



Responses to pre-bid queries and Corrigendum No. 3

To

Request for Empanelment (RFE) for “Sandbox Exit Under National Digital Health Mission (NDHM)”

RFE Number: S-12019/82/2020-Part(1)

Date of Publishing RFE: 22.07.2021

Date of Publishing 3rd Corrigendum: 16.08.2021

- National Health Authority's (NHA) responses to pre-bid queries are specified at Annexure-I of this document.
- NHA has decided to make the following changes in the RFE as described in the table below-

Serial No.	RFP Section reference and Page	RFP clause	Modification /Insertion/Deletion
1	Section 5: Scope of work	Clause 5.1.1: Scope of Work	<p>To be read as under: Clause 5.1.1: Develop a self-assessment certificate service/tool to automate sandbox exit process as 'detailed in this section', within a period of 4 months from the date of empanelment and certify NDHM sandbox participants as NDHM compliant by issuing a Pass/Fail certificate. The bidder must ensure that the tool is duly developed within the stipulated time with all internal checks, validations & tests completed. The time required by NHA to validate the tool is outside the time period given to bidders to develop the self-assessment tool/service.</p>
2	Section 5: Scope of work	New clause inserted as Clause 5.1.5 (b)	<p>Insertion of new clause: Clause 5.1.5 (b): The no. of entities that will require functional testing certification will depend on how many NDHM sandbox applicants approved by an internal NHA committee want to integrate with the NDHM. The type of entities include HMIS/LIMS, Hospitals/Labs, govt. health programs, Health Locker etc. Please note that this list is not exhaustive.</p>

3	Section 5: Scope of work	New clause inserted as Clause 5.1.5(c)	<p>Insertion of new clause: Clause 5.1.5 (c): A tool must be based on validating the request and response for all the APIs to be implemented by the participant including errors and edge cases.</p>
4	Section 5: Scope of work	New clause inserted as Clause 5.1.5(d)	<p>Insertion of new clause: Clause 5.1.5 (d): The content must pass FHIR validation as defined by NDHM for each health record type in HIP/HIU guidelines. Any attachment/file must be verified to be of appropriate format.</p>
5	Section 5: Scope of work	New clause inserted as Clause 5.1.5(e)	<p>Insertion of new clause: Clause 5.1.5 (e): Care contexts and the meta data, excluding unstructured data created at health locker must also be validated.</p>
6	Section 5: Scope of work	Clause 5.1.10: NDHM Use Cases to be supported by self-assessment service	<p>To be read as under:: NDHM use-cases to be supported by self-assessment service. These use-cases are illustrative in nature</p>

7	Section 5: Scope of work	New clause inserted as Clause 5.1.12	<p>Insertion of new clause: Clause 5.1.12: Tool hosting will be the sole responsibility of the bidder & NDHM will have no role to play in infrastructure requirements</p>
8	Section 5: Scope of work	New clause inserted as Clause 5.1.13	<p>Insertion of new clause: Clause 5.1.13: NDHM Sandbox applicants are required to be compliant with latest use-cases, new APIs and new API versions as released by NHA. Detailed guidelines in this regard shall be communicated later</p>
9	Section 6: Instructions to Bidders	Clause 6.3.1: Availability of RFE	<p>To be read as under: Clause 6.3.1. NHA has published the NIT (Notice Inviting Tender) for the RFE on –</p> <ul style="list-style-type: none"> a) Website of PM-JAY (www.pmjay.gov.in) b) Central Public Procurement Portal (www.eprocure.gov.in) c) Website of NDHM (www.ndhm.gov.in) <p>Bidder will be required to sign and submit NDA at the time of submission of proposal as per Format in Annexure VIII, Corrigendum #3. This is in addition to the requirements laid out in clause 9.4.2 and 10.14.1 of the RFE.</p>

10	Section 8.4 : Technical Evaluation Criteria No. 2	Clause 8.4 Table B, S.No. 2: "Approach and Methodology"	<p>To be read as under: Clause 8.4 Table B, S.No. 2: Supporting Document Required:</p> <p>Detailed presentation required as per Table B under section 4 will have to be submitted along with the bid. NHA shall duly inform the qualified bidders to present the detailed approach. Date & time for the same shall be accordingly communicated to bidders qualifying the PQ stage.</p>
11	Section 10: Terms and Conditions of Agreement	Clause 10.15.1	<p>To be read as under: Clause 10.15.1 : Intellectual Property Rights: Bidder shall provide only the right to use the self-assessment tool/service developed under the RFE for the term in the contract. No ownership rights shall be transferred over the software, products, reports, drawings and other documents which have been developed by the bidder to develop the self-assessment tool/service.</p>
12	Section 10: Terms and Conditions of Agreement	Clause 10.15.2	Clause 10.15.2 stands "deleted"

Annexure I: NHA's responses to pre-bid queries

Sno .	Page no.	Section no.	Section name	Statement as per RFE document	Query by bidder	NHA's response
1	14	5.1.5. a)	Functional Testing Service	Provide an automated workflow to verify API integrations built by NDHM sandbox participants in their mobile or web applications	Request to clarify: Will NDHM provide the test cases or test cases are expected to be developed by bidder? Generally, the test plan/test cases are provided by authority. If it is left to bidder each bidder may define different test plan and different test cases leading to non-standard certification platform.	As per RFF & corrigendum #3. The test-cases for live use-cases are available at this link: https://sandbox.ndhm.gov.in/documents/HMIS_Health_ID_CM_PHR_Integration_Test_Cases_Std_template_5thMar.xlsx . NHA shall provide additional test cases as and when additional use-cases are added in the scope.
2	16	5.1.11	Scope of Web Application Security Assessment (WASA)	The NDHM sandbox participants are free to use the "Auditing Services" of STQC/CERT-IN empanelled vendors for the purpose of security assessment. These services are available in public domain. Empanelled Agencies under this RFE can also provide security assessment services, provided empanelled agencies under	Request to Clarify: Does the Security assessment is optional for the Certification agency?	As per RFE

				this RFE are empanelled with "STQC/CERT-IN.		
3	12	4.2.3	NDHM Pilot Phase	Over the last few months, Phase I of the mission has been implemented, rolling out key building blocks in pilot mode in six Union Territories – Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, and Daman & Diu, Ladakh, Lakshadweep and Puducherry.	Request to Clarify: Since Phase 1 is already implemented in 6 territories, what are the qualification process followed to validate the self - assessment tool before using it in production environment?	As per RFE. In current sandbox exit process, functional testing is completed manually to check compliance against recommended workflow. Thus, there is no self-assessment tool that exists & as such there has been no need for any validation
4	14	5.1.1	Scope of Work	Develop a self-assessment certificate service/tool to automate sandbox exit process as 'detailed in this section', within a period of 4 months from the date of empanelment and certify NDHM sandbox participants as NDHM compliant by	Request to increase the time period to develop the self-assessment tool to 6 months from the date of empanelment.	As per RFE

				issuing a Pass/Fail certificate.		
5	14	5.1.1	Scope of Work	Develop a self-assessment certificate service/tool to automate sandbox exit process as 'detailed in this section', within a period of 4 months from the date of empanelment and certify NDHM sandbox participants as NDHM compliant by issuing a Pass/Fail certificate.	Does this time period exclude the time period required to validate the tool?	As per corrigendum #3

6	14	10.15	Intellectual Property Rights	<p>NHA shall own and have a right in perpetuity to use all Intellectual Property Rights which have arisen out of or in connection with the implementation of this Contract, including all processes, products, software, specifications, reports, drawings and other documents which have been developed by the agency for conducting functional assessment as per the scope of this RFE and security assessment of a sandbox application and for the purposes of inter-alia use or sub-license of such Services under this Contract. The agency undertakes to disclose all Intellectual Property Rights arising out of or in connection with the performance of the Services to NHA and execute all such agreements/documents and file all relevant applications, effect transfers and obtain all</p>	<p>Request to consider that intellectual property rights for the complete self-assessment sandbox platform/solution including all the sub-components, source code, artifacts etc. will be with bidder. Bidders are not being paid to develop the platform/solution and also bidder may already have the intellectual properties/skills of developing these kind of platforms/solutions. The current clause is extremely restrictive and may discourage reputed and experienced participants. This also against global practice where the test platform developed are always property of developers.</p>	As per corrigendum #3
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				permits and approvals that may be necessary in this regard to effectively transfer and conserve the Intellectual Property Rights of NHA.		
7	NA	NA	General	Business Queries	Request to clarify the number of entities and type of entities who will undergo this certification	As per corrigendum #3
8	NA	NA	General	Business Queries	When and how NDHM is planning to mandate this certification?	As per RFE
9	NA	NA	General	Business Queries	What is the frequency of performing the re-certification (the general industry practice is 2 years)	As per corrigendum #3
10	NA	NA	General	Tool hosting requirement	Please confirm if the tool hosting is the sole responsibility of the bidder and NDHM has not role to play on the infra requirements?	As per corrigendum #3

11	35	10.15.1	Intellectual Property Rights	<p>NHA shall own and have a right in perpetuity to use all Intellectual Property Rights which have arisen out of or in connection with the implementation of this Contract, including all processes, products, software, specifications, reports, drawings and other documents which have been developed by the agency for conducting functional assessment as per the scope of this RFE and security assessment of a sandbox application and for the purposes of inter-alia use or sub-license of such Services under this Contract. The agency undertakes to disclose all Intellectual Property Rights arising out of or in connection with the performance of the Services to NHA and execute all such agreements/documents and file all relevant applications, effect</p>	<p>We request you to edit the clause as "Bidder shall provide only right to use over the material provided under the RFP for the term on the contract. No ownership rights shall be transferred over the software, products etc."</p>	<p>As per corrigendum #3</p>
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				transfers and obtain all permits and approvals that may be necessary in this regard to effectively transfer and conserve the Intellectual Property Rights of NHA.		
12	35	10.15.2	Intellectual Property Rights	The Agency shall ensure that while it uses any software, hardware, processes or material in the course of performing the Services, it does not infringe the Intellectual Property Rights of any person and the Agency shall keep NHA indemnified against all costs, expenses and liabilities howsoever, arising out of any illegal or unauthorized use (piracy) or in connection with any claim or proceedings relating to any breach or violation of any permission/license terms or infringement of any Intellectual Property Rights by the	We confirm that that Bidder shall replace or modify infringed material with non-infringed material, however, it shall not be able to indemnify the customer. Kindly confirm if that would be acceptable	As per corrigendum #3

				Agency during the course of performance of the Services		
13	36	10.18	Arbitration	The Authority to appoint the arbitrator shall be the CEO of National Health Authority.	We propose that the arbitrator should be appointed by mutual consent of both the parties, and it should be neutral person	As per RFE
14	NA	NA	NA	NA	We request you to add another clause which states that "Bidder is providing services under the assumption that indirect, consequential damages is excluded, and the total aggregate liability of the bidder shall not exceed 12 months of the charges preceding the claim under a specific purchase order giving rise to liability."	As per RFE
15	14	5.1.5 -	Functional Testing Service	Provide an automated workflow to verify API integrations built by NDHM sandbox participants in their	Please confirm if we have to define stub for each use-case mentioned against all the modules in NDHM ecosystem or do we have to build a tool	As per corrigendum #3

				mobile or web applications. Initially, this will include a test suite specific to certain NDHM use-cases	based on validating the request and response provided by the participant for the entire workflow of a use case.	
16	14	5.1.5 -	Functional Testing Service	Provide an automated workflow to verify API integrations built by NDHM sandbox participants in their mobile or web applications. Initially, this will include a test suite specific to certain NDHM use-cases	What would be the level of validation required for medical records - File level is enough, or any content validation is required if possible?	As per corrigendum #3
17	14	5.1.5 -	Functional Testing Service	Provide an automated workflow to verify API integrations built by NDHM sandbox participants in their mobile or web applications. Initially, this will include a test suite specific to certain NDHM use-cases	How to go about certain manual actions such as patient consent, OTP etc.? Can it still be manual even when using assessing tool?	Bidders must attempt to automate the workflow of use-cases as much as possible. If certain elements in the work cannot be automated, it shall be acceptable
18	14	5.1.5 -	Functional Testing Service	Provide an automated workflow to verify API integrations built by NDHM sandbox participants in their mobile or web	Can we make use of the FHIR validator tool available on sandbox within assessing tool?	Bidder is free to use any tool of their choice that helps to meet the requirements of development of self-assessment service/tool

				applications. Initially, this will include a test suite specific to certain NDHM use-cases		
19	14	5.1.5 -	Functional Testing Service	Provide an automated workflow to verify API integrations built by NDHM sandbox participants in their mobile or web applications. Initially, this will include a test suite specific to certain NDHM use-cases	Do we have to build a tool based on validating the request and response provided by the participant for the entire workflow of an use case.	As per corrigendum #3
20	14	5.1.5 -	Functional Testing Service	Provide an automated workflow to verify API integrations built by NDHM sandbox participants in their mobile or web applications. Initially, this will include a test suite specific to certain NDHM use-cases	Level of validation required for medical records - File level is enough, or any content validation is required if possible?	As per corrigendum #3
21	14	5.1.5 -	Functional Testing Service	Provide an automated workflow to verify API integrations built by NDHM sandbox participants in their mobile or web applications. Initially,	Health locker creating new care context – Please confirm if any validation is required for self-creating care context (in case of direct document uploads by the patients instead of linking from HIPs)	As per corrigendum #3

				this will include a test suite specific to certain NDHM use-cases		
22	29	8.4	Technical Evaluation Criteria	Presentation	Please clarify on the requirements of the presentation. When is the same expected to be held, aside also confirm if we need to submit our presentation (or solution) along with the bid in soft copy	As per RFE and corrigendum #3
23	17	6.3	Availability of RFE	Bidders can obtain the RFE by submitting NDA (published with NIT) to NHA	Kindly also look at the next row Both these clauses as in the RFE states contradictory statements regarding the submission of NDA Aside the NDA agreement format as given in the RFE mentions the agreement between the Purchaser and the empanelled agency. Kindly confirm if we need to submit the NDA along with the proposal (and also if it needs to be submitted in hard copy or in soft copy) or does the agreement needs to be signed during the empanelment.	As per RFE and corrigendum #3

24	35	10.14.1	Non-Disclosure Agreement	The agency will treat as confidential all data and information about the NHA obtained in the execution of its responsibilities in strict confidence and will not reveal such information to any other party without the prior written approval of the NHA. All agencies shortlisted for empanelment shall submit a Non-Disclosure Agreement to NHA, in the format provided in Annexure VII.	<p>Kindly also look at the previous row-- Both these clauses as in the RFE states contradictory statements regarding the submission of NDA. Aside the NDA agreement format as given in the RFE mentions the agreement between the Purchaser and the empanelled agency.</p> <p>Kindly confirm if we need to submit the NDA along with the proposal (and also if it needs to be submitted in hard copy or in soft copy) or does the agreement needs to be signed during the empanelment.</p>	As per RFE and corrigendum #3
25	28	8.3	Pre-Qualification Criteria	<p>The bidder should have the following valid certifications as on the date of submission of the proposal:</p> <p>a) Valid STQC empanelment certificate for ISO/IEC 17025: 2017 OR b) Valid CERT-IN empanelment for information security auditing services</p>	<p>We are empanelled with CERT-IN and our name has been published on their website in the link https://www.cert-in.org.in/</p> <p>We have email confirmation from CERT-IN, however they do not provide any certificate now, hence as a proof we will attach the email confirmation and the Screenshot of the website</p> <p>We hope you would consider</p>	The "e-mail confirmation from CERT-IN" duly attested by authorized signatory and "URL for verification of the validity date" can be submitted by the Bidder for this criteria.

				<p>Document Proof Required:--</p> <p>i) Profile of bidder as per Form A1 or ii) Copy of the valid Certificate issued from the accreditation organization</p>	<p>the same as a valid proof for this criteria</p>																					
26	40	ANNEXURE – III: FORMAT FOR SUBMISSION OF PROPOSALS	FORM A1: BIDDER PROFILE	<p>Certification Details as prescribed in Eligibility Criteria- Table A:</p> <p>a) STQC empanelment for API testing OR b) CERT-IN empanelment for Information Security Audits</p> <table border="1"> <thead> <tr> <th>S.no</th> <th>Certificate Type</th> <th>Certificate Number</th> <th>Valid Up-to</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	S.no	Certificate Type	Certificate Number	Valid Up-to																	<p>We are empanelled with CERT-IN and our name has been published on their website in the link https://www.cert-in.org.in/</p> <p>We have email confirmation from CERT-IN, however they do not provide any certificate now, hence there is no Certificate number and Certificate Type that we could enter into the table. We would mention only the Valid upto date.</p> <p>We hope that it would suffice the said requirement</p>	<p>Bidder to mention 'CERT-IN' as 'Certificate Type' and a corresponding valid up to date. Certificate number for CERT-IN certification shall not be required.</p>
S.no	Certificate Type	Certificate Number	Valid Up-to																							

27	NA	NA	Submission Portal	<p>Number of Covers</p> <table border="1" data-bbox="787 300 1066 539"> <caption>Cover Details, No. Of Covers - 2</caption> <thead> <tr> <th>Cover No</th> <th>Cover</th> <th>Document Type</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>PreReq/Qual/Technical</td> <td>.pdf</td> <td>Bid Declaration</td> </tr> <tr> <td></td> <td></td> <td>.pdf</td> <td>Integrity pact</td> </tr> <tr> <td>2</td> <td>Finance</td> <td>.pdf</td> <td>RFQ</td> </tr> <tr> <td></td> <td></td> <td>.pdf</td> <td>TQ1</td> </tr> <tr> <td></td> <td></td> <td>.pdf</td> <td>TQ2</td> </tr> <tr> <td></td> <td></td> <td>.pdf</td> <td>RFQ</td> </tr> <tr> <td></td> <td></td> <td>.xls</td> <td>Sheet</td> </tr> </tbody> </table>	Cover No	Cover	Document Type	Description	1	PreReq/Qual/Technical	.pdf	Bid Declaration			.pdf	Integrity pact	2	Finance	.pdf	RFQ			.pdf	TQ1			.pdf	TQ2			.pdf	RFQ			.xls	Sheet	<p>The submission portal site mentions us to submit a excel sheet in the finance cover.</p> <p>Considering that there is no excel document shared with us in the RFP and we are not required to submit any commercials as of now, we request you to help us understand what document do we need to share here</p>	As per RFE.
Cover No	Cover	Document Type	Description																																			
1	PreReq/Qual/Technical	.pdf	Bid Declaration																																			
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2	Finance	.pdf	RFQ																																			
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Annexure VIII

Non-Disclosure Agreement

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

THIS AGREEMENT is made on this the <***> day of <***> 20--- at <***>, India. BETWEEN National Health Authority having its office at 9th floor, Tower I Jeevan Bharati Building, Connaught Place, Delhi-11001 India hereinafter referred to as 'Purchaser' or 'NHA' or 'Disclosing Party', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, A company incorporated under the Indian Companies Act, 2013 OR any other previous company law as per section 2 (20) of the Indian Companies Act 2013 OR Partnership firms registered under the Limited Liability Partnerships (registered under LLP Act, 2008), having its registered office at <***> (hereinafter referred to as 'the Service Provider/Receiving Party' which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

1. Purchaser is desirous for Empanelment of Agencies for Sandbox Exit under NDHM.
2. The Purchaser and SERVICE PROVIDER have entered into an agreement in furtherance of the Request for Empanelment (RFE) for SANDBOX EXIT UNDER NATIONAL DIGITAL HEALTH MISSION (NDHM) dated 22nd July 2021.
3. Whereas in pursuing the Project (the "Business Purpose"), a Party ("Disclosing Party) recognizes that they will disclose certain Confidential Information (as defined hereinafter) to the other Party ("Receiving Party").
4. Whereas such Confidential Information (as defined hereinafter) belongs to Receiving Party as the case may be and is being transferred to the Disclosing Party to be used only for the Business Purpose and hence there is a need to protect such information

from unauthorized use and disclosure.

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

DEFINITIONS AND INTERPRETATION

1. Definitions

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

2. Interpretation

In the Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs and Schedules are to clauses, subclauses, paragraphs of and schedules to the Agreement;
- (b) use of any gender includes the other genders;
- (c) references to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a 'person' shall be construed so as to include any individual, firm, company, government, state or Service Provider of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted;
- (f) any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;

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

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

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

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

3. Measurements and Arithmetic Conventions

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

4. Ambiguities within Agreement

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

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

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

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

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

5. Term

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

6. Scope of the agreement

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

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

7. Obligations of the receiving party

The Receiving Party shall:

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

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

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

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

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

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

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

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

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

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

8. Exceptions to confidential information

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

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

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

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

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

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

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

9. Ownership of the confidential information

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

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

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

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

10. Dispute resolution

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

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

(c) During the 14 days after a notice is given under clause 7(b) (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising

between the parties to the Agreement out of or relating to the construction, meaning, scope, operation or effect of the Agreement or the validity of the breach thereof shall be referred to a sole arbitrator to be appointed as mutually decided between the Parties. If the parties cannot agree on the appointment of the arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of the jurisdiction specified in this agreement. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The seat and venue of Arbitration proceedings will be held at New Delhi.

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

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

11. Variation

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

12. Waiver

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

(a) shall be in writing

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

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

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

13. Exclusion of Implied Warranties

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

14. Entire agreement

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

15. Severability

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

16. No partnership

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

17. Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing

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

18. Successors and assigns

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

19. Notices

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

If to Purchaser: Attn: <***> Tel:

Fax:

Email:

Contact:

With a copy to:

If to the SERVICE PROVIDER:

Attn. <***> Phone: <***> Fax No. <***>

20. Language

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

21. Counterparts

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

22. Mitigation

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

23. Removal of difficulties

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the SERVICE PROVIDER by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of the Purchaser by: (Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

- 1.
- 2.