



PUNJAB POLICE

**Punjab Police
(Technical Services)
Government of Punjab**

REQUEST FOR PROPOSAL (RFP)

PART 2

Selection of System Integrator for Operation and Management of CCTNS Punjab

RFP Reference No :
e-Tender\Technical Services 2022-23\01

RFP Publish date : 30th April, 2022

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5.10 Appendix 10: Draft Master Service Agreement (MSA)

Note: This draft Master Service Agreement is indicative in nature and the final MSA will be finalized before signing.

MASTER SERVICE AGREEMENT

THIS MASTER SERVICE AGREEMENT ("Agreement") is made on this the <***> day of <***> 2022... at <*****>, India.

BETWEEN

_____having its office at _____
----- India hereinafter referred to as '**Purchaser**' '-----', which
expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<*****>, a Company incorporated under the *Companies Act, 1956 / 2013* , or <*****> having
its registered office at <***> (hereinafter referred to as '**the System Integrator**' 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:

- (i) Purchaser is desirous to implement the project of e-Governance for <Insert the project name>.
- (ii) In furtherance of the same, Purchaser undertook the selection of a suitable System Integrator through an open competitive bidding process for support of the Project and in this behalf issued Request for Proposal (RFP) dated <***> .
- (iii) The successful bidder has been selected as the System Integrator on the basis of the bid response set out as <insert details bid submitted as Annexure> of this Agreement, to undertake the support and management of the Project as per the scope defined in the RFP and its associated documents.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out below .

Term	Meaning
Adverse Effect	means material adverse effect on (a) the ability of the System Integrator 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 (b) the legal validity, binding nature or enforceability of this Agreement;
Agreement	means this Master Services Agreement, Service Level Agreement and Non-Disclosure Agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP;
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;



RFP Version	Refers to the RFP No.<Insert RFP No.> , floated in Punjab e-tendering portal dated <Insert Date > along with its subsequent corrigendum.
Assets	shall have the same meaning ascribed to it in Clause 10.1 (a)
Core Application Software	means the software management, customized, tested and deployed by the System Integrator for the purposes of the Project and includes the source code 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 System Integrator;
Non-Disclosure Agreement	It is a contract through which the System Integrator agrees not to disclose information covered by this agreement
Business Hours	shall mean the working time for Purchaser users which is mentioned in the RFP. For CAS Application and Web Services 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 maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance.
Certificate(s) of Compliance	shall have the same meaning ascribed to it in Clause 5.2.
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, plans, budgets 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



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	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”.
Control	means, in relation to any business entity, the power of a person to secure (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person’s wishes and in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;
Deliverables	means the products, infrastructure and services agreed to be delivered by the System Integrator in pursuance of the agreement as defined more elaborately in the RFP, Operation and management phase 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;
Proprietary Information	shall have the same meaning ascribed to it in Clause 19.1
Effective Date	shall have the same meaning the date of signing of the contract.
Test	1) Purchaser Data Center/ DRC operational 2) UAT of the overall integrated solution and portal.
Final Testing and Certification Agency	shall have the same meaning ascribed to it in Clause 5.2.
Force Majeure	shall have the same meaning ascribed to it in Clause 16.1.
Force Majeure Costs	shall have the same meaning ascribed to it in Clause 16.2.4 (b).
Gol	means the Government of India.
Go-Live	The date of commencement of Operations and Maintenance phase.
Indemnifying Party	shall have the same meaning ascribed to it in Clause 15.1.
Indemnified Party	shall have the same meaning ascribed to it in Clause 15.1;



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Intellectual Property Rights	means all rights in written designs and copyrights, moral rights, rights in databases and Bespoke Software / Pre-existing work including its up-gradation systems and compilation rights (whether or not any of these are registered and including application for registration);
Material Breach	means a breach by either Party (Purchaser or System Integrator) of any of its obligations under this Agreement which has or is likely to have an Adverse Effect on the Project which such Party shall have failed to cure;
Required Deliverables	shall have the same meaning ascribed to it as defined in the RFP;
Parties	means Purchaser and System Integrator for the purposes of this Agreement and “ Party ” shall be interpreted; accordingly,
Performance Guarantee	Means the guarantee provided by a Nationalized Bank in favor of the Purchaser. The amount of Performance Security shall be 10 % of the overall contract value. This performance security shall be valid till 60 days after the completion of the project i.e. sixty days beyond the total contract period;
Planned Application Downtime	means the unavailability of the application services due to maintenance activities such as configuration changes, upgradation, or changes to any supporting infrastructure wherein prior intimation (at least two working days in advance) of such planned outage shall be given and approval sought from the Purchaser as applicable;
Planned network outage	means the unavailability of the network services due to infrastructure maintenance activities such as configuration changes, upgradation, or changes to any supporting infrastructure. Prior intimation of such planned outage shall be given, and approval sought from the Purchaser as applicable and shall be notified at least prior to two working days;
Project	means Project Operation and Management support in terms of the Agreement;
Project Implementation	means Project Implementation as per the testing standards and acceptance criteria prescribed by Purchaser or its nominated agencies;
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 5.2 of this Agreement;



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Project Monitoring Unit (PMU)	The PMU function is already defined by the Purchaser and is in vogue in its current Governance structure. It comprises of the staff members of the Purchaser as applicable;
Project Timelines	shall have the same meaning as defined in the RFP;
Replacement of Implementation Agency/ System Integrator	means any third party that Purchaser or its nominated agencies appoint to replace System Integrator upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
Required Consents	means the consents, waivers, clearances, and licenses to use Purchaser's Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the software and other items that Purchaser or their nominated agencies are required to make available to System Integrator pursuant to this Agreement;
Services	means the services delivered to the Stakeholders or its nominated agencies, employees of Purchaser or its nominated agencies, and to professionals, using the tangible and intangible assets created, installed, managed and operated by the System Integrator including the tools of information and communications technology and includes but is not limited to the list of services specified in the RFP;
Service Level	means the level of service and other performance criteria which will apply to the Services delivered by the System Integrator;
SLA	means the Performance and Maintenance SLA executed as part of this Master Service Agreement;
Stakeholders	means the Citizens, Purchaser or its nominated agencies, Purchaser, employees, MHA/NCRB and the Departments of the State Government;
Term	shall have the same meaning ascribed to it in Clause 3.2/ RFP;
Third Party Systems	means systems (or any part thereof) in which the Intellectual Property Rights are not owned by the Purchaser or System Integrator and to which System Integrator has been granted a license to use and which are used in the provision of Services;
Unplanned Application Downtime	means the total time for all the instances where services in the software requirement specification document prepared by the System Integrator are not available for more than 5 consecutive minutes;



Unplanned outage	means the total time for all the instances where services in the software requirement specification document prepared by the System Integrator are not available for more than 5 consecutive minutes;
Application	means the software application to be managed as a part of scope of work set out in the RFP.
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;
O&M Period	from the date of successful signing of the contract for application, DC/DR management.

1.2. Interpretation

In this Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures 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 re- enacted;
- (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 offices in the State of Punjab and Chandigarh are 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.
- (k) System integrator (SI) or Implementation Agency (IA) has been used for the same entity i.e. the bidder selected for the project.

1.3. Measurements and Arithmetic Conventions

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.

1.4. Ambiguities within Agreement

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

- (l) 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;
- (m) 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; and
- (n) as between any value written in numerals and that in words, the value in words shall prevail.

1.5. 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:

- (a) This Agreement along with
- (b) the SLA agreement,
- (c) NDA agreement,
- (d) Schedules and Annexures.
- (e) the RFP along with subsequently issued corrigenda.
- (f) Technical and financial proposal submitted by the successful bidder, to the extent they along with subsequently issued clarifications furnished by the System Integrator 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. SCOPE OF THE PROJECT

The System Integrator shall be required to support the operation and management of the DC/DRC and end locations application, manage and provide technical support to the solution for the period of 02 years and if extended by the purchaser for a period of 01 year from the date of signing of the contract. The roles and responsibilities of the Parties under this Agreement have been set out in detail as Annexure A Section 22.1 of this Agreement.

For the avoidance of doubt, it is expressly clarified that this Agreement shall govern the provision of the contracted services under the SLA to the Purchaser and its nominated agencies. It is anticipated that new or renewal agreements may be undertaken by creating a separate SLA, with schedules and annexures as required, under this Agreement for each additional engagement.

2.1. Scope of work

The scope of work would be as laid out in the scope of work document mentioned in the **RFP**, corrigendum, or associated documents.

3. TERM AND DURATION OF THE AGREEMENT

- a). The Purchaser intends to grant to the System Integrator the right to undertake and implement the Project on the terms and conditions set forth below and details as mentioned in the RFP:
 - (i) Application support for CAS and state developed 38 State extension modules
 - (ii) Support for operation and management of DC and DR
 - (iii) Support for Value added services, integration and training
 - (iv) Helpdesk support

- b). This Agreement shall come into effect on **<***> 2022** (hereinafter the 'Effective Date') and shall continue till operation and management completion date which shall be the date of the completion of the operation and management to the Purchaser or its nominated agencies, unless terminated earlier (as per clause 14), in which case the contract will get terminated on fulfillment of all obligations mentioned as per clause 14 and Schedule-II.



- c). Both Parties reserve the right to revise the terms of SLA on mutual agreement at the time of extension or during any time of the contract period however the final decision to accept the revised terms lays with the purchaser. A specific addendum/supplementary agreement shall then be signed by both the parties for any change in the SLA.

4. CONDITIONS PRECEDENT & EFFECTIVE DATE

4.1. Provisions to take effect upon fulfillment 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. However, Purchaser or its nominated agencies may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the System Integrator.

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.

4.2. (a). Conditions Precedent of the System Integrator

The System Integrator shall be required to fulfill the Conditions Precedent in which is as follows:

- i. to provide a 10% Performance Security/Guarantee and other guarantees/ payments within 15 days of the receipt of notification of award from the purchaser; and
- ii. 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 by the System Integrator (optional).

(b). Conditions Precedent of the Purchaser

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

- i. Handing over of <project office> (if applicable)
- ii. Necessary clearances associated with the execution of the project, unless specified to be performed by the System Integrator
- iii. Approval of the Project by a Competent Authority, etc.

4.3. 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.

4.4. Non-fulfillment of the System Integrator's Conditions Precedent

- (a) In the event that any of the Conditions Precedent of the System Integrator 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 System Integrator's Conditions Precedent, the Purchaser or its nominated agencies shall not be liable in any manner whatsoever to the System Integrator 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 System Integrator 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. OBLIGATIONS UNDER THE SLA

5.1. The SLA shall be a separate contract in respect of this Agreement and shall be entered into concurrently with this Agreement between Purchaser and System Integrator.

5.2. In relation to any future SLA entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein.

5.3. Change of Control

- (i) In the event of a change of control of the System Integrator during the Term, the System Integrator shall notify Purchaser and/or its nominated agencies within 07 days in the format set out as Change Control Notice in the RFP document.
- (ii) In the event that the net worth of the surviving entity is less than that of System Integrator prior to the change of control, the Purchaser or its nominated agencies may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the System Integrator from a guarantor acceptable to the Purchaser or its nominated agencies (which shall not be System Integrator or any of its associated entities).
- (iii) If such a guarantee is not furnished within 30 days of the Purchaser or its nominated agencies requiring the replacement, the Purchaser may exercise its right to terminate the SLA and/ or this Agreement within a further 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 of this Agreement shall follow.



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

5.4. Testing and acceptance

The Project shall be governed by the mechanism of testing and acceptance to be put into place by the Purchaser and System Integrator as under:

- (a) Final testing and acceptance criteria will lay down a set of guidelines following CMMI /ITSM/ITIL standards for testing and certification for all aspects of project management and implementation covering software, including the processes relating to the design of solution architecture, design of systems and sub-systems, customization, coding, testing, business process description, documentation, version control, change management, security, service oriented architecture, performance in relation to compliance with SLA metrics, interoperability, scalability, availability and compliance with all the technical and functional requirements of the RFP and this Agreement;
- (b) Final testing and acceptance criteria will be finalized from the requirement gathering stage/gap analysis to ensure that the guidelines are being followed
- (c) Final testing and acceptance criteria will consider conducting specific tests on the application, security and all other aspects for smooth operation of the project;
- (d) Final testing and acceptance criteria will establish appropriate processes for notifying the System Integrator of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the System Integrator to take corrective action; etc.

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



6. REPRESENTATIONS AND WARRANTIES

6.1. Representations and warranties of the System Integrator

The System Integrator represents and warrants to the Purchaser or its nominated agencies that:

- (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) from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (v) in providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to Purchaser's normal business operations
- (vi) 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;
- (vii) the information furnished in the System Integrator'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;
- (viii) 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;
- (ix) there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;



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- (x) 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;
- (xi) 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;
- (xii) 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
- (xiii) 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

Purchaser or its nominated agencies represent and warrant to the System Integrator that:

- (a) 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;
- (b) 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;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) 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;



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- (e) 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;
- (f) 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;
- (g) there are no actions, suits or proceedings 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 default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on the Purchaser or its nominated agencies 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;
- (i) it has complied with Applicable Laws in all material respects;
- (j) 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
- (k) upon the System Integrator 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 System Integrator, in accordance with this Agreement.

7. OBLIGATIONS OF THE PURCHASER OR ITS NOMINATED AGENCIES

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:

- (a) To provide any support through personnel to test the system during the Term;
- (b) To provide any support through personnel and/or test data during management, customization, rollout, steady state operation, as well as, for any



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- changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- (c) Purchaser shall provide the data (including in electronic form wherever available) to be migrated.
 - (d) To authorize the System Integrator to interact for implementation of the Project with external entities such as other department of the state, authorized banks, trademark database etc. and other entities mentioned for integration requirements in RFP.
 - (e) **Provide prompt Deliverable feedback:** Within 21 working days from the submission of a deliverable/SLA and performance reports, the purchaser shall provide a sign offs on the deliverable or provide its comments or suggestions for changes. Purchaser shall make a sincere effort to provide signoffs.

8. OBLIGATIONS OF THE SYSTEM INTEGRATOR

- 8.1. It shall provide to the Purchaser or its nominated agencies, the Deliverables as set out in the RFP.
- 8.2. It shall perform the Services as set out in RFP and in a good and workmanlike 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.

9. APPROVALS AND REQUIRED CONSENTS

- 9.1. The Parties shall cooperate to procure, maintain and observe all relevant and regulatory and governmental licenses, clearances and applicable approvals (hereinafter the "Required Consents") necessary for the System Integrator to provide the Services. The costs of such Approvals shall be borne by the Party normally responsible for such costs according to local custom and practice in the locations where the Services are to be provided.
- 9.2. The Purchaser or its nominated agencies shall use reasonable endeavors to assist System Integrator to obtain the required consent. In the event that any Required Consent is not obtained,



the System Integrator 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 System Integrator 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 System Integrator's obligations are not dependent upon such Required Consents.

10. USE OF ASSETS BY THE SYSTEM INTEGRATOR

10.1. During the Term the System Integrator shall:

- a) 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 System Integrator 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
- b) keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the System Integrator takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- c) ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the System Integrator will be followed by the System Integrator and any person who will be responsible for the use of the Assets;
- d) take such steps as may be properly recommended by the manufacturer of the Assets and notified to the System Integrator or as may, in the reasonable opinion of the System Integrator, be necessary to use the Assets in a safe manner;
- e) ensure that the Assets that are under the control of the System Integrator, are kept suitably housed and in conformity with Applicable Law;
- f) 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;
- g) 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.



11. ACCESS TO THE PURCHASER OR ITS NOMINATED AGENCIES LOCATIONS

11.1. For so long as the System Integrator 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 System Integrator with any safety and security guidelines which may be provided by the Purchaser as the case may be or its nominated agencies and notified to the System Integrator in writing, provide the System Integrator with:

- a) 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;
- b) 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 System Integrator to perform its obligations hereunder and under the SLA.

11.2. Access to locations, office equipment's and services shall be made available to the System Integrator < 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 System Integrator agrees to ensure that its employees, agents shall not use the location, services and equipment referred to in RFP for the following purposes:

- a) for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
- b) 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).

12. MANAGEMENT PHASE

12.1. Governance

The review and management process of this Agreement shall be carried out in accordance with the Governance Schedule set out in Schedule IV of this Agreement and shall cover all the management aspects of the Project.

12.2. Use of Services

- (a) 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 SLA or this Agreement or any agreement that may be entered into between the Parties from time to time;

- (b) 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 SLA shall be dealt with in accordance with the Change Control Schedule set out in Schedule I of this Agreement.

12.4. Security and Safety

- (a) The System Integrator 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 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.
- (b) Each Party to the SLA/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 System Integrator aware in writing insofar as the same apply to the provision of the Services.
- (c) The Parties to the SLA/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 nominees data, facilities or Confidential Information.
- (d) The System Integrator 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.
- (e) As per the provisions of the SLA or this Agreement, the System Integrator 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 or the SLA, each Party ("**System Integrator**") to this Agreement or to the SLA undertakes promptly to provide the other Party ("**Purchaser**") with all such information and cooperation which the purchaser reasonably requests, provided that such information and cooperation:

- i. does not require material expenditure by the System Integrator to provide the same;
- ii. is reasonably required by the purchaser in order for it to comply with its obligations under this Agreement or the SLA;
- iii. cannot be construed to be Confidential Information; and
- iv. is capable of being provided by the System Integrator.

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

13. FINANCIAL MATTERS

13.1. Terms of Payment

- v. In consideration of the Services and subject to the provisions of this Agreement and of the SLA, the Purchaser shall pay the System Integrator for the Services rendered in pursuance of this agreement, in accordance with the Terms of Payment Schedule set out in the RFP.
- vi. Payments shall be subject to the application of SLA penalties and its adjustments/corrections as may be provided for in the Agreement and the SLA from the relevant milestone(s),
- vii. Save and except as otherwise provided for herein or as agreed between the Parties in writing, the Purchaser shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the System Integrator performance of any obligations under this Agreement or the SLA) other than those covered in RFP. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.



13.2. Invoicing and Settlement

- i. Subject to the specific terms of the Agreement and the SLA, the System Integrator shall submit its invoices in accordance with the following principles:
 - (i) The Purchaser shall be invoiced by the System Integrator for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the System Integrator shall raise an invoice as per the terms set out in the RFP; and
 - (ii) Any invoice presented in accordance with this Clause shall be in a form agreed with the Purchaser.
- ii. The System Integrator 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 the RFP.
- iii. Payment shall be made within 30 working days on the receipt of invoice along with supporting documents by the Purchaser subject to deduction of applicable SLA penalties. The penalties are imposed on the vendor as per the SLA criteria specified in the SLA.
- iv. The Purchaser shall be entitled to delay or withhold payment of any invoice or part of it delivered by the System Integrator under the terms and conditions in the RFP 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 defined during signing of the contract. Any exercise by the Purchaser under this Clause shall not entitle the System Integrator to delay or withhold provision of the Services.

13.3. Tax

- i. The Purchaser or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the System Integrator wherever applicable. The System Integrator shall pay for all other taxes in connection with this Agreement, SLA, 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 System Integrator with the original tax receipt of any withholding taxes paid by Purchaser or its nominated



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agencies on payments under this Agreement. The System Integrator 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 System Integrator.

- 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 goods and services i.e. service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the System Integrator in performing the Services, then the remuneration and reimbursable expense otherwise payable to the System Integrator 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 the payment schedules in this Agreement and the RFP. However, in case of any new or fresh tax or levy imposed after submission of the proposal the System Integrator shall be entitled to reimbursement on submission of proof of payment of such tax or levy.
- 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:
 - (i) any resale certificates;
 - (ii) any relevant information regarding out-of-state or use of materials, equipment or services; and
 - (iii) any direct pay permits, exemption certificates or information reasonably requested by the other Party.

14. TERMINATION

14.1. For Material Breach

- (a) In the event that either Party believes that the other Party is in Material Breach of its obligations under this Agreement, such aggrieved Party may terminate this Agreement upon giving a one month's notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, the Purchaser or System Integrator, as the case may be will have the option to terminate the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events



and the termination will become effective:

- (i) If the System Integrator is not able to deliver the services as per the SLAs defined in RFP which translates into Material Breach, then the Purchaser may serve a 30 days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the Purchaser will have the option to terminate this Agreement. Further, the Purchaser may offer a reasonable opportunity to the System Integrator to explain the circumstances leading to such a breach.
- (ii) If there is a Material Breach by the Purchaser or its nominated agencies which results in not providing support for effecting data migration or not providing the certification of User Acceptance then the System Integrator will give a one month's notice for curing the Material Breach to the Purchaser. After the expiry of such notice period, the System Integrator will have the option to terminate the Agreement.
- (b) The Purchaser may by giving a one month's written notice, terminate this Agreement if a change of control of the System Integrator has taken place. For the purposes of this Clause, in the case of System Integrator, change of control shall mean the events stated in Clause 5.1, and such notice shall become effective at the end of the notice period as set out in Clause 5.3 (iii).
- (c) In the event that System Integrator undergoes such a change of control, Purchaser may, as an alternative to termination, require a full Performance Guarantee for the obligations of System Integrator 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 System Integrator.
- (d) The termination provisions set out in this Clause shall apply *mutatis mutandis* to the SLA.

14.2. Termination for convenience

14.2.1. The Purchaser may at any time terminate the Contract for any reason by giving the System Integrator a notice of termination that refers to this clause.

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

- (a) 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,



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- or any work required to leave the site in a clean and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to Clause 14.2.2 (d) (ii) below;
 - (c) remove all SI's Equipment from the site, repatriate the SI's and its personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
 - (d) in addition, the SI shall:
 - (i) deliver to the Purchaser the parts of the System executed by the SI up to the date of termination;
 - (ii) to the extent legally possible, assign to the Purchaser all right, title, and benefit of the SI to the System, or Subsystem, as at the date of termination, and, as may be required by the Purchaser.
 - (iii) deliver to the Purchaser all non-proprietary drawings, specifications, and other documents prepared by the SI as of the date of termination in connection with the System.

14.3. Effects of termination

- (a) In the event that Purchaser terminates this Agreement pursuant to failure on the part of the System Integrator to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by System Integrator may be forfeited.
- (b) Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule II of this Agreement.
- (c) In the event that Purchaser or the System Integrator terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out in this Agreement and RFP.
- (d) Purchaser agrees to pay System Integrator for i) all charges for Services System Integrator provides and any Deliverables and/or system (or part thereof) System Integrator 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, Transfer of Asset Clause 2.2 and reimbursable expenses System Integrator incurs through termination.
- (e) If Purchaser terminates without cause, Purchaser also agrees to pay any applicable adjustment expenses to System Integrator incurred as a result of such termination, which System Integrator will take reasonable steps to mitigate.
- (f) In the event of termination of the Contract under 14.2, the Purchaser shall pay to the SI the following amounts:



- (i) the Contract Price, properly attributable to the parts of the System executed by the SI as of the date of termination;
- (ii) the costs reasonably incurred by the SI in the removal of the SI's Equipment from the site and in the repatriation of the SI's and its personnel;
- (iii) any amount to be paid by the SI in connection with the termination of any contracts, including any cancellation charges;
- (iv) costs incurred by the SI in protecting the System and leaving the site in a clean and safe condition pursuant to Clause 14.2; and
- (v) the cost of satisfying all other obligations, commitments, and claims that the SI may in good faith have undertaken with third parties in connection with the Contract and that are not covered by Clauses 14.3 (d) above.

14.4. Termination of this Agreement due to bankruptcy of System Integrator

The Purchaser may serve written notice on System Integrator at any time to terminate this Agreement with immediate effect in the event that the System Integrator reporting an apprehension of bankruptcy to the Purchaser or its nominated agencies

15. INDEMNIFICATION & LIMITATION OF LIABILITY

- 15.1. Subject to Clause 15.4 below, System Integrator (the "Indemnifying Party") undertakes to indemnify, hold harmless the Purchaser (the "Indemnified Party") from and against all claims, liabilities, losses, expenses (including reasonable attorneys' fees), fines, penalties, taxes or damages (Collectively "Loss") on account of bodily injury, death or damage to tangible personal property arising in favor of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or willful default in performance or non-performance under this Agreement.
- 15.2. If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages, that may be finally awarded against Indemnified Party.
- 15.3. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by
- a) Indemnified Party's misuse or modification of the Service;
 - b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party;



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- c) Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party;

However, if any service, information, direction, specification or materials provided by Indemnified Party or any third party contracted to it, is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either

- a) Procure the right for Indemnified Party to continue using it
- b) Replace it with a non-infringing equivalent
- c) Modify it to make it non-infringing.

The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.

15.4. The indemnities set out in Clause 15 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) the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
- (v) 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;



- (vi) the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
- (vii) 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;
- (viii) 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
- (ix) if a Party makes a claim under the indemnity set out under Clause 15.1 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).

15.5. 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. The liability cap given under this Clause shall not be applicable to the indemnification obligations set out in Clause 15 and breach of Clause 12.4 and 17.

15.6. 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) nor for any third party claims (other than those set-forth in Clause 15.1) even if it has been advised of their possible existence.

15.7. 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

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;

16.2.1. 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.

16.2.2. 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.

16.2.3. 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.

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

- (a) constitute a default or breach of the Contract;
- (b) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance,

if, and to the extent that, such delay or nonperformance is caused by the occurrence of an event of Force Majeure.



- 16.2.5. 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.
- 16.2.6. In the event of termination pursuant to Clause 16, the rights and obligations of the Purchaser and the Supplier shall be as specified in the clause titled Termination.
- 16.2.7. Notwithstanding Clause 16.2.4, Force Majeure shall not apply to any obligation of the Purchaser to make payments to the Supplier under this Contract.
- 16.2.4. For the avoidance of doubt, it is expressly clarified that the failure on the part of the System Integrator under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA 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 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 System Integrator to review and utilize highly confidential public records and the System Integrator shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- 17.2. Additionally, the System Integrator 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 System Integrator regarding any forbidden disclosure.
- 17.4. The System Integrator shall ensure that all its employees, agents and involved in the project, execute individual non-disclosure agreements, which have been duly approved by the Purchaser



with respect to this Project. The System Integrator may submit a declaration that it has obtained the NDA from its employees. However, if the project is critical in nature, SI may get NDAs signed from every resource involved in the project and submit it to purchaser (Optional).

For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:

- (a) information already available in the public domain;
- (b) information which has been developed independently by the System Integrator;
- (c) information which has been received from a third party who had the right to disclose the aforesaid information;
- (d) Information which has been disclosed to the public pursuant to a court order.

17.5. To the extent the System Integrator shares its confidential or proprietary information with the Purchaser for effective performance of the Services, the provisions of the Clause 17.1 to 17.3 shall apply mutatis mutandis on the Purchaser or its nominated agencies.

17.6. Any handover of the confidential information needs to be maintained in a list, both by Purchaser & SI, 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.

17.7. Notwithstanding anything to the contrary mentioned hereinabove, the System Integrator shall have the right to share the Letter of Intent / work order provided to it by the Purchaser in relation to this Agreement, with its prospective purchasers solely for the purpose of and with the intent to evidence and support its work experience under this Agreement.

18. AUDIT, ACCESS AND REPORTING

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

19. INTELLECTUAL PROPERTY RIGHTS

19.1. **Products and fixes:** All products and related solutions and fixes provided pursuant to this Agreement shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product, the ownership of which shall continue to vest with the product owner.



“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 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 to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.

19.3. 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”**) including any enhancement or modification thereto shall remain the sole property of that Party. During the performance of the services for this agreement, each party grants to the other party 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 System Integrator 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 System Integrator leaves with Purchaser at the conclusion of performance of the services.

19.4. Residuals: In no event shall System Integrator 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, System Integrator 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.



20. MISCELLANEOUS

20.1. Personnel

(a) The personnel assigned by System Integrator to perform the Services shall be employees of System Integrator, and under no circumstances shall such personnel be considered employees of Purchaser or its nominated agencies. The System Integrator 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.

(b) The System Integrator shall use its best efforts to ensure that sufficient System Integrator personnel are assigned to perform the Services and that such personnel have appropriate qualifications to perform the Services. After discussion with System Integrator, Purchaser or its nominated agencies shall have the right to require the removal or replacement of any System Integrator personnel performing work under this Agreement based on bonafide reasons. In the event that Purchaser or its nominated agencies requests that any System Integrator personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.

(d) In the event that the Purchaser and System Integrator identify any personnel of System Integrator as "Key Personnel", then the System Integrator 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.

(e) Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of System Integrator to freely assign or reassign its employees; provided that System Integrator 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 System Integrator's plan for any such knowledge transfer. System Integrator shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.

(f) Each Party shall be responsible for the performance of all its obligations under this Agreement or the SLA as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.

(g) 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.

20.2. Independent Contractor

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

- (a) incur any expenses on behalf of the other Party;
- (b) enter into any engagement or make any representation or warranty on behalf of the other Party;
- (c) pledge the credit of or otherwise bind or oblige the other Party; or
- (d) commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

20.3. Sub-contractors

System Integrator shall not subcontract any work related to <Insert details> without Purchaser's prior written consent. However, the System Integrator shall provide the list of all the other services planned to be sub contracted, within 15 days of signing the Agreement. It is clarified that the System Integrator shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The System Integrator undertakes to indemnify the Purchaser or its nominated agencies from any claims on the grounds stated hereinabove.

20.4. Assignment

- (a) All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the Purchaser and their respective successors and permitted assigns.
- (b) Subject to Clause 5.1, the System Integrator shall not be permitted to assign its rights and obligations under this Agreement to any third party.
- (c) The Purchaser may assign or novate all or any part of this Agreement and Schedules/Annexures, and the System Integrator shall be a party to such novation, to any third party contracted to provide outsourced services to Purchaser or any of its nominees.

20.5. Trademarks, Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that System Integrator 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 along 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, the SLA 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 System Integrator 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.

20.6. Notices

- (d) Any notice or other document which may be given by either Party under this Agreement or under the SLA shall be given in writing in person or by pre-paid recorded delivery post, email or by facsimile transmission.
- (e) 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:

Department

<Insert Address>

- Tel:
- Fax:
- Email:
- Contact:
- With a copy to:

System Integrator

- Tel:
- Fax:
- Email:
- Contact:

- (f) In relation to a notice given under the MSA / SLA, 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.
- (g) Any such notice or other document shall be deemed to have been given to the



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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).

- (h) Either Party to this Agreement or to the SLA 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.

20.7. Variations and Further Assurance

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

20.8. Severability and Waiver

- (a) If any provision of this Agreement or the SLA, 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 SLA or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.
- (b) No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the SLA of any right, remedy or provision of this Agreement or the SLA 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.

20.9. Compliance with Applicable Law

Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to its business like the System Integrator as an information technology service provider) at all times comply with all laws, rules and regulations of government and other bodies having jurisdiction over the area in which the Services are undertaken provided that changes in such laws, rules and regulations which result in a change to the Services shall be dealt with in accordance with the Change Control Schedule set out in Schedule I of this Agreement.

20.10. Professional Fees

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

20.11. Ethics

The System Integrator 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 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 Purchaser standard policies and may result in cancellation of this Agreement, or the SLA.

20.12. Entire Agreement

This Agreement and the SLA 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.

20.13. Amendment

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

21. GOVERNING LAW AND DISPUTE RESOLUTION

21.1. This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules.



21.2. Any dispute arising out of or in connection with this Agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as Schedule IV of this Agreement.

21.3. In case the escalations do not help in resolution of the problem within 3 weeks of escalation, both the parties should agree on a mediator for communication between the two parties. The process of the mediation would be as follows:

- Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.
- The mediator shall use his best endeavors to conclude the mediation within a certain number of days of his appointment.
- If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to Experts for advising on the issue.

21.4. In case the mediation does not help in resolution and it requires expertise to understand an issue, a neutral panel of 3 experts, agreeable to both parties should be constituted. The process of the expert advisory would be as follows:

- Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the timeframe and requesting for expert advisory. This is to be sent with a copy to the mediator.
- Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute
- The expert panel shall use his best endeavors to provide a neutral position on the issue.
- If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.

21.5. Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein. 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 Court of Chandigarh, India. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration



proceedings will be held at Chandigarh, India. Any legal dispute will come under the sole jurisdiction of state of Punjab, India.

21.6. Compliance with laws: Each party will comply with all applicable export and import laws and regulations.

21.7. Risk of Loss: For each hardware item, System Integrator 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.

21.8. Third party components: System Integrator will provide all third-party components solely on a pass-through basis in accordance with the relevant third-party terms and conditions.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE HERE UNTO SET THEIR RESPECTIVE HANDS THE DAY AND THE YEAR FIRST ABOVE WRITTEN

For and on behalf of Purchaser
(FIRST PARTY)

For and on behalf System Integrator
(SECOND PARTY)

Signed by:
Name:
Designation:

Signed by:
Name:
Designation:

WITNESSES:
Name:
Designation:
Date:

WITNESSES:
Name:
Designation:
Date:

WITNESSES:
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Designation:
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WITNESSES:
Name:
Designation:
Date:



21.1. 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, SLA 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 System Integrator and changes to the terms of payment as stated in the Terms of Payment Schedule.

The Purchaser and SI 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 SI will endeavour, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and Purchaser or its nominated agencies will work with the System Integrator 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 SLAs for which a separate process has been laid out in the SLA.

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 SLA 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 as set out in the RFP. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- ii. The SI and the Purchaser or its nominated agencies, during the Project Operation and Management 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 System Integrator and accepted by the Purchaser or its nominated agencies or as decided and approved by Purchaser or it Nominated Agencies. For arriving at the cost / rate for change upto 25% of the project value, the payment terms and relevant rates as specified in RFP shall apply.

b) Quotation

- iv. The SI shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN the SI 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;
 6. material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work
- v. 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 SI 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 SI 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 SI 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 SI.

d) Obligations

The SI 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. SI 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 goods/License for product should not exceed the price quoted in the System Integrator's proposal. Any costs associated with changes to Software specifications which cannot be arrived at on the basis of the SI's proposal shall be mutually agreed to between the SI 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 Operation and Management SLA.
- 1.2. In the case of termination of the Project 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 to the SI at any time during the exit management period as detailed hereinabove requiring the SI to provide the Purchaser with a complete and up to date list of the assets and details of DC/DR within 30 days of such notice.
- 2.2. In case of contract being terminated by Purchaser, Purchaser reserves the right to ask SI to continue running the project operations up to a period of 90 days after termination orders are issued.
- 2.3. Upon service of a notice under this Article the following provisions shall apply:
 - (a) in the event, if the Assets to be transferred are mortgaged to any financial institutions by the SI, the SI 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.
 - (b) 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.
 - (c) Payment to the outgoing SI shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements.
 - (d) The outgoing SI will pass on to Purchaser and/or to the Replacement SI, the subsisting rights in any leased properties/ licensed products on terms not less favorable to Purchaser/ Replacement SI, than that enjoyed by the outgoing SI.



3. COOPERATION AND PROVISION OF INFORMATION

3.1. During the exit management period:

- (a) The System Integrator 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;
- (b) promptly on reasonable request by the Purchaser, the SI 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. 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 System Integrator shall permit the Purchaser or its nominated agencies to have reasonable access to its employees and facilities as reasonably required by the Purchaser to understand the methods of delivery of the services employed by the System Integrator and to assist appropriate knowledge transfer.
- (c) The outgoing SI will extend all out support to complete knowledge transfer to the incoming SI duly selected by the purchaser beyond the expire of contract period, if so arises due to unforeseen reasons like delay in bidding process, onboarding of the new SI where the existing SI will extend the contract at least for a period of 45-60 days on pro rata payment basis of the existing rate in the interest of the project keeping the business continuity in mind. The SI will ensure that all the resources are available during this period to impart detail Knowledge Transfer to the new SI.

4. CONFIDENTIAL INFORMATION, SECURITY AND DATA

4.1. The System Integrator will promptly on the commencement of the exit management period supply to the Purchaser or its nominated agency the following:

- (a) information relating to the current services rendered and customer and performance data relating to the performance of all deployed resources in relation to the services;
- (b) documentation relating to Project's Intellectual Property Rights;
- (c) all current and updated data as is reasonably required for the purposes of Purchaser or its nominated agencies transitioning the services to its Replacement



System Integrator in a readily available format nominated by the Purchaser, its nominated agency;

- (d) 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 System Integrator to carry out due diligence in order to transition the provision of the Services to Purchaser or its nominated agencies, or its Replacement System Integrator (as the case may be).

4.2. Before the expiry of the exit management period, the System Integrator 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.

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 System Integrator all forms of System Integrator confidential information, which is in the possession or control of, Purchaser or its users.

5. EMPLOYEES

5.1. Promptly on reasonable request at any time during the exit management period, the System Integrator 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 System Integrator 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 System Integrator to the Purchaser or its nominated agency, or a Replacement System Integrator ("**Transfer Regulation**") applies to any or all of the employees of the System Integrator, 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 System Integrator shall effect such assignments, transfers, licenses and sub-licenses as the Purchaser may require in favor of the Purchaser or its Replacement System Integrator in relation to any equipment lease, maintenance or service provision agreement between System Integrator 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 System Integrator.



7. RIGHTS OF ACCESS TO PREMISES

7.2. At any time during the exit management period, where Assets are located at the System Integrator's premises, the System Integrator 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 System Integrator in order to make an inventory of the Assets.

7.3. The System Integrator shall also give the Purchaser or its nominated agency or its nominated agencies, or any Replacement System Integrator right of reasonable access to the System Integrator's premises and shall procure the Purchaser or its nominated agency or its nominated agencies and any Replacement System Integrator 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 System Integrator.

8. GENERAL OBLIGATIONS OF THE SYSTEM INTEGRATOR

- 8.1. The System Integrator shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the Purchaser or its nominated agency or its Replacement System Integrator and which the System Integrator has in its possession or control at any time during the exit management period.
- 8.2. For the purposes of this Schedule, anything in the possession or control of any System Integrator, associated entity is deemed to be in the possession or control of the System Integrator.
- 8.3. The System Integrator shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

9. EXIT MANAGEMENT PLAN

9.1. The System Integrator shall provide the Purchaser or its nominated agency with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the MSA as a whole and in relation to the Operation and Management SLA.

- (a) A detailed program of the transfer process that could be used in conjunction with a Replacement System Integrator including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until



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the cessation of the services and of the management structure to be used during the transfer;

- (b) plans for the communication with such of the System Integrator's, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the Purchaser's operations as a result of undertaking the transfer;
- (c) (if applicable) proposed arrangements for the segregation of the System Integrator's networks from the networks employed by Purchaser and identification of specific security tasks necessary at termination;
- (d) Plans for provision of contingent support to Purchaser, and Replacement System Integrator for a reasonable period after transfer.

- 9.2. The System Integrator shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- 9.3. Each Exit Management Plan shall be presented by the System Integrator to and approved by the Purchaser or its nominated agencies.
- 9.4. The terms of payment as stated in the Terms of Payment Schedule include the costs of the System Integrator complying with its obligations under this Schedule.
- 9.5. In the event of termination or expiry of MSA, and Project Implementation, each Party shall comply with the Exit Management Plan.
- 9.6. During the exit management period, the System Integrator shall use its best efforts to deliver the services.
- 9.7. This Exit Management plan shall be furnished in writing to the Purchaser or its nominated agencies within 90 days from the Effective Date of this Agreement.



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 System Integrator.

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/assessment of the project. Such agreed timetable shall be conducted on regular basis and shall not be required to give the System Integrator any further notice of carrying out such audits/assessment.
- 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 System Integrator, a security violation, or breach of confidentiality obligations by the System Integrator, provided that the requirement for such an audit is notified in writing to the System Integrator 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 System Integrator considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Governance Schedule.
- 2.3. Purchaser will ensure that any 3rd party agencies (except CAG) appointed to conduct the audit will not be the competitor of System Integrator and will be bound by confidentiality obligations.

3. ACCESS

The System Integrator shall provide to the Purchaser or its nominated agency reasonable access to employees, 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 Purchaser shall have the right to copy and retain copies of any relevant records. The System Integrator shall make every reasonable effort to cooperate 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:
- (a) The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of Purchaser and documentation related thereto;
 - (b) That the actual level of performance of the services is the same as specified in the SLA;
 - (c) That the System Integrator has complied with the relevant technical standards, and has adequate internal controls in place; and
 - (d) The compliance of the System Integrator with any other obligation under the MSA and SLA.
 - (e) For the avoidance of doubt the audit rights under this Schedule shall not include access to the System Integrator's profit margins or overheads, any confidential information relating to the System Integrator' 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

- 5.1. The System Integrator 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 System Integrator shall inform the Purchaser or its nominated agency prior to concluding any sub-contract or supply agreement if any.

5.2. REPORTING:

The System Integrator will provide monthly and quarterly reports to the Purchaser regarding any specific aspects of the Project and in context of the audit and access information as required by the Purchaser or its nominated agency.



6. ACTION AND REVIEW

- 6.1. Any change or amendment to the systems and procedures of the System Integrator, 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 System Integrator 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 System Integrator, for all reasonable assistance and information provided under the MSA, the Project Operation and Management SLA by the System Integrator pursuant to this Schedule.

8. RECORDS AND INFORMATION

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



SCHEDULE IV - GOVERNANCE SCHEDULE

a) 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 System Integrator (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.

b) 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. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
3. The Present Governance Structure (State Level) of the Purchaser is as follows:

The following governance committees, recommended by DIT shall review progress, implementation, and rollout, shall monitor utilization of funds and issue Policy Directions/Guidelines for CCTNS project at the State level.

- (i) State Apex Committee
- (ii) State Empowered Committee
- (iii) State Mission Team
- (iv) District Mission Team

The committees as appended below are constituted as per the guidelines of the MHA/ NCRB.

(i) State Apex Committee

This committee will be headed by the Chief Secretary and will be responsible for the following:



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- Review progress of project
- Monitor utilization of funds
- Issue of Policy Directions
- Issue of Guidelines etc.

The composition of **State Apex Committee** is as following:

Members	Composition Suggested
Member 1 (Chairperson)	Chief Secretary
Member 2 (Co-Chair)	Principal Home Secretary
Member 3	Secretary Finance
Member 4	IT Secretary
Member 5	Head of SCRB
Member 6	Representative of NIC
Member 7	Representative of GOI, MHA
Member 8 (Convener)	Nodal Officer (CCTNS Project)
Member 9	Any other member co-opted from the field of IT, Telecom, etc.

Frequency of Meeting: *Once in a quarter*

(ii) State Empowered Committee

This Committee will be headed by the DGP and will be responsible for following:

- Allocation of funds
- Approval of BPR (Business Process Reengineering) proposals.
- Sanction for various project components, as may be specified, including the Hardware/Software procurement.
- Approval of various functionalities to be covered in the Project.
- Review progress of the Project.
- Ensure proper Training arrangements.
- Ensure deployment of appropriate handholding personnel.
- Other important policy and procedural issues.
- Guidance to State/District Mission Teams.



The Composition of State Empowered Committee is as following:

Members	Composition Suggested
Member 1 (Chairperson)	DGP
Member 2 (Co-Chair)	Head of SCRB
Member 3	Representative of NCRB
Member 4	Representative of Home Department at State level
Member 5	Representative of Finance at State level
Member 6	Director e-governance or representative of IT Department
Member 7	NIC representative at State Level
Member 8	Representative of State Implementation agency
Member 9 Nodal Officer as Convener	ADGP/IG level office as nominated by DGP
The Committee may co-opt any other member whenever, felt necessary.	

Frequency of Meeting: Once a month

(iii) State Mission Team

The State Mission Team will be headed by the Nodal Officer for CCTNS Project/Head of SCRB, whoever is senior. The State Mission Team will be responsible for following:

- Operational responsibility for the Project.
- Formulating Project Proposals.
- Getting sanction of GOI for various projects.
- Hardware rollout and commissioning
- Co-ordination with various agencies.
- Resolution of all software related issues, including customization.
- Resolution of all other issues hindering the Project Progress.
- Any other decision to ensure speedy implementation of the project.
- Assist the State Apex and Empowered Committees



The composition of State Mission Team is as following:

Members	Composition Suggested
Member 1 (Mission Leader)	Nodal Officer
Member 2	Head of SCRB
Member 3	Head of Implementing Agency
Member 4	State Informatics Officer (SIO), NIC
Nodal Officer/ Head of SCRB, whoever is senior will be the Mission Leader	

Frequency of meeting: Once a month

(iv) District Mission Team

The **District Mission Team** will be headed by the SSP/SP of the respective district and will perform the following functions:

- Prepare District Project Proposal.
- Ensure proper Rollout of the Project in each selected Police Station.
- Ensure hardware and software installation, and operationalization of the Project.
- Training of all police personnel in the District.
- Site preparation and availability of all utilities.
- Ensure separate account keeping for the Project.
- Appointment and proper utilization of handholding personnel.

The suggested composition of **District Mission Team** will have the following members:

Members	Composition Suggested
Member 1 (Chairperson)	SSP\SP of the District
Member 2 (Convener) Convener	One Officer of DCRB
Member 3	DIO of the NIC District Centre
Member 4	One Officer from District Police having Computer Knowledge

Frequency of meeting: Once a month



c) GOVERNANCE PROCEDURES

- I. The System Integrator shall document the agreed structures in a procedure's manual.
- II. The agenda for each meeting of the Purchaser 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 Purchaser, along with relevant pre- reading material, shall be distributed at least one week in advance of the relevant meeting.
- III. 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.
- IV. The Parties shall ensure as far as reasonably practicable that the Purchaser 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.
- V. In order formally to submit a Disputed Matter to the aforesaid for a, one Party ("Claimant") shall 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.
- VI. 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 the document.
- VII. All negotiations, statements and / or documentation pursuant to these Articles shall be without prejudice and confidential (unless mutually agreed otherwise).
- VIII. 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 – SPECIAL CONDITIONS OF CONTRACT

- (i) **Period of Contract:** The contract is valid for 2 years from the date of signing of contract/ MSA for the O&M support. This may be maximum extendable up to another 01 years (total contract period of 3 years) subject to rendering of satisfactory service & fulfilling the term & conditions.
- (ii) The services shall be rendered to all CCTNS locations such as SDC, DRC, police stations, sub-divisional offices, district headquarters, ranges, Police Headquarters, and all other CCTNS locations to be included in future.
- (iii) The number of end locations under O&M can be increased or decreased at the discretion of department as PS/Higher offices may get established within the state during the contract period.
- (iv) The SI shall develop and maintain an inventory database of all the DC/DRC & client site application.
- (v) Updates/Upgrades/New releases/New versions: The SI shall upgrade from time to time the new updates/ /New releases/New versions of the Core Application software.
- (vi) The SI should support in management of DC/DRC etc. as required and maintains the SLA for raising the ticket to OEM for faulty equipment/ services.
- (vii) Software License Management: The department will provide the OEM license for the SDC/DRC and end location infrastructure. However, the SI shall provide technical support in software application enhancements, refreshes and upgradation till up and running of the services for business.
- (viii) The SI shall provide support for problem tracking, problem source identification, problem impact (severity) determination, bypass and recovery support, problem resolution, and management reporting.
- (ix) The SI shall provide technical and telephonic support during the department's business hours with one-hour staggered break for lunch. For Data Centre and Help Desk, the working time should be considered as 24 hours for all the days of the week.
- (x) It is desired that the management support, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance. Any up-gradation or schedule maintenance activity should be done after business hours preferably in weekend if not urgent.
- (xi) Whenever required by department, the SI should be able to provide additional reports in a pre-specified format. The indicative services as part of this support are as below:
 - a) System Administration, Maintenance & Management Services



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- b) Application Monitoring Services
 - c) Backend Services (Mail, messaging, etc.)
 - d) Storage Administration and Management Services
 - e) IT Security Administration Services and Services
 - f) Backup and Restore Services
 - g) Work flow design, analysis
 - h) Additional Script required for customization of CAS application and 138 State Extension modules.
- (xii) The SI may deploy additional resources and project manager as per the requirements if it feels so without any additional cost other than the resources quoted by the employer for this assignment.
- (xiii) The Program Manager\ Project Director must supervise the activity and may have regular interaction with the Employer and onsite team to ensure quality of the work and prompt action for any kind of issue escalated to him/her.
- (xiv) The scope of the services for the Data Centre shall be on 365x24x7 basis. However, for the client locations it will be based on business hours as defined in this agreement.
- (xv) The performance Bank Guarantee (PBG) should remain valid for a period of 60 days beyond the date of completion of contractual obligations/warranty. The PBG will be returned to the Vendor on successful completion of all his obligations under the contract/work order. In case the execution of the contract/work order is delayed beyond the contracted period and the Client grants extension of delivery period, with or without penalty, the supplier must get the PBG revalidated, if not already valid.
- (xvi) Any change in payment process will be done on mutual consent of both the parties in the interest of the project.
- (xvii) Deduction of penalty as per SLA will be done for every quarterly payment
- (xviii) The payment of the SI will be released after necessary deduction of taxes as applicable.
- (xix) The maintenance work shall normally be done during business hours as defined under Service Level Agreement (SLA). However, in case of emergency maintenance may have to be done beyond office hours and even on holidays and prior arrangement through proper communication should be worked out in all cases by the servicing agencies.
- (xx) The SI shall have to abide by all “terms & conditions” of the RFP, SI may please note that the prices quoted shall include all required works to be done for the satisfactory completion of the entire scope during the contracted period.
- (xxi) The Purchaser reserves right to modify the terms and conditions of the Contract, during the Project execution, so as to meet contingency situations, which can arise from time to time.



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Such modifications would be discussed and agreed upon by the successful SI after taking into consideration the Cost, time and other implications. After finalization of modification, the Contract Agreement may be suitably amended, if required.

- (xxii) The System Integrator **WILL NOT** replace the deployed resources for the first 06 months of the contract except for the unavoidable circumstances which is out of control of the SI such as medical urgency, etc.
- (xxiii) If any of the Key Experts become unavailable for the extended validity period, the System Integrator shall provide a written notice with adequate justification and evidence satisfactory to Punjab Police together with the substitution request. In such case, a replaced Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert.
- (xxiv) If the System Integrator fails to provide a replacement of any Key Expert with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to Punjab Police, such Bid will be rejected.
- (xxv) Punjab Police reserves the right to seek for replacement of resources against any of the positions mentioned in the RFP if at any point they are found not suitable for the work allocated to them in the project. The System Integrator should provide a replacement within 30 days of such written request placed by Punjab Police otherwise a penalty of 5% of quoted man-month rate per day of delay will be levied. In such an eventuality where replacement is sort by Punjab Police, at-least a 30 days' notice will be given to System Integrator to advice the concerned resource to improve upon his/her performance failing which the replacement clause will be started.
- (xxvi) Under exceptional circumstances, if the Key Personnel are to be replaced or removed owing to factors beyond the control of the SI, the SI shall provide the profiles of personnel being proposed as replacements, which will be equivalent or better than the resource being replaced. Client will have the right to accept or reject these substitute profiles. Final decision on replacement will remain with the client.
- (xxvii) Change Request: Any addition of Scope of Work and deliverables added for execution of the work which is not part of the Terms of the Reference or during the contract negotiation will be done through the Change request process with a limit of 25% of the total contract value by the purchaser. The additional order can be given to the SI for any development/customization of modules or rendering services which is required for smooth functioning of CCTNS project without any further bid process during the contract period. For the sake of clarity, for any activity related to Change Request the SI will deploy additional man power to completed the CR activity without engaging the deployed project resources.



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(xxviii) Post the selection of the successful bidder, Purchaser shall enter into a contract, incorporating all clauses, pre-bid clarifications and the proposal of the Bidder between Purchaser and the successful Bidder. The Legal Agreement (Master Service Agreement) would contain all the terms and conditions mentioned in this RFP document and is provided as a separately as a template. The following schedules and Annexures will also be part of the contract.

- a. Governance schedule
- b. Payment schedule
- c. Timelines & Deliverables
- d. Scope of Work schedule
- e. Service Level Agreement schedule
- f. Format for Change Control Notice Annexure
- g. Bill of Material of the existing infrastructure Annexure
- h. Required deliverables and associated timelines Annexure
- i. The bid documents submitted by the bidder Annexure
- j. Resource deployment Annexure

(xxix) Only the purchaser reserves the right to change the conditions of the contract and parameters of the SLA.

22. ANNEXURES

22.1. ANNEXURE A– ROLES AND RESPONSIBILITIES OF THE PARTIES

Roles and Responsibilities of the System Integrator

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. Operation and Maintenance support for the DC/ DRC and end locations applications in order to meet the SLA parameters.
3. Rectification of system software problems which occur due to crashing or malfunctioning and meet the SLAs as defined in RFP.
4. Provide necessary additional manpower for managing the Change Requests.
5. Design various necessary manuals like User manual, Sync Utility Manual, Trouble Shooting manual etc.
6. Provide initial and refresher trainings on new application modules to the ToT and stakeholders of the Department as and when required.
7. Ensure that the Business Continuity Plan is followed and maintained diligently.
8. Deploy the required manpower to manage the operations.
9. Any other service which is required for the successful execution of the project.
10. Regular Backup as per the schedule for Disaster Recovery.
11. Generation of MIS reports as per the requirements of Purchaser.
12. Generation of the report for the monitoring of SLAs.

Roles and Responsibilities of Purchaser (Indicative only and may need customization)

1. All necessary hardware, software and License for DC, DR and end user locations will be provided by separate vendor/OEM and is out of scope for SI to be selected through this RFP.
2. Provide adequate space at the Purchaser's office for setting up of infrastructure, software development and other project activities to be carried out by the SI.
3. Coordination between all the divisions for providing necessary information for the study

and development / customization of the necessary solution.

4. Co-ordination with other Government agencies to assist the System Integrator in execution of the project.
5. Coordinate with SI for conducting workshops for the Stakeholders .
6. Ensure that Data Backups are being taken regularly by SI as per the schedule agreed upon.
7. Ensure that the hardware and other infrastructure deployed at HQ, DC etc. meets the specifications as mentioned in the RFP and is functioning properly so that SI can meet the SLAs as defined in the RFP.
8. Monitoring of overall timelines, SLAs and calculation of penalties accordingly.
9. Issuing the Acceptance Certificate on successful deployment of the software application and other components as per the requirement.
10. Any other requirements that could arise during operations for effective governance to meet any administrative requirement.
11. To create internal capacity for execution of the project after taking over from from SI.
12. Ensuring that the staff members and other stakeholders attending the training programs are as per the schedule defined by the SI and agreed upon by Purchaser.

22.2. ANNEXURE 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 '-----',
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 System Integrator/SI**' 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 System Integrator have entered into a Master Services Agreement dated <***> (the "**MSA**") as well as a Service Level Agreement dated <***> (the "**SLA**") 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 ("Bidder").
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 of MSA.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs and Schedules are to clauses, sub- clauses, 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 re- enacted;
- (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 offices in the State of Punjab and Chandigarh are 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 prevail.

1.5 Priority 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 years from the date of the last disclosure of Confidential Information (“*Term*”), at which time it will terminate, unless extended by the disclosing party in writing.

3. SCOPE OF THE AGREEMENT

- (a) This Agreement shall apply to all confidential and proprietary information disclosed by Disclosing Party to the Bidder and other information which the disclosing party identifies in writing or otherwise as confidential before or within (30) thirty days after disclosure to the Bidder (“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 Bidder.

4. OBLIGATIONS OF THE BIDDER

The Bidder 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, taking into account the nature of the Confidential Information, and
- (b) grant access to Confidential Information only to its employees on a 'need to know basis' and restrict such access as and when not necessary to carry out the Business Purpose.
- (c) cause its employees to comply with the provisions of this Agreement;
- (d) reproduce Confidential Information only to the extent essential to fulfilling the Business Purpose, and
- (e) prevent disclosure of Confidential Information to third parties;
- (f) disclose the Confidential Information to its consultants on a need to know basis; provided that by doing so, the Bidder agrees to bind such consultants to terms at least as restrictive as those stated herein. The Bidder upon making a disclosure under this Clause shall:
 - (i) advise the consultants of the confidentiality obligations imposed on them by this Clause.
- (g) upon the Disclosing Party's request, the Bidder 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 Bidder'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 Purchaser 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 Purchaser'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 Purchaser's request, the Bidder 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 Bidder can demonstrate that such Confidential Information:

- (a) was independently developed by or for the Bidder without reference to the Information, or was received without restrictions; or
- (b) has become generally available to the public without breach of confidentiality obligations of the Receiving Party; or
- (c) was in the Receiving Party's possession without restriction or was known by the Receiving Party without restriction at the time of disclosure; 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 make reference 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 Contract (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 Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole arbitrator to be appointed by mutual consent of both the parties herein. 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 Arbitration proceedings will be held at the jurisdiction specified in Item 27. Any legal dispute will come under the sole jurisdiction specified in Item 27.
- (b) The Receiving Party agrees that the Disclosing Party shall have the right to obtain an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

8. VARIATION

This Agreement may only be varied 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 System Integrator:

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 System Integrator 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 System Integrator 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.)

Name of key DC/DR resources and their details:

- 1.
- 2.
- 3.