

**Tamil Nadu Industrial Guidance & Export  
Promotion Bureau (Presently renamed as  
Guidance)**

**Department of Industries, Government of Tamil  
Nadu**

**REQUEST FOR PROPOSAL  
FOR  
SELECTION OF SYSTEM INTEGRATOR FOR DESIGN,  
DEVELOPMENT, IMPLEMENTATION AND MAINTENANCE OF  
ONLINE SYSTEMS  
FOR  
IMPROVING THE EASE OF DOING BUSINESS IN THE STATE  
OF TAMIL NADU**

**VOLUME III**

**MODEL MASTER SERVICE AGREEMENT**

**Ref No: IT/SYSTEM INTEGRATOR/2862/2020**

**Tamil Nadu Industrial Guidance & Export Promotion  
Bureau (Presently renamed as Guidance)**

*19-A, SIPCOT Building, Rukmani Lakshmi pathy Road,  
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## **1 MASTER SERVICES AGREEMENT**

**THIS MASTER SERVICE AGREEMENT (“Agreement”)** is made on this the <<‘Day’>> day of <<‘Year’>> 20... at <<‘Location’>>, India.

### **BETWEEN**

1. Tamil Nadu Industrial Guidance & Export Promotion Bureau (Presently renamed as Guidance) having its office at 19-A, SIPCOT Building, Rukmani Lakshmiipathy Road, Egmore, Chennai - 600 008, India (hereinafter called the Guidance, which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

### **AND**

2. <<‘Implementing Agency full name’>>, a Company incorporated under the Companies Act, 1956, having its registered office at <<‘Regd Location’>> (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. Guidance is proposing for the design, development, implementation and maintenance of online systems for improving the ease of doing business in the State of Tamil Nadu. In furtherance of the same, Guidance undertook the selection of a suitable System integrator through a competitive bidding process and in this behalf issued Request for Proposal (RFP) vide reference IT/SYSTEM INTEGRATOR/2862/2020.
2. The System Integrator has been selected on the basis of the bid response set out as Annexure – D - Proposal of this Agreement. The SI shall develop, integrate and implement online solutions and its roll out and sustain operations.

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

## **2 Definitions and Interpretation**

### **2.1 Definitions**

[Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out in Schedule – I – Definitions]

## **2.2 Interpretation**

[In this Agreement, unless otherwise specified:]

- I. references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- II. use of any gender includes the other genders;
- III. references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- IV. 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);
- V. 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;
- VI. any reference to a '**day**' (including within the phrase 'business day') shall mean a Calendar day ;
- VII. references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) are generally open for business;
- VIII. references to times are to Indian Standard Time;
- IX. 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
- X. all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- XI. "System integrator (SI)" "has been used for the same entity i.e. successful bidder in this tender selected for the SI project.

### **2.3 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.

### **2.4 Ambiguities within Agreement**

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

- I. as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- II. as between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures; and
- III. as between any value written in numerals and that in words, the value in words shall prevail.

### **2.5 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:

- I. This Agreement along with the SLA agreement, NDA agreement, Schedules and Annexures;
- II. Request for Proposal and Addendum / Corrigendum to the Request for Proposal (if any).

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.

### **3 Scope of the Project**

The Scope of work has been detailed out in Volume II. The same needs to be reproduced in the Contract or reference is provided in the contract.

For the avoidance of doubt, it is expressly clarified that this Agreement shall govern the provision of the contracted professional services under the SLA to the Guidance 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.

#### **3.1 Scope of work**

The broad scope of work for the SI is as follows:

##### **A. Project Implementation Phase**

1. Solution Design
2. Software Development/Customization
3. Integration with legacy application as required
4. Obtain Third party Certification
5. Alignment with Integrated Framework
6. Application Support for Existing Services
7. Supply Procurement of IT infrastructure
8. SMS Gateway & Payment Gateway
9. Final Acceptance Testing (FAT)
10. Solution stabilization & Go-Live
11. Capacity Building and Handholding support
12. Project Management
13. Others as required to meet the requirements as specified in the RFP

##### **B. Operation and Maintenance Phase**

1. Application Debugging
2. Fresh Customizations / Developments
3. Horizontal / Vertical Scalability
4. Warranty Support
5. Helpdesk Support
6. Manpower Support
7. Periodic VAPT support
8. Annual Technical Support
9. Refresher Training

10. Help desk and Trouble Ticket Management System
11. Handholding Support
12. SLA Monitoring and Reporting
13. Others as required to meet the requirements as specified in the RFP

#### **4 Term and Duration of the Agreement**

This date of signing the Agreement shall be the '**Effective Date**' and shall continue till operation and maintenance completion date which shall be the date of the completion of the operation and maintenance to Guidance.

#### **5 Conditions Precedent & Effective Date**

##### **5.1 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, Guidance may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the SI.

##### **5.2 Conditions Precedent to the parties**

###### **5.2.1 Conditions Precedent of the SI**

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

- I. to provide a Performance Security/Guarantee and other guarantees/ payments as and when required to Guidance; and
- II. to provide the Guidance certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the SI.

###### **5.2.2 Conditions Precedent of the Guidance**

Guidance shall be required to fulfill the Conditions Precedent in which is as follows:

- I. Necessary clearances
- II. Approval by a Competent Authority

##### **5.3 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.

For the avoidance of doubt, it is expressly clarified that any such extension of time shall be subject to imposition of penalties on the SI linked to the delay in fulfilling the Conditions



Precedent.

#### **5.4 Non-fulfillment of the SI's Conditions Precedent**

- I. In the event that any of the Conditions Precedent of the SI have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by Guidance , this Agreement shall cease to exist;
- II. In the event that the Agreement fails to come into effect on account of non fulfillment of the SI's Conditions Precedent, the Guidance shall not be liable in any manner whatsoever to the SI and Guidance shall forthwith forfeit the Performance Guarantee.
- III. In the event that possession of any of the Guidance facilities has been delivered to the SI prior to the fulfillment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to Guidance, free and clear from any encumbrances or claims.

### **6 Obligations under the SLA**

#### **6.1 SLA and the Agreement**

The SLA shall be a separate Contract in respect of this Agreement and shall be entered into concurrently with this Agreement between Guidance and SI;

#### **6.2 Future SLAs**

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

#### **6.3 Change of Control**

- I. In the event of a change of control of the SI during the Term, the SI shall promptly notify Guidance of the same in the format set out as Annexure – A – Format for Change Control Notice of this Agreement.
- II. In the event that the net worth of the surviving entity is less than that of SI prior to the change of control, Guidance may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the <<SI>> from a guarantor acceptable to Guidance (which shall not be <<SI>> or any of its associated entities).
- III. If such a guarantee is not furnished within 30 days of the Guidance requiring the replacement, Guidance 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 Section 15 of this Agreement shall follow.

For the avoidance of doubt, it is expressly clarified that the internal reorganization of the <<SI>> 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.

#### **6.4 Final testing and certification**

The Project shall be governed by the mechanism of final acceptance testing and certification to be put into place by the Guidance and SI as under:

- I. Final testing and certification criteria will lay down a set of guidelines following internationally accepted norms and Standards for testing and certification for all aspects of project development and implementation covering software, hardware and networking including the processes relating to the design of solution architecture, design of systems and sub- systems, 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;
- II. Final testing and certification criteria will be finalized from the development stage to ensure that the guidelines are being followed and to avoid large scale modifications pursuant to testing done after the Application is fully developed;
- III. Final testing and certification criteria will consider conducting specific tests on the software, hardware, networking, security and all other aspects;
- IV. Final testing and certification criteria will establish appropriate processes for notifying the <<SI>>' of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the <<SI>> to take corrective action; etc.

#### **6.5 Change Control Schedule**

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 Guidance and '<<SI>>' in accordance with the Change Control Schedule set out in Schedule – II – Change Control Schedule of this Agreement. Save for the express terms of the Terms of Payment

Schedule set out as Schedule – VI - Terms Of Payment Schedule of this Agreement, Guidance or its users may purchase any particular category of Services that may become necessary as per the Change Control Schedule set out in Schedule – II – Change Control Schedule of this Agreement, without the need to go for a separate procurement process.

## **7 Representations and Warranties**

### **7.1 Representations and warranties of the '<<SI>>'**

The '<<SI>>' represents and warrants to Guidance 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 Guidance'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 tender documents and as updated 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;
- 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 Guidance 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 Guidance in connection therewith.

## **7.2 Representations and warranties of Guidance**

The Guidance represent and warrant to the <<SI>> that:

- I. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein

and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;

- II. it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- III. it has the financial standing and capacity to perform its obligations under the Agreement; 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;
- IV. 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;
- V. 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;
- VI. 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 ability of Guidance 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;
- VII. it has complied with Applicable Laws in all material respects;
- VIII. all information provided by it in the RFP in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- IX. upon the <<SI>> 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 <<SI>>, in accordance with this Agreement.

## **8 Obligations of the Guidance**

[Without prejudice to any other undertakings or obligations of Guidance under this Agreement, Guidance shall perform the following:]

- I. To provide any support through personnel to test the system during the Term;
- II. To provide any support through personnel and/or test data during development, rollout, steady state operation, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- III. To provide the data (including in electronic form wherever available) to be migrated.
- IV. To authorize the <<'SI'>> to interact for implementation of the Project with external entities.

## **9 Obligations of the SI**

### **9.1 Deliverables**

It shall provide to the Guidance, the Deliverables per the project schedule given in Annexure – C –Required Deliverable and Associated Timelines of this Agreement.

### **9.2 Scope**

It shall perform the Services as set out in Section 3 of this Agreement and in a good and workman like manner commensurate with industry and technical Standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, and so as to comply with the applicable Service Levels set out with this Agreement.

### **9.3 Timelines**

It shall ensure that the Services are being provided as per the Project Timelines set out as Annexure – C –Required Deliverable and Associated Timelines to this Agreement.

## **10 Approvals and required consents**

### **10.1 Required Consents**

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 <<SI>> 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

### **10.2 Assistance to obtain Required Consents**

Guidance shall use reasonable endeavors to assist <<SI>> to obtain the Required Consents [or vice versa, depending on the Scope of work defined in the RFP]. In the event that any Required Consent is not obtained, the <<SI>> and the Guidance will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the Guidance 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 <<SI>> 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 <<SI>>’s obligations are not dependent upon such Required Consents.

## **11 Use of assets by the <<SI>>**

During the term the <<SI>> shall:

- I. take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the <<SI>> exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the “**Assets**”) in proportion to their use and control of such Assets; and
- II. keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the <<SI>> takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- III. ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the <<SI>> will be followed by the <<SI>> and any person who will be responsible for the use of the Assets;

- IV. take such steps as may be properly recommended by the manufacturer of the Assets and notified to the <<SI>> or as may, in the reasonable opinion of the System integrator, be necessary to use the Assets in a safe manner;
- V. ensure that the Assets that are under the control of the <<SI>>, are kept suitably housed and in conformity with Applicable Law;
- VI. procure permission from the Guidance and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- VII. not, knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.

## **12 Access to the Locations**

### **12.1 Access to project locations**

For so long as the <<SI>> provides services to the locations pertaining to this project, on a non-permanent basis and to the extent necessary, Guidance shall, subject to compliance by the <<SI>> with any safety and security guidelines which may be provided by Guidance and notified to the <<SI>> in writing, provide the <<SI>> with:

- I. reasonable access, in the same manner granted to employees of Guidance, to the location twenty-four hours a day, seven days a week;
- II. reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other locations of Guidance or its users as the case may be, if any, as may be reasonably necessary for the <<SI>> to perform its obligations hereunder and under the SLA.

### **12.2 Responsibilities of SI in the use of locations, services and equipments of Guidance**

Access to locations, office equipments and services shall be made available to the <<SI>> on an "as is, where is" basis by Guidance. The <<SI>> agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in RFP for the following purposes:



- I. for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
- II. in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality).

## **13 Management Phase**

### **13.1 Governance**

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

### **13.2 Use of Services**

- I. The Guidance as the case may be, 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;
- II. The Guidance as the case may be shall be responsible for the operation and use of the Deliverables resulting from the Services.

### **13.3 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 – II – Change Control Schedule of this Agreement.

### **13.4 Security and Safety**

- I. The <<SI>> 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 as specifically stated in the RFP and follow the industry Standards related to safety and security (including those as stated in the RFP), insofar as it applies to the provision of the Services.
- II. Each Party to the SLA/Agreement shall also comply with the security Standards and policies of Guidance or the Government of Tamil Nadu, and Government of

India from time to time at each location of which Guidance, make the <<SI>> aware in writing in so far as the same apply to the provision of the Services.

- III. 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 Guidance or any of their nominees data, facilities or Confidential Information.
- IV. The <<SI>> shall upon reasonable request by the Guidance or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- V. As per the provisions of the SLA or this Agreement, the <<SI>> shall promptly report in writing to Guidance, 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 Guidance.

### **13.5 Cooperation**

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

- I. does not require material expenditure by the Providing Party to provide the same;
- II. is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement or the SLA;
- III. cannot be construed to be Confidential Information; and
- IV. is capable of being provided by the Providing Party.

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

## **14 Financial Matters**

### **14.1 Terms of Payment**

- I. In consideration of the Services and subject to the provisions of this Agreement and of the SLA, Guidance shall pay the <<SI>> for the Services rendered in pursuance of this agreement, in accordance with the Terms of Payment Schedule set out as Schedule – VI - Terms Of Payment Schedule of this Agreement.
- II. Save and except as otherwise provided for herein or as agreed between the Parties in writing, Guidance shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the <<SI>> performance of any obligations under this Agreement or the SLA) other than those covered in Schedule – VI - Terms Of Payment Schedule of this Agreement.

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.

- III. All payments are subject to TDS as applicable.

### **14.2 Invoicing and Settlement**

- I. Subject to the specific terms of the SLA, the <<SI>> shall submit its invoices in accordance with the following principles:
  - A. Guidance shall be invoiced by the <<SI>> for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the <<SI>> shall raise an invoice as per Schedule – VI - Terms Of Payment Schedule of this Agreement; and
  - B. Any invoice presented in accordance with this Article shall be in a form agreed with the Guidance.
- II. The <<SI>> alone shall invoice all payments after receiving due approval from the competent authority. Such invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in Schedule – VI - Terms Of

Payment Schedule of this Agreement. The <<SI>> shall waive any charge for a Service that is not invoiced within six months after the end of the month in which the change relating to such Service is (i) authorized or (ii) incurred, whichever is later.

- III. Guidance will make reasonable endeavor to make payment within 30 working days of the receipt of invoice along with supporting documents subject to penalties. The penalties are imposed on the SI as per the SLA criteria specified in the SLA. If payment is not made as stated above, no interest will be made for the delayed payment.
- IV. Guidance shall be entitled to delay or withhold payment of any invoice or part of it delivered by the <<'SI'>> under Schedule – VI - Terms Of Payment Schedule of this Agreement where Guidance disputes/withholds such invoice or part of it provided that such dispute is bona fide. The withheld amount shall be limited to that which is in dispute. The disputed / withheld amount shall be settled in accordance with the escalation procedure as set out in Schedule – V - Governance Schedule of this Agreement. Any exercise by the Guidance, under this Clause shall not entitle the <<SI>> to delay or withhold provision of the Services.
- V. Guidance shall be entitled to delay or withhold part of the payment of any invoice which is under a dispute. The withheld amount shall be limited to that which is the disputed amount. The disputed amount shall be referred to the escalation procedure as set out in Schedule – V - Governance Schedule of this Agreement. Any exercise by the Guidance under this Clause shall not entitle the <<SI>> to delay or withhold provision of the Services.
- VI. Guidance shall not be liable for making any payments to any other third parties.

### **14.3 Tax**

- I. Guidance shall provide <<SI>> with the original tax receipt of any withholding taxes paid by Guidance on payments under this Agreement. The <<SI>> agrees to reimburse and hold the Guidance harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this contract. For purposes of this Agreement, taxes shall include taxes incurred on transactions between Guidance and the <<SI>>.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 Guidance for providing the services i.e. GST or any such other applicable tax from time to time, which increase or decreases the cost incurred by the SI in performing the Services, then the remuneration and reimbursable expense otherwise payable to the Guidance under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule – VI - Terms Of Payment Schedule. However, in case of any new or fresh tax or levy imposed after submission of the proposal the <<SI>> shall be entitled to reimbursement on submission of proof of payment of such tax or levy.

- II. The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with the following:
- A. any resale certificates;
  - B. any relevant information regarding out-of-state or use of materials, equipment or services; and
  - C. any direct pay permits, exemption certificates or information reasonably requested by the other Party.

## **15 Termination**

### **15.1 Termination for Default**

- I. Guidance may without prejudice to any other remedy for breach of Contract, by written notice of default with a notice period of 30 days, sent to the SI, terminate the contract in whole or part,
- a. If the SI fails to deliver any or all of the goods within the time period(s) specified in the Contract, or fails to deliver the items as per the Delivery Schedule or within any extension thereof granted by Guidance; or
  - b. If the SI fails to perform any of the obligation(s) under the Contract; or
  - c. If the SI, in the judgement of the Guidance, has engaged in fraudulent and corrupt practices in competing for or in executing the Contract.
- II. In the event of Guidance terminating the Contract in whole or in part, Guidance

may procure the services upon terms and in such manner as deems appropriate at the risk and cost of the defaulting SI and the SI shall be liable for any additional costs for such services. However, the SI shall continue the performance of the contract to the extent not terminated.

### **15.2 Termination for Convenience**

Guidance may by written notice with a notice period of 30 days sent to the <<SI>>, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Guidance's convenience, the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective. On termination, the <<SI>> is not entitled to any compensation whatsoever.

### **15.3 Termination for Insolvency**

Guidance may at any time terminate the Contract by giving a written notice with a notice period of 30 days to the <<SI>>, if the SI becomes bankrupt or otherwise insolvent. In this event, termination will be without any compensation to the SI, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to Guidance.

### **15.4 Effects of termination**

- I. In the event that Guidance terminates this Agreement pursuant to failure on the part of the <<SI>> to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by <<SI>> may be forfeited.
- II. Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule – III - Exit Management Schedule of this Agreement.
- III. In the event that Guidance terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as Schedule – VI - Terms Of Payment Schedule of this Agreement.
- IV. Guidance agrees to pay <<SI>> for i) all charges for Services <<SI>> provides and any Deliverables and/or system (or part thereof) <<SI>> delivers through termination, and ii) reimbursable expenses <<SI>> incurs through termination.

If Guidance terminates without cause, Guidance also agrees to pay any applicable adjustment expenses <<SI>> incurs as a result of such termination (which <<SI>> will take reasonable steps to mitigate).

## **16 Indemnification & Limitation of Liability**

### **16.1 Indemnification of Guidance**

Subject to Clause 16.2 below, <<SI>> (the "Indemnifying Party") undertakes to indemnify Guidance (the "Indemnified Party or Parties" as the case maybe) from and against all Losses on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including Guidance) attributable to system Integrator's negligence or willful default in performance or non-performance under this Agreement. If Guidance promptly notifies SI in writing of a third party claim against Guidance that any Service provided by the SI infringes a copyright, trade secret or patents incorporated in India of any third party, SI will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Guidance. The System Integrator shall hold Guidance harmless towards any claim or damage or infringement from any third parties in relation incase of any breach of IPR / Patent rights etc.

### **16.2 Conditions**

The indemnities set out in Clause 16.1 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 16.1 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).

### **16.3 Limitation of Liability**

The aggregate liability of the SI under this agreement, or otherwise in connection with the services to be performed hereunder, shall in no event exceed the contract price.

## **17 Force Majeure**

### **17.1 Definition of Force Majeure**

The <<SI>> or Guidance, as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by an event of force majeure ('Force Majeure').



## **17.2 Force Majeure events**

A Force Majeure event means any event or circumstance or a combination of events and circumstances referred to in this Clause, which:

- I. is beyond the reasonable control of the affected Party;
- II. such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care;
- III. does not result from the negligence of such Party or the failure of such Party to perform its obligations under this Agreement;
- IV. is of an incapacitating nature and prevents or causes a delay or impediment in performance; and
- V. may be classified as all or any of the following events:

Such events include:

### Non-Political Events

- (A) act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions;
- (B) radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the <<SI>>'s use of radiation or radio-activity or biologically contaminating material;
- (C) strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances as the case may be not arising on account of the acts or omissions of the <<SI>> and which affect the timely implementation and continued operation of the Project; or
- (D) any event or circumstances of a nature analogous to any of the foregoing.

### Political Events

- (E) Change in Law, other than any Change in Law for which relief is provided under this Agreement;
- (F) expropriation or compulsory acquisition by Guidance or any of

their nominated agencies of any material assets or rights of the <<SI>>;

- (G) unlawful or unauthorised revocation of, or refusal by Guidance or any of their nominated agencies, GoI or any of its agencies to renew or grant any clearance or Required Consents required by the <<SI>> to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the <<SI>>'s inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- (H) any judgment or order of any court of competent jurisdiction or statutory authority in India made against the <<SI>> in any proceedings for reasons other than failure of the <<SI>> to comply with Applicable Laws or Required Consents or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement;
- (I) unlawful or unauthorized revocation of, or refusal by any authority other than the Guidance or any of their nominated agencies to renew or grant any Required Consents required by the <<SI>> to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the <<SI>>'s inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- (J) any requisition of the Project by any other authority; or
- (K) any requisition of the Project by the Guidance or any of their nominated agencies.
- (L) For the avoidance of doubt, suspension of the Project in accordance with the provisions of this Agreement shall not be considered a requisition for the purposes of Force Majeure event.

#### Other Events

- (M) an act of war (whether declared or undeclared), hostilities, invasion, armed conflict or act of foreign enemy, blockade,

embargo, prolonged riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage, for a continuous period exceeding seven (7) days.

For the avoidance of doubt, it is expressly clarified that the failure on the part of the <<SI>> 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, System Integrator 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).*

### **17.3 Notification procedure for Force Majeure**

- I. The affected Party shall notify the other Party of a Force Majeure event within seven (7) days of occurrence of such event. If the other Party disputes the claim for relief under Force Majeure it shall give the claiming Party written notice of such dispute within thirty (30) days of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in accordance with Clause
- II. Upon cessation of the situation which led the Party claiming Force Majeure, the claiming Party shall within seven (7) days hereof notify the other Party in writing of the cessation and the Parties shall as soon as practicable thereafter continue performance of all obligations under this Agreement.

### **17.4 Costs arising out of Force Majeure**

Upon occurrence of a Force Majeure Event the costs incurred and attributable to such event and directly relating to the Project ('**Force Majeure Costs**') shall be borne by respective parties and neither party shall be required to pay to the other party any costs thereof.

- I. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, operation and maintenance expenses, any increase in the cost of the

Services on account of inflation and all other costs directly attributable to the Force Majeure Event.

- II. Save and except as expressly provided in this Clause, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof.

### **17.5 Consultation and duty to mitigate**

Except as otherwise provided in this Clause, the affected Party shall, at its own cost, take all steps reasonably required to remedy and mitigate the effects of the Force Majeure event and restore its ability to perform its obligations under this Agreement as soon as reasonably practicable. The Parties shall consult with each other to determine the reasonable measures to be implemented to minimize the losses of each Party resulting from the Force Majeure event. The affected Party shall keep the other Parties informed of its efforts to remedy the effect of the Force Majeure event and shall make reasonable efforts to mitigate such event on a continuous basis and shall provide written notice of the resumption of performance hereunder.

### **18 Confidentiality**

- I. Guidance shall allow the <<SI>> to review and utilize highly confidential public records and the <<SI>> shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- II. Additionally, the <<SI>> shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- III. Guidance shall retain all rights to prevent, stop and if required take the necessary punitive action against the <<SI>> regarding any forbidden disclosure.
- IV. The <<SI>> shall ensure that all its employees, associates execute individual non disclosure agreements.

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; information which has been received from a third party who had the right to disclose the aforesaid information;
  - (b) information which has been disclosed to the public pursuant to a court order.
- V. To the extent the <<SI>> shares its confidential or proprietary information with the Guidance for effective performance of the Services, the provisions of the Clause 16.1 to 16.2 shall apply mutatis mutandis on Guidance.

## **19 Audit, Access and Reporting**

The <<SI>> shall allow access to Guidance to all information which is in the possession or control of the <<SI>> 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 Guidance to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule – IV - Audit, Access and Reporting of this Agreement.

## **20 Intellectual Property Rights**

The IPR and Source Code of the solution developed under this project would be with the Guidance. Any use of the Source code/IPR/Application/Data for any purpose not limited to commercial/demonstration/marketing/awards shall be done only with prior written consent of Guidance. The Guidance would evaluate the request and make a decision considering the sections 20.1, 20.2 & 20.3 of this contract; the decision made by the Guidance shall be binding and the SI shall comply to the same.

### **20.1 Products and fixes**

All products and related solutions and fixes provided pursuant to this contract shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. <<SI>> would be responsible for arranging any licenses associated with products. **“Product”** means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to Guidance 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.

## **20.2 Bespoke development**

Subject to the provisions of Clause 20.3 and 20.4 below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie with Guidance. <<SI>> shall be entitled to a broad license back in the bespoke development for its internal usage and other e-governance projects.

## **20.3 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 (and their sub-contractors as necessary) a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the <<SI>> should grant Guidance a non-exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to Guidance 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. Guidance’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 SI leaves with Guidance at the conclusion of performance of the services.

## **20.4 Residuals**

In no event shall <<SI>> 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, <<SI>> 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.

## **21 Warranty**

### **21.1 Standard**

The <<SI>> warrants that the Project, including all the system(s) and other Services provided, shall be free from any defect or deficiency in the material, design, engineering, and performance/workmanship that prevent the Project and/or any of its systems(s) from fulfilling

the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the Project and/or any of its system(s) as per the performance guarantee / warranty period defined in the Schedule.

If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services provided by the <<SI>>, the <<SI>> shall promptly, in consultation and agreement with Guidance, and at the <<SI>>'s sole cost repair, replace, or otherwise make good such default, defect or deficiency as well as any damage to the Project caused by such default, defect or deficiency. Any defective system that has been replaced by the <<SI>> shall remain the property of the <<SI>>.

If the Project or any of its System cannot be used by reason of such default, defect or deficiency and/or making good of such default, defect or deficiency, the warranty period for the Project shall be extended by a period equal to the period during which the Project or any of its system could not be used by Guidance because of such defect and/or making good of such default, defect or deficiency.

### **21.2 Implied Warranty**

The warranties provided herein are in lieu of all other warranties, both express and implied, and all other warranties, including without limitation that of merchantability or fitness for intended purpose is specifically disclaimed.

### **21.3 Limitation of liability**

The <<SI>> shall have no liability in the case of breach of this warranty due to the deliverables having been tampered with, altered or modified by Guidance without the written permission of the <<SI>>, or use of the deliverables otherwise than in terms of the relevant documentation.

## **22 Liquidated Damages**

Time is the essence of the Agreement and the delivery dates are binding on the <<SI>>. In the event of delay for whatever reasons, (except delay caused by Guidance and/or Force Majeure), in meeting the deliverables, the Guidance shall be entitled at its option to recover Liquidated Damages from the <<SI>> as specified in the SLA.

## **23 Escrow Agreement**

If required, the Escrow arrangement will be discussed and decided at the appropriate time.

## **24 Insurance Cover**

### **24.1 Obligation to maintain insurance**

In connection with the provision of the Services, the Service Provider must have and maintain:

- (a) for the Agreement Period, valid and enforceable insurance coverage for:
  - (i) public liability;
  - (ii) either professional indemnity or errors and omissions;
  - (iii) product liability;
  - (iv) workers' compensation as required by law; and
  - (v) any additional types specified in Schedule – I – Definitions; and
- (b) The item intended under this contract should be Free on Road/Free on Rail/Free on Air etc destination basis. Till acceptance of the delivery by the Guidance / Consignee the comprehensive insurance shall be covered by System Integrator.

### **24.2 Certificates of currency**

The <<SI>> must, on request by the Guidance provide current relevant confirmation of insurance documentation from its insurance companies certifying that it has insurance as required by this Clause. The SI agrees to replace/renew any coverage prior to the date of expiry/cancellation.

### **24.3 Non-compliance**

Guidance may, at its election, terminate this Agreement upon the failure of <<SI>>, or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve <<SI>> of its obligations under this Agreement.

## **25 Miscellaneous**

### **25.1 Personnel**

- (a) The personnel assigned by <<SI>> to perform the Services shall be employees of <<SI>> or their associates and under no circumstances shall such personnel be construed as employees of Guidance. The <<SI>> 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, contribution towards EPF and ESIC, 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 <<SI>> shall use its best efforts to ensure that sufficient <<SI>> personnel are assigned to perform the Services and that such personnel have appropriate qualifications to perform the Services. After discussion with <<SI>>, Guidance shall have the right to require the removal or replacement of any <<SI>> personnel performing work under this Agreement based on bonafide reasons. In the event that Guidance or its nominated agencies requests that any <<SI>> personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.
- (c) In the event that the Guidance and <<SI>> identify any personnel of <<SI>> as “Key Personnel”, then the <<SI>> shall not remove such personnel from the Project without the prior written consent of Guidance unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc. In the event of Guidance identifying any personnel as undesirable, SI should remove such personnel and replace another competent person in his place.
- (d) Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of <<SI>> to freely assign or reassign its employees; provided that <<SI>> shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. Guidance shall have the right to review and approve <<SI>>’s plan for any such knowledge transfer. <<SI>> shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.
- (e) 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.
- (f) 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.

## **25.2 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.

### **25.3 Sub-contracting**

<<SI>> shall not underlet or sublet the contract to anybody including companies or individuals or body corporate without Guidance's prior written consent. It is clarified that the <<SI>> shall have the sole responsibility for fulfilling the contract.

### **25.4 Assignment**

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

### **25.5 Trademarks, Publicity**

None of the Parties may use the trademarks of the other Parties without the prior written consent of the concerned Party except that <<SI>> 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, no 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 Parties. Such approval shall apply to each specific case and relate only to that case.

## **25.6 Notices**

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

A) Tamil Nadu Industrial Guidance & Export Promotion Bureau

(Presently renamed as Guidance)

19-A, SIPCOT Building, Rukmani Lakshmi pathy Road,

Egmore, Chennai - 600 008,

Telephone: +91 44 28553866; Fax: +91 44 28553856

B) <<SI>>

Tel:

Fax:

Email:

Contact:

[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]

- (c) Any such notice or other document shall be deemed to have been given to the concerned Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the working hours at the address of the concerned 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).
- (d) Any 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.

### **25.7 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 – II – Change Control Schedule 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.

### **25.8 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 delay or failure by a Party to exercise any of its powers, rights or remedies under this agreement nor any time or other indulgence granted by a Party will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies or grant of time etc. would be treated as waiver for other or subsequent defaults by the concerned Party. Any waiver, to be effective, must be in writing and duly signed by the authorized representative of parties to this agreement.

### **25.9 Compliance with Applicable Law**

Each Party to this Agreement accepts that its individual conduct shall 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 – II – Change Control Schedule of this Agreement.

#### **25.10 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.

#### **25.11 Ethics**

The <<SI>> 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 Guidance 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 standard policies of Guidance and may result in cancellation of this Agreement, or the SLA.

#### **25.12 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.

#### **25.13 Amendment**

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

### **26 Dispute Resolution and Governing Law**

- (a) Any dispute or difference, whatsoever, arising among the parties to this agreement arising out of or in relation to this agreement shall be resolved by the Parties through mutual consultation, in good faith and using their best endeavors. To this end, the parties agree to provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate discussions between them/their representatives or officers;
- (b) Except as otherwise provided elsewhere in the Contract, if any dispute, difference, question or disagreement arises between the parties hereto or their

respective representatives or assignees, at any time in connection with construction, meaning, operation, effect, interpretation or out of the contract or breach thereof, the same shall be decided by a sole Arbitrator to be appointed by the Managing Director, Guidance.

- (c) If the Arbitrator so appointed dies, resigns, incapacitated or withdraws for any reason from the proceedings, another Arbitrator shall be appointed by the Managing Director, Guidance. The Arbitrator so appointed shall proceed with the reference from the stage where his predecessor had left if both parties consent for the same, otherwise, he shall proceed de novo.
- (d) It is a term of the contract that the party invoking arbitration shall specify all disputes to be referred to arbitration at the time of invocation of arbitration and not thereafter.
- (e) It is also a term of the contract that neither party to the contract shall be entitled to seek interest and the arbitrator should not grant interest.
- (f) The Arbitral Tribunal shall give reasoned award and the same shall be final, conclusive and binding on the parties.
- (g) The venue of the arbitration shall be the Chennai and language English.
- (h) The fees of the arbitrator and expenses incidental to the arbitration proceedings shall be borne equally by the parties.
- (i) Subject to as aforesaid, the provisions of the Arbitration and Conciliation Act 1996 and any statutory modifications or re-enactment in lieu thereof shall apply to the arbitration proceedings under this clause.
- (j) Subject to the above, the Courts in Chennai alone shall have jurisdiction in this matter.
- (k) This agreement and all questions of its interpretation shall be construed in accordance with the Laws of India. The Courts at Chennai alone shall have jurisdiction.

## **27 Risk of loss or damage of hardware**

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

## **28 Third party components**

<<SI>> 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 have by duly authorized

Representatives set their respective hands and seal on the date first above

Written in the presence of:

WITNESSES:

Signed by:

(Name and designation) For and on behalf of Guidance

(FIRST PARTY)

Signed by:

(Name and designation) For and on behalf of <<SI>>

(SECOND PARTY)

**29 Schedules**

**29.1 Schedule – I – Definitions**

<b>Adverse Effect</b>	<p>means material adverse effect on</p> <p>(a) the ability of the &lt;&lt;SI&gt;&gt; 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</p> <p>(b) the legal validity, binding nature or enforceability of this Agreement;</p>
<b>Agreement</b>	<p>means this Master Services Agreement, Service Level Agreement and Non-Disclosure Agreement together with all Articles, Annexures, Schedules and the contents and specifications, Corrigenda and Addenda of the RFP and communications between the bidder and Guidance;</p>
<b>Applicable Law(s)</b>	<p>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;</p>
<b>Assets</b>	<p>All items are property of Guidance / the respective Departments which may or may not have been supplied by the SI</p>
<b>Software</b>	<p>means the software designed, developed / customized, tested and deployed by the &lt;&lt;SI&gt;&gt; for the purposes of the Project and includes the complete source code (in case of Bespoke development) or source code for customization in case of COTS product, 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, proprietary software components and tools deployed by the &lt;&lt;SI&gt;&gt;;</p>
<b>Business Hours</b>	<p>shall mean the working time for Guidance users Again for Web Server and other components which enable successful usage of web portals of Guidance the working time should be considered as 24 hours for all the days of the week. It is desired that IT maintenance, other batch</p>



	processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance;
<b>Certificate(s) of Compliance</b>	shall have the same meaning ascribed to it in Clause 6.4;
<b>Confidential Information</b>	means all information including Guidance 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);
<b>Control</b>	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;
<b>Deliverables</b>	means the products, infrastructure and services agreed to be delivered by the <<SI>> in pursuance of the agreement as defined more elaborately in the RFP, Implementation and the Maintenance phases and includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related), inter alia payment and/or process related etc., source code and all its modifications;
<b>Proprietary Information</b>	shall have the same meaning ascribed to it in Section 20
<b>Effective Date</b>	shall have the same meaning ascribed to it in Clause 4;

<b>Guidance Data</b>	means all proprietary data of the department generated out of operations and transactions, documents all taxpayers data and related information including but not restricted to user data which the <<SI>> obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement;
<b>Final Acceptance Test</b>	shall be conducted on completion of the following: <ol style="list-style-type: none"> <li>1) Data Center operational,</li> <li>2) Deployment &amp; operational hardware and required networking at requisite locations,</li> <li>3) UAT of the overall integrated solution and portal.</li> </ol>
<b>Final Testing and Certification Agency</b>	shall have the same meaning ascribed to it in Clause 6.4;
<b>Force Majeure</b>	shall have the same meaning ascribed to it in Section 17;
<b>Force Majeure Costs</b>	shall have the same meaning ascribed to it in Clause 17.4;
<b>GoI</b>	means the Government of India;
<b>Indemnifying Party</b>	shall have the same meaning ascribed to it in Clause 16.1;
<b>Indemnified Party</b>	shall have the same meaning ascribed to it in Clause 16.1;
<b>Intellectual Property Rights</b>	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);
<b>Insurance Cover</b>	<ul style="list-style-type: none"> <li>- Public liability insurance for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than [INR <i>insert amount</i>] in aggregate</li> <li>- Either professional indemnity or errors and omissions insurance for an insured amount of [INR <i>insert amount</i>] per</li> </ul>

	<p>occurrence and not less than [INR <i>insert amount</i>] in aggregate.</p> <ul style="list-style-type: none"> <li>- Product liability for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than value of infrastructure in aggregate.</li> <li>- Workers compensation as required by law</li> </ul>
<b>Additional Insurance</b>	Third Party insurance claim, IPR, Source Code violation, employee coverage, etc
<b>Material Breach</b>	means a breach by a Party (Guidance or <<SI>>) 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;
<b>Required Deliverables</b>	shall have the same meaning ascribed to it in Annexure – C –Required Deliverable and Associated Timelines of this Agreement;
<b>Parties</b>	means Guidance and <<SI>> for the purposes of this Agreement and “ <b>Party</b> ” shall be interpreted accordingly;
<b>Performance Guarantee</b>	Means the guarantee provided by a Nationalized Bank in favour of the <<SI>>. The amount of Performance Security shall be 10% of the overall cost of the project. This performance security shall be valid till six months after the completion of the project i.e. ---- years from the date of signing of contract or for such time as is required under this Agreement;
<b>Planned Application Downtime</b>	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 Guidance as applicable and shall be notified at least two working days in advance to Guidance;
<b>Planned network outage</b>	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 Guidance as applicable and shall be notified at least two working days in

	advance to Guidance;
<b>Project</b>	means Pilot, Project Implementation (roll out) and Maintenance in terms of the Agreement;
<b>Project Implementation</b>	means Project Implementation as per the testing Standards and acceptance criteria prescribed by Guidance;
<b>Project Implementation Phase</b>	shall be from the Effective Date of the Agreement to the date of Go-Live
<b>Project Implementation Unit (PIU)</b>	shall be constituted by Guidance to monitor the activities, deliverables and progress of the Project. PIU will comprise of the staff members of the Guidance, other officials from concerned department and external experts (as defined in the RFP);
<b>Project Timelines</b>	shall have the same meaning ascribed to in Annexure – C –Required Deliverable and Associated Timelines;
<b>Providing Party</b>	shall have the same meaning ascribed to it in Clause 13.5;
<b>Receiving Party</b>	shall have the same meaning ascribed to it in Clause 13.5;
<b>Replacement &lt;&lt;SI&gt;&gt;</b>	means any third party that Guidance / Guidance through another agency appoint to replace <<SI>> upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
<b>Required Consents</b>	means the consents, waivers, clearances and licenses to use Guidance's Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the software and other items that Guidance or their nominated agencies are required to make available to <<SI>> pursuant to this Agreement;
<b>Services</b>	means the services delivered to the Stakeholders of Guidance, employees of Guidance, and to professionals, using the tangible and intangible assets created, procured, installed, managed and operated by the <<SI>> including the tools of information and communications technology and includes but is not limited to the list of services specified in Annexure – B - List of Services Provided by the <<SI>>;

<b>Service Level</b>	means the level of service and other performance criteria which will apply to the Services delivered by the <<SI>>;
<b>SLA</b>	means the Performance and Maintenance SLA executed as part of this Master Service Agreement;
<b>Stakeholders</b>	means the Franchisee’s, Investors, Citizens, Guidance, employees of Guidance, and the Departments/Agencies/Undertakings of State Government;
<b>Third Party Systems</b>	means systems (or any part thereof) in which the Intellectual Property Rights are not owned by Guidance or <<SI>> and to which <<SI>> has been granted a license to use and which are used in the provision of Services;
<b>Unplanned Application Downtime</b>	means the total time for all the instances where services in the software requirement specification document prepared by the <<SI>> are not available for more than 5 consecutive minutes;
<b>Network</b>	refers to all the IT assets installed by the <<SI>> as part of the Project for networking;
<b>Unplanned network outage</b>	means the total time for all the instances where services in the software requirement specification document prepared by the <<SI>> are not available for more than 5 consecutive minutes;
<b>Application</b>	means the software Application developed as a part of scope of work
<b>Application Downtime</b>	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;
<b>Network Uptime</b>	Uptime refers to network availability between Guidance’s Head Quarters to Data center. “%Uptime” means ratio of ‘up time’ (in minutes) in a month to Total time in the month (in minutes) multiplied by 100;
<b>Warranty / AMC Period</b>	[shall be 5 years from the date of Go-live.]

<b>Safety and Security</b>	Safety & Security should comply to NFPA Standards
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## **29.2 Schedule – II – 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 <<SI>> and changes to the terms of payment as stated in the Terms of Payment Schedule.

Guidance 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 Guidance will work with the <<SI>> 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 attached as Annexure – A – Format for Change Control Notice hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- ii. The SI and Guidance, during the Project Implementation Phase and Guidance 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 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 <<SI>> and accepted by the Guidance or as decided and approved by Guidance or its 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 Annexure D shall apply.

**b. Quotation**

i. 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;
7. material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work

ii. Prior to submission of the completed CCN to Guidance, the Service Provider / SI 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 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.



### **29.3 Schedule – III - Exit Management Schedule**

#### **1 PURPOSE**

1.1 This Schedule sets out the provisions, which will apply on expiry or termination of the MSA, the Project Implementation, Operation and Management SLA.

1.2 In the case of termination of the Project Implementation and/or Operation and Management, the Parties shall agree at that time whether, and if so during what period, the provisions of this Schedule shall apply.

1.3 The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Schedule.

#### **2 TRANSFER OF ASSETS**

2.1 Guidance shall be entitled to serve notice in writing on the SI at any time during the exit management period as detailed hereinabove requiring the SI to provide Guidance with a complete and up to date list of the Assets within 30 days of such notice.

2.2 In case of contract being terminated by Guidance, the Guidance reserves the right to ask SI to continue running the project operations for a period of 6 months after termination orders are issued.

2.3 Upon service of a notice under this Article the following provisions shall apply:

(i) Payment to the outgoing SI shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements.

(ii) The outgoing SI will pass on to Guidance and/or to the new SI, the subsisting rights in any licensed products on terms not less favorable to Guidance/ new SI, than that enjoyed by the outgoing SI.

#### **3 COOPERATION AND PROVISION OF INFORMATION**

3.1 During the exit management period:

(i) The <<SI>> will allow Guidance access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable Guidance to assess the existing services being delivered;

(ii) promptly on reasonable request by Guidance, 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 (whether provided by the <<SI>> or sub contractors appointed by the <<SI>>). Guidance shall be

entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The <<SI>> shall permit the Guidance to have reasonable access to its employees and facilities as reasonably required by the Managing Director, PIU to understand the methods of delivery of the services employed by the <<SI>> and to assist appropriate knowledge transfer.

#### **4 CONFIDENTIAL INFORMATION, SECURITY AND DATA**

4.1 The <<SI>> will promptly on the commencement of the exit management period supply to Guidance the following:

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

4.2 Before the expiry of the exit management period, the <<SI>> shall deliver to the Guidance 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 Guidance shall deliver to the <<SI>> all forms of <<SI>> confidential information, which is in the possession or control of Chairperson, PIU or its users.

#### **5 EMPLOYEES**

5.1 Promptly on reasonable request at any time during the exit management period, the <<SI>> shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to Guidance a list of all employees (with job titles) of the <<SI>> 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 <<SI>> to Guidance, or a Replacement <<SI>> ("**Transfer Regulation**") applies to any or all of the employees of the <<SI>>, then the Parties shall comply with their respective obligations under such Transfer Regulations.

5.3 To the extent that any Transfer Regulation does not apply to any employee of the <<SI>>, department, or its Replacement <<SI>> may make an offer of employment or contract for services to such employee of the <<SI>> and the <<SI>> shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the Managing Director, PIU or any Replacement <<SI>>.

## **6 POST-CONTRACT SCENARIO**

After expiry of the contract (five years from date of Go-Live), Guidance at its discretion may request the System Integrator to renew the contract for extended support for a period of 2 years from the date of expiry of the contract under the same terms & conditions of this contract.

Alternatively, Guidance may identify any other contractor for the purpose of Facility Management Services (FMS) to continue the support services of the project. In such occasion, the existing contractor should carry out the knowledge transfer as specified in the tender document.

## **7 RIGHTS OF ACCESS TO PREMISES**

7.1 At any time during the exit management period, where Assets are located at the <<SI>>'s premises, the <<SI>> 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) Guidance and/or any Replacement <<SI>> in order to make an inventory of the Assets.

7.2 The <<SI>> shall also give the Guidance, or any Replacement <<SI>> right of reasonable access to the Implementation Partner's premises and shall procure the Guidance and any Replacement <<SI>> 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 Guidance, or a Replacement <<SI>>.

## **8 GENERAL OBLIGATIONS OF THE <<SI>>**

8.1 The <<SI>> shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the Guidance or its Replacement <<SI>> and which the <<SI>> 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 <<SI>>, associated entity, or sub contractor is deemed to be in the possession or control of the <<SI>>.

8.3 The <<SI>> shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

## **9 EXIT MANAGEMENT PLAN**

9.1 The <<SI>> shall provide Guidance 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 Project Implementation, and the Operation and Management SLA.

(i) A detailed program of the transfer process that could be used in conjunction with a Replacement <<SI>> including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;

(ii) plans for the communication with such of the <<SI>>'s sub contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the operations of Guidance as a result of undertaking the transfer;

(iii) (if applicable) proposed arrangements for the segregation of the <<SI>>'s networks from the networks employed by Guidance and identification of specific security tasks necessary at termination;

(iv) Plans for provision of contingent support to Guidance, and / or Replacement <<SI>> for a reasonable period after transfer.

9.2 The <<SI>> 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 <<SI>> to and approved by the Guidance.

9.4 The terms of payment as stated in the Terms of Payment Schedule include the costs of the <<SI>> 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 <<SI>> shall use its best efforts to deliver the services.

9.7 Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.

9.8 This Exit Management plan shall be furnished in writing to Guidance within 90 days from the Effective Date of this Agreement.

## **29.4 Schedule – IV - Audit, Access and Reporting**

### **1 PURPOSE**

This Schedule details the audit, access and reporting rights and obligations of the Guidance and the <<SI>>.

### **2 AUDIT NOTICE AND TIMING**

2.1 As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavors to agree to a timetable for routine audits during the Project Implementation Phase and the Operation and Management Phase. Such timetable during the Implementation Phase, and thereafter during the operation Phase, Guidance shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the <<SI>> any further notice of carrying out such audits.

2.2 Guidance may conduct non-timetabled audits at its own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the <<SI>>, a security violation, or breach of confidentiality obligations by the <<SI>>, provided that the requirement for such an audit is notified in writing to the <<SI>> 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.

2.3 The frequency of audits shall be fixed by Guidance, provided always that Guidance shall endeavour to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the <<SI>>. Any such audit shall be conducted by with adequate notice of 2 weeks to the <<SI>>.

2.4 Guidance will ensure to a reasonable degree that any 3<sup>rd</sup> party agencies (except CAG) appointed to conduct the audit will not be the competitor of <<SI>> and will be bound by confidentiality obligations.

### **3 ACCESS**

The <<SI>> shall provide to the Guidance reasonable access to employees, suppliers, 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. Guidance shall have the right to copy and retain copies of any relevant records. The <<SI>> shall make every reasonable effort to co-operate with them.

### **4 AUDIT RIGHTS**

4.1 Guidance shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in the RFP), Data Centres, documents, records, procedures and systems

relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:

- (i) The security, integrity and availability of all data processed, held or conveyed by Guidance and documentation related thereto;
- (ii) That the actual level of performance of the services is the same as specified in the SLA;
- (iii) That the <<SI>> has complied with the relevant technical Standards, and has adequate internal controls in place; and
- (iv) The compliance of the <<SI>> with any other obligation under the MSA and SLA.
- (v) Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the <<SI>>.
- (vi) For the avoidance of doubt the audit rights under this Schedule shall not include access to the <<SI>>'s profit margins or overheads, any confidential information relating to the <<SI>>' 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 SUPPLIERS AND AGENTS

5.1 The <<SI>> shall use reasonable endeavors to achieve the same audit and access provisions as defined in this Schedule with suppliers and agents who supply labour, services, equipment or materials in respect of the services. The <<SI>> shall inform Guidance prior to concluding any supply agreement of any failure to achieve the same rights of audit or access.

5.2 REPORTING: The <<SI>> will provide periodical reports to Guidance (on a mutually decided periodicity) regarding any specific aspects of the Project and in context of the audit and access information as required.

## 6 ACTION AND REVIEW

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

6.2 Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to Guidance and the <<SI>> Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the MSA.

## 7 RECORDS AND INFORMATION

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



## **29.5 Schedule – V - Governance Schedule**

### **1 PURPOSE**

The purpose of this Schedule is to:

- (i) establish and maintain the formal and informal processes for managing the relationship between Guidance and the <<SI>> (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.

### **2 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. In the event that either Party wishes to substitute its Project Manager it will do so in manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within 7 days of the substitution. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
2. Project Implementation Unit (PIU): Within 7 days following the Effective Date, Guidance shall form PIU with Members.
3. The PIU will meet formally on a fortnightly / monthly / quarterly, as required, basis at a time and location to be circulated. These meetings will cover, as a minimum, the following agenda items: (i) consideration of Quarterly Performance Reports; (ii) consideration of matters arising out of the Change Control Schedule; (iii) issues escalated in accordance with the escalation procedure as set out in the Governance Schedule; (iv) matters to be brought before the PIU in accordance with the MSA and the Schedules; (v) any matter brought before the PIU by the <<SI>> under this Article; and (vi) any other issue which either Party wishes to add to the agenda.

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

### 3 GOVERNANCE PROCEDURES

3.1 The <<SI>> shall document the agreed structures in a procedures manual.

3.2 The agenda for each meeting of the PIU shall be set to reflect the discussion items referred to above and extraordinary items may be added either with the agreement of the Parties or at the request of either Party. Copies of the agenda for meetings of the PIU, along with relevant pre-reading material, shall be distributed in advance of the relevant meeting.

3.3 All meetings and proceedings will be documented such documents to be distributed to the Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.

3.4 The Parties shall ensure as far as reasonably practicable that the PIU shall resolve the issues and resolve the objectives placed before them and that members representing that Party are empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achieve this.

3.5 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.

3.6 The other Party ("Respondent") shall have the right to respond to the Dispute Notice within 7 days after receipt of the Dispute Notice. In the event that the parties are unable to resolve the Disputed Matter within a further period of 7 days, it shall refer the Disputed Matter to next level of the dispute resolution for action as per the process mentioned in article 9.1

3.7 All negotiations, statements and / or documentation pursuant to these Articles shall be without prejudice and confidential (unless mutually agreed otherwise).

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

## 29.6 Schedule – VI - Terms Of Payment Schedule

The following schedule would be followed for payment during the Project implementation:

S. No	Milestone	% of Total Fee
1.	Approval of Final SRS and Solution Sign-off Submission of Gap infrastructure report	10% CAPEX
2.	Deployment, Supply, Installation and Commissioning of ICT and Non-ICT Infra	35% CAPEX
3.	UAT of the solution for 50% of the envisaged services (as per section 4.7 of Vol.II of this RFP)	10% CAPEX
4.	UAT of the solution for remaining 50% of the envisaged services (as per section 4.7 of Vol.II of this RFP)	10% CAPEX
5.	Security and Performance Testing Certification for the entire solution	10% CAPEX
6.	“Go-Live” for 50% of the services	10% CAPEX
7.	“Go-Live” for all of the services	10% CAPEX
8.	Operations and Maintenance Phase for 5 years	5% of OPEX per quarter (To be paid as equated quarterly installments)
9.	Successful Exit Management	5% CAPEX

### **Definition of Go-Live**

Guidance will accept the commissioning and project Go-Live only after successfully passed SDLC review process and also satisfying all the following parameters

- UAT sign-off from each of User Department
- Security, Performance, Testing, & VAPT
- Stabilization of the solution successfully meeting the minimum SLA with live transactions for continuous period of **1 month** in the production environment
- The capacity building to all intended audience before the end of stabilization period

**Based on the above four parameters Go-Live sign off will be issued by Guidance**

**30 Annexures**

**30.1 Annexure – A – Format for Change Control Notice**

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

Deliverables:	
Timetable:	
Charges for Implementation: (including a schedule of payments)	
Other Relevant Information: (including value-added and acceptance criteria)	
Authorised by the <<SI>>	Date:
Name:	
Signature:	

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

Rejected <b>Requires Further Information</b> (as follows, or as Attachment 1 etc.)	
For <i>Guidance</i> and its nominated agencies	For the <<SI>>
Signature	Signature

Name	Name
Title	Title
Date	Date

**30.2 Annexure – B - List of Services Provided by the <<SI>>**

Various services to be offered by the <<SI>> will consist of:

- i.
- ii.
- iii.

Note:

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

**30.3 Annexure – C –Required Deliverable and Associated Timelines**

<b>S. No.</b>	<b>Project Activity</b>	<b>Deliverables / Activity</b>	<b>Timelines in months</b>
1.	Issue of LOA to the Successful Bidder	Issue of LOA	T
2.	Approval of Final SRS and Solution design Sign-off	After studying & validating the FRS, etc & submission of Software Requirement Specifications (SRS) document & Solution Design Document (SDD) Gap Infrastructure report	T+2 months
3.	Supply, Installation and Commissioning of ICT and Non-ICT Infra	Sign off report of successful commissioning	T+6 months
4.	UAT of the solution for 50% of the envisaged services	User Acceptance Report from all concerned Departments	T+8 months
5.	UAT of the solution for remaining 50% of the envisaged services	User Acceptance Report from all concerned departments	T+10 months
6.	Security and Performance Testing Certification for the entire solution	Compliance report by SI & Acceptance certificate from the testing agency	T+11 months



<b>S. No.</b>	<b>Project Activity</b>	<b>Deliverables / Activity</b>	<b>Timelines in months</b>
7.	Go-Live” for 50% of the services	Go-Live Report encapsulating the solution’s compliance to the Go-Live definition	T+11 months
8.	“Go-Live” for all of the services	Go-Live Report encapsulating the solution’s compliance to the Go-Live definition	P= T+12 months
9.	Training to the staff members and stakeholders and necessary Change Management	Completion on Application training	P
10.	Operations and maintenance phase	Quarterly Operations and maintenance Performance report	P + 60 months
11.	Project Closure & Exit Management	Exit management Report	P + 60th month

**Note:**

The UAT for the applications and services needs to be obtained from department levels and subsequently based on respective department’s feedback & recommendations Guidance would sign-off which will qualify as the “deliverable sign-off”.

### **30.4 Annexure – D - Proposal**

1. TECHNICAL PROPOSAL

2. FINANCIAL PROPOSAL:

2a. Summary of Cost Components

The details of the financial figures quoted by the successful bidder would be reproduced in this agreement before final signatures.

**30.5 Annexure – E – Bill of Material**

IT Compute Infrastructure required at DC should meet the requirements as specified in RFP.

SI. No	Item Description	Quantity

Note:  
Detailed Bill of Material given in Tech Form 25 also needs to be given in addition to the above Annexure E. The detailed Bill of Material shall also contain additional details on sub-component / part-level for each of the supplied hardware/infrastructure.

## **30.6 Annexure – F – Roles and Responsibilities of the Parties**

### **Roles and Responsibilities of <<SI>>**

1. Preparation of Detailed Project Plan in line with the overall plan provided in the RFP. The same should be prepared in consultation with Guidance.
2. Procure, install, commission, operate and maintain:
  - a. Requisite hardware & system software at Data Center and other locations as per the requirements mentioned in this RFP
  - b. Networking requirements as mentioned in this RFP
  - c. Meet the defined SLAs for the performance of the system.
3. Addressing technology obsolescence by appropriate upgradation, replacement and / or replenishment of systems deployed at various locations (data center and other locations).
4. Insure the entire hardware against the infrastructure deployed at various locations for the entire duration of the contract against vandalism, theft, fire and lightening.
5. Keep all system software i.e. OS, antivirus, etc., for Servers, etc. at Data Centre and various locations, up to date by installing regular upgrades / patches.
6. Rectification of system software problems due to crashing or malfunctioning of the OS, RDBMS or front end within the time limits to meet the SLAs as defined in RFP.
7. Develop / customize, deploy and maintain the requisite Software Solution as per the requirements of the Guidance at appropriate locations.
8. Provide necessary support for the resolution of bugs, patches & upgrades of the software solution.
9. Provide necessary manpower for managing the Change Requests.
10. Design various manuals like User manual, Trouble Shooting manual etc. for the system.
11. Provide computer basic skills training and advanced training on Application modules to the staff members and stakeholders of the Guidance.
12. Maintain the business continuity.
13. Deploy the required manpower to manage the operations.
14. Ensuring the SLAs for downtime of system, software development / customization, procurement and delivery of hardware, etc.
15. Management and quality control of all services and infrastructure.
16. Any other services which is required for the successful execution of the project.
17. Regular Backup as per the schedule and Disaster Recovery.
18. Generation of MIS reports as per the requirements of Guidance or its nominees.

19. Generation of the report for the monitoring of SLAs.
20. Meet the defined Technical Specifications for the IT Infrastructure including Hardware and networking equipments keeping in mind the Application and future requirements of the Guidance and its stakeholders.

### **Roles and Responsibilities of Guidance**

1. Coordination between all the divisions for providing necessary information for the study and development / customization of the necessary solution.
2. Coordinate with Bidder for conducting workshops for the Stakeholder departments.
3. Provide the data available in the form of physical files or existing databases to the selected bidder for digitization purposes, if required.
4. Deployment of staff members for verification of the digitized data within the defined timelines.
5. Monitoring of overall timelines, SLAs and calculation of penalties accordingly.
6. Conducting UAT for the Application solution deployed.
7. Issuing the Acceptance Certificate on successful deployment of the software Application, hardware deployed, digitized data and for other components of the Scope of Work (wherever required).
8. Any other requirements that could arise during operations for effective governance and to meet any administrative requirement.
9. To create internal capacity now for execution of the project after takeover from the bidder.
10. Ensuring the staff members and other stakeholders attend the training programs as per the schedule defined by the bidder and agreed upon.
11. Provide sign off on the deliverables of the project including SRS, design documents etc.

### **31 Non-Disclosure Agreement (NDA)**

1 Guidance shall allow the SI to come into possession of records involving a high degree of confidentiality and the SI and its agents who gain access to such records shall exercise professionally reasonable care to maintain the required confidentiality and privacy with regard thereto;

2 Additionally, the SI shall maintain the confidentiality of all the details and information with regard to this engagement;

3 SI agrees to secure the interests of Guidance against any unauthorized use or disclosure of the information, data, method, procedure, etc. to which it would have access during the course of this agreement by any individual associated with it. To that effect, the SI shall also ensure that all its employees execute individual non-disclosure agreements with respect to this engagement, which shall be subject to the verification of Guidance;

4 The aforesaid provisions shall not apply to the following information:

(i) already in the public domain;

(ii) which has been received from a third party who had the right to disclose the aforesaid information; and

(iii) directed to be disclosed to the public by a court order immediately brought to the notice of Guidance and either approved to be disclosed by the Guidance or not directed by Guidance to be challenged /recalled/revoked;

5 The provisions of this Clause shall survive even after the termination or expiration of this agreement.

### **32 Service Level Agreement (SLA)**

1. SI shall arrive at a complete understanding on the interpretation and approach to the measurement of the SLA as specified in the RFP document. Changes or adjustments to the SLAs, threshold levels or measurement thereof, shall be avoided.
2. Guidance shall monitor SI's engagement/ agreement/ contract as may be reasonably required to meet with Performance obligations and SLA requirements.
3. Guidance shall ensure measurement of the SLAs as per the agreed model and shall, at all times, ensure the reliability and accuracy of such measurements.
4. Based on these measurements and conclusions drawn thereon, Guidance shall make payments to the SI after due deductions, in case the performance parameters are not found to be conforming to the required levels.

The SLA conditions are given below in ANNEXURE B – Service Levels.

### 32.1 ANNEXURE A – Definitions

<b>Agreement</b>	means this Service Level agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP;
<b>Applicable Law(s)</b>	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 of, or determination by, or any interpretation or administration of the Guidance as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
<b>Business Hours</b>	shall mean the working time for Guidance users which is 9:30 AM to 6:30 PM daily. Again for Web Server and other components which enable successful usage of web portals, the working time should be considered as 24 hours for all the days of the week. It is desired that IT maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance;
<b>MSA</b>	shall have the same meaning ascribed to it in Schedule II;
<b>Parties</b>	means the Buyer and System integrator for the purposes of this Agreement; " <b>Party</b> " shall be interpreted accordingly;
<b>Project</b>	shall have the same meaning ascribed to it in Schedule I;
<b>SLA Change Request</b>	shall have the same meaning ascribed to it in Schedule II;
<b>Service Level</b>	means the level of service and other performance criteria which will apply to the Services as set out in the SLA parameters effective during the Term of this Agreement;
<b>Term or Agreement Period</b>	Means the duration of this Agreement as set out in Clause 4 of the MSA.



<b>Application Response Time</b>	Defined as time the system takes to fetch requested (a form or a report) from the server.
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## 32.2 ANNEXURE B – Service Levels

### 32.2.1 Purpose:

This document describes the service levels to be established for the Services offered by the SI to the Guidance. The SI shall monitor and maintain the stated service levels to provide quality service.

### 32.2.2 Definitions

- (a) "Scheduled Maintenance Time" shall mean the time that the System is not in service due to a scheduled activity as defined in this SLA. The scheduled maintenance time would not be during 16X6 timeframe. Further, scheduled maintenance time is planned downtime with the prior permission.
- (b) "Scheduled operation time" means the scheduled operating hours of the System for the month. All scheduled maintenance time on the system would be deducted from the total operation time for the month to give the scheduled operation time. The total operation time for the systems and Applications within the Primary DC, DRC and critical client site infrastructure will be 24 hrs X 7 days X 12 months. The total operation time for the client site systems shall be 12 hours.
- (c) "System or Application downtime" means accumulated time during which the System is totally inoperable within the Scheduled Operation Time but outside the scheduled maintenance time and measured from the State Government employees log a call with the SI team of the failure or the failure is known to the SI from the availability measurement tools to the time when the System is returned to proper operation.
- (d) "Availability" means the time for which the services and facilities are available for conducting operations on the State Government system including Application and associated infrastructure. Availability is defined as:  

$$\frac{\{(Scheduled\ Operation\ Time - System\ Downtime)\}}{(Scheduled\ Operation\ Time)}$$
 \* 100%
- (e) "Helpdesk Support" shall mean the 12x5 basis support centre which shall handle Fault reporting, Trouble Ticketing and related enquiries during this contract.

- (f) "Incident" refers to any event / abnormalities in the functioning of the Data Centre Equipment / Services that may lead to disruption in normal operations of the Data Centre, System or Application services.

### **32.2.3 Interpretations**

- (a) The operating hours are 8:30AM to 8:30PM on all working days (Mon-Frid) excluding Public Holidays or any other Holidays observed by the State. The SI however recognizes the fact that the State Government offices will require to work beyond the business hours on need basis.
- (b) "Non-Business Hours" shall mean hours excluding "Business Hours".
- (c) 12X5 shall mean hours between 8:30AM -8.30 PM on Monday - Friday of the week.
- (d) The availability for a cluster will be the average of availability computed across all the servers in a cluster, rather than on individual servers. However, non compliance with performance parameters for infrastructure and system / service degradation will be considered for downtime calculation.
- (e) The SLA parameters shall be monitored on a monthly basis as per the individual SLA parameter requirements. However, if the performance of the system/services is degraded significantly at any given point in time during the contract and if the immediate measures are not implemented and issues are not rectified to the complete satisfaction of the State Government, then the State Government will have the right to take appropriate disciplinary actions including termination of the contract.
- (f) A Service Level violation will occur if the SI fails to meet Minimum Service Levels, as measured on a half yearly basis, for a particular Service Level. Overall Availability and Performance Measurements will be on a monthly basis for the purpose of Service Level reporting. An "Availability and Performance Report" will be provided by the SI on monthly basis in the suggested format and a review shall be conducted based on this report. A monthly Availability and Performance Report shall be provided to at the end of every month containing the summary of all incidents reported and associated SI performance measurement for that period. The monthly Availability and Performance Report will be deemed to be accepted by the State Government upon review and signoff by both SI and the State Government. Where required, some of the Service Levels will be assessed through audits or reports e.g. utilization reports, measurements reports, etc., as appropriate to be provided by the SI on a monthly basis, in the formats as required by audit will need to be provided by the

- SI. Audits will normally be done on regular basis or as required by the State Government and will be performed by the State Government or the State Government appointed third party agencies.
- (g) EMS system as specified in this RFP shall play a critical role in monitoring the SLA compliance and hence will have to be customized accordingly. The 3rd party testing and audit of the system shall put sufficient emphasis on ensuring the capability of EMS system to capture SLA compliance correctly and as specified in this RFP. The selected System Integrator (SI) must obtain licenses for EMS tool in the DC and develop additional scripts (if required) for capturing the required data for SLA report generation in automated way. This tool should generate the SLA Monitoring report in the end of every month which is to be shared with the State Government on a monthly basis. The tool should also be capable of generating SLA reports for a half-year. The State Government will audit the tool and the scripts on a regular basis.
- (h) The Post Implementation SLAs will prevail from the start of the Operations and Maintenance Phase. However, SLAs will be subject to being redefined, to the extent necessitated by field experience and the developments of technology practices globally. The SLAs may be reviewed on an annual/bi-annual basis as the Department decides after taking the advice of the SI and other agencies. All the changes would be made by the Department in consultation with the SI.
- (i) The SI is expected to provide the following service levels. In case these service levels cannot be achieved at service levels defined in the tables below, it shall result in a breach of contract and invoke the penalty clause. Payments to the SI are linked to the compliance with the SLA metrics laid down in the tables below. The penalties will be computed and calculated as per the computation explained in this Annexure. During the contract period, it is envisaged that there could be changes to the SLA, in terms of addition, alteration or deletion of certain parameters, based on mutual consent of both the parties i.e. the Guidance and SI.
- (j) Following tables outlines the key service level requirements for the system, which needs be ensured by the SI during the operations and maintenance period. These requirements shall be strictly imposed and either the Guidance or a third party audit/certification agency shall be deployed for certifying the performance of the SI against the target performance metrics as outlined in the tables below.

### 32.2.4 Service Level Agreements (SLAs)

#### 32.2.4.1 Implementation Timelines Service Levels

Service Level Parameter	Penalty
For every one week of delay for Go-Live Date	0.1% of total CAPEX for every week of delay
For every one week of delay beyond 10 weeks from Go-Live Date	0.5% of total of CAPEX for every week of delay, subject to the total cumulative penalty capped at 10% of CAPEX

Note: Penalty component refers to component not supplied and installed

#### 32.2.4.2 Operation and Maintenance (O&M) Support Service levels

S. No.	SLA Terms	Description
1.	<b>System Uptime</b>	<ul style="list-style-type: none"> <li>- Time for which user is able to access the Applications, website and other components of the IT solution during the working hours. The system can be down due to any of the reasons including failure of hardware, network, system software, Application etc.</li> <li>- Scheduled downtime for example, backup time, batch processing time, routine maintenance time will not be considered while evaluating the system uptime. However, the selected SI will be required to schedule such downtime with prior approval of Guidance. The selected SI will plan scheduled downtime outside working time. In exceptional circumstances, Guidance</li> <li>- may allow the SI to plan scheduled downtime in the working hours.</li> </ul>
2.	<b>Bugs / Issues in the Application Software / Hardware device / Network Equipment</b>	<ul style="list-style-type: none"> <li>• Critical bugs / issues – Bugs / issues affecting more than one division or more than one user in a division,</li> <li>• Non-critical bugs / issues – Bugs / issues affecting at most one user in a division.</li> </ul>

**A. Solution (Hardware & Software) Service Levels**

#	Criteria	Target Service Level	Penalty
1	<b>Minimum Guaranteed Solution (Software &amp; Hardware) Uptime</b> (SLA Period of Measurement hours: 10x7x365)	> 99.9 % Uptime	Nil
		>98.5% & less than 99.9% Uptime	2% on the OPEX payable
		For Every 0.5% drop from <98.5% Uptime	Additional 2% on the OPEX CAPPED at 10% of OPEX
2	<b>Solution (software &amp; Hardware) Performance Degradation</b> (SLA Period of Measurement hours: 24x7x365)	> 90% at thresholds	Nil
		>98.5% & less than 99.9% Uptime	2% on the OPEX payable
		For Every 0.5% drop from <98.5% Uptime	Additional 2% on the OPEX CAPPED at 10% of OPEX

**Please note:**

- *Following conditions will be considered as the Breach of the Agreement in case of O&M Phase and in any of the following conditions Guidance reserves the Right to terminate the agreement*
  - *System uptime at DC of less than 99% continuously for a quarter;*
  - *More than 3 incidents of not resolving the bugs / issues within the defined time limits in a quarter;*
  - *Average page loading time for Application & reports to be more than 20 seconds evaluated for a quarter;*
- *Critical calls : All calls logged pertaining to availability of the supplied IT hardware, LAN network supplied as a part of this project*

**B. Capacity Building based Service Levels**

#	Criteria	Target Service Level	Penalty for non-compliance
1	<b>Capacity Building Refresher &amp; New Candidate Training</b>	Feedback > 75.0 %	Nil
		Feedback >65% & less than 75%	0.1% on the OPEX payable

#	Criteria	Target Service Level	Penalty for non-compliance
		Feedback for Every 0.5% drop from <65%	Additional 0.5% on the OPEX payable, CAPPED at 10% of OPEX

**Please Note:**

- *The bidder will be solely responsible for conducting additional training sessions for the staff members providing the feedback rating less than 75%.*

**C. Business Continuity Planning Service Level**

#	Criteria	Target Service Level	Penalty for non-compliance
1	Data Loss	Near to zero	For loss of every 5 MB of data 0.15% on the OPEX payable capped to 10% OPEX
2	Returning to Business-as-usual	RTO = 30 minute	For loss of every 0.5 minute delay of RTO above the 1 minute 0.15% on the OPEX payable capped to 10% OPEX