

*Tamil Nadu Industrial Guidance and Export Promotion Bureau
(in the process of being 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 and Export Promotion Bureau
(in the process of being renamed as Guidance)*

*19-A, SIPCOT Building, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008,
India.*

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MASTER SERVICES AGREEMENT

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

BETWEEN

1. **Tamil Nadu Industrial Guidance and Export Promotion Bureau (in the process of being renamed as Guidance)** having its office at 19-A, SIPCOT Building, Rukmani Lakshmi pathy Road, Egmore, Chennai - 600 008, India (hereinafter called “**Guidance**”, which expression shall, unless the context otherwise requires, include its successors and permitted assigns);

AND

2. <<’Implementing Agency’s full name’>>, a company incorporated under the Companies Act, [1956/2013], having its registered office at <<’Regd Location’>> (hereinafter referred to as “**the System Integrator**” or “**SI**” which expression shall, unless the context otherwise requires, include its successors and permitted assigns).

In this Agreement, Guidance and the SI are collectively referred to as ‘**Parties**’ and individually as ‘**Party**’.

WHEREAS:

- A. Guidance desires to put in place an online system to promote the ease of doing business in the state of Tamil Nadu, and needs assistance in the designing, supply, installation, development, implementation, commissioning, integration, management, and maintenance of such online system and providing training with respect to such online system.
- B. In furtherance of the above, Guidance undertook the selection of a suitable system integrator through a competitive bidding process for which it issued a Request for Proposal (“**RFP**”), with reference number IT/SYSTEM INTEGRATOR/2862/2020.
- C. The SI has been selected as the successful bidder under this RFP, on the basis of their bid response, as received by Guidance, and set out in Annexure – D (*Proposal*) of this Agreement.
- D. The Parties have agreed that, based on the terms and conditions set out in this Agreement, the SI shall be responsible for providing a comprehensive solution for designing, supply, installation, development, implementation, commissioning, integration, management, and maintenance of such online system, Applications and computing infrastructure, and providing necessary training related to such systems.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless defined in the body of the Agreement, terms and expressions used in this Agreement (including in the recitals above) shall have the meanings set out in Schedule – I (*Definitions*).

All capitalized terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- I. references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, and paragraphs in, and schedules and annexures to, this Agreement. Recitals, Annexures and Schedules to this Agreement shall always be deemed to be an integral part of this Agreement and form a single Agreement among the Parties hereto;
- II. use of any gender includes the other genders;
- III. words in the singular shall include the plural and vice versa;
- IV. “including”, “includes” or “in particular” shall be construed to mean including, includes, or in particular, without limitation;
- V. time is of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of essence;
- VI. references to a ‘**company**’ shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established, in India or abroad, under the law governing such entity in the applicable jurisdiction;
- VII. references to a ‘**person**’ shall be construed so as to include any individual, society, trust, company, government, State or agency/instrumentality of a State, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- VIII. 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, and shall include all subordinate legislation made, from time to time, under that provision;
- IX. any reference to a ‘**day**’ (including within the phrase ‘business day’) shall mean a calendar day;
- X. references to a ‘**business day**’ shall be construed as a reference to a day other than a Sunday or a public holiday, when scheduled commercial banks are open for ordinary banking business in Chennai, India;
- XI. when any particular day prescribed in this Agreement is not a business day, the next succeeding day which is a business day shall be considered as such day;
- XII. references to times are to Indian Standard Time;
- XIII. “INR” means Indian Rupees, the lawful currency of India;
- XIV. a reference to any other document in this Agreement is a reference to that other document as amended, varied, novated or supplemented from time to time; and
- XV. all headings and titles are inserted for convenience and ease of reference only. They shall not affect the construction or interpretation of this Agreement.

1.3 Measurements and Arithmetic Conventions

- I. All measurements and calculations shall be in the metric system.

- II. Calculations shall be done to 2 (two) decimal places. If the third decimal place has a value of 5 (five) or above, it shall be rounded up and, if it has a value less than 5 (five), it shall be rounded down, i.e. 9.335 shall be rounded up to 9.34 and 9.334 shall be rounded down to 9.33.
- III. However, Clause 1.3(II) shall not apply to monetary calculations, where decimal points shall be rounded off to the nearest INR, i.e. INR 9.5 shall be rounded up to INR 10 and INR 9.4 shall be rounded down to INR 9.

1.4 **Ambiguities within the 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.

1.5 **Priority of documents**

If, in the event of a dispute as to the interpretation or meaning of this Agreement, it becomes necessary for the Parties to refer to the documents forming part of the bidding process leading to this Agreement, then such documents shall be relied upon and interpreted in the following order of priority:

- I. This Agreement;
- II. Schedules and Annexures to this Agreement;
- III. The SLA and NDA;
- IV. RFP and addendum/corrigendum to the RFP (if any).

2 **SCOPE OF SERVICES**

- 2.1 The scope of work/scope of Services, as contained in Volume II of the RFP, is deemed to be incorporated in this Agreement by reference and forms an integral part of this Agreement. (“**Scope of Services**”)
- 2.2 For the avoidance of doubt, it is expressly clarified that this Agreement shall govern Services provided under the SLA to 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.
- 2.3 Without prejudice to the generality of Clause 2.1, and subject to the RFP, the broad Scope of Services for the SI is as follows:

Project Implementation Phase:

- I. Solution design;
- II. Software development/customization;
- III. Integration with legacy applications, as required;
- IV. Obtaining third party certification;
- V. Alignment with integrated framework;

- VI. Application support for existing services;
- VII. Supply procurement of information technology infrastructure;
- VIII. Short messaging service (SMS) gateway and payment gateway;
- IX. Final Acceptance Testing (FAT);
- X. Solution stabilization and Go-Live;
- XI. Capacity building and handholding support;
- XII. Project management; and
- XIII. Such other services as may be required to fulfil the Scope of Services.

Operation and Maintenance Phase:

- I. Application debugging;
- II. Fresh customizations / developments;
- III. Horizontal / vertical scalability;
- IV. Warranty support;
- V. Helpdesk support;
- VI. Manpower support;
- VII. Periodic vulnerability assessment and penetration testing (“VAPT”) support;
- VIII. Annual technical support;
- IX. Refresher training;
- X. Help desk and trouble ticket management system;
- XI. Handholding support;
- XII. SLA monitoring and reporting; and
- XIII. Such other services as may be required to fulfil the Scope of Services.

2.4 Final testing and certification

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

- I. The Final Testing and Certification Agency, as chosen by Guidance, at its sole discretion, will lay down a set of guidelines or criteria, following internationally accepted norms and standards, for testing and certification of all aspects of project development and implementation governing software, hardware and networking, including, without limitation, 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 at 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. The Final Testing and Certification Agency will consider conducting specific tests on the Software, hardware, networking, security and all other aspects; and
- IV. The Final Testing and Certification Agency 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.

- 2.5 The Parties shall each ensure that the range of Services under the SLA shall not be varied, reduced or increased (“**Change in Services**”) except with the prior written agreement between Guidance and the SI in accordance with the format and procedure set out in Schedule – II (*Change in Services Schedule*), of

this Agreement.

- 2.6 Save for the express terms of payment 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 in Services set out in Schedule – II (*Change in Services Schedule*) of this Agreement, without the need to undertake a separate procurement process.

3 EFFECTIVE DATE AND TERM OF THE AGREEMENT

- 3.1 This Agreement shall come into effect on and from the Effective Date and shall continue to be in effect until the date of completion of the Scope of Services to be provided by the SI to Guidance, in accordance with the terms and conditions of this Agreement and to the satisfaction of Guidance.
- 3.2 The initial term of this Agreement shall be for a period of 6 (six) years, i.e. the Go-Live year plus 5 (five) years (“**Term**”). Guidance reserves the right to extend the Term for a period or periods of up to 6 (six) months at a time, subject to a maximum extension of 2 (two) years over and above the Term.
- 3.3 Any such extension or extensions shall be on the same terms and conditions as laid out in this Agreement, subject to Guidance’s obligations under Applicable Law.

4 OBLIGATIONS UNDER THE SLA

- 4.1 The SLA shall be a separate contract under the aegis of, and subject to, this Agreement and shall be entered into concurrently with this Agreement between Guidance and SI.
- 4.2 The SLA sets out the Service Levels to be established for the Services offered by the SI to Guidance.
- 4.3 Every SLA entered into between the SI and Guidance shall be subject to the terms and conditions of this Agreement.
- 4.4 The principles and model terms that will govern each SLA are provided in Annexure – H (*Service Level Agreement*) of this Agreement.
- 4.5 The SI shall ensure that the Performance Guarantee remains valid throughout the Project and Warranty Period, including any extensions thereof. The Performance Guarantee shall have a claim period of 3 (three) months from the end of the validity date. It shall be the sole responsibility of the SI to secure extension of the validity date and claim period of the Performance Guarantee, as and when necessary, on account of non-completion of the Project and/or Warranty Period. Guidance shall have the right to invoke the Performance Guarantee in case the SI fails to discharge its obligations or covenants under this Agreement, or if Guidance incurs any loss due to the SI’s negligence or wilful default in executing the Project.

5 CHANGE OF CONTROL

- 5.1 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.
- 5.2 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 (thirty) 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 the SI or any of its associated entities).
- 5.3 If such fresh guarantee is not furnished within 30 (thirty) days of the Guidance requiring the replacement under Clause 5.2, Guidance may exercise its right to terminate the SLA and/ or this Agreement within a further 30 (thirty) days by issuing a written notice. Such termination shall be effective from the date

specified in such notice.

- 5.4 Pursuant to termination, the effects of termination as set out in Clause 15 (*Termination*) of this Agreement shall follow.
- 5.5 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 REPRESENTATIONS AND WARRANTIES

6.1 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. 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
- III. It is a competent provider of a variety of information technology and business process management services;
- IV. The SI has been in the business of being an information technology system integrator for more than 5 (five) years as of 31 January 2020;
- V. It has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- VI. From the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- VII. In providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to Guidance's normal business operations;
- VIII. The information furnished in the tender documents and as updated on or before the date of this Agreement is true and accurate in all material respects as on the Effective Date;
- IX. The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, or constitute a default of, 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 are bound or affected;
- X. 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 Adverse Effect;
- XI. 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 and no fact or circumstance exists which may give rise to such proceedings that would have Adverse Effect;

- XII. It has complied with all 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;
- XIII. 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 fact, or omits or shall omit to state a fact necessary to make such representation or warranty not misleading;
- XIV. Neither the SI nor its promoters, directors, officers, contractors, employees, agents or representatives have violated any anti-corruption related Applicable Laws, and neither the SI nor any of its promoters, directors, officers, contractors, employees, agents or representatives have offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any governmental authority or to any person for the purpose of: (1) influencing any act or decision of a governmental authority in their official capacity; (2) inducing a governmental authority to do or omit to do any act in violation of their lawful duties; (3) securing any improper advantage; (4) inducing a governmental authority to influence or affect any act or decision of any governmental authority; (5) assisting in obtaining or retaining or directing business; or (6) in a manner which would constitute or have the purpose or effect of public or commercial bribery, acceptance of, or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage;
- XV. The operations of the SI are, and have been, conducted, at all times in compliance with applicable financial record keeping and reporting requirements and Applicable Laws related to money laundering, and no proceeding by or before any governmental authority, body or any arbitrator with respect to money laundering laws is pending and no such actions, suits or proceedings are threatened or contemplated;
- XVI. SI is the lawful owner or licensee of all programs used by it in the performance of the Project and Services contemplated hereunder. Such programs have been lawfully developed or acquired by the SI and the SI has the right to permit Guidance access to, or use of, such programs. SI has all right, power and authority to grant to the Guidance good and marketable title to the Deliverables developed by it while performing the Project, free from any third party interests, liens or encumbrances;
- XVII. The SI represents and warrants that none of the Services (including without limitation the Project and materials relating thereto) shall, at the time of performance or delivery, as the case may be, infringe on any patent, copyright, trademark, trade secret or other Intellectual Property Right of any third party. SI further represents and warrants to Guidance that it shall not use any trade secrets, or confidential or proprietary information, owned by any third party with respect to the Project in an unauthorized manner;
- XVIII. SI represents, warrants and covenants that it shall comply with the descriptions, representations, covenants and undertakings as to the Services and Project set forth herein, in the RFP and in the SLA (including without limitation, any amendment hereto or thereto). SI represents, warrants and covenants that it shall perform the Project in a competent and workmanlike manner in accordance with the level of professional care customarily observed by skilled professionals in the industry;
- XIX. SI represents, warrants and covenants that (a) it and its personnel shall hold and comply with

all required licenses, permits and approvals, including, without limitation, the Required Consents, and (b) it has all rights necessary for (and is not subject to any restriction, penalty, agreement, commitment, Applicable Law or order which is violated by) its execution and delivery of this Agreement and performance of its obligations under this Agreement;

- XX. SI represents, warrants and covenants that it has no other agreement or relationship or commitment to any person or entity that conflicts with SI's obligations to the Guidance under this Agreement, including, but not limited to, any agreement to assign inventions, trademarks, copyrights, ideas or other intellectual property to another person or entity; and
- XXI. The representations, warranties and covenants hereunder extend to the Project and all Services under this Agreement, whether provided by the SI and/or any other third party (e.g., any sub-contractor of the SI).

6.2 Representations and warranties of Guidance

Guidance represents and warrants to the SI 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 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;
- III. 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;
- IV. it has the financial standing and capacity to perform its obligations under the Agreement;
- V. this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;
- VI. the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected; and
- VII. upon the SI performing the covenants herein, Guidance shall not at any time during the Term of this Agreement, unless required by Applicable Law, interfere with the peaceful exercise of rights and discharge of the obligations by the SI, in accordance with this Agreement.

7 OBLIGATIONS OF GUIDANCE

Without prejudice to any other undertakings or obligations of Guidance under this Agreement, and subject to Annexure - F (*Roles and Responsibilities of the Parties*) Guidance shall perform the following:

- I. Provide support to SI through personnel to test the system during the Term;

- II. Provide support through personnel and/or test data during development, rollout, steady state operation and for any changes/enhancements in the system whenever required due to a change in scope change arising due to business, delivery or statutory/regulatory reasons;
- III. Provide the data (including in electronic form wherever available) to be migrated; and
- IV. Authorize the SI to interact, for implementation of the Project, with external entities, subject to this Agreement.

8 OBLIGATIONS OF THE SI

8.1 Deliverables

It shall provide the Deliverables to Guidance, in accordance with the Project schedule given in Annexure – C (*Required Deliverables and Associated Timelines*) of this Agreement and subject to Annexure - E (*Bill of Material*).

8.2 Scope

The SI shall perform the Services set out in Clause 2 (*Scope of Services*) of this Agreement, read with the RFP and with Annexure - F (*Roles and Responsibilities of the Parties*), in a good and workman like manner, commensurate with industry and technical standards 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 in this Agreement.

8.3 Timelines

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

8.4 SI Equipment

Except as specifically provided to the contrary in this Agreement or any applicable SLA, or except as agreed to the contrary, in writing, by the Parties, the Parties agree that the SI shall furnish all personnel, equipment and supplies necessary to perform the Project, at the SI's sole cost.

8.5 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 Guidance-designated carrier for shipment to Guidance or Guidance's designated location.

8.6 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.

9 APPROVALS AND REQUIRED CONSENTS

9.1 Required Consents

SI shall procure, maintain and observe all relevant regulatory and governmental licenses, clearances and approvals (hereinafter the "**Required Consents**") necessary, under Applicable Law, for the SI to perform the Project and provide the Services. The costs of such Required Consents shall be borne

by the Party normally responsible for such costs according to local custom and practice in the locations where the Services are to be provided.

9.2 Assistance to obtain Required Consents

Guidance shall use reasonable endeavors and best efforts to assist the SI in obtaining the Required Consents. In the event that any Required Consent is not obtained, the Parties will co-operate with each other to achieve a reasonable alternative arrangement, acceptable under Applicable Laws, as soon as reasonably practicable, to enable 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. It is clarified 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.

10 CONFLICT OF INTEREST

- 10.1 Guidance requires that the SI and its personnel shall, at all times, hold Guidance's interests as paramount, strictly avoid conflicts with other projects or their own corporate interests, and act without being influenced by any consideration for future work.
- 10.2 The SI shall not receive any remuneration from Guidance in connection with the Project except as provided in this Agreement.
- 10.3 The SI, and its affiliates in India, shall not engage in activities that conflict with the interests of Guidance or the Project or Services provided under this Agreement.
- 10.4 The SI shall undertake that, during the Term of this Agreement with Guidance, neither it nor its affiliates shall, directly or indirectly, provide any competing or comparable services to any other state government in India or to the central government or their respective instrumentalities.
- 10.5 The SI, and its affiliates in India, shall not act as service provider or contractor to any third party engaged by Guidance to provide services or supply goods or purchase any asset, unless such service or purchase is pursuant to and necessary to render the Services under this Agreement.
- 10.6 The SI shall not accept any assignment from any other person that would be in conflict with its obligations to Guidance under this Agreement.
- 10.7 The SI represents and warrants that as of the Effective Date and throughout the entire Term hereof, the SI and its employees and consultants shall not be connected, whether on account of being a relative (as the term is defined in the Income Tax Act, 1961); a related party (as the term is defined in the Companies Act, 2013; or on account of having any pecuniary interest in Guidance or with employees or consultants of Guidance
- 10.8 The SI hereby undertakes, represents and warrants both as of the Effective Date, and throughout the entire Term hereof, to refrain from making any press releases, articles, speeches, social media statements or the like, in relation to the Services provided under this Agreement or the contents of this Agreement without the prior written consent of Guidance.
- 10.9 The SI shall promptly advise Guidance of any actual or potential conflict of interest that arises during the performance of the Services and shall reasonably co-operate with Guidance in resolving such conflict of interest.

11 USE OF ASSETS BY THE SI

To perform the Project and the Services the SI may need to access and use certain assets of Guidance.

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 control of such Assets;
- II. keep all 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 SI, 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, in conformity with Applicable Law;
- VI. procure permission from 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; and
- 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.

At the end of the Term or upon termination of this Agreement, the SI shall hand over all the Assets, other than Assets referred to Clause 8.4 (*SI Equipment*) back to Guidance in good and working condition and shall cease to exercise any control over them.

12 ACCESS TO THE LOCATIONS

12.1 Access to Project locations

For so long as the SI provides Services at the locations pertaining to the Project, as may be specified by Guidance from time to time, on a non-permanent basis and to the extent necessary, Guidance shall, subject to compliance by the SI with (a) safety and security guidelines prescribed by Guidance and notified to the SI, in writing; and (b) the standards prescribed by the National Fire Protection Association; provide the SI with:

- I. reasonable access, in the same manner granted to employees of Guidance, to the location 24 (twenty-four) hours a day, 7 (seven) days a week; and
- II. reasonable workspace, 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 the 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 the Guidance. The SI agrees to ensure that its employees, agents, and contractors shall not use the location, services and equipment referred to in this Agreement or the 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 management aspects of the Project.

13.2 Use of Services

After the Deliverables are delivered by the SI to Guidance in compliance with this Agreement and the applicable SLA, and upon Guidance accepting the Deliverables based on the acceptance criteria in this Agreement or applicable SLA(s):

- I. The Guidance shall use the Services in accordance with any instructions or procedures that may be entered into between the Parties from time to time; and
- II. Guidance shall be responsible for the operation and use of the Deliverables.

13.3 Security and Safety

- I. The SI shall comply with (a) requirements of security, safety, privacy and other requirements specified in the Information Technology Act, 2000 or the Indian Telegraph Act, 1885, or any other Applicable Law as may be enacted from time to time, including the regulations issued by Department of Telecommunications (wherever applicable); (b) all provisions related to privacy, safety and security, including, without limitation, information security, as specifically stated in the RFP; and (c) industry standards related to privacy, safety and security (including those 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 GoI, as applicable from time to time at each location, and 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 could have an Adverse Effect on the

proper conduct of safety and information technology security at the facilities of Guidance.

13.4 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 Project and 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 Project or the Services (or, without limitation to the foregoing, in respect of the SI’s performance of any obligations under this Agreement or the SLA) other than those covered in Schedule - VI (*Terms of Payment Schedule*) of this Agreement.
- III. For the avoidance of doubt, it is expressly clarified that payments shall be deemed to include all ancillary and incidental costs and charges arising out of, or in the course of, delivery of the Project, the Deliverables and the Services, including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes.
- IV. All payments are subject to tax deduction at source, as prescribed under Applicable Law.

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 Project and 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 Clause shall be in a form agreed with

Guidance.

- II. The SI alone shall invoice all payments after receiving due approval from the competent authority. Such invoices shall be accurate and shall contain 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 6 (six) months after the end of the month in which the charge relating to such Service is (i) authorized or (ii) incurred, whichever is later.
- III. Guidance will make reasonable endeavor to make payment within 30 (thirty) working days of the receipt of invoice along with supporting documents, subject to penalties imposed on the SI. Penalties, if any, shall be imposed on the SI as per the criteria specified in the applicable SLA. If payment is not made as stated above, no interest shall be chargeable for the delayed payment.
- IV. In the event any of the SI's charges are subject to a dispute in good faith, Guidance shall be entitled to withhold payment of that portion of the invoice which contain charges that Guidance disputes in good faith. Guidance shall give written notice to the SI before the due date, stating the details of the underlying dispute. The resolution of any dispute in good faith shall first be through mutual discussions between the Parties. If such dispute is ultimately resolved in the SI's favor, then Guidance shall settle such disputed amounts to the SI in accordance with the escalation procedure as set out in Schedule – V (*Governance Schedule*) of this Agreement, within a period of 10 (ten) business days from the date of resolution of the dispute. If such dispute is ultimately resolved in Guidance's favor, then the Guidance shall be relieved of any financial liability in relation to such invoice or disputed payment. Any exercise by Guidance of its rights under this Clause shall not entitle the SI to delay or withhold provision of the Services.
- V. Guidance shall not be liable for making any payments to any third parties, including to the sub-contractors or consultants, if any, of the SI.

14.3 Expenses

Unless otherwise specifically set forth in this Agreement or the RFP, the SI shall bear all of its own expenses arising from the performance of its obligations under this Agreement. If, pursuant to this Agreement or the RFP, Guidance is to reimburse certain expenses of the SI, the SI must obtain prior written approval of Guidance for the expenses to be incurred and shall provide documentation with respect to the incurrence of such expenses, and such expenses shall not include any mark-up by the SI, unless specifically authorized by Guidance.

14.4 Tax

- I. Guidance shall pay any and all applicable national, state and local sales, use and any other taxes of any nature assessed on materials delivered by the SI in connection with the Services, including the goods and service tax (“GST”).
- II. However, taxes based upon SI's income shall be the sole responsibility of the SI.
- III. Guidance shall provide the SI with the original tax receipt of any withholding taxes paid by the Guidance on payments under this Agreement. The SI agrees to reimburse and hold Guidance harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this Agreement.
- IV. For purposes of this Agreement, taxes shall include taxes incurred on transactions between Guidance and the SI.

- V. If, after the Effective Date, 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 Guidance for the Services such as GST or any such other applicable tax from time to time, which increases or decreases the cost incurred by the SI in performing the Services, then the remuneration and reimbursable expense otherwise payable by Guidance under this Agreement shall be increased or decreased accordingly, as mutually agreed by the Parties, in writing, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule – VI (*Terms of Payment Schedule*).
- VI. 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.
- VII. 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. **Events of Default:** The occurrence of any of the following shall be considered an “**Event of Default**” under this Agreement:
 - a. If the SI fails to deliver any or all of the Deliverables, or to perform the Services, within the time period(s) specified in this Agreement, or fails to deliver the items as per Annexure-C (*Required Deliverable and Associated Timelines*) or within any extension thereof granted by Guidance; or
 - b. If the SI fails to perform any of the obligation(s) under this Agreement; or
 - c. If the SI, in the judgement of the Guidance, has engaged in fraudulent and corrupt practices in competing for or in executing this Agreement; or
 - d. If there is a breach, inaccuracy or misrepresentation of any of the SI’s representations and warranties under Clause 6.1 (*Representations and Warranties of the SI*); or
 - e. If the SI breaches its conflict of interest obligations contained in Clause 10 (*Conflict of Interest*); or
 - f. If SI or any of its personnel commit any act or become involved in any situation or occurrence which brings SI, the Guidance, or any of the Guidance’s Stakeholders or personnels into disrepute, or which damages or disparages the goodwill or reputation of Guidance, or which reflects unfavorably upon the Guidance.
- II. Upon becoming aware of the occurrence or existence of an Event of Default, Guidance may, issue a written notice of such Event of Default to the SI (“**Default Notice**”). If the SI does

not remedy the Event of Default within a period of 30 (thirty) days from the receipt of the Default Notice, then Guidance may, with immediate effect, and without prejudice to any other remedy for breach of this Agreement, terminate this Agreement, or any part hereof, and any arrangement hereunder including the SLA. Provided that, for the Event of Default described in Clause 15.1(I)(c) above, Guidance shall be entitled to terminate the Agreement with immediate effect without providing any Default Notice.

- III. In the event of Guidance terminating this Agreement in whole or in part, Guidance may procure the Services from any third party service provider, which shall be provided upon terms and in such manner as the Guidance 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 and, solely to that extent, the rights, duties and responsibilities of the Guidance and the SI under this Agreement shall continue in full force.

15.2 Termination for Convenience

Guidance may, by written notice with a notice period of 30 (thirty) days sent to the SI, terminate the Agreement, in whole or in part, at any time, for its convenience. The notice of termination shall specify:

- a. that termination is for the Guidance's convenience;
- b. the extent to which the performance of work under this Agreement is terminated; and
- c. the date upon which such termination becomes effective.

On termination for convenience, the SI is not entitled to any compensation whatsoever, except as has been specifically set forth in this Agreement.

15.3 Termination for Insolvency

Guidance may, at any time, terminate this Agreement by giving a written notice of 30 (thirty) days to the SI, if the SI undergoes an Insolvency Event. Termination for insolvency 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.

For the purposes of this Agreement, an "Insolvency Event" shall mean, with respect to the SI, if such SI:

- I. is unable to pay its debts when due or has admitted in writing of its inability to pay its debts when due or ceases to carry on its business; or
- II. a secured party takes possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued, on or against all, or substantially all, of its assets, and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 60 (sixty) days thereafter; or
- III. makes an assignment for the benefit of creditors, or files, or consents to, any petition in bankruptcy or for reorganization under any bankruptcy or insolvency law, or for the appointment of a liquidator, receiver or trustee (in each case, whether provisional, interim or otherwise) for itself or a substantial portion of its property, or to effect a composition or extension of time to pay its debts, or for any alteration or adjustment of a substantial part of its indebtedness; or
- IV. commences proceedings for or takes any action authorizing or providing for its dissolution or liquidation; or

- V. is subject to a liquidator, receiver or trustee (in each case, whether provisional, interim or otherwise) being appointed in respect of itself or over a substantial part of the property of such Party and such appointment is not vacated in 60 (sixty) days; or
- VI. is subject to a petition in bankruptcy or insolvency or liquidation or for the alteration or adjustment of a substantial part of indebtedness being filed before a governmental authority against it, and if such petition, complaint or action filed against such Party, is not dismissed/vacated within 60 (sixty) days from the date of its filing; and/or
- VII. takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing.

15.4 Effects of termination

- I. In the event that Guidance terminates this Agreement under this Clause 15 (*Termination*), and depending on the Event of Default, the Performance Guarantee furnished by the 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, as applicable, will be decided in accordance with the Terms of Payment Schedule set out as Schedule – VI (*Terms of Payment Schedule*) of this Agreement. Guidance shall be obligated to pay the SI, within 15 (fifteen) days from the date of termination, the fee for Services actually performed by the SI until the date of termination.
- IV. On or before the date of termination, the SI shall return to Guidance, all Confidential Information, all Project materials, working papers, and any other Deliverables prepared under this Agreement.
- V. In the event that possession of any of Guidance’s facilities has been delivered to the SI, upon the termination of this Agreement under Clause 15 (*Termination*), such facilities shall immediately revert to Guidance, free and clear from any encumbrances or claims. The SI shall not retain any copies of such facilities, unless the same is required under Applicable Laws. Further, the SI shall inform Guidance, in writing, the details of the facilities retained by it, along with a copy of the relevant provisions of the Applicable Laws under which such facilities are retained
- VI. Guidance agrees to pay to the SI (a) all charges for Services the SI has provided and any Deliverables and/or system (or part thereof) that the SI has delivered until the date of termination, and (b) reimbursable expenses of the SI incurred for the performance of the Services until the date of termination.
- VII. If Guidance terminates the Agreement for convenience, the Guidance also agrees to pay any applicable adjustment expenses that the SI incurs as a result of such termination, provided that the SI shall take all reasonable steps to mitigate these adjustment expenses.
- VIII. Guidance shall own all Deliverables and materials created and/or approved as of the date of termination, if not earlier, pursuant to the terms of this Agreement. The SI shall devote its best good faith efforts prior to the date of termination or expiry of the Term to cooperate with Guidance, so as to facilitate the transfer of the knowledge/skills arising from or documented as part of the Services performed by the SI under this Agreement and to minimize the interruption of the flow of work caused by termination and the appointment of another service provider.

16 INDEMNIFICATION AND LIMITATION OF LIABILITY

16.1 Indemnification of Guidance

Subject to Clause 16.2 (*Conditions*) below, the SI (the "**Indemnifying Party**") undertakes to indemnify Guidance, its personnel, representatives, offices, employees, affiliates and related entities availing Services under this Agreement (the "**Indemnified Party or Parties**" as the case maybe) from and against all direct costs, expenses, damages, demands, allegations, claims, suits, actions, proceedings, liabilities, losses, judgments, orders, awards and settlements including, without limitation, attorneys' fees and legal expenses, arising from, due to, or on account of, the following:

- I. bodily injury, death or damage to tangible property of any person, corporation or other entity (including Guidance) attributable to the SI's negligence or willful default in performance or non-performance under this Agreement;
- II. failure by the SI or any of its personnel, agents, or sub-contractors, while providing the Services, to comply with (a) the Applicable Law; or (b) any obligations under this Agreement or the SLA or the RFP;
- III. gross negligence or willful misconduct of the SI or any of its personnel or agents or sub-contractors in connection with the Project, Services, or Deliverables;
- IV. claims or demands made by the the personnel, agents, or sub-contractors of the SI against Guidance in relation to compensation or dues from the SI, including workers' compensation or unemployment compensation etc.; and
- V. third party claims related to the infringement or breach of any Intellectual Property Rights, trade secrets, Confidential Information or similar rights. Specifically, if Guidance notifies the SI, in writing, of a third party claim against Guidance that any Service or Deliverables provided by the SI infringes and third party Intellectual Property Rights, SI will defend such claim at its expense, and will be liable to pay any costs or damages that may be finally awarded in this regard.

16.2 Conditions

The indemnities set out in Clause 16.1 (*Indemnification of Guidance*) shall be subject to the following conditions:

- I. The Indemnified Party shall, as promptly as practicable, inform the Indemnifying Party, in writing, of the claim or proceedings, and provide all available 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 discretion, reasonably participate, through its attorneys or otherwise, in such defense. The Indemnified Party shall be entitled to be reimbursed for all costs and expenses incurred by it in such defense;
- III. If the Indemnifying Party does not assume full control over the defense of a claim as provided in this Clause, the Indemnified Party may control such defense, and 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 the computation of losses and shall be liable to be made good by the Indemnifying Party;

- IV. 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 which settlement shall include an unconditional release of the Indemnified Party by the claimant or plaintiff under such claim, for all liability in respect of such claim. Under no circumstance shall any such settlement result in the Indemnified Party incurring any cost or expense or liability, except as has been specifically consented to by the Indemnified Party; and
 - b. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
- V. The Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
- VI. The Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;
- VII. If any amount payable to the Indemnified Party under this Clause 16 (*Indemnification and Limitation of Liability*) is chargeable to tax in the hands of the Indemnified Parties under Applicable Laws, including any withholding taxes which the Indemnifying Parties may be subject to under Applicable Laws, then such amount shall be grossed up to take into account any taxes chargeable to such payment;
- VIII. In the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Clause, 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 any Indemnified Party makes a claim under the indemnity provisions set out under Clause 16.1 above in respect of any particular loss or losses, then that Indemnified 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 monetary liability of the SI under this Agreement, in connection with the Services to be performed hereunder, shall in no event exceed the contract price, i.e. the amount received by it under this Agreement.

Under no circumstance shall either Party be liable to the other Party for any special, indirect, exemplary, punitive or consequential loss or damage, including lost opportunities or profits, whether or not such loss or damage is caused by the fault or negligence of Guidance, its employees, agents, or any of the other related entities or the fault or negligence of the SI, its employees, agents, or sub-contractors. This exclusion of liability for special, indirect, exemplary, punitive or consequential loss or damage is intended to also apply to damage or loss of a commercial nature such as, but not limited to, loss of profits or revenue, cost or capital.

17 FORCE MAJEURE

- 17.1 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 a Force Majeure Event (*as defined below*). However, the Party declaring a Force Majeure Event shall make all

reasonable efforts to continue to meet its obligations throughout the duration of the Force Majeure Event. The suspension of any obligations shall only last during the time the Force Majeure Event continues (and such reasonable time thereafter, if any, as may be mutually agreed by the Parties to allow the affected Party to recover from the Force Majeure Event).

17.2 Force Majeure Events

Any event or circumstance or a combination of events and circumstances referred to in this Clause (each, a “**Force Majeure Event**”), 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:

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, extreme atmospheric conditions, pandemics or epidemics;
- (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 Applicable Law, other than any change in Applicable 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 the Guidance or any of their nominated agencies, Government of Tamil Nadu or GoI or any of their 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, or breach in the compliance of, 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) Any requisition of the Project by any other authority; or
- (J) Any requisition of the Project by Guidance or any of their nominated agencies.

Other Events

- (K) 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 7 (seven) days.

17.3 For the avoidance of doubt, it is expressly clarified that:

- I. Suspension, expiry or termination of the Project in accordance with the provisions of this Agreement, applicable SLA, or RFP shall not be considered a Force Majeure Event.
- II. Failure on the part of the SI to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA or RFP against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure Event; and
- III. Negligence or wilful default in performance of Services or Deliverables which directly causes any breach of security (such as hacking) shall not be Force Majeure Events.
- IV. Insofar as applicable to the performance of Services, SI will be solely responsible to complete 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).

17.4 Notification procedure for Force Majeure Event

- I. The affected Party shall notify the other Party of a Force Majeure Event and the nature of the Force Majeure Event within 7 (seven) days of occurrence of such event. If the other Party disputes the claim for relief under this Clause 17 (*Force Majeure*), it shall give the claiming Party written notice of such dispute within 30 (thirty) days of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in accordance with Clause 26 (*Dispute Resolution and Governing Law*).
- II. In the event of SI's failure to perform its obligations hereunder due to a Force Majeure Event, the SI shall promptly consult with Guidance regarding an alternative plan acceptable to Guidance to provide total support for its requirements as stated in this Agreement. Full implementation of the alternative plan acceptable to Guidance shall be completed at SI's earliest opportunity, not to exceed 15 (fifteen) days from the occurrence of such Force Majeure Event. If the alternative plan is not acceptable to Guidance, Guidance reserves the right at its sole discretion (but has no obligation) to use other services, including those of another service provider, to complete the Project under such circumstances.
- III. Upon cessation of the Force Majeure Event, the claiming Party shall, within 7 (seven) days thereof, 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.

17.5 **Costs arising out of Force Majeure**

- I. 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.
- II. 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.
- III. Save and except as expressly provided in this Clause 17 (*Force Majeure*), 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 hereto.

17.6 **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 Party 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**

- 18.1 Guidance shall allow the SI to review and utilize highly Confidential Information, including confidential public records and the SI shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- 18.2 Additionally, the SI shall keep confidential all details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities and the Services and Deliverables being provided hereunder. Except as required by Applicable Law, the SI shall not disclose the existence of this Agreement, the existence of its working relationship with the Guidance or the terms of this Agreement.
- 18.3 Guidance shall retain all rights to prevent, stop and, if required, take punitive action against the SI regarding any forbidden disclosure.
- 18.4 The SI shall ensure that all its employees, personnel, associates, agents, representatives, and sub-contractors execute individual non-disclosure agreements with terms no less stringent than provided under this Agreement.
- 18.5 To the extent the SI shares its own confidential or proprietary information with Guidance under this Agreement, Guidance shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto. For any violation of the confidentiality obligations by Guidance, it shall be liable to indemnify the SI in accordance with provisions of Clause 16 (*Indemnification and Limitation of Liability*).
- 18.6 The SI hereby agrees and acknowledges that it shall have no proprietary interest in the Confidential Information of the Guidance and shall not disclose, communicate or publish the nature or content of such information to any person or entity, nor use, except as authorized in writing by the Guidance, any of the

Confidential Information it produces, receives, acquires or obtains from the Guidance.

- 18.7 In the event the receiving Party becomes legally compelled, under Applicable Law, to disclose any of the Confidential Information of the other Party, it shall provide the disclosing Party with prompt notice thereof and shall not divulge any information until the disclosing Party, has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by the disclosing Party is unsuccessful, or the disclosing Party otherwise waives its right to seek such remedies, the receiving Party shall disclose only that portion of the Confidential Information which it is legally required to disclose.
- 18.8 Remedies. The Parties acknowledge and agree that remedy at law for a breach or threatened breach of any of the provisions under this Clause 18 (*Confidentiality*) would be inadequate and, in recognition of this fact, in the event of a breach or threatened breach by either Party of any of the provisions contained in this Clause 18 (*Confidentiality*), the non-breaching party, without posting any bond, shall be entitled to obtain provisional equitable relief in the form of temporary restraining order and/or temporary injunction or any other provisional equitable remedy which may then be available. Nothing herein contained shall be construed as prohibiting either Party from pursuing any other remedies available to it from such breach or threatened breach. Pursuit of any remedy at law or in equity shall not be deemed as an election of remedies.
- 18.9 Personally Identifiable Information. The SI and the Guidance expressly understand and acknowledge that certain Confidential Information disclosed to the SI or its employees, peronnel, agents or sub-contractors in connection with the Services may include non-public personal information, i.e. information linked to a particular individual and/or any list, description or other grouping of individuals that is derived using any information linked to a particular individual (collectively, “Personally Identifiable Information”). Notwithstanding any other provision of this Agreement, if advised in writing by Guidance, that any Confidential Information disclosed to the SI, its employees, personnel, representatives, agents, or sub-contractors hereunder constitutes Personally Identifiable Information, the SI shall not use, reproduce, disclose or retain such non-public personal information. The SI hereby covenants and undertakes to maintain strict compliance with the highest standards of data privacy with respect to all information, including Personally Indentifiable Information, provided to it under this Agreement and shall (a) comply with such Applicable Laws as may exist from time to time; and (b) observe globally adoped best practices to ensure privacy of data, including Personally Identifiable Information.
- 18.10 For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following:
- a. information already available in the public domain;
 - b. information which has been received from a third party who had the right to disclose the aforesaid information;
 - c. information which has been disclosed pursuant to a court order;
 - d. was rightfully acquired by the SI prior to disclosure by Guidance;
 - e. was independently developed by SI or its Representatives without reference to the Confidential Information.
- 18.11 Guidance may, at its sole discretion, require the SI and/or any of its personnel, employees, agents, representatives, or sub-contractors to execute a non-disclosure agreement relating to the obligations under this Clause 18 (*Confidentiality*). The principles governing such a non-disclosure agreement are contained in Annexure – G (*Terms of Non-Disclosure Agreement*).

19 AUDIT, ACCESS AND REPORTING

Guidance shall have the right to audit and inspect the SI, its suppliers, agents, third party facilities, data, documents, records, procedures and systems relating to the provision of Services. The SI shall allow access to Guidance to all information, as set out in Schedule – IV (*Audit, Access and*

Reporting), which is in the possession or control of the SI, which relates to the provision of Services and Deliverables, and which is reasonably required by Guidance pursuant to Schedule – IV (*Audit, Access and Reporting*) of this Agreement.

The terms relating to the audit, inspection and reporting shall be as set out in Schedule – IV (*Audit, Access and Reporting*).

20 INTELLECTUAL PROPERTY RIGHTS

20.1 Products and fixes

All Products and related solutions and Fixes provided pursuant to this Agreement shall be licensed according to the terms of the license agreement packaged with, or otherwise applicable to, such Product. The SI shall be responsible for arranging any licenses associated with such Products.

For the purposes of this Clause 20 (*Intellectual Property Rights*), the following terms shall have the meaning specified below:

“**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 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 (*Pre-existing work*) and 20.4 (*Residuals*) below, upon payment, the Intellectual Property Rights for any bespoke development done during the implementation of the Project shall be owned solely by Guidance. The SI shall be entitled to a broad license back in the bespoke development for its internal usage and other e-governance projects for Guidance or the Government of Tamil Nadu.

20.3 Pre-existing work

- I. All Intellectual Property Rights including the source code and materials developed or otherwise obtained independently by 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.
- II. 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.
- III. Except as may be otherwise explicitly agreed to in a statement of Services, upon payment in full, the SI should grant the 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 Services or Deliverables, only for its internal business operations.
- IV. Under such license, neither Party shall have a right to sell the Pre-Existing Work of the other Party to a third party.

- V. 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 the Guidance at the conclusion of performance of the Services or which forms a part of the Deliverables or the Services.

20.4 Residuals

In no event shall the SI be precluded from independently developing for itself, or for others, anything, whether in tangible or intangible form, which is competitive with, or similar to, the Deliverables set-out in this Agreement or Annexures hereto. In addition, subject to Clause 18 (*Confidentiality*), the 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.

20.5 Project Materials

- I. All Project Materials (as defined below) shall be and remain the sole property of the Guidance and shall be delivered to Guidance on its, or upon the earlier termination or expiration of this Agreement.
- II. For purposes of this Agreement, the term “Project Materials” shall mean all programs, concepts, ideas, studies, artwork, plates, negatives, positives, proofs, text, copy, designs, processes, techniques, documents or writings created by the SI specifically for Guidance in connection with the Services. The Parties hereby agree that the term Project Materials shall not include the proprietary materials of the SI, materials over which the SI has any Intellectual Property Right of any kind or any third-party Intellectual Property Right being used by the SI under any kind of license or agreement or arrangement with the third party rights-holder thereof. Pursuant to this Agreement, the Intellectual Property Rights of these excluded materials shall be assigned or licensed to the Guidance insofar as it incorporated into the Services and is required for its effective use.
- III. The SI shall not, without the prior written consent of the Guidance, use, or permit the use of, any Project Materials, or any materials or information supplied by Guidance, for any purpose other than the Services. Without limiting the generality of the foregoing, the SI shall not reproduce, distribute, disclose or sell to any person other than to Guidance any of the Project Materials or derivation thereof or any materials or information supplied by the Guidance. The provisions of this Clause shall not apply if the SI is required to use or permit the use of or disclose materials or information or Project Materials under the provisions of any Applicable Law.

20.6 Further Documentation

At the Guidance’s request, the SI shall execute and deliver such further documents and instruments as may be requested by Guidance to perfect its rights under this Agreement, including, without limitation, any documents required to register in the Guidance’s name, or record the transfer to the Guidance of, the patent, copyright or other right or protection (including Intellectual Property Rights) in the Project Materials.

21 WARRANTY

21.1 Standard

- I. The Parties agree that the provisions of this Clause 21 (*Warranty*) are in addition to, and not in derogation of, warranty commitments under the RFP.

- II. The SI warrants that the Project, including all the system(s), other Services and Deliverables 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-I (*Definitions*).
- III. 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 expense, 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 only if the original system was also the property of the SI.
- IV. If the Project or any of its systems 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 and in the RFP 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 accordance with the terms of this Agreement.

22 LIQUIDATED DAMAGES

Time is the essence of in the fulfilment of obligations under this 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 Event), in meeting the Deliverables or the schedule for delivery, Guidance shall be entitled at its option to recover liquidated damages from the SI as specified in the SLA.

23 ESCROW AGREEMENT

If required by Guidance, the Parties shall mutually discuss the terms for an escrow arrangement. The conditions and provisions for the escrow arrangement shall be recorded in writing in a separate agreement to be executed between the Parties.

24 INSURANCE COVER

24.1 Obligation to maintain insurance

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

- I. For the Term of this Agreement, valid and enforceable Insurance Coverage for:
 - a. public liability;
 - b. professional indemnity or errors and omissions;

- c. product liability;
 - d. workers' compensation as required by law and employers' liability insurance;
 - e. all Additional Insurances; and
 - f. any additional types of insurance specified in Schedule – I (*Definitions*)
- II. The Deliverables under this contract should be free on road/free on rail/free on air etc. destination basis. Until acceptance of the delivery by the Guidance, comprehensive insurance shall be covered by the SI.

24.2 Certificates of currency

The SI must, on request by the Guidance, provide all current relevant confirmation of insurance documentation from its insurance companies certifying that it has insurance as required by this Agreement and all necessary premiums have been duly paid. The SI agrees to replace/renew any coverage prior to the date of its expiry/cancellation and shall make sure that, at no time, shall any of the specified insurance requirements are not covered.

24.3 Non-compliance

Guidance may, at its election, terminate this Agreement upon the failure of the SI, or notification of such failure, to maintain the required insurance coverage or if the insurance coverage is inadequate. Inadequate insurance coverage for any reason shall not relieve the SI of its obligations under this Agreement. The SI shall remain liable to indemnify the Guidance for any loss arising to it due to non-compliance by the SI of its obligations specified in this Clause.

25 MISCELLANEOUS

25.1 Personnel

- I. The personnel assigned by the SI to perform the Services shall be employees of the 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 on the Project and for payment of such personnel's compensation, including salary, contribution towards EPF (employee provident fund) and ESIC (employee state insurance corporation), withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.
- II. The 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 the SI, Guidance shall have the right to require the removal or replacement of any the SI's personnel performing work under this Agreement based on *bona fide* reasons. In the event that Guidance or its nominated agency requests that any SI personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule, which, under any circumstances, shall not be later than 15 (fifteen) days from the receipt of the request by the SI. In the event of Guidance identifying any personnel as undesirable, SI shall forthwith remove such personnel and replace another competent person in his place.
- III. In the event that the Guidance and the SI identify any personnel of the 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.
- IV. Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of

the SI to freely assign or reassign its employees; provided that the 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.

- V. 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.
- VI. 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.
- VII. Compliance with Applicable Laws: With respect to the personnel, employees, agents or contractors of the SI providing Services on behalf of the SI under this Agreement, the SI is solely responsible for complying with all then Applicable Laws, codes, rules and regulations, and all employment laws, as well as agreements existing between the SI and such personnel, employees, agents or contractors of the SI, which agreements shall not violate any Applicable Law nor conflict with any of SI's obligations under this Agreement.
- VIII. Compliance with the Guidance's workplace policies: In providing the Services under this Agreement, the SI agrees to follow, and to ensure that the personnel, employees, agents or contractors of the SI performing the Services abide by, all applicable workplace policies of Guidance, as they may be amended or modified from time to time (collectively, "Guidance Policies"). Guidance agrees to inform the SI of the content of such Guidance Policies in advance and to give the SI and the relevant personnel or agents or contractors of the SI the opportunity to understand the Guidance Policies. The failure of the SI or any of the personnel or agents or contractors of the SI to abide by any material provisions of the Guidance Policies shall constitute a breach of this Agreement, giving rise to the right on the part of the Guidance to terminate this Agreement for cause.

25.2 Independent Contractor

The relationship between the SI and the Guidance is that of independent contractors. Nothing in this Agreement or the SLA shall be construed as establishing or implying any partnership or joint venture or employer-employee relationship or principal-agent relationship between the Parties to this Agreement or the SLA. Except as expressly stated in this Agreement or the SLA, nothing in this Agreement or the SLA shall authorize either Party to:

- I. incur any expenses on behalf of the other Party;
- II. enter into any engagement or make any representation or warranty on behalf of the other Party;
- III. pledge the credit of or otherwise bind or oblige the other Party; or
- IV. commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

Consistent with the SI's status as an independent contractor, and the Parties' intent that Guidance shall not be an employer of any of the personnel or agents or contractors of the SI for any purpose, neither the SI nor any of the personnel, employees, agents or contractors of the SI shall be entitled to receive any compensation or benefits from Guidance, or participate in any compensation or benefit

plan, program or arrangement, that Guidance provides or makes available to its employees pursuant to legal requirements or otherwise. Guidance shall have no power or authority to hire, fire, promote, demote or otherwise make decisions regarding the personnels or agents or contractors of the SI's relationship with the SI.

25.3 Sub-contracting

SI shall not underlet or sublet the contract to any person, including companies or individuals or body corporates, without Guidance's prior written consent except those part of the SI's proposal. It is clarified that the SI shall have the sole responsibility for fulfilling the contract.

25.4 Assignment

- I. All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of Guidance and its successors and permitted assigns.
- II. The SI shall not be permitted to assign its rights and obligations under this Agreement to any third party.
- III. 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 the SI may, upon completion, use the Project as a reference solely for the purpose of credentials. Except as required by Applicable 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 Party. Such approval shall apply to each specific case and relate only to that case.

25.6 Notices

- I. 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.
- II. 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) Guidance
(Tamil Nadu Industrial Guidance and Export Promotion Bureau (in the process of being renamed as Guidance))
19-A, SIPCOT Building, Rukmani Lakshmi pathy Road,
Egmore, Chennai - 600 008,
Telephone: +91 44 28553866; Fax: +91 44 28553856
Email: [●]
Contact: [●]

B) SI
Address:
Telephone:

Fax:
Email:
Contact:

Parties shall have the right to specify a different address for service of notice under an SLA, however, a copy of such notice shall also be served to the Parties at the addresses set out in this Clause. Delivery of notice to the addresses specified in this Clause is considered valid delivery under this Agreement and under any SLA, notwithstanding the fact that additional address(es) for service of notice may be specified under the SLA.

- III. 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 facsimile, then upon receipt of confirmation of successful facsimile transmission, or on the next working day thereafter if delivered outside such hours, and 7 (seven) days from the date of posting (if by letter).
- IV. 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

- I. No amendment, variation or other change to this Agreement or the SLA shall be valid unless authorised in accordance with the Change in Services procedure as set out in Schedule – II (*Change in Services 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.
- II. The Parties undertake that they will do or procure to be done all such further acts and things, execute or procure the execution of all such other documents and exercise all rights and powers, direct and indirect, available to them in relation to any person so as to ensure the complete and punctual fulfilment, observance and performance of the provisions of this Agreement and generally that full effect is given to the provisions of this Agreement.

25.8 Severability and Waiver

- I. 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.
- II. 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 in Services Schedule set out in Schedule – II (*Change in Services 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 and 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.

26 DISPUTE RESOLUTION AND GOVERNING LAW

26.1 **Governing law and jurisdiction.** This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Chennai shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

26.2 Dispute Resolution.

- I. During a period of 60 (sixty) days after a notice of dispute is given or longer period agreed in writing by the Parties, the Parties shall, in good faith, endeavour to resolve the dispute by submitting to the PIU in the manner envisaged in Schedule – V (*Governance Schedule*).
- II. If the Parties are unable to resolve the dispute within the aforementioned 60 (sixty) day period, the Parties shall refer the dispute to arbitration in accordance with sub-clause (III) below.
- III. Arbitration:
 - a. The arbitration shall be governed by the rules of arbitration of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”).
 - b. The Parties shall be entitled to apply to the courts of Chennai for interim or interlocutory relief in respect of such arbitration.
 - c. The juridical seat and venue of arbitration shall be Chennai, India.
 - d. All proceedings in any such arbitration shall be conducted in English.
 - e. There shall be 3 (three) arbitrators, all of whom shall be fluent in English. The Party making the reference shall appoint one arbitrator and the other Party shall appoint one arbitrator in accordance with the Arbitration Act. The third presiding arbitrator shall be

appointed by the 2 (two) appointed arbitrators in accordance with the Arbitration Act. No arbitrator shall have power to alter, amend, or add to the provisions of this Agreement except as provided by the Arbitration Act.

- f. The arbitration award made by a majority of the arbitrators shall be final and binding on the Parties and the Parties agree to be bound thereby and to act accordingly. The arbitration award shall be enforceable in any competent court of law.
- g. The arbitration award shall be in writing and shall be a reasoned award.
- h. The arbitration panel may (but shall not be required to) award to the Party that substantially prevails on merits, its costs and reasonable expenses (including reasonable fees of its counsel).

[Signature Page follows]

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:

(Name and designation)
For and on behalf of Guidance
(FIRST PARTY)

(Name and designation)
For and on behalf of the SI
(SECOND PARTY)

Signature of Witnesses

(1)

(2)

Name:

Name:

Address:

Address:

SCHEDULES

Schedule – I – Definitions

TERM	MEANING
Additional Insurance	Shall mean third party insurance claim, Intellectual Property Right violation, source code violation, employee coverage, etc.
Adverse Effect	Shall mean material adverse effect on (a) the ability of the SI to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement, and/or (b) the ability of Guidance to exercise its rights or perform/discharge any of its obligations, specifically payment obligation, under and in accordance with the provisions of this Agreement, and/or (c) the legal validity, binding nature or enforceability of this Agreement
Agreement	Shall mean this Master Services Agreement, Service Level Agreement and Non-Disclosure Agreement together with all Clauses, Annexures, Schedules and the contents and specifications, Corrigenda and Addenda of the RFP and communications between the SI and Guidance;
Applicable Law(s)	Shall mean all applicable provisions of (a) the Constitution of India, all decrees, treaties, statutes, laws (including the common law), codes, notifications, rules, regulations, policies, guidelines, circulars, directions, directives, ordinances or orders of any government authority, statutory authority, court, tribunal having jurisdiction over the Parties; (b) all consent, registration, filing, agreement, notarization, certificate, license, approval, permit, authority or exemption from, by or with any governmental authority, whether given by express action or deemed to be given by failure to act within any specified time period; and (c) all orders, decisions, injunctions, judgments, awards and decrees of or agreements with any government authority, statutory authority, court, tribunal having jurisdiction over the Parties
Application	Shall mean the software Application developed as a part of Scope of Services;
Assets	Shall have the meaning ascribed to such term in Clause 11(I) and shall include all items that are property of the Guidance/the respective departments, which may or may not have been supplied to the SI;
Certificate(s) of Compliance	Shall mean the certificate issued pursuant to Clause 2.4 (<i>Final Testing and Certification</i>);
Confidential Information	Shall mean all confidential or proprietary information and materials, including Guidance Data, copyrights, contractual arrangements, inventions etc. (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, forecasts, analyses and evaluations, information relating to products, services, processes, operations and personnel of each Party and its affiliates or of any third party 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

TERM	MEANING
Control	<p>Agreement);</p> <p>Shall mean, in relation to any business entity, the power of a person to secure</p> <p>(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or</p> <p>(ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity,</p> <p>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;</p>
Deliverables	<p>Shall mean the products, infrastructure and Services agreed to be delivered by the SI in pursuance of this 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.</p> <p>The required Deliverables are set out in Annexure – C (<i>Required Deliverable and Associated Timelines</i>) of this Agreement;</p>
Final Acceptance Testing	<p>shall be conducted on completion of the following:</p> <ol style="list-style-type: none"> 1) Data center operational, 2) Deployment and operational hardware and required networking at requisite locations, 3) User Acceptance Testing (UAT) of the overall integrated solution and portal.
Final Testing and Certification Agency	<p>Shall mean the agency certifying pursuant to Clause 2.4 (<i>Final Testing and Certification</i>);</p>
Force Majeure Event	<p>Shall have the same meaning ascribed to it in Clause 17.2;</p>
Force Majeure Costs	<p>Shall have the same meaning ascribed to it in Clause 17.5;</p>
GoI	<p>Shall mean the Government of India;</p>
Go-Live	<p>Shall mean the declaration by the Guidance when the proposed solution becomes operational after successful conclusion of all acceptance tests to the satisfaction of the department or as provided in the RFP;</p>
Guidance Data	<p>Shall mean all proprietary data of Guidance and/or departments of Government of Tamil Nadu generated out of operations and transactions, documents containing all taxpayers' data and related information including but not restricted to (a) user data which the SI obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement; and (b) third party information where such information has been provided to Guidance subject to confidentiality obligations. Without prejudice to the generality of the above, Guidance Data, shall, without limitation include:</p> <ol style="list-style-type: none"> (i) business information and materials, including, but not limited to, financial information, technical information, business plans, business proposals,

TERM	MEANING
	<p>customer contract terms and conditions, proposals, customer lists, customer contact information, and other business information, business partner lists, supplier lists, supplier contact information, supplier preferences and other business information, vendor lists, vendor contact information, vendor preferences and other business information, price lists, business partner contact information, business partner preferences and other business information and similar items;</p> <p>(ii) information and materials relating to future plans, including, but not limited to, marketing strategies, pending projects, product development road map, proposals and similar items;</p> <p>(iii) personnel information and materials, including, but not limited to, employee lists and contact information, employee performance information, employee compensation information, recruiting sources, contractor and consulting information, contacts, cost and similar information;</p> <p>(iv) any information or material that gives it an advantage with respect to its competitors by virtue of not being known by those competitors; and</p> <p>(v) other valuable, confidential information and materials or trade secrets that are customarily treated as confidential or proprietary, whether or not specifically identified as confidential or proprietary;</p>
Indemnified Party	Shall have the same meaning ascribed to it in Clause 16.1;
Indemnifying Party	Shall have the same meaning ascribed to it in Clause 16.1;
Insurance Coverage	<p>a. 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</p> <p>b. Professional indemnity or errors and omissions insurance for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than [INR <i>insert amount</i>] in aggregate.</p> <p>c. Product liability for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than value of infrastructure in aggregate.</p> <p>d. Workers compensation as required by law</p>
Intellectual Property Rights	<p>Shall mean means all of the following anywhere in the world and all legal rights including moral rights, title or interest in, under or in respect of the following arising under Applicable Law, whether or not filed, perfected, registered or recorded, issued or acquired, including all renewals:</p> <p>(i) all patents and applications for patents and all related re-issues, re-examinations, divisions, renewals, extensions, continuations and continuations in part;</p> <p>(ii) all copyrights, copyright registrations and copyright applications, copyrightable works and all other corresponding rights;</p> <p>(iii) all inventions (whether patentable or un-patentable and whether or not reduced to practice), know how, technology, technical data, industrial and other designs, trade secrets, manufacturing and production processes and techniques, research and development information, licenses, franchises and formulae, formulations, logos, service marks, designs, original works of authorship, neighbouring rights, trade secrets, know-how, internet domain names, processes, integrated circuits etc.;</p> <p>(iv) all computer software (including source and object code), firmware, development tools, algorithms, files, records, technical drawings and related documentation, data and manuals;</p> <p>(v) all other proprietary rights; and/or</p>

TERM	MEANING
	(vi) all copies and tangible embodiments of any of the foregoing (in whatever form or medium). It shall include 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);
NDA	Shall mean the non-disclosure agreement executed as part of this Agreement;
Performance Guarantee	Shall mean the guarantee provided by a nationalized bank in favour of the SI. The amount of Performance Guarantee shall be 5% of the overall value of the contract under this Agreement.
Project	Shall mean the project as detailed in the RFP, including in Section 3 thereof and shall include the pilot, Project Implementation (i.e. roll out) and maintenance in terms of the Agreement;
Project Implementation	Shall mean the implementation/roll out of the Project as per the testing standards and acceptance criteria prescribed by Guidance;
Project Implementation Phase	Shall be from the Effective Date of the Agreement to the date of Go-Live
Project Implementation Unit (PIU)	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 departments and external experts;
Project Timelines	Shall have the same meaning ascribed to in Annexure – C (<i>Required Deliverable and Associated Timelines</i>);
Providing Party	Shall have the same meaning ascribed to it in Clause 13.4;
Receiving Party	Shall have the same meaning ascribed to it in Clause 13.4;
Replacement SI	Shall mean any third party that Guidance, directly or through another agency, appoints to replace the SI upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
Required Consents	Shall have the meaning assigned to such term in Clause 9.1 and shall include the consents, waivers, clearances, registrations, filings, agreements, notarizations, certificates, approvals, permits, authority, exemption, 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 the SI pursuant to this Agreement;
Service Level	Shall mean the level of service and other performance criteria which will apply to the Services delivered by the SI and as has been set out in the SLA;
Services	Shall mean 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

TERM	MEANING
	list of services specified in Annexure – B (<i>List of Services Provided by the SI</i>) or as specified in the RFP;
SLA	Shall mean the performance and maintenance service level agreement executed between the Parties as a part of this Agreement;
Software	Shall mean the software designed, developed / customized, tested and deployed by the SI 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 commercial off the shelf product, along with associated documentation, which is the work product of the development efforts involved in the Project and in the Deliverables and the improvements and enhancements effected during the term of the Project, proprietary software components and tools deployed by the SI;
Stakeholders	Shall mean the franchisees, investors, citizens, Guidance, employees of Guidance, and the departments/agencies/undertakings of the State Government;
Third Party Components	Shall mean systems (or any part thereof) in which the Intellectual Property Rights are not owned by the Guidance or the SI and to which the SI has been granted a license to use and which are used in the provision of Services;
Warranty / AMC Period	Shall be 5 (five) years from the date of Go-Live.

Schedule – II – Change in Services Schedule

This Schedule describes the procedure to be followed in the event of any proposed change to the Master Service Agreement (“**Agreement**”), Project Implementation Phase, SLA and Scope of Services and Functional Requirement Specifications (*as contained in the RFP*). 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 Schedule – VI (*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 shall endeavour, wherever practicable, to effect change without an increase in the terms of payment as stated in Schedule – VI (*Terms of Payment Schedule*), and Guidance shall work with the SI to ensure that all changes are discussed and managed in a constructive manner.

This Change in Services Schedule sets out the provisions which will apply to all the changes to the Agreement and other documents under the Agreement, with the exception of changes in SLAs (for which the process will be contained in the relevant SLA).

CHANGE MANAGEMENT PROCESS

a. Change Control Notice (“CCN”)

- i. Change requests in respect of the Agreement, the Project Implementation, the operation, the SLA or Scope of Services 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 it nominated agencies. For arriving at the cost / rate for change upto 25% of the Project value, the payment terms and relevant rates as specified in Annexure - D (*Proposal*) 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 timetable 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 Services
- ii. Prior to submission of the completed CCN to Guidance, the 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 Agreement 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.

Schedule – III – Exit Management Schedule

1. PURPOSE

- 1.1. This Schedule sets out the provisions, which will apply on expiry or termination of the Agreement, the Project Implementation, Operation and Maintenance, and any and all SLAs applicale to same.
- 1.2. In the case of termination of the Project Implementation and/or Operation and Maintenance, the Guidance shall at its sole discretion decide 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 (thirty) 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 (six) months after termination orders are issued.
- 2.3. Upon service of a notice under this Clause, 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 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 the 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 updated materials from the categories set out in this Schedule, and under the Agreement, and shall not retain any copies thereof.
- 4.3. Before the expiry of the exit management period, unless otherwise provided under the Agreement, 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-AGREEMENT SCENARIOS

After expiry of the Agreement (five years from date of Go-Live), Guidance, at its discretion, may request the SI to renew the Agreement for extended support for a period of 2 (two) years from the date of expiry of the Agreement, under the same terms and conditions as stated in the Agreement.

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 SI should carry out the knowledge transfer as specified in the RFP.

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 SI’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 Agreement 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 Agreement as a whole and in relation to the Project Implementation, and the Operation and Maintenance 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 or the Services 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 Schedule – VI (*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 the Agreement 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 Schedule – VI (*Terms of Payment Schedule*).
- 9.8. This Exit Management Plan shall be furnished in writing to Guidance within 90 (ninety) days from the Effective Date of this Agreement.

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 Maintenance Phase. Based on 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 Guidance shall endeavor, on a best-efforts basis, to conduct routine audits and non-timetabled audits, if any, with as little inconvenience and disturbance to the SI as practicable.
- 2.4 Guidance will ensure to a reasonable degree that any third party agencies (except the Comptroller and Auditor General of India) appointed to conduct the audit will not be a 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 effort to co-operate with Guidance.

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, 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 the Agreement 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 (a) the SI 's profit margins or overheads, any confidential information relating to the SI's employees, or (b) minutes of its internal board or committee meetings including audit committee, or (c) such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the Agreement.

5 AUDIT RIGHTS OF 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 30 (thirty) 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 Agreement.

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 Agreement.

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 maintenance of appropriate relationships 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

- 1.1. Project Managers: The relationship under this Agreement will be managed by the “Project Managers” (as described in the RFP) 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 (seven) days of the substitution. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
- 1.2. Project Implementation Unit (PIU): Within 7 (seven) days following the Effective Date, Guidance shall form PIU with its members.
- 1.3. 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 Schedule II (*Change in Services Schedule*); (iii) issues escalated in accordance with the dispute resolution procedure as set out in Clause 3 (*Governance Procedures*) below; (iv) matters to be brought before the PIU in accordance with the Agreement and the Schedules; (v) any matter brought before the PIU by the SI under this Schedule; and (vi) any other issue which either Party wishes to add to the agenda.
- 1.4. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in Schedule – VI (*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 Schedule – VI (*Terms of Payment Schedule*). Any variation so agreed shall be implemented through the procedure for change in Services as set out in Schedule - II (*Change in Services Schedule*).

3 GOVERNANCE PROCEDURES

- 4.1. The SI shall document the agreed structures in a manual of procedures.
- 4.2. 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.
- 4.3. All meetings and proceedings will be documented such documents to be distributed to the Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.

- 4.4. 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.
- 4.5. In order to formally submit a dispute to the PIU for resolution, 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 dispute in reasonable detail and (b) documentation, if any, supporting the Claimant's position on the dispute.
- 4.6. The other Party ("**Respondent**") shall have the right to respond to the Dispute Notice within 7 (seven) days after receipt of the Dispute Notice. In the event that the parties are unable to resolve the dispute within a further period of 60 (sixty) days, it shall refer the dispute to next level of the dispute resolution for action as per the process mentioned in Clause 26 (*Dispute Resolution and Governing Law*) of the Agreement.
- 4.7. All negotiations, statements and/or documentation pursuant to these Clauses shall be without prejudice and confidential (unless mutually agreed otherwise).
- 4.8. If the dispute 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 dispute.

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 (five) 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, and VAPT
- Stabilization of the solution successfully meeting the minimum SLA with live transactions for continuous period of **1 (one) 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

ANNEXURES

Annexure – A – Format for Change Control Notice

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

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

Title	Title
Date	Date

Annexure – B - List of Services Provided by the SI

Various Services to be offered by the SI will include:

- i.
- ii.
- iii.

Note:

- Guidance will sign the end user license agreement for the software brought from any third party for the purpose of this Project. However, the SI shall be solely responsible to make payment for the cost of software to such third party software vendor.

Annexure – C –Required Deliverable and Associated Timelines

S. No.	Project Activity	Deliverables / Activity	Timelines in months
1.	Issue of LOA to the Successful Bidder (i.e. SI)	Issue of LOA	T
2.	Approval of Final SRS and Solution design Sign-off	After studying and validating the FRS, etc. and submission of Software Requirement Specifications (SRS) document and 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 and Acceptance certificate from the testing agency	T+11 months
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 and 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 and recommendations Guidance would sign-off which will qualify as the “deliverable sign-off”.

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 (i.e. SI) would be reproduced in this Agreement before final signatures.]

Annexure – E – Bill of Material

Information technology and compute infrastructure required at the data centre should meet the requirements as specified in RFP.

Sl. 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.

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 and 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, relational database management system (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 and 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 the SI for conducting workshops for the Stakeholder departments.
3. Provide the data available in the form of physical files or existing databases to the SI 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 Services (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 SI.
10. Ensuring the staff members and other stakeholders attend the training programs as per the schedule defined by the SI and agreed upon.
11. Provide sign off on the Deliverables of the Project including SRS, design documents etc.

Annexure – G – Terms of Non-Disclosure Agreement (NDA)

- 1 Subject to the provisions of Clause 18 (*Confidentiality*) of the Agreement, Guidance shall allow the SI to come into possession of Confidential Information, 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 have terms no less stringent than those prescribed in this Agreement, and 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;
 - (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;
 - (iv) was rightfully acquired by the SI prior to disclosure by Guidance;
 - (v) was independently developed by SI or its Representatives without reference to the Confidential Information.
- 5 The provisions of such non-disclosure agreements shall survive the termination or expiration of this Agreement.

Annexure – H – Service Level Agreement (SLA)

1. The 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.
5. Time is the essence of in the fulfilment of obligations under this Agreement and the delivery dates are binding on the SI.
6. In the event of delay for whatever reasons, (except delay caused by Guidance and/or Force Majeure Event), in meeting the Deliverables or the schedule for delivery, Guidance shall be entitled at its option to recover liquidated damages from the SI as specified in the SLA.

The SLA conditions are given below in SLA Annexure B (*Service Levels*).

SLA Annexure A – Definitions

Agreement	means this Service Level agreement together with all Clauses, Annexures, Schedules and the contents and specifications of the RFP;
Applicable Law(s)	means all applicable provisions of (a) the Constitution of India, all decrees, treaties, statutes, laws (including the common law), codes, notifications, rules, regulations, policies, guidelines, circulars, directions, directives, ordinances or orders of any government authority, statutory authority, court, tribunal having jurisdiction over the Parties; (b) all consent, registration, filing, agreement, notarization, certificate, license, approval, permit, authority or exemption from, by or with any governmental authority, whether given by express action or deemed to be given by failure to act within any specified time period; and (c) all orders, decisions, injunctions, judgments, awards and decrees of or agreements with any government authority, statutory authority, court, tribunal having jurisdiction over the Parties (d) 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;
Business Hours	shall mean the working time for Guidance users which is 9:30 AM to 6:30 PM daily. For Web Server and other components which enable successful usage of web portals, the working time should be considered as 24 (twenty-four) 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;
MSA	shall mean the Master Services Agreement executed between the Parties;
Parties	means the Buyer and System Integrator for the purposes of this Agreement; “ Party ” shall be interpreted accordingly;
Project	shall have the same meaning ascribed to it in Schedule I of the MSA;
SLA Change Request	shall have the same meaning ascribed to it in Schedule II of the MSA;
Service Level	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;
Term	Means the duration of this Agreement as set out in Clause 3 (<i>Effective Date and Term of the Agreement</i>) of the MSA.
Application Response Time	Defined as time the system takes to fetch requested (a form or a report) from the server.

SLA Annexure B – Service Levels**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.

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 hours X 7 days X 12 months. The total operation time for the client site systems shall be 12 (twelve) 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:
$$\{(\text{Scheduled Operation Time} - \text{System Downtime}) / (\text{Scheduled Operation Time})\} * 100\%$$
- (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.

3. Interpretations

- (a) The operating hours are 8:30AM to 8:30PM on all working days (Monday-Friday) excluding Public Holidays or any other Holidays observed by the State (“**Business Hours**”). 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.

4. Terms and Conditions

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The 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.

5. 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 (ten) 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

6. Operation and Maintenance (O&M) Support Service levels

S. No.	SLA Terms	Description
1.	System Uptime	<ul style="list-style-type: none"> • 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. • 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. • May allow the SI to plan scheduled downtime in the working hours.
2.	Performance Degradation - Bugs / Issues in the Application Software / Hardware device / Network Equipment	<ul style="list-style-type: none"> • Slower processing time • Form level loading challenges • Bugs / issues affecting more than one user or more

A. Solution (Hardware & Software) Service Levels

#	Criteria	Target Service Level	Penalty
1	Minimum Solution (Software & Hardware) Guaranteed Uptime	> 99 % Uptime	Nil

#	Criteria	Target Service Level	Penalty
	(SLA Period of Measurement hours: 24x7x90)	From 99% upto 97% uptime	2% on the OPEX payable for that quarter
		For Every 0.5% drop from <97% uptime	2% on the OPEX payable for that Quarter, CAPPED at 10% of the total OPEX
2	Solution (software & hardware) Performance Degradation (SLA Period of Measurement hours: 24x7x90)	> 90% at thresholds	Nil
		For Every 0.5% drop from 90% threshold compliances	2% on the OPEX payable for that Quarter, CAPPED at 10% of the total 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	Capacity Refresher & New Building Training Candidate	Feedback > 75.0 %	Nil
		Feedback >65% & less than 75%	0.1% on the CAPEX
		Feedback for Every 0.5% drop from <65%	Additional 0.5% of CAPEX, CAPPED at 10% of the total CAPEX

Please Note:

- *The SI 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 (SLA Period of Measurement hours: 24x7x90)	Near to zero	For loss of every 5 MB of data 0.15% on the OPEX payable in that quarter capped to 10% of the total OPEX
2	Returning to Business-as-usual (SLA Period of Measurement hours: 24x7x90)	RTO = 30 minute	For loss of every 1 minute delay of RTO above the 30 minutes, 0.15% on the OPEX payable in that quarter, capped to 10% of the total OPEX