, willful default or lack of due care. The Indemnifying Party shall also indemnify Indemnified Party from and against all direct monetary losses, damages etc. suffered by Indemnifying Party or any third party arising out of any defect, fault, deficiency in the applications/system developed and or maintained by the Indemnifying Party or any of its sub-contractors etc.

15.2 IPR Indemnity

If the Indemnified Party notifies the Indemnifying Party in writing –

- i. Of a third party claim against the Indemnified Party that any Goods Deliverables/Services provided by the Indemnifying Party infringes a copyright, trade secret, patent or other intellectual property rights of any third party, or
- ii. Of a third party claim against the Indemnified Party or any of its service provider that any Purchaser's Material provided by the Indemnified Party or any of its service provider has been used by Indemnifying Party in breach of licensing or use terms for such Purchaser's Material, provided such licensing or use terms are notified to the Indemnifying Party in advance in writing;

the Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the Indemnified Party or its service provider, provided, the Indemnifying Party will not indemnify the Indemnified Party if the claim of infringement is caused by

- i. The Indemnified Party's misuse or modification of the Deliverables;
- ii. The Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party;
- iii. The Indemnified Party's use of the Deliverables in combination with any product or information not owned or developed or supplied by the Indemnifying Party
- iv. Compliance with technical specifications, instructions of the Purchaser;
- v. Inclusion in the Deliverables of any content or other materials provided by Indemnified Party and the infringement relates to or arises from such Indemnified Party materials or provided material; or
- vi. Use of the Deliverables for any purposes for which the same have not been designed or developed or other than in accordance with any applicable specifications or documentation provided by the Indemnifying Party.

If any of the Deliverables is or likely to be held as infringing, the Indemnifying Party shall at its expense and option either (i) procure the right for the Indemnified Party to continue using it, (ii) replace it with a non-infringing equivalent, or (iii) modify it to make it non-infringing.

15.3 Conditions for Indemnity

The indemnities set out in Clause 15.1 (General Indemnity) and 15.2 (IPR Indemnity) shall be subject to the following conditions:

- i. The Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
- ii. The Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense;
- iii. If the Indemnifying Party does not assume full control over the Defense of a claim as provided in this Article, the Indemnifying Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses;
- iv. All settlements of claims subject to indemnification under this Clause will:
 - a. Be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and

- b. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
- v. The Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favor of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
- vi. The Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;
- vii. In the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and
- viii. If a Party makes a claim under the indemnity set out under Clause 15.1 (General Indemnity) above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).

15.4 Risk Purchase

If the SASP fails to perform its obligations (or any part thereof) under this Agreement or if the Agreement is terminated by the Purchaser due to breach of any obligations of the SASP under this Agreement, the Purchaser reserves the right to procure the same or equivalent Goods / Services / Deliverables from alternative sources at the SASP's risk and responsibility. Any incremental cost borne by the Purchaser in procuring such Goods /Services/ Deliverables shall be borne by the SASP. Any such incremental cost incurred in the procurement of the such Goods /Services/ Deliverables from alternative source will be recovered from the undisputed pending due and payable Payments /Security Deposit / Bank Guarantee provided by the SASP under this Agreement which shall not exceed the total Contract value and if the value of the Goods /Services/Deliverables under risk purchase exceeds the amount of Security Deposit and / or Bank Guarantee, the same may be recovered, if necessary, by due legal process. The procurement from alternate source shall be done, as far as possible, through Central Government's procurement guidelines as deemed appropriate by the Purchaser.

15.5 Limitation of Liability

- i. The liability of either Party (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event exceed one time the total contract value payable under this Agreement
- ii. In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings).
- iii. The allocations of liability in this Section 15 represent the agreed and bargained-for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

16 Force Majeure

16.1 Definition of Force Majeure

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

16.2 Force Majeure events

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

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

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

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

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

16.2.5. No delay or nonperformance by either party to this Agreement caused by the occurrence of any event of Force Majeure shall:

16.2.6. Constitute a default or breach of the Contract;

16.2.7. Give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance, if, and to the extent that, such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

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

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

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

16.2.11. For the avoidance of doubt, it is expressly clarified that the failure on the part of the SASP under this Agreement to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement against natural disaster, fire, sabotage or other

similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking etc. aren't the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure". In so far as applicable to the performance of Services, Service Provider will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).

17 Confidentiality

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

18 Stipulated Time Schedule and Audit

- 18.1. Stipulated Time Schedule: The Time Schedule has been mentioned in the section 2 & 7 (Scope of Work, Deliverables and Payment Terms) of Volume 1 of the RFP. The SASP shall perform the activities and comply in all respects with the critical dates, which will be communicated by the Purchaser to the SASP's team, as the case may be, and the parties hereby agree that failure on part of the SASP, to meet the critical dates without prejudice to any other rights that the Purchaser may have, may lead to the imposition of such obligations as are laid down in levy of liquidated damages as set out in Annexure III (Service Level Metrics) of Volume 1 of the RFP and/or termination of the Agreement at the discretion of the Purchaser.
- 18.2. Audit Access and Reporting: The SASP shall allow access to the Purchaser or its nominated agencies to all information which is in the possession or control of the SASP and which relates to the provision of the Services as set out in the Schedule III (Audit, Access and Reporting Schedule) and which is reasonably required by the Purchaser to comply with the terms of the Schedule III (Audit, Access and Reporting Schedule) of this Agreement.

19 Ownership and Intellectual Property Rights

- 19.1. Products and Fixes: All COTS products and related solutions and fixes provided by the SASP pursuant to this Agreement shall be licensed to the Purchaser according to the terms of the license agreement packaged with or otherwise applicable to such product. Such licenses shall be brought on behalf of and in the name of the Purchaser or mentioning the Purchaser as the end user of such licenses. SASP would be responsible for arranging any licenses associated with products. "Product" means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to the Purchaser for license which is published by product owner or its affiliates, or a third party. "Fixes" means product fixes that are either released generally (such as commercial product service packs) or that are provided when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing. Unless otherwise specifically restricted by the Licensing Terms of the COTS products, all intellectual property rights in any development/enhancement/customization etc. done on the COTS products pursuant to this Agreement shall be owned for any future use by the Purchaser.
- 19.2. The SASP undertakes to execute all such agreements/documents and assist the Purchaser in filing 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. The SASP shall be obliged to ensure that all approvals, registrations, licenses, permits and rights which are, inter-alia, necessary for use of the Deliverables, services, applications, services etc. provided by the SASP and subcontractors under this Agreement shall be acquired in the name of the Purchaser and SASP shall have the non-exclusive, limited right to use such licenses till the Term on behalf of the Purchaser solely for the purpose of execution of any of its obligations under the terms of this Agreement. However, subsequent to the term of this Agreement, such approvals etc. shall endure to the exclusive benefit of the Purchaser.
- 19.3. Bespoke development: Subject to the provisions of Clause 19.3 and 19.4 (Ownership and Intellectual Property Rights) below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie exclusively with the Purchaser. License in Bespoke Development: Upon receipt of written request from the SASP, the Purchaser may grant license to SASP (hereinafter referred to as 'licensee' for purposes of this clause) to market, use, modify, enhance etc. the Bespoke Development. The terms of license agreement shall be mutually agreed between the licensee and the Purchaser. The license agreement shall, inter alia, define the royalty to be paid by the licensee to the Purchaser. Notwithstanding the foregoing, the royalty shall not be less than 10% of the payment to be received by the licensee in each project which involved any use implementation etc. of the Bespoke Development. As a consideration for grant of license under this clause, the licensee shall also be obligated under the license agreement to replicate in the Solution of the Purchaser, without any additional cost to the Purchaser, any enhancements, improvements etc. carried out by the licensee under any other project which involved any use implementation etc. of the Bespoke Development. The obligation to carry out such enhancements shall be limited to the term as agreed in the license agreement.
- 19.4. Pre-existing work: All IPR including the source code and materials developed or otherwise obtained independently of the efforts of a Party under this Agreement ("pre-existing work") shall remain the sole property of that Party. During the performance of the services for this agreement, each party grants to the other party (and their sub-contractors as necessary) a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the SASP should grant Purchaser

a non-exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to Purchaser as part of the service or deliverables only for its internal business operations. Under such license, either of parties will have no right to sell the pre-existing work of the other party to a Third Party. Purchaser’s license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that bidder leaves with Purchaser at the conclusion of performance of the services.

- 19.5. Residuals: In no event shall SASP be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables, set-out in this Agreement or Annexure. In addition, subject to the confidentiality obligations, SASP shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services.
- 19.6. 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 SASP in the course of performing the Services. Forthwith upon expiry or earlier termination of this Agreement and at any other time on demand by the Purchaser, the SASP shall deliver to the Purchaser all Documents provided by or originating from the Purchaser and all Documents produced by or from or for the SASP in the course of performing the Services, unless otherwise directed in writing by the Purchaser at no additional cost. The SASP shall not, without the prior written consent of the Purchaser store, copy, distribute or retain any such Documents.

20 Warranty and Maintenance

- 20.1. Standard: The SASP warrants that the Project, including all the system(s), materials and goods supplied pursuant to the Agreement, shall be free from any defect or deficiency in the material, design, engineering, and workmanship that prevent the system and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the system and/or any of its sub-system(s). Commercial warranty provisions of products supplied under the Agreement shall apply to the extent they do not conflict with the provisions of this Agreement.
 - a. The SASP also warrants that the products, materials and other goods supplied under the Agreement are new, unused and incorporate all recent improvements in design that materially affect the system’s or subsystem’s ability to fulfill the technical requirements specified in the RFP.
 - b. In addition, the SASP warrants that: (i) all Goods components to be incorporated into the System form part of the SASP/OEM’s and/or Subcontractor’s current product lines.
 - c. The warranty period shall commence from the date of Go Live of the project or of any major component or subsystem for which phased Go-Live is provided for in the Agreement and shall extend for as follows:

Standard Hardware	6 months post completion of the agreement
COTS Software	6 months post completion of the agreement
Bespoke Software	6 months post completion of the agreement

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

- 20.3. In case the Purchaser/Government department fails to respond and provide feedback on the above stated submission, the deliverables will be deemed accepted for the commencement of warranty for the project.
- 20.4. However, in case the purchaser confirms to vendor an alternative date, then the date would stand revised for deemed acceptance. Such revisions may be limited to 2 (two).
- 20.5. If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services provided by the SASP , the SASP shall promptly, in consultation and agreement with Purchaser, and at the SASP 's sole cost repair, replace, or otherwise make good (as the SASP shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the system caused by such default, defect or deficiency. Any defective component, excluding hard disks, that has been replaced by the SASP shall remain the property of the SASP.
- 20.6. The SASP may, with the consent of the Purchaser, remove from the site any product and other goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the Purchaser may give the SASP notice requiring that tests of the defective part be made by the SASP immediately upon completion of such remedial work, whereupon the SASP shall carry out such tests. If such part fails the tests, the SASP shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by the Purchaser and the Supplier.
- 20.7. If the SASP fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within a reasonable time period, the Purchaser may, following notice to the SASP, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Purchaser in connection with such work shall be paid to the Purchaser by the SASP or may be deducted by the Purchaser from any amount due to the SASP.
- 20.8. If the System or any of its sub-systems cannot be used by reason of such default, defect or deficiency and/or making good of such default, defect or deficiency, attributable to SASP, the warranty period for the Project shall be extended by a period equal to the period during which the Project or any of its system could not be used by the Purchaser because of such defect and/or making good of such default, defect or deficiency. For reasons not attributable to SASP, the SASP shall not be liable.
- 20.9. Items substituted for defective parts of the System during the Warranty Period shall be covered by the Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.
- 20.10. The Implementing Agency shall have no liability in the case of breach of this warranty due to (i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the Implementing Agency, (ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the Implementing Agency; (iii) the deliverables having been tampered with, altered or modified by Purchaser without the written permission of the Implementing Agency, or (iv) use of the deliverables otherwise than in terms of the relevant documentation.
- 20.11. Implied Warranty: The warranties provided herein are in lieu of all other warranties, both express and implied, and all other warranties, including without limitation that of merchantability or fitness for intended purpose is specifically disclaimed.

21 Liquidated Damages

Time is the essence of the Agreement and the delivery dates are binding on the SASP. In the event of delay or any gross negligence in implementation of the project before Go-Live, for causes attributable to the SASP, in meeting the deliverables, the Purchaser shall be entitled at its option to recover from the SASP as agreed, liquidated damages, as defined in section 7 of Volume I of this RFP for service levels/ deliverables/milestones which suffered delay or gross negligence for each completed period as specified therein or part thereof. This right to claim any liquidated damages shall be without prejudice to other rights and remedies available to Purchaser under the contract and law. If the liquidated damages cross the cap on liquidated damages mentioned in Section 7.3 of Volume 1 of the RFP, the Purchaser shall have the right to terminate the Agreement for default and consequences for such termination as provided in this Agreement shall be 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 SASP in accordance with the provisions of Change Control set out in this Agreement.

22 Insurance Cover

22.1. Obligation to maintain insurance: In connection with the provision of the Services, the Service Provider must have and maintain:

- i. For the Agreement Period, valid and enforceable insurance coverage for:
 - a. public liability;
 - b. either professional indemnity or errors and omissions;
 - c. product liability;
 - d. workers' compensation as required by law; and
 - e. any additional types specified in Schedule I (Change Control Schedule); and
- ii. For 01 year (one year) following the expiry or termination of the Agreement, valid and enforceable insurance policies (if relevant),

The above insurance policies shall be for appropriate values as per the applicable laws and as per Industry Standards so as to cover risks under the agreement. In the event of any failure by the SASP 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 SASP, purchase such insurance, at the SASP's expense, provided that Purchaser shall have no obligation to do so and if Purchaser shall do so, the SASP 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 SASP and/or may be withheld from any payment due to SASP. None of the requirements contained herein as to types, limits or Purchaser's approval of insurance coverage to be maintained by the SASP are intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by the SASP under the agreement, or otherwise provided by law. The SASP shall not use these documents for purposes unrelated to this Agreement without the prior written approval of the Purchaser and shall produce the same as and when required.

22.2. Certificates of currency: The SASP must, on request by the Purchaser, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 22 (Insurance Cover). The Service Provider agrees to replace any coverage prior to the date of expiry/cancellation.

22.3. Non-compliance: Purchaser or its nominated agencies may, at its election, terminate this Agreement as per clause 14 (Events of Default, termination and Suspension), upon the failure of SASP or

notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve SASP of its obligations under this Agreement.

23 Miscellaneous

23.1. Personnel

- i. The personnel assigned by SASP to perform the Services shall be employees of SASP or its subcontractor(s), and under no circumstances shall such personnel be considered employees of Purchaser or its nominated agencies. The SASP shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.
- ii. The SASP shall use its best efforts to ensure that sufficient SASP personnel are assigned to perform the Services and that such personnel have appropriate qualifications to perform the Services. After discussion with SASP, Purchaser or its nominated agencies shall have the right to require the removal or replacement of any SASP personnel performing work under this Agreement based on bona fide reasons. In the event that Purchaser or its nominated agencies requests that any SASP personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.
- iii. The SASP shall appoint an employee as its authorized representative through a written notice to the Purchaser. The SASP's Representative shall have the authority to exercise all of the powers and functions of the SASP under this Agreement other than the power to amend this Agreement and ensure the proper administration and performance of the terms hereof and to bind the SASP in relation to any matter arising out of or in connection with this Agreement. The SASP, along with the Sub-Contractors/third parties shall be bound by all undertakings and representations made by the authorized representative of the SASP and any covenants stipulated hereunder, with respect to this Agreement, for and on their behalf. The SASP's representative shall have all the power requisite for the performance of the work under this Agreement. The SASP's Representative shall liaise with the Purchaser's Representative for the proper coordination and timely completion of the works and on any other matters pertaining to the works. The SASP's Representative will extend full co-operation to the Purchaser's representative for supervision/inspection/observation of the equipment/material procedures, performance, reports and records pertaining to the works. The SASP shall comply with any instructions that are given by the Purchaser's representative during the course of this Agreement in relation to the performance of its obligations under the terms of this Agreement and the RFP. SASP's Representative shall also have complete charge of the SASP's personnel engaged in the performance of the works and to ensure compliance of rules, regulations and safety practice. SASP's Representative shall also cooperate with the other service providers/contractors of the Purchaser. Such SASP's representative shall be available to the Purchaser's Representative during the execution of Services.
- iv. In the event that the Purchaser and SASP identify any personnel of SASP as "Key Personnel", then the SASP shall not remove such personnel from the Project without the prior written consent of Purchaser or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.
- v. Except as stated in this Clause, nothing in this Agreement will limit the ability of SASP to freely assign or reassign its employees; provided that SASP shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. Purchaser or its nominated agencies shall have the right to review and approve SASP's plan for any such knowledge

transfer. SASP shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.

- vi. Each Party shall be responsible for the performance of all its obligations under this Agreement as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- vii. Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.
- viii. The Purchaser's Representative may at any time request the SASP to remove from the Services any employee of the SASP or its sub-contractor or any person(s) deployed by the SASP 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 SASP shall consider the Purchaser's Representative request and may accede to or disregard it except that in case of unethical, corrupt, fraudulent behavior the SASP shall remove the person immediately. The Purchaser's Representative, having made a request, as aforesaid in the case of any person, which the SASP 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 SASP to remove that person from deployment on the work, which the SASP 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 SASP in writing his reasons for any request or requirement pursuant to this clause. The SASP 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 Liquidated damages as provided in the RFP.

23.2. Independent Contractor:

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

- i. Incur any expenses on behalf of the other Party;
- ii. Enter into any engagement or make any representation or warranty on behalf of the other Party;
- iii. Pledge the credit of or otherwise bind or oblige the other Party; or
- iv. Commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

23.3. Sub-contractors:

- i. Except for subcontracting allowed in Section 3.6 (Consortium and Sub-Contracting) of Volume 2 of the RFP, the SASP shall not subcontract any part of the scope of work under this Agreement to any third party without the prior written consent of the Purchaser, which consent shall not be unreasonably delayed or withheld. SASP shall assist the Purchaser with all documents etc. required by the Purchaser to decide whether to give its consent or not. While giving its consent for appointment of any subcontractor, the Purchaser may impose such conditions on subcontracting as mutually agreed between the SASP and the Purchaser for successful accomplishment of the obligations of the SASP under this Agreement and such conditions shall be applicable on the SASP and the subcontractor (as applicable).
- ii. Prior to executing any contract or entering into any contract or understanding with a sub-contractor, the SASP shall ensure that, where requested by the Purchaser, the sub-contractor

- appointed by the SASP executes a non-disclosure agreement and a deed of adherence in the manner and form prescribed by the Purchaser. The deed of adherence will be a unilateral undertaking from the subcontractor to the Purchaser. The terms of deed of adherence shall be discussed by the Purchaser with the SASP. Execution of deed of adherence by the subcontractor shall not in any way relieve the SASP from any of its obligations and liability under this Agreement.
- iii. The SASP shall ensure that the subcontractor proposed by SASP is competent and professional and possess the requisite qualifications and experience appropriate to the tasks they will perform under this Agreement.
 - iv. Any change of the sub-contractor(s), after the arrangement is firmed up, will be made by the SASP only with the prior written approval of the Purchaser which approval shall not be unreasonably withheld or delayed.
 - v. The SASP 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 SASP 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. It is clarified that this indemnity refers to (a) the same extent and nature the SASP is liable to indemnify for SASP's own acts and omissions under this Agreement; and (b) any claims made by the subcontractor against the Purchaser due to breach by the SASP of the agreement entered into between subcontractor and the SASP. The SASP 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.
 - vi. The clauses related to intellectual property rights applicable on the SASP under this Agreement shall be mutatis mutandis applicable to the deliverables/services etc. provided by the sub-contractors. The SASP 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.
 - vii. Nothing in this Agreement or any subcontract agreement hereunder shall relieve the SASP from its liabilities or obligations under this Agreement to provide the Goods and Services in accordance with this Agreement.
 - viii. Where the Purchaser deems necessary, it shall have the right to require replacement of any sub-contractor with another sub-contractor and the SASP 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 SASP 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 SASP all losses/or other damages that may have resulted from such failure. In case the SASP terminates any contract/arrangement or agreement with a sub-contractor for any reason whatsoever, the SASP 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.
 - ix. 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 may be applicable.

23.4. SASP's Obligations:

- i. The obligations of the SASP described in this clause is in addition to, and not in derogation of, the obligations mentioned in Section 2 (Scope of Work) of Volume 1 of the RFP and the two are to be read harmoniously:
- ii. The SASP shall also be the sole point of contact for all matters relating to this RFP and Agreement thereof.
- iii. The SASP shall ensure that the SASP's Team is competent, professional and possesses the requisite qualifications and experience appropriate to the task they are required to perform under this Agreement. The SASP shall ensure that the Services are performed through the efforts of the SASP's Team, in accordance with the terms hereof and to the satisfaction of the Purchaser. Nothing in this Agreement relieves the SASP from its liabilities or obligations under this Agreement to provide the Services in accordance with the Purchaser's direction and requirements and as stated in this Agreement and the performance, non-compliance, breach or other loss and damage resulting either directly or indirectly by or on account of SASP's Team.
- iv. The SASP's Representative(s) shall have all the power requisite for execution of Scope of Work and performance of services under this Agreement. The SASP's Representative(s) shall liaise with the Purchaser's Representative for the proper coordination and timely completion of the works and on any other matters pertaining to the works. He will extend full co-operation to the Purchaser's Representative for the proper coordination and timely completion of the works and on any other matter pertaining to the works. He will extend full co-operation to Purchaser's Representative in the manner required by them for supervision/inspection/observation of the equipment/goods/material, procedures, performance, progress, reports ad records pertaining to the works. He shall also have complete charge of the SASP's personnel engaged in the performance of the works and to ensure compliance of rules, regulations and safety practice. He shall also cooperate with other Service Providers/Vendors of the Purchaser.

23.5. OEM-ES obligations:

Without prejudice to SASP's obligation to ensure performance of this Agreement by SASP, OEM-ES shall, inter-alia, have the following obligations:

- i. The OEM-ES shall supply equipment/components including associated accessories and software, OEM ES shall install and provide maintenance of these components during the period of contract.
- ii. The OEM-ES shall provide support and assistance to the SASP in case of any problems/issues arising in the course of commissioning, integration and management of these components.

- iii. In case of any default on part of the SASP in providing the level of support desired by the Purchaser in relation to the components supplied by the OEM-ES, the OEM-ES shall extend the necessary support to Purchaser and the System as required to be provided under the Agreement. The Purchaser shall, on being satisfied that OEM-ES and OEM-S are providing and have given firm commitment to provide such level of support on continuous basis for the Contract Period, make payment directly to the OEM -ES, as the case may be, on mutually agreed terms and at rates which will not exceed the payments due from the Purchaser to the SASP. Provided that such payments shall amount to satisfaction/discharge of all payment due from the Purchaser to SASP. The Sub-Contracting Agreement entered into between the SASP and sub-Contractor shall contain an enabling provision to give full effect to this clause. Any provision in the Sub-Contracting Agreement which affects the ability of the OEM-ES to provide the direct support to the Purchaser and the System as envisaged above shall be void to that extent.
- iv. It is expected that the OEM-ES shall ensure that the equipment/components being supplied by them will not be declared end of sale for from the period as mentioned in the RFP, which they are aware of at the time of supply. It is also expected that the same will be supported by them for a minimum as mentioned in the RFP. If the same is de-supported by the OEM-ES, for any reason whatsoever, SASP shall replace it with an equivalent or better substitute that is acceptable to Purchaser without any additional cost to the Purchaser and without impacting the performance of the solution in any manner whatsoever. (iv) OEM-ES shall provide support and assistance to SASP in case of any problems / issues arising due to integration of components supplied by them with any other component(s)/product(s) under the purview of the overall

23.6. No Claim Certificate: The SASP shall not be entitled to make any claim, whatsoever against the Purchaser under or by virtue of or arising out of, this Agreement, nor shall the Purchaser entertain or consider any such claim, if made by the SASP after he shall have signed a 'No claim' certificate in favor of the Purchaser in such forms as shall be required by the Purchaser after the works are finally accepted.

23.7. Severability and Waiver

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

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

23.8. Assignment

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

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

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

23.9. Trademarks and Publicity: Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that SASP may, upon completion, use the Project as a reference for credential purpose. Except as required by law or the rules and regulations of each stock exchange upon which the securities of one of the Parties is listed, neither Party shall publish or permit to be published either alone or in conjunction with any other person any press release, information, article, photograph, illustration or any other material of whatever kind relating to this Agreement, or the business of the Parties without prior reference to and approval in writing from the other Party, such approval not to be unreasonably withheld or delayed provided however that SASP may include Purchaser or its client lists for reference to third parties subject to the prior written consent of Purchaser not to be unreasonably withheld or delayed. Such approval shall apply to each specific case and relate only to that case.

23.10. Notices

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

<Insert address>

Tel:

Email:

Fax:

Contact:

With a copy to:

SASP

Tel:

Fax:

Email:

Contact:

- ii. In relation to a notice given under the MSA, 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.
- iii. 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).
- iv. Either Party to this Agreement or to the may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

23.11. Variations and Further Assurance

- i. No amendment, variation or other change to this Agreement or the Service Levels shall be valid unless authorized in accordance with the change control procedure as set out in the Schedule I (Change Control Schedule) of this Agreement. Such amendment shall be made in writing and signed by the duly authorized representatives of the Parties to this Agreement or the Service Levels.
- ii. Each Party to this Agreement agrees to enter into or execute, without limitation, whatever other agreement, document, consent and waiver and to do all other things which shall or may be reasonably required to complete and deliver the obligations set out in this Agreement.

23.12. Compliance with Applicable Law:

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

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

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

23.15. 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.

23.16. Amendment:

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

23.17. Conflict of Interest:

- i. The SASP shall disclose to the Purchaser in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the SASP or the SASP's Team) in the course of performing the Services as soon as practical after it becomes aware of that conflict.
- ii. The SASP shall not receive any remuneration in connection with the assignment except as provided in the contract. The SASP and its affiliates shall not engage in activities that conflict with the interest of the _____ under the contract and shall be excluded from downstream supply of goods or construction works or purchase of any asset or provision of any other service related to the assignment other than a continuation of the "Services" under the on-going contract.
- iii. It should be the requirement of the contract that the SASP should provide professional, objective and impartial advice and at all times hold the _____ interest paramount, without any consideration for future work, and that in providing advice they avoid conflict with other assignments and their own interests. SASP shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the _____. Without limitation on the generality of the foregoing, SASP shall not be hired, under the circumstances set forth below:
- iv. Conflict between system integration activities and procurement of goods, work or services: A firm that has been engaged by _____ to provide goods, works, or services for the project, and each of its affiliates that directly or indirectly controls, is controlled by or is under common control with that firm, shall be disqualified from providing system integration services related to those goods, works or services resulting from or directly related to those goods, works or services. Conversely, a firm hired to provide system integration services for the preparation or implementation of a project and each of its affiliates shall be disqualified for such preparation or implementation.
- v. Conflict between system integration assignments: Neither SASP (including their personnel and sub-consultants) nor any of their affiliates that directly or indirectly control, is controlled by or is under common control with the firm shall be hired for any assignment that by its nature may be in conflict with another assignment of the SASP. As an example, consultant hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environment assessment for the same project, and consultants assisting a client in the privatization on public assets shall neither purchase nor advice purchasers of, such assets. Similarly, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.
- vi. Relationship with Government Ministry / Department staff: SASP (including their personnel and sub-consultants) that have a close business or family relationship with such member(s) of the Ministry or Department's staff or with the staff of the project implementing agency, who are directly or indirectly involved in any part of ; (a) the preparation of the TOR of the contract, (b) the selection process for such contract, or (c) supervision of such contract; may not be awarded a contract unless it is established to the complete satisfaction of the employing authority, for the reason to be recorded in

writing, that such relationship would not affect the aspects of fairness and transparency in the selection process and monitoring of SASP's work.

24 Bank Guarantee

- 24.1. The SASP shall furnish, within 15 days of issuance of Letter of Award by the Purchaser to the SASP, an unconditional, irrevocable and continuing Bank Guarantee, from a schedule bank in India, equivalent to 10% of Total value of Contract in a form and manner acceptable to the Purchaser, which should remain valid till 6 months after expiry of the Term of the Agreement (Performance Guarantee).
- 24.2. In the event of the SASP being unable to service the Agreement for the reasons attributable to the SASP, 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 SASP, its subcontractors, or any team members to perform/comply its obligations under the contract. The Purchaser shall notify the bidder in writing of the exercise of its right to receive such compensation within 30 days, indicating the contractual obligation(s) for which the SASP is in default.
- 24.3. The Purchaser shall also be entitled to make recoveries from the SASP'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.
- 24.4. In case the Project is delayed beyond the Timelines as mentioned in RFP due to reasons attributable to SASP, its subcontractors, or any team members, the Performance Guarantee shall be accordingly extended by the SASP till completion of scope of work as mentioned in RFP.

25 Governing Law and Dispute Resolution

- 25.1. This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement and the performance of the parties contemplated under this Agreement, to the extent that such convention might otherwise be applicable.
- 25.2. Parties shall use all reasonable efforts to amicably resolve and settle any dispute arising out of or in relation to or in connection with this Agreement by firstly referring the dispute to any committee constituted under the Governance Schedule (Schedule V (Terms of Payment Schedule)) for such dispute settlement.
- 25.3. In the case of dispute arising out of or in relation to or in connection with the Agreement between the Purchaser and the SASP, which has not been settled in accordance with Clause 25.2 above within 30 days from date of reference of the dispute to such committee, any Party can submit any dispute or difference whatsoever arising between the parties to this Agreement out of or relating to the construction, meaning, scope, operation or effect of this Agreement or the validity of the breach thereof to the Sole Arbitrator appointed by two Arbitrators [two Arbitrators so chosen by both SASP and Purchaser (one each)] in accordance with and in full satisfaction of the qualifications to be prescribed for such arbitrator, including but not limited to qualifications as to technical experience, nationality and legal experience, by the Purchaser and the SASP, at the time of appointment. Arbitration Proceedings shall be conducted in English Language. The Arbitration proceedings with its seat and venue will be held at New Delhi, India.

- 25.4.If the parties cannot agree on the appointment of the Arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of New Delhi, India.
- 25.5.The provisions of the Arbitration and Conciliation Act, 1996 will be applicable on the Arbitration Proceedings and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings with its seat and venue will be held at New Delhi, India. Any legal dispute will come under the sole jurisdiction of New Delhi, India / state jurisdiction of Delhi, India.
- 25.6.Compliance with laws: Each party will comply with all applicable laws of India along with applicable export and import laws and regulations.

26 Risk of Loss

For each hardware item, SASP bears the risk of loss or damage up to the time it is delivered to the Implementation/Purchaser-designated carrier for shipment to Purchaser or Purchaser's designated location.

27 Third Party Components

SASP will provide all third-party components solely on pass-through basis in accordance with the relevant third-party terms and conditions.

IN WITNESS WHEREOF the Parties have by duly authorized Representatives set their respective hands and seal on the date first above Written in the presence of:

WITNESSES:

Signed by:

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

(FIRST PARTY)

Signed by:

(Name and designation)

SASP (SECOND PARTY)

(Name and designation) For and on behalf of SASP Signed by:

SCHEDULES

SCHEDULE I – CHANGE CONTROL SCHEDULE

This Schedule describes the procedure to be followed in the event of any proposed change to the Master Service Agreement (“**MSA**”), Project Implementation Phase, 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 SASP and changes to the terms of payment as stated in the Terms of Payment Schedule.

The Purchaser and SASP 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 SASP will endeavor, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in Schedule V (Terms of Payment Schedule) and Purchaser or its nominated agencies will work with the SASP to ensure that all changes are discussed and managed in a constructive manner. This Change Control Schedule sets out the provisions which will apply to all the changes to this agreement and other documents except for the changes in Service Levels for which a separate process has been laid out in Clause 5 (Conditions Precedent) of this Agreement.

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

CHANGE MANAGEMENT PROCESS

a. CHANGE CONTROL NOTE ("CCN")

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

subject matter for a separate bid process and a separate contract. It is hereby clarified that the 25% of the value of the Project as stated in herein above is

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

b. Quotation

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

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

Prior to submission of the completed CCN to the Purchaser, or its nominated agencies, the

Service Provider will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the SASP shall consider the materiality of the proposed change in the context of the MSA and the Project Implementation affected by the change and the total effect that may arise from implementation of the change.

c. Costs

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the SASP 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 SASP 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 SASP.

d. Obligations

The SASP 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. SASP will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact. The cost associated with any hardware/goods/License for COTS product should not exceed the price quoted in the bidder's proposal. Any costs associated with changes to Software specifications which cannot be arrived at on the basis of the SASP's proposal shall be mutually agreed to between the SASP and the Purchaser.

SCHEDULE II - EXIT MANAGEMENT SCHEDULE

1 PURPOSE

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

2 TRANSFER OF ASSETS

- 2.1** Purchaser shall be entitled to serve notice in writing on the SASP at any time during the exit management period as detailed hereinabove requiring the SASP and/or its sub-contractors to provide the Purchaser with a complete and up to date list of the Assets within 30 days of such notice. Purchaser shall then be entitled to serve notice in writing on the SASP at any time prior to the date that is 30 days prior to the end of the exit management period requiring the SASP to sell the Assets, if any, to be transferred to Purchaser or its nominated agencies at book value as determined as of the date of such notice in accordance with the provisions of relevant laws.
- 2.2** In case of contract being terminated by Purchaser, Purchaser reserves the right to ask SASP to continue running the project operations for a period of 6 months after termination orders are issued.
- 2.3** Upon service of a notice under this Article the following provisions shall apply:
 - (i) in the event, if the Assets to be transferred are mortgaged to any financial institutions by the SASP, the SASP shall ensure that all such liens and liabilities have been cleared

beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to the Purchaser.

- (ii) All risk in and title to the Assets to be transferred / to be purchased by the Purchaser pursuant to this Article shall be transferred to Purchaser, on the last day of the exit management period.
- (iii) Purchaser shall pay to the SASP on the last day of the exit management period such sum representing the Net Block (procurement price less depreciation as per provisions of Companies Act) of the Assets to be transferred as stated in Schedule V (Terms of Payment Schedule).
- (iv) Payment to the outgoing SASP shall be made to the tune of last set of completed services / deliverables, subject to Service Levels requirements.
- (v) The outgoing SASP will pass on to Purchaser and/or to the Replacement SASP, the subsisting rights in any leased properties/ licensed products on terms not less favorable to Purchaser/ Replacement SASP, than that enjoyed by the outgoing SASP.

3 COOPERATION AND PROVISION OF INFORMATION

3.1 During the exit management period:

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

4 CONFIDENTIAL INFORMATION, SECURITY AND DATA

4.1 The SASP will promptly on the commencement of the exit management period

supply to the Purchaser or its nominated agency the following:

- (i) information relating to the current services rendered and customer and performance data relating to the performance of sub-contractors in relation to the services;
- (ii) documentation relating to Computerization Project's Intellectual Property Rights;
- (iii) documentation relating to sub-contractors;
- (iv) all current and updated data as is reasonably required for purposes of Purchaser or its nominated agencies transitioning the services to its Replacement SASP in a readily available format nominated by the Purchaser, its nominated agency;
- (v) all other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable Purchaser or its nominated agencies, or its Replacement SASP to carry out due diligence in order to transition the provision of the Services to Purchaser or its nominated agencies, or its Replacement SASP (as the case may be).

4.2 Before the expiry of the exit management period, the SASP shall deliver to the Purchaser or its nominated agency all new or up-dated materials from the categories set out in Schedule above and shall not retain any copies thereof, except that the SASP shall be permitted to retain one copy of such materials for archival purposes only.

4.3 Before the expiry of the exit management period, unless otherwise provided under the MSA, the Purchaser or its nominated agency shall deliver to the SASP all forms of SASP confidential information, which is in the possession or control of Chairperson, PIU or its users.

5. EMPLOYEES

5.1 Promptly on reasonable request at any time during the exit management period, the SASP shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the Purchaser or its nominated agency a list of all employees (with job titles) of the SASP dedicated to providing the services at the commencement of the exit management period.

5.2 Where any national, regional law or regulation relating to the mandatory or automatic transfer of

the contracts of employment from the SASP to the Purchaser or its nominated agency, or a Replacement SASP ("**Transfer Regulation**") applies to any or all of the employees of the SASP, then the Parties shall comply with their respective obligations under such Transfer Regulations.

6. TRANSFER OF CERTAIN AGREEMENTS

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

7. RIGHTS OF ACCESS TO PREMISES

7.1 At any time during the exit management period, where Assets are located at the Implementation Agency's premises, the SASP will be obliged to give reasonable rights of access to (or, in the case of Assets located on a third party's premises, procure reasonable rights of access to) the Purchaser or its nominated agency and/or any Replacement SASP in order to make an inventory of the Assets.

7.2 The SASP shall also give the Purchaser or its nominated agency or its nominated agencies, or any Replacement SASP right of reasonable access to the Implementation Partner's premises and shall procure the Purchaser or its nominated agency or its nominated agencies and any Replacement SASP rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to the Purchaser or its nominated agency, or a Replacement SASP .

SCHEDULE III - AUDIT, ACCESS AND REPORTING

1 PURPOSE

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

2 AUDIT NOTICE AND TIMING

2.1 As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavors 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 SASP 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 SASP, a security violation, or breach of confidentiality obligations by the SASP, provided that the requirement for such an audit is notified in writing to the SASP 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 SASP considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Schedule IV (Governance Schedule).

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

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

3 ACCESS

The SASP 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 SASP 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 centers, 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 SASP has complied with the relevant technical standards, and has adequate internal controls in place; and
- (iv) The compliance of the SASP with any other obligation under the MSA 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 SASP.
- (vi) For the avoidance of doubt the audit rights under this Schedule shall not include access to the SASP 's profit margins or overheads, any confidential information relating to the SASP ' employees, or (iii) minutes of its internal Board or Board committee meetings including internal audit, or (iv) such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the MSA.

5 AUDIT RIGHTS OF SUB-CONTRACTORS, SUPPLIERS AND AGENTS

5.1The SASP shall use reasonable endeavors to achieve the same audit and access provisions as defined in this Schedule with sub-contractors who supply labor, services in respect of the services. The SASP 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 SASP 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

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

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

7 TERMS OF PAYMENT

The Purchaser shall bear the cost of any audits and inspections. The terms of payment are exclusive of any costs of the SASP and the sub-contractor, for all reasonable assistance and information provided

under the MSA, the Project Implementation, Operation and Management Service Levels by the SASP pursuant to this Schedule.

8 RECORDS AND INFORMATION: For the purposes of audit in accordance with this Schedule, the SASP shall maintain true and accurate records in connection with the provision of the services and the SASP shall handover all the relevant records and documents upon the termination or expiry of the MSA.

SCHEDULE IV - GOVERNANCE SCHEDULE

PURPOSE

The purpose of this Schedule is to:

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

GOVERNANCE STRUCTURE

1. Project Managers: The relationship under this Agreement will be managed by the Project Managers appointed by each Party, who will provide the interface between the executive management of the respective Parties.
2. Project Implementation Unit (PIU): Within 7 days following the Effective Date, Purchaser or its nominated agencies and the SASP shall each appoint a Project Manager. In the event that either Party wishes to substitute its Project Manager it will do so in manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within 7 days of the substitution.
3. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
4. The PIU will meet formally on a fortnightly / monthly / quarterly, as required, basis at a time and location to be agreed between them. These meetings will cover, as a minimum, the following agenda items: (i) consideration of Quarterly Performance Reports; (ii) consideration of matters arising out

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of the Schedule I (Change Control Schedule); (iii) issues escalated in accordance with the escalation procedure as set out in the Schedule IV (Governance Schedule); (iv) matters to be brought before the PIU in accordance with the MSA and the Schedules; (v) any matter brought before the PIU by the SASP under this Article; and (vi) any other issue which either Party wishes to add to the agenda.

5. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in the Schedule V (Terms of Payment Schedule), the Parties agree to discuss in the PIU any appropriate amendment to the Agreement or any Service Levels or Statement of Works including any variation to the terms of payment as stated in the Schedule V (Terms of Payment Schedule). Any variation so agreed shall be implemented through the change control procedure as set out in the Schedule I (Change Control Schedule).

GOVERNANCE PROCEDURES

1. The SASP shall document the agreed structures in a procedure's manual.
2. The agenda for each meeting of the PIU shall be set to reflect the discussion items referred to above and extraordinary items may be added either with the agreement of the Parties or at the request of either Party. Copies of the agenda for meetings of the PIU, along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.
3. All meetings and proceedings will be documented such documents to be distributed to the Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.
4. The Parties shall ensure as far as reasonably practicable that the PIU shall resolve the issues and resolve the objectives placed before them and that members representing that Party are empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achieve this.
5. In order formally to submit a Disputed Matter to the aforesaid for a, one Party ("Claimant") shall
 - a. give a written notice ("Dispute Notice") to the other Party. The Dispute Notice shall be accompanied by (a) a statement by the Claimant describing the Disputed Matter in reasonable detail and (b) documentation, if any, supporting the Claimant's position on the Disputed Matter.
6. The other Party ("Respondent") shall have the right to respond to the Dispute Notice within 7 days after receipt of the Dispute Notice. In the event that the parties are unable to resolve the Disputed Matter within a further period of 7 days, it shall refer the Disputed Matter to next level of the dispute resolution for action as per the process mentioned in article 9.1
7. All negotiations, statements and / or documentation pursuant to these Articles shall be without prejudice and confidential (unless mutually agreed otherwise).

8. If the Disputed Matter is having a material effect on the operation of the Services (or any of them or part of them) the Parties will use all their respective reasonable endeavors to reduce the elapsed time in reaching a resolution of the Disputed Matter.

SCHEDULE V - TERMS OF PAYMENT SCHEDULE

As defined in section 7 (Payment Terms) of Volume I of the RFP.

ANNEXURES

ANNEXURE A – FORMAT FOR CHANGE CONTROL NOTICE

Change Control Note		CCN Number:	
Part A: Initiation			
Title:			
Originator:			
Sponsor:			
Date of Initiation:			
Details of Proposed Change			
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)			
Authorized by Purchaser		Date:	
Name:			
Signature:		Date:	
Received by the SASP			
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)	
Authorized by the SASP	Date:
Name:	
Signature:	

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

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

ANNEXURE B - LIST OF SERVICES PROVIDED BY THE SASP

As per Section 2 (Scope of Work) of Volume I of the RFP

Note:

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

ANNEXURE C –REQUIRED DELIVERABLE AND ASSOCIATED TIMELINES

As per section 6 of the RFP.

ANNEXURE D - BID

1. Pre-qualification bid response
2. TECHNICAL BID RESPONSE – EXTRACTED AS APPENDIX – A
3. FINANCIAL/Commercial BID RESPONSE:
4. 3. Details of Cost Component

ANNEXURE E – ROLES AND RESPONSIBILITIES OF THE PARTIES

Roles and Responsibilities of SASP

1. Preparation of Detailed Project Plan in line with the overall plan provided in the RFP. The same should be prepared in consultation with Purchaser.
2. Procure, develop, install, commission, operate and maintain:
 - a. Requisite hardware & system software at Purchaser's HQ, Data Center and other locations as per the requirements mentioned in this RFP
 - b. Networking equipment's, connectivity and LAN as per the requirements mentioned in this RFP,
 - c. Meet the defined Service Levels for the performance of the system.
3. Addressing technology obsolescence by appropriate upgradation, replacement and / or replenishment of systems deployed at various locations (data center, HQ and other locations).
4. Insure the entire hardware against the infrastructure deployed at various locations for the entire duration of the contract against vandalism, theft, fire and lightning.
5. Keep all system software i.e. OS, antivirus, office applications etc., for Servers, PCs etc. at Data Centre and various locations, up to date by installing regular upgrades / patches.
6. Rectification of system software problems due to crashing or malfunctioning of the OS, RDBMS or front end within the time limits to meet the Service Levels as defined in RFP.
7. Develop / customize, deploy and maintain the requisite Software Solution as per the requirements of the Corporation at appropriate locations.
8. Ensure adequate security of hardware & software system from viruses, Trojan horses, spyware, worms, Denial of Service (DoS) attack, fire, flood, power outage, natural disaster, manmade disaster etc.
9. Provide necessary support for the resolution of bugs, patches & upgrades of the software solution.
10. Provide necessary manpower for managing the Change Requests.

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11. Design various manuals like User manual, Trouble Shooting manual etc. for the system.
12. Submit the source code of any bespoke software development to the purchaser.
13. Provide computer basic skills training and advanced training on application modules to the staff members and stakeholders of the Corporation.
14. Maintain the business continuity, as per agreed business continuity plan.
15. Deploy requisite manpower and infrastructure for the digitization of the existing data.
16. Deploy the required manpower to manage the operations.
17. Ensuring the Service Levels for downtime of system, software development / customization, procurement and delivery of hardware & networking equipment's, errors in data entry as defined in RFP Annexure III (Service Level Metrics) of Volume 1 are met.
18. Management and quality control of all services and infrastructure.
19. Any other services which is required for the successful execution of the project.
20. Regular Backup as per the schedule and Disaster Recovery.
21. Generation of MIS reports as per the requirements of Purchaser.
22. Generation of the report for the monitoring of Service Levels.
23. Meet the defined Technical Specifications for the IT Infrastructure including Hardware and networking equipment's keeping in mind the application and future requirements of the Corporation.

Roles and Responsibilities of Purchaser

1. Provide adequate space at the Purchaser's HQ for setting up of infrastructure, software development and other activities to be carried out by the Bidder.
2. Coordination between all the divisions for providing necessary information for the study and development / customization of the necessary solution.
3. Co-ordination (as far as possible) with other Government agencies to assist the selected bidder in execution of the project.
4. Coordinate with Bidder for conducting workshops for the Stakeholder departments.

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5. Provide the data available in the form of physical files or existing databases to the selected bidder for digitization purposes.
6. Deployment of staff members of the Corporation for verification of the digitized data within the defined timelines.
7. Ensure that Data Backups are being taken regularly by bidder as per the schedule agreed upon.
8. Ensure that the hardware and other infrastructure deployed at HQ, DC etc. meets the specifications as mentioned in RFP and is maintained properly to meet the Service Levels as defined in RFP.
9. Monitoring of overall timelines, Service Levels and calculation of penalties accordingly.
10. Conducting User Acceptance Test (UAT) for the application solution deployed.
11. Issuing the Acceptance Certificate on successful deployment of the software application, hardware deployed, digitized data and for other components of the Scope of Work (wherever required).
12. Any other requirements that could arise during operations for effective governance and to meet any administrative requirement.
13. To create internal capacity now for execution of the project after takeover from the bidder.
14. Ensuring the staff members and other stakeholders attend the training programs as per the schedule defined by the bidder and agreed upon by Purchaser.
15. Provide sign off on the deliverables of the project including SRS, design documents etc.

B. 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 '**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 SASP /SASP/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 SASP have entered into a Master Services Agreement dated *** (the "**MSA**") in furtherance of the Project.

3. Whereas in pursuing the Project (the "**Business Purpose**"), a Party ("Disclosing Party) recognizes that they will disclose certain Confidential Information (*as defined hereinafter*) to the other Party ("Receiving Party").

4. Whereas such Confidential Information (*as defined hereinafter*) belongs to Receiving Party as the case may be and is being transferred to the Disclosing Party to be used only for the Business Purpose and hence there is a need to protect such information from unauthorized use and disclosure.

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

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

1.2 Interpretation

In this Agreement, unless otherwise specified:

(a) references to Clauses, Sub-Clauses, Paragraphs and Schedules are to clauses, subclauses, paragraphs of and schedules to this Agreement;

(b) use of any gender includes the other genders;

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

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

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

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

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

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

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

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

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being

rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

1.4 Ambiguities within Agreement

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

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

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

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

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

2. TERM

This Agreement will remain in effect for perpetuity from the date of execution of this Agreement and/or MSA ("**Term**").

3. SCOPE OF THE AGREEMENT

(a) This Agreement shall apply to all confidential and proprietary information disclosed by Disclosing Party to the Receiving Party and other information which the disclosing party identifies in writing or

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

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

4. OBLIGATIONS OF THE RECEIVING PARTY

The Receiving Party shall:

(a) use the Confidential Information only for the Business Purpose and shall hold the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, 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 and such employees and/or associates shall be instructed, directed and guided by SASP to deal with Confidential Information in the same manner as stated in this Non- Disclosure Agreement and RFP. SASP 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. Provided, however, that an archival copy of the Confidential Information may be retained in the files of the Receiving Party's counsel, solely for the purpose of proving the contents of the Confidential Information.

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

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

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

5. EXCEPTIONS TO CONFIDENTIAL INFORMATION

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

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

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

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

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

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

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

6. OWNERSHIP OF THE CONFIDENTIAL INFORMATION

(a) Each Party recognizes and agrees that all of the disclosing Party's Confidential Information is owned solely by the Disclosing Party (or its licensors) and that the unauthorized disclosure or use of such

Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain.

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

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

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

7. DISPUTE RESOLUTION

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

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

(c) During the 14 days after a notice is given under clause 7(b) (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to this Agreement out of or relating to the construction, meaning, scope, operation or effect of this Agreement or the validity of the breach thereof shall be referred to to a Sole Arbitrator appointed by two Arbitrators [two Arbitrators so chosen by both SASP and Purchaser (one each)] in accordance with and in full satisfaction of the qualifications to be prescribed for such arbitrator, including but not limited to qualifications as to technical experience, nationality and legal experience, by the Purchaser and the SASP, at the time of appointment. Arbitration Proceedings shall be

conducted in English Language. 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 as amended from time to time 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, India. 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.

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

8. VARIATION

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

9. WAIVER

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

(a) shall be in writing

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

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

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

10. EXCLUSION OF IMPLIED WARRANTIES

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

11. ENTIRE AGREEMENT

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

12. SEVERABILITY

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall

not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the dispute resolution procedure set forth under this Agreement or otherwise.

13. NO PARTNERSHIP

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

14. THIRD PARTIES

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

15. SUCCESSORS AND ASSIGNS

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

16. NOTICES

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

If to Purchaser:

Attn: ***

Tel:

Fax:

Email:

Contact:

With a copy to:

If to the SASP:

Attn. ***

Phone: ***

Fax No. ***

17. LANGUAGE

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

18. COUNTERPARTS

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

19. MITIGATION

Without prejudice to any express provisions of this Agreement on any mitigation obligations of the Parties, each of the Purchaser and the SASP shall at all times take all reasonable steps to minimize and

mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

20. REMOVAL OF DIFFICULTIES

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the SASP 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.

C. INTEGRITY PACT

As per the Format given in Annexure VII (Pre-contract Integrity Pact) of Volume 2 of the RFP.

D. 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 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: _____