



MHRD

Government of India

Ministry of Human Resource Development

Request for Proposal (RFP)

for

**Appointment of Implementing Agency
for MHRD - SWAYAM MOOCs Project**

Volume – 3

**Ministry of Human Resource
Development
Government of India**

Ref: No. 8-26/2014-TEL

21st November 2015

Table of Contents

Master Service Agreement.....	5
Non-Disclosure Agreement	46
Service Level Agreement	55
Integrity Pact	67

----- This page has been intentionally left blank -----

Section 1:

Master Service Agreement

Master Service Agreement

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

BETWEEN

The President of India, acting through Ministry of Human Resource Development having its office at -----

India hereinafter referred to as ‘**MHRD**’, which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the *Companies Act, 1956*, having its registered office at <***> (hereinafter referred to as ‘**Bidder**’ which expression shall, unless the context otherwise requires, include its permitted successors, executors, administrators and assigns).

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

WHEREAS:

1. MHRD is desirous to implement the project of e-Governance for <Insert the type of project>.
2. In furtherance of the same, MHRD undertook the selection of a suitable Implementation Agency through a competitive bidding process for implementing the Project and in this behalf issued Request for Proposal (RFP) dated <***> .
3. The successful bidder has been selected as the Bidder on the basis of the bid response to undertake the Project of the development and implementation of the solution, its roll out and sustained operations.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out in RFP Vol 1 Section 1.6

1.2. Interpretation

In this Agreement, unless otherwise specified:

- a. Singular includes the plural and vice versa;

- b. References to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- c. use of any gender includes the other genders;
- d. References to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- e. References to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- f. A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted;
- g. Any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- h. References to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which banks in the state of Delhi are generally open for business;
- i. references to times are to Indian Standard Time;
- j. A reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- k. All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- l. System integrator (SI) or Bidder (IA) has been used for the same entity i.e. bidder selected for the project.

1.3. Measurements and Arithmetic Conventions

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

1.4. Ambiguities within Agreement

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

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

- c. As between any value written in numerals and that in words, the value in words shall prevail.

1.5. Priority of documents

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

- a. This Agreement along with the SLA agreement, NDA agreement, Schedules and Annexures;
- b. Request for Proposal and Addendum / Corrigendum to the Request for Proposal (if any). For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures / Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexures / Schedules and Annexures / Schedules shall prevail over the contents and specifications of the RFP.

2. SCOPE OF THE PROJECT

The Bidder shall be required to carry out the Scope of work mentioned in RFP Vol 1, RFP Vol 2 and Annexures.

The roles and responsibilities of the Parties under this Agreement have been set out in RFP Vol 2 Section 2.5.

The essentials and the requirements that the bidder should adhere to, in case the bidder intends to bid for the RFP, after forming a consortium, is set out in RFP volume 1.

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

2.1. Scope of work

Detailed scope of work for the selected bidder is as mentioned in RFP Vol 1, RFP Vol 2, Annexures and any corrigenda released.

3. TERM AND DURATION OF THE AGREEMENT

*This Agreement shall come into effect on <***> 20--- (hereinafter the '**Effective Date**') and shall continue till 'Complete Go-Live' + 36 months which shall be the date of the completion of the Ongoing Support and IT Helpdesk to MHRD or its nominated agencies, unless terminated earlier in accordance with clause 14.*

4. CONDITIONS PRECEDENT & EFFECTIVE DATE

4.1. Provisions to take effect upon fulfilment of Conditions Precedent

Subject to express terms to the contrary, the rights and obligations under this Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out below. However, MHRD or its nominated *agencies* may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the Bidder.

4.2. Conditions Precedent of the Bidder

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

- a. To provide a Performance Security/Guarantee to MHRD or its nominated agencies within fifteen (15) days of award of the contract to the Bidder substantially in the format provided in in RFP volume 1 ; and
- b. To provide MHRD or its nominated agencies certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Bidder.

4.3. Extension of time for fulfilment of Conditions Precedent

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

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

4.4. Non-fulfilment of the Bidder's Conditions Precedent

- a. In the event that the Agreement fails to come into effect on account of non-fulfillment of the Bidder's Conditions Precedent, MHRD or its nominated agencies shall not be liable in any manner whatsoever to the Bidder and MHRD shall forthwith forfeit the bid security or Performance Guarantee as the case may be.
- b. In the event that possession of any of MHRD or its nominated agencies facilities has been delivered to the Bidder prior to the fulfillment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to MHRD or its nominated agencies, free and clear from any encumbrances or claims.

5. OBLIGATIONS UNDER THE SLA

5.1. The SLA shall be a separate contract in respect of this Agreement and shall be entered into concurrently with this Agreement between MHRD and Bidder;

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

5.3. Change of Control

- a. In the event of a change of control of the Bidder during the Term, the Bidder shall promptly notify MHRD and/or its nominated agencies of the same in the format set out as Annexure B of this Agreement.

- b. In the event that the net worth of the surviving entity is less than that of Bidder prior to the change of control, MHRD or its nominated agencies may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the Bidder from a guarantor acceptable to MHRD or its nominated agencies (which shall not be Bidder or any of its associated entities).
- c. If such a guarantee is not furnished within 30 days of MHRD or its nominated agencies requiring the replacement, MHRD may exercise its right to terminate the SLA and/ or this Agreement within a further 30 days by written notice, to become effective as specified in such notice.
- d. Pursuant to termination, the effects of termination as set out in clause 14.2 of this Agreement shall follow.
- e. For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Bidder shall not be deemed an event of a change of control for purposes of this clause unless the surviving entity is of less net worth than the predecessor entity.

5.4. Final testing and certification

The Project shall be governed by the mechanism of final acceptance testing and certification as per RFP Vol 2 Section 4.8.

5.5. The Parties shall each ensure that the range of the Services under the SLA shall not be varied, reduced or increased except with the prior written agreement between MHRD and Bidder in accordance with the Change Control Schedule set out in Schedule I of this Agreement. Save for the express terms of the Terms of Payment Schedule set out in RFP Vol 2 Section 5, MHRD or its nominated agencies and its users may purchase any particular category of Services that may become necessary as per the Change Control Schedule set out in Schedule II of this Agreement, without the need to go for a separate procurement process.

6. REPRESENTATIONS AND WARRANTIES

6.1. Representations and warranties of the Bidder

The Bidder represents and warrants to MHRD or its nominated agencies that:

[A concept of materiality could be introduced for some of the clauses, on request of the successful bidder]

- a. 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;
- b. It is a competent provider of a variety of information technology and business process management services;

- c. It has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- d. From the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- e. In providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to MHRD's normal business operations
- f. 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;
- g. The information furnished in the tender documents and as updated on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement;
- h. The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- i. There are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- j. It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- k. It has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement;
- l. It and its consortium partner and personnel, have the necessary experience, skill, knowledge and competence to perform the Services;
- m. It will not, nor will it suffer or permit any third party under its direction or control to negligently introduce into the Client's systems or any deliverables any harmful code.
- n. No representation or warranty by it contained herein or in any other document furnished by it to MHRD or its nominated agencies in relation to the Required

Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and

- o. No sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of MHRD or its nominated agencies in connection therewith.

7. OBLIGATIONS OF MHRD OR ITS NOMINATED AGENCIES

Without prejudice to any other undertakings or obligations of MHRD or its nominated agencies under this Agreement, MHRD or its nominated agencies shall perform the Roles & Responsibilities as mentioned in the RFP Vol 2 Section 4.5.

8. OBLIGATIONS OF THE BIDDER

The Bidder shall perform the Roles & Responsibilities as mentioned in the RFP Vol 2.

9. APPROVALS AND REQUIRED CONSENTS

- 9.1.** The Parties shall cooperate to procure, maintain and observe all relevant and regulatory and governmental licenses, clearances and applicable approvals (hereinafter the “**Required Consents**”) necessary for the Bidder to provide the Services
- 9.2.** MHRD or its nominated agencies shall use reasonable endeavours to assist Bidder to obtain the Required Consents. In the event that any Required Consent is not obtained, the Bidder and MHRD or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for MHRD or its nominated agencies to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Required Consent is obtained, provided that the Bidder 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 Bidder’s obligations are not dependent upon such Required Consents.

10. USE OF ASSETS BY THE BIDDER

10.1. During the Term the Bidder shall:

- a. Take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the Bidder exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the “Assets”) in proportion to their use and control of such Assets; and
- b. Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Bidder takes control of and/or first uses the Assets and during the entire Term of the Agreement.

- c. Ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Bidder will be followed by the Bidder and any person who will be responsible for the use of the Assets;
- d. Take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Bidder or as may, in the reasonable opinion of the Bidder, be necessary to use the Assets in a safe manner;
- e. Ensure that the Assets that are under the control of the Bidder, are kept suitably housed and in conformity with Applicable Law;
- f. procure permission from MHRD or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- g. Not, knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.

11. ACCESS TO MHRD OR ITS NOMINATED AGENCIES LOCATIONS

- 11.1.** For so long as the Bidder provides Services to MHRD or its nominated agencies location, as the case may be, on a non-permanent basis and to the extent necessary, MHRD as the case may be or its nominated agencies shall, subject to compliance by the Bidder with any safety and security guidelines which may be provided by MHRD as the case may be or its nominated agencies and notified to the Bidder in writing, provide the Bidder with:
 - a. Reasonable access, in the same manner granted to MHRD or its nominated agencies employees, to MHRD as the case may be location twenty-four hours a day, seven days a week;
 - b. Reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other MHRD as the case may be location, if any, as may be reasonably necessary for the Bidder to perform its obligations hereunder and under the SLA.
- 11.2.** Access to locations, office equipment and services shall be made available to the Bidder on an “as is, where is” basis by MHRD as the case may be or its nominated agencies. The Bidder agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in RFP for the following purposes:
 - a. For the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
 - b. In a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality).

12. MANAGEMENT PHASE

12.1. Governance

The review and management process of this Agreement shall be carried out in accordance with the Governance Schedule set out in RFP Vol 2 Section 4.4 and shall cover all the management aspects of the Project.

12.2. Use of Services

- a. MHRD as the case may be or its nominated agencies, will undertake and use the Services in accordance with any instructions or procedures as per the acceptance criteria as set out in the SLA or this Agreement or any agreement that may be entered into between the Parties from time to time;
- b. MHRD as the case may be or its nominated agencies shall be responsible for the operation and use of the Deliverables resulting from the Services.

12.3. Changes

Unless expressly dealt with elsewhere in this Agreement, any changes under or to this Agreement or under or to the SLA shall be dealt with in accordance with the Change Control Schedule set out in Schedule I of this Agreement.

12.4. Security and Safety

- a. The Bidder shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act or Telegraph Act including the regulations issued by dept. of telecom (wherever applicable), IT Security Manual of MHRD & the Other Security requirements as specifically stated in the RFP and follow the industry standards related to safety and security (including those as stated in the RFP), insofar as it applies to the provision of the Services.
- b. Each Party to the SLA/Agreement shall also comply with MHRD or the Government of India, and the respective State's security standards and policies in force from time to time at each location of which MHRD or its nominated agencies make the Bidder aware in writing insofar as the same apply to the provision of the Services.
- c. The Parties to the SLA/Agreement shall use reasonable endeavours 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 MHRD as the case may be or any of their nominees data, facilities or Confidential Information.
- d. The Bidder shall upon request by MHRD as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- e. As per the provisions of the SLA or this Agreement, the Bidder shall promptly report in writing to MHRD or its nominated agencies, any act or omission which they are

aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of MHRD as the case may be.

12.5. Cooperation

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

- a. Does not require material expenditure by the Providing Party to provide the same;
- b. Is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement or the SLA;
- c. Cannot be construed to be Confidential Information; and
- d. 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.

13. FINANCIAL MATTERS

13.1. Terms of Payment and Service Credits and Debits

- a. In consideration of the Services and subject to the provisions of this Agreement and of the SLA, MHRD shall pay the Bidder for the Services rendered in pursuance of this Agreement, in accordance with the Terms of Payment Schedule set out in RFP Vol 2 Section 5.
- b. All payments are subject to the application of service credits and debits as may be provided for in the SLA. For the avoidance of doubt, it is expressly clarified that MHRD will pay the service credits as stated in accordance with the Terms of Payment Schedule set out in RFP Vol 2 Section 5 and MHRD may also calculate a financial sum and debit the same against the Terms of Payment Schedule as set out in RFP Vol 2 Section 5 of this Agreement as a result of the failure of the Bidder to meet the Service Level as defined in RFP Vol 2 Section 6.
- c. Save and except as otherwise provided for herein or as agreed between the Parties in writing, MHRD shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the Bidder performance of any obligations under this Agreement or the SLA) other than those covered in Terms of Payment Schedule set out in RFP Vol 2 Section 5. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this clause.

13.2. Invoicing and Settlement

Subject to the specific terms of the SLA, the Bidder shall submit its invoices in accordance with the following principles:

- a. MHRD shall be invoiced by the Bidder for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the Bidder shall raise an invoice as per Terms of Payment Schedule set out in RFP Vol 2 Section 5; and
- b. Any invoice presented in accordance with this Article shall be in a form agreed with MHRD.
- c. The Bidder alone shall invoice all payments after receiving due approval from the competent authority. Such invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in Terms of Payment Schedule set out in RFP Vol 2 Section 5. The Bidder shall waive any charge for a Service that is not invoiced within six months after the end of the month in which the change relating to such Service is (i) authorized or (ii) incurred, whichever is later.
- d. Payment of each valid and undisputed invoice shall be due and payable within 30 working days of the receipt of invoice along with supporting documents by MHRD subject to deduction of penalties. The penalties are imposed on the Bidder as per the SLA criteria specified in the SLA.
- e. MHRD shall be entitled to delay or withhold payment of any invoice or part of invoice delivered by the Bidder under Terms of Payment Schedule set out in RFP Vol 2 Section 5 where MHRD disputes/withholds such invoice or part of invoice. The withheld amount shall be limited to that which is in dispute. The disputed / withheld amount shall be settled in accordance with the escalation procedure as set out in RFP Vol 2 Section 4.4. Any exercise by MHRD under this clause shall not entitle the Bidder to delay or withhold provision of the Services.

13.3. Tax

- a. MHRD or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the Bidder wherever applicable. The Bidder shall be solely responsible to pay all other taxes in connection with this Agreement, SLA, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.
- b. MHRD or its nominated agencies shall provide Bidder with the original tax receipt of any withholding taxes paid by MHRD or its nominated agencies on payments under this Agreement. The Bidder agrees to indemnify, defend and hold harmless MHRD or its nominated agencies from any claims, judgments, actions, suits, proceedings, demands, liabilities, costs, losses, damages and expenses, including, reasonable attorney's fees arising out of or relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among MHRD or its nominated agencies, the Bidder and third party subcontractors.

- c. If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by MHRD for providing the services i.e. service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the Bidder in performing the Services, then the remuneration and reimbursable expense otherwise payable to MHRD under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Terms of Payment Schedule set out in RFP Vol 2 Section 5. However, in case of any new or fresh tax or levy imposed after submission of the proposal the Bidder shall be entitled to reimbursement on submission of proof of payment of such tax or levy.

14. TERMINATION

14.1. Material Breach

- a. In the event a Party materially breaches its obligations under this Agreement, the non-defaulting aggrieved Party may terminate this Agreement upon giving a one month's written notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, MHRD or Bidder, as the case may be will have the option to terminate the Agreement. Termination of this Agreement will be without prejudice to any other rights and remedies that a non-defaulting may have under this Agreement or at law or in equity. Any notice served pursuant to this clause shall give reasonable details of the Material Breach, which could include the following events and the termination will become effective:
- b. If the Bidder is not able to deliver the Services as per the SLAs defined in RFP which translates into Material Breach, then MHRD may serve a 30 days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, MHRD will have the option to terminate this Agreement. Further, MHRD may at its sole discretion afford a reasonable opportunity to the Bidder to explain the circumstances leading to such a breach.
- c. If there is a Material Breach by MHRD or its nominated agencies which results in not providing support for effecting data migration or not providing the certification of User Acceptance, and / or failing to make payment of undisputed amount within 30 days from date of receipt of invoice, then the Bidder will give a one month's notice for curing the Material Breach to MHRD. After the expiry of such notice period, the Bidder will have the option to terminate the Agreement
- d. MHRD may, upon its sole discretion, by giving a one month's written notice, terminate this Agreement if there is a change of control of the Bidder has taken place. For the purposes of this clause, in the case of Bidder, change of control shall mean the events stated in clause 5.3, and such notice shall become effective at the end of the notice period as set out in clause 5.3 (c).
- e. In the event that Bidder undergoes such a change of control, MHRD may, as an alternative to termination, require a full Performance Guarantee for the obligations of Bidder by a guarantor acceptable to MHRD or its nominated

agencies. If such a guarantee is not furnished within 30 days of MHRD's demand, MHRD may exercise its right to terminate this Agreement in accordance with this clause by giving 15 days further written notice to the Bidder.

- f. MHRD may terminate this Agreement at any time upon 30 days prior written notice to Bidder. In the event of any such termination under this clause, MHRD will only be liable to make any payments which are due hereunder to Bidder for work performed in accordance with the terms and conditions herein upto the date of such termination.
- g. The termination provisions set out in this clause shall apply mutatis mutandis to the SLA.

14.2. Effects of termination

- a. In the event that MHRD terminates this Agreement pursuant to failure on the part of the Bidder to comply with the conditions as contained in this Agreement and depending on the event of default, Performance Guarantee furnished by Bidder may be forfeited.
- b. Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule II of this Agreement.
- c. In the event that MHRD or the Bidder terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as RFP Vol 2 Section 5.
- d. MHRD agrees to pay Bidder for i) all charges for Services Bidder provides and any Deliverables and/or system (or part thereof) Bidder delivers through termination, and ii) reimbursable expenses Bidder incurs through termination. If MHRD terminates without cause, MHRD also agrees to pay any applicable adjustment expenses Bidder incurs as a result of such termination (which Bidder will take reasonable steps to mitigate).
- e. Upon any termination or expiration of this Agreement, Bidder will (i) deliver to MHRD all deliverables or work product, including any in progress at the time of termination or expiration, (ii) repay all monies paid in advance for services not yet provided; (iii) work with MHRD or its nominated agency to ensure a smooth transition of services.

14.3. Termination of this Agreement due to bankruptcy of Bidder

MHRD may serve written notice on Bidder at any time to terminate this Agreement with immediate effect in the event MHRD reports an apprehension of bankruptcy of the bidder or if there is an appointment of receiver over the bidders' assets by a court or incase of a similar proceedings or cessation of business of the bidder.

15. INDEMNIFICATION & LIMITATION OF LIABILITY

- 15.1.** Subject to Clause 15.2 below, Bidder (the "Indemnifying Party") at its expense and to the maximum extent permitted by law, undertakes to indemnify, defend and hold harmless MHRD (the "Indemnified Party") from and against all losses, liabilities, costs, damages and expenses and will reimburse such fees and expenses as they are incurred, including in connection with any claim or action threatened or brought against the Indemnified Party, attributable to the Indemnifying Party's or its representative's negligence or wilful default, including but not limited to, bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) in performance or non-performance under this Agreement; provided, however, that Indemnifying Party shall not be obligated to defend, indemnify, or hold the Indemnified Party from and against any such liabilities, costs, loses, damages and expenses to the extent caused solely by any negligent act or omission or intentional wrongdoing of such Indemnified Party .
- 15.2.** The Indemnifying Party at its expense and to the maximum extent permitted by law, will indemnify, defend and hold harmless the Indemnified Party from and against all claims, actions, suits, proceedings, judgments, demands losses, liabilities, costs, damages and expenses and will reimburse such fees and expenses as they are incurred, including in connection with any claim or action threatened or brought against the Indemnified Party, arising out of or relating to any claim that the provision or the utilization of any services or any portion thereof constitutes an infringement, violation, trespass, contravention or breach of any intellectual property rights of any third party , or constitutes the unauthorized use of any trade secret of any third party.
- 15.3.** Indemnified Party will promptly notify the Indemnifying Party of any such claim or action and will reasonably co-operate with Indemnifying Party in the defence of any such claim or action, at Indemnifying Party's expense. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by (a) Indemnified Party's misuse or modification of the Service; (b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party; (c) Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party; (d) Indemnified Party's distribution, marketing or use for the benefit of third parties of the Service; or (e) information, direction, specification or materials provided by Indemnified Party or any third party contracted to it. If any Service is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either (i) procure the right for Indemnified Party to continue using services or such portion thereof, as contemplated hereunder, (ii) replace it with an equally suitable, compatible, non-infringing and functionally equivalent services as reasonably determined by Indemnified Party , (iii) modify the services or such portion thereof, to make it non infringing (provided such modification does not adversely affect the utilization of such services, as reasonably determined by Indemnified Party).
- 15.4.** The indemnities set out in Clause 15.1 shall be subject to the following conditions:

- a. The Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
- b. The Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the defense of such claim or proceedings including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such defense;
- c. If the Indemnifying Party does not assume full control over the Defense of a claim as provided in this clause, the Indemnifying Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses;
- d. The Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise or consent to the entry of any judgment in any such commenced or threatened proceedings or claim, without the prior written consent of the Indemnifying Party;
- e. All settlements of claims or proceedings subject to indemnification under this Clause will:
 - i. Be entered into only with the prior written consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim or threatened proceedings or claim; and
 - ii. Include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
- f. 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 or threatened proceedings or claims;
- g. 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 or threatened proceedings or claim;
- h. 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 or proceedings to which such indemnification relates; and
- i. If a Party makes a claim under the indemnity set out under clause 15.1 above in respect of any particular loss or losses, then that Party shall not be

entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).

- 15.5.** The liability of Bidder (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event in the aggregate exceed the total value of the contract. The liability cap given under this clause 15.5 shall not be applicable to the indemnification obligations set out in clause 15.1 and breach of clause 12.4 and 17 of this Agreement, or the Bidder's wilful misconduct or gross negligence, or any claims of personal injury or property or damage.
- 15.6.** In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) nor for any third party claims (other than those set-forth in clause 15.1) even if it has been advised of their possible existence.
- 15.7.** The allocations of liability in this Section 15 represent the agreed and bargained-for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

16. FORCE MAJEURE

16.1. Definition of Force Majeure

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

16.2. Force Majeure events

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

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

Such events include:

a. Non-Political Events

- i. act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions;
- ii. radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the Bidder's use of radiation or radioactivity or biologically contaminating material;
- iii. 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 Bidder and which affect the timely implementation and continued operation of the Project; or
- iv. any event or circumstances of a nature analogous to any of the foregoing.

b. Political Events

- i. Change in Law, other than any Change in Law for which relief is provided under this Agreement;
- ii. expropriation or compulsory acquisition by MHRD or any of their nominated agencies of any material assets or rights of the Implementing Partner;
- iii. unlawful or unauthorised revocation of, or refusal by MHRD or any of their nominated agencies, Gol or any of its agencies to renew or grant any clearance or Required Consents required by the Bidder to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Bidder's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- iv. any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Bidder in any proceedings for reasons other than failure of the Bidder 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;
- v. expropriation or compulsory acquisition by MHRD or any of their nominated agencies of any material assets or rights of the Bidder;
- vi. unlawful or unauthorized revocation of, or refusal by any authority other than MHRD or any of their nominated agencies to renew or grant any Required Consents required by the Bidder to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Bidder's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;

- vii. any requisition of the Project by any other authority; or
- viii. any requisition of the Project by MHRD or any of their nominated agencies.
- ix. For the avoidance of doubt, suspension of the Project in accordance with the provisions of this Agreement shall not be considered a requisition for the purposes of Force Majeure event.

c. Other Events

- i. an act of war (whether declared or undeclared), hostilities, invasion, armed conflict or act of foreign enemy, blockade, embargo, prolonged riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage, for a continuous period exceeding seven (7) days.

For the avoidance of doubt, it is expressly clarified that the failure on the part of the Bidder under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking aren't the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure". *In so far as applicable to the performance of Services, Bidder will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).*

16.3. Notification procedure for Force Majeure

- a. The affected Party shall notify the other Party of a Force Majeure event within seven (7) days of occurrence of such event. If the other Party disputes the claim for relief under Force Majeure it shall give the claiming Party written notice of such dispute within thirty (30) days of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in accordance with clause 25.
- b. Upon cessation of the situation which led the Party claiming Force Majeure, the claiming Party shall within seven (7) days hereof notify the other Party in writing of the cessation and the Parties shall as soon as practicable thereafter continue performance of all obligations under this Agreement.

16.4. Allocation of costs arising out of Force Majeure

- a. Upon the occurrence of any Force Majeure Event prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- b. Upon occurrence of a Force Majeure Event after the Effective Date, the costs incurred and attributable to such event and directly relating to the Project ('Force Majeure Costs') shall be allocated and paid as follows:

- i. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
- ii. upon occurrence of an other event of Force Majeure, all Force Majeure Costs attributable to such other event, and not exceeding the Insurance Cover for such other event, shall be borne by the Bidder and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by MHRD to the Bidder (optional clause – to be used, if relevant.)
- iii. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by MHRD to the Bidder.
- iv. 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.
- v. Save and except as expressly provided in this clause, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof.

16.5. Consultation and duty to mitigate

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

17. CONFIDENTIALITY

- 17.1.** MHRD or its nominated agencies shall allow the Bidder to review and utilize highly confidential public records and the Bidder shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- 17.2.** Additionally, the Bidder shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- 17.3.** MHRD or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Bidder regarding any forbidden disclosure.

- 17.4.** Bidder may disclose the confidential information to its representatives who have a need to know such confidential information solely in connection with this Agreement.
- 17.5.** The Bidder shall ensure that all its employees, agents, representatives and consortium partners execute individual non-disclosure agreements, which have been duly approved by the MHRD with respect to this Project and will assume full responsibility for any failure to comply with the terms of this Agreement by any such employees, agents, representatives and consortium partners.
- 17.6.** For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:
- a. information already available in the public domain;
 - b. information which has been developed independently by the Bidder;
 - c. information which has been received from a third party who had the right to disclose the aforesaid information;
 - d. information which has been disclosed to the public pursuant to a court order.
- 17.7.** Bidder will not transfer or disclose any such confidential information to any third party without MHRD's prior written consent and without such third party having a contractual obligation to keep such confidential information confidential.
- 17.8.** Bidder will not use any confidential information for any other purpose other than to provide Services to MHRD under this Agreement.
- 17.9.** To the extent the Bidder shares its confidential or proprietary information with MHRD for effective performance of the Services, the provisions of the Clause 17.1 to 17.3 shall apply mutatis mutandis on MHRD or its nominated agencies.

18. AUDIT, ACCESS AND REPORTING

The Bidder shall allow access to MHRD and or its nominated agencies to all information which is in the possession or control of the Bidder and which relates to the provision of the Services as set out in the Audit, Access and Reporting Schedule and which is reasonably required by MHRD to comply with the terms of the Audit, Access and Reporting Schedule set out as Terms of Payment Schedule set out in RFP Vol 2 Section 5.

19. INTELLECTUAL PROPERTY RIGHTS

- 19.1. Products and fixes:** All products and related solutions and fixes provided pursuant to the work order shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. Bidder would be responsible for arranging any licenses associated with products. **“Product”** means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to MHRD for license which is published by product owner or its affiliates, or a third party. **“Fixes”** means product fixes that are either released generally (such as

commercial product service packs) or that are provided to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.

- 19.2. Bespoke development:** Subject to the provisions of clause 19.3 and 19.4 below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie with MHRD. Bidder shall be entitled to a broad license back in the bespoke development for its internal usage and other e-governance projects.
- 19.3. Pre-existing work:** This Agreement does not restrict or deprive the Bidder of any of its rights or proprietary interest in any materials that is owned and controlled by the Bidder and which is not generated as an outcome of the requirements under this Agreement (“pre-existing work”). During the performance of the services under this Agreement, if pre-existing work are delivered in connection with or part of the deliverable, Bidder grants to MHRD a non-exclusive, irrevocable, perpetual, worldwide license to use, duplicate, distribute, reproduce and modify any of its pre-existing work provided to MHRD solely for the performance of such services for duration of the Term of this Agreement.
- 19.4. Residuals:** In no event shall Bidder be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables, set-out in this Agreement or Annexure. In addition, subject to the confidentiality obligations, Bidder 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. WARRANTY

- 20.1. Standard:** The Bidder warrants that the products, including all the system(s), hardware, devices and other Services provided, shall be free from any defect or deficiency in the material, design, engineering, and performance/workmanship that prevent the Project and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the Project and/or any of its system(s) as per the Performance Guarantee / warranty period defined in the Schedule. The warranty shall remain valid for five years from the date of Final Acceptance Test. The Bidder shall replace any parts/components of the products if the components are defective and during the entire warranty period Bidder shall apply all the latest upgrades/patches/releases for the software/hardware after appropriate testing. MHRD shall not pay any additional costs for warranty.
- 20.2.** The Bidder further represents, warrants and covenants that all Services will be performed to the best of Bidder’s ability and in an effective, timely, professional and workmanlike manner in accordance with the highest applicable industry standards and practices and such Services will be performed in accordance with any specifications and documentations set forth in the RFP and will comply, including the utilization thereof as contemplated hereunder, with all applicable laws, rules, regulations, orders of any governmental agencies; and will not violate or contravene the terms of any contract between Bidder and any third party.

- 20.3.** The Bidder further warrants, covenants and represents that it has and will have all right, titles, licenses, intellectual property, permissions and approvals necessary in connection with its performance under this Agreement and to grant MHRD rights granted hereunder; and none of the services nor the utilization of the services will, violate, infringe, trespass or in any manner contravene or breach or constitute the unauthorized use or misappropriation of any intellectual property of any third party.
- 20.4.** If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the product and other Services provided by the Bidder, the Bidder shall promptly, in consultation and agreement with MHRD, and at the Bidder's sole cost repair, replace, or otherwise make good (as the Bidder shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the product caused by such default, defect or deficiency. Any defective system that has been replaced by the Bidder shall remain the property of the Bidder. If the product 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 product shall be extended by a period equal to the period during which the product or the services could not be used by the MHRD because of such defect and/or making good of such default, defect or deficiency.
- 20.5. Implied Warranty:** The warranties provided herein are in lieu of all other warranties, both express and implied, and all other warranties, including without limitation that of merchantability or fitness for intended purpose is specifically disclaimed.

21. Support services and related services

During the term of this Agreement, Bidder shall provide preventive maintenance and support services to the Products including all the hardware devices, system software and network systems which in deployed in the Project at no charge to MHRD. Upon expiration of the Agreement, Bidder shall provide the support services, if ordered by MHRD at a price to be mutually agreed upon. The installation of the software, hardware and network applications is the responsibility of Bidder and Bidder shall incur all cost relating hereto.

22. Transfer of Title

Upon expiration of the term of the Agreement, Bidder agrees to transfer all rights, title and interest vested in the hardware, devices, software, network or application deployed in the performance of the service in favor MHRD upon payment of a nominal cost of Rs. 100/-.

23. LIQUIDATED DAMAGES

The delivery dates, timetables, milestones and other requirements mentioned in the RFP and the work order are binding on the Bidder. In the event of delay or any gross negligence, for causes attributable to the Bidder, in meeting the milestones and associated deliverables, milestones and time table MHRD shall be entitled to recover from the Bidder as agreed, liquidated damages as mentioned as part of the SLA in RFP Vol 2 Section 6.

24. INSURANCE COVER

24.1. Obligation to maintain insurance

In connection with the provision of the Services, the Bidder, at its sole cost and expense, must obtain and maintain:

- a. for the Agreement Period, valid and enforceable insurance coverage for:
 - i. public liability;
 - ii. either professional indemnity or errors and omissions;
 - iii. product liability;
 - iv. workers' compensation as required by law; and
 - v. any additional types specified in Schedule I; and
- b. for <three> years following the expiry or termination of the Agreement, valid and enforceable insurance policies (if relevant), in the amount not less than the Insurance Cover specified in RFP Vol 2 Section 1.6.

24.2. Certificates of currency

The Bidder must, on request by MHRD, provide current relevant confirmation of insurance documentation from its insurance brokers, including those if its consortium partner, certifying that it has obtained insurance as required by this clause 23. The Bidder agrees to replace any coverage prior to the date of expiry/cancellation. Bidder shall assure that any consortium partner utilized by the Bidder for the provision of services shall maintain the same level of insurance coverage required of Bidder. Bidder is responsible for monitoring the insurance programs of its consortium partner.

24.3. Non-compliance

MHRD or its nominated agencies may, at its election, terminate this Agreement upon the failure of Bidder, or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve Bidder of its obligations under this Agreement.

24.4. Personnel

- a. *The personnel assigned by Bidder to perform the Services shall be employees of Bidder or its consortium partners, and under no circumstances shall such personnel be considered employees of MHRD or its nominated agencies. The Bidder shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.*

- b. *The Bidder shall use its best efforts to ensure that sufficient Bidder personnel are assigned to perform the Services and that such personnel have appropriate qualifications to perform the Services. Bidder will maintain continuity of personnel consistent with its obligation to perform the services. After discussion with Bidder, MHRD or its nominated agencies shall have the right to require the removal or replacement of any Bidder personnel performing work under this Agreement based on bonafide reasons. In the event that MHRD or its nominated agencies requests that any Bidder personnel be replaced for any reasons, Bidder will provide a qualified replacement and the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule. In the event that Bidder provides a replacement of personnel, Bidder will not charge MHRD for the number of hours required to train the replacement until such personnel is familiar with the particular project, so that the replacement is capable of performing the services under this Agreement.*
- c. *In the event that MHRD and Bidder identify any personnel of Bidder as “Key Personnel”, then the Bidder shall not remove such personnel from the Project without the prior written consent of MHRD or its nominated agencies unless such removal is the result of an unavoidable circumstance which is beyond the control of the Bidder, including but not limited to resignation, termination, medical leave, etc.*
- d. *Except as stated in this clause, nothing in this Agreement or the SLA will limit the ability of Bidder to freely assign or reassign its employees; provided that Bidder shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. MHRD or its nominated agencies shall have the right to review and approve Bidder’s plan for any such knowledge transfer. Bidder shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.*
- e. *Each Party shall be responsible for the performance of all its obligations under this Agreement or the SLA as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.*
- f. *Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.*

24.5. Independent Contractor

Bidder is acting as an independent contractor and the Bidder is solely responsible for its actions and inactions , and nothing in this Agreement or the SLA shall be construed as establishing or implying any partnership or joint venture or employment relationship between the Parties to this Agreement or the SLA and, except as expressly stated in this Agreement or the SLA, nothing in this Agreement or the SLA shall be deemed to constitute any Parties as the agent of any other Party or authorizes either Party to:

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

24.6. Sub-contractors

Bidder shall not subcontract any work for providing the products and services mentioned.

24.7. Assignment

- a. All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of MHRD and their respective successors and permitted assigns.
- b. Subject to clause 5.3, the Bidder shall not be permitted to assign its rights and obligations under this Agreement to any third party.
- c. MHRD may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Bidder shall be a party to such novation, to any third party contracted to provide outsourced services to MHRD or any of its nominees.

24.8. Trademarks, Publicity

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

24.9. Notices

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

<Insert Address> Tel:

Fax:

Email:

Contact:

With a copy to:

Bidder

Tel:

Fax:

Email:

Contact:

- c. In relation to a notice given under the MSA / SLA, a Party shall specify the Parties' address for service of notices, any such notice to be copied to the Parties at the addresses set out in this clause.
- d. Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter).
- e. Either Party to this Agreement or to the SLA may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

24.10. Bidder acknowledges that a breach of the confidential obligations may result into irreparable and continuing damages to MHRD for which monetary damages may not be sufficient, and agrees that MHRD will be entitled to seek, in addition to its other rights and remedies under the law, injunctive or any other equitable relief as may be proper from court of competent jurisdiction.

24.11. Variations and Further Assurance

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

- b. *Each Party to this Agreement or the SLA agrees to enter into or execute, without limitation, whatever other agreement, document, consent and waiver and to do all other things which shall or may be reasonably required to complete and deliver the obligations set out in this Agreement or the SLA.*

24.12. Severability and Waiver

- a. *If any provision of this Agreement or the SLA, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this Agreement or the SLA or the remainder of the provisions in question will remain unimpaired and which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.*
- b. *No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the SLA of any right, remedy or provision of this Agreement or the SLA shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision.*

24.13. Compliance with Applicable Law

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

24.14. 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.

24.15. Ethics

The Bidder 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 MHRD or its nominated agencies in connection with this agreement and acknowledges that the giving of any such payment, gifts, entertainment,

or other things of value is strictly in violation of MHRD standard policies and may result in cancellation of this Agreement, or the SLA.

24.16. Entire Agreement

This Agreement and the SLA with all schedules & annexures appended thereto and the contents and specifications of the RFP constitute the entire agreement between the Parties with respect to their subject matter, and as to all other representations, understandings or agreements which are not fully expressed herein, provided that nothing in this clause shall be interpreted so as to exclude any liability in respect of fraudulent misrepresentation.

24.17. Amendment

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

25. GOVERNING LAW AND DISPUTE RESOLUTION

- 25.1.** This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement and the performance of the parties contemplated under this Agreement, to the extent that such convention might otherwise be applicable.
- 25.2.** Any dispute arising out of or in connection with this Agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as RFP Vol 2 Section 4.4.
- 25.3.** In case the escalations do not help in resolution of the problem within 3 weeks of escalation, both the parties should agree on a mediator for communication between the two parties. The process of the mediation would be as follows:
- a. Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.
 - b. The mediator shall use his best endeavours to conclude the mediation within a certain number of days of his appointment.
 - c. If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to Experts for advising on the issue.
- 25.4.** In case the mediation does not help in resolution and it requires expertise to understand an issue, a neutral panel of 3 experts, agreeable to both parties should be constituted. The process of the expert advisory would be as follows :

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

25.5. Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the Arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of New Delhi, India. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at New Delhi, India. Any legal dispute will come under the sole jurisdiction of New Delhi, India.

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

25.7. Risk of Loss: For each hardware item or software products, Bidder bears the risk of loss or damage up to the time it is received by MHRD, or its representative, provided that such loss or damage is not caused by the Bidder or its agents..

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

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

WITNESSES:

Signed by:

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

(FIRST PARTY)

Signed by:

(Name and designation)

BIDDER

(SECOND PARTY)

(Name and designation) For and on behalf of Bidder

Signed by:

SCHEDULES

SCHEDULE I – CHANGE CONTROL SCHEDULE

This Schedule describes the procedure to be followed in the event of any proposed change to the Master Service Agreement (“**MSA**”), Project Implementation Phase, SLA and Scope of Work and Functional Requirement Specifications. Such change shall include, but shall not be limited to, changes in the scope of services provided by the Bidder and changes to the terms of payment as stated in the Terms of Payment Schedule.

MHRD and Bidder 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 BIDDER will endeavour, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule in RFP Vol 2 Section 5 and MHRD or its nominated agencies will work with the Bidder to ensure that all changes are discussed and managed in a constructive manner. This Change Control Schedule sets out the provisions which will apply to all the changes to this agreement and other documents except for the changes in SLAs for which a separate process has been laid out in clause 11 of the SLA.

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

CHANGE MANAGEMENT PROCESS

a. CHANGE CONTROL NOTE ("CCN")

- i. Change requests in respect of the MSA, the Project Implementation, the operation, the SLA or Scope of work and Functional Requirement specifications will emanate from the Parties' respective Project Manager who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached as Annexure A hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- ii. The BIDDER and MHRD or its nominated agencies, during the Project Implementation Phase and MHRD or its nominated agencies during the Operations and Management Phase and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the RFP and is suggested and applicable only after the testing, commissioning and certification of the Complete Go-Live Phase as set out in this RFP.

b. Quotation

- i. The BIDDER shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN the BIDDER shall provide as a minimum:
 1. a description of the change
 2. a list of deliverables required for implementing the change;
 3. a time table for implementation;
 4. an estimate of any proposed change
 5. any relevant acceptance criteria
 6. an assessment of the value of the proposed change;

7. material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work
- ii. Prior to submission of the completed CCN to MHRD, or its nominated agencies, the Bidder will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the BIDDER shall consider the materiality of the proposed change in the context of the MSA and the Project Implementation affected by the change and the total effect that may arise from implementation of the change.

c. Costs

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the BIDDER meets the obligations as set in the CCN. In the event the BIDDER 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 BIDDER.

d. Obligations

The BIDDER 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. BIDDER will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact.

SCHEDULE II - EXIT MANAGEMENT SCHEDULE

1 PURPOSE

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

2 TRANSFER OF ASSETS

- 2.1 MHRD shall be entitled to serve notice in writing on the BIDDER at any time during the exit management period as detailed hereinabove requiring the BIDDER and/or its Consortium partners to provide MHRD with a complete and up to date list of the Assets within 30 days of such notice. MHRD shall then be entitled to serve notice in writing on the BIDDER at any time prior to the date that is 30 days prior to the end of the exit management period requiring the BIDDER to sell the Assets, if any, to be transferred to MHRD or its nominated agencies at book value as determined as of the date of such notice in accordance with the provisions of relevant laws.
- 2.2 In case of contract being terminated by MHRD, MHRD reserves the right to ask BIDDER to continue running the project operations for a period of 6 months after termination orders are issued.
- 2.3 Upon service of a notice under this Article the following provisions shall apply:
 - (i) in the event, if the Assets to be transferred are mortgaged to any financial institutions by the BIDDER, the BIDDER shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to MHRD.
 - (ii) All risk in and title to the Assets to be transferred / to be purchased by MHRD pursuant to this Article shall be transferred to MHRD, on the last day of the exit management period.
 - (iii) MHRD shall pay to the BIDDER on the last day of the exit management period such sum representing the Net Block (procurement price less depreciation as per provisions of Companies Act) of the Assets to be transferred as stated in the Terms of Payment Schedule.
 - (iv) Payment to the outgoing BIDDER shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements.
 - (v) The outgoing BIDDER will pass on to MHRD and/or to the Replacement BIDDER, the subsisting rights in any leased properties/ licensed products on terms not less favorable to MHRD/ Replacement BIDDER, than that enjoyed by the outgoing BIDDER.

3 COOPERATION AND PROVISION OF INFORMATION

- 3.1 During the exit management period:
 - (i) The Bidder will allow MHRD or its nominated agency access to information reasonably required to define the then current mode of operation associated with the provision of the

services to enable MHRD to assess the existing services being delivered;

- (ii) promptly on reasonable request by MHRD, the BIDDER 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 Bidder or the consortium partner). MHRD shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The Bidder shall permit MHRD or its nominated agencies to have reasonable access to its employees and facilities as reasonably required by the Chairman, PIU to understand the methods of delivery of the services employed by the Bidder and to assist appropriate knowledge transfer.

4 CONFIDENTIAL INFORMATION, SECURITY AND DATA

4.1 The Bidder will promptly on the commencement of the exit management period supply to MHRD or its nominated agency the following:

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

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

4.3 Before the expiry of the exit management period, unless otherwise provided under the MSA, either party shall deliver to the other party all forms confidential information, which is in the possession or control of the party.

5 EMPLOYEES

5.1 Promptly on reasonable request at any time during the exit management period, the Bidder shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to MHRD or its nominated agency a list of all employees (with job titles) of the Bidder 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 Bidder to MHRD or its nominated agency, or a Replacement Bidder ("Transfer Regulation") applies to any or all of the employees of the Bidder, 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 Bidder, department, or its Replacement Bidder may make an offer of employment or contract for services to such employee of the Bidder and the Bidder shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the Chairperson, PIU or any Replacement Bidder.

6 TRANSFER OF CERTAIN AGREEMENTS

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

7 RIGHTS OF ACCESS TO PREMISES

- 7.1 At any time during the exit management period, where Assets are located at the Bidder's premises, the Bidder 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) MHRD or its nominated agency and/or any Replacement Bidder in order to make an inventory of the Assets.
- 7.2 The Bidder shall also give MHRD or its nominated agency or its nominated agencies, or any Replacement Bidder right of reasonable access to the Bidder's premises and shall procure MHRD or its nominated agency or its nominated agencies and any Replacement Bidder rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to MHRD or its nominated agency, or a Replacement Bidder.

8 GENERAL OBLIGATIONS OF THE BIDDER

- 8.1 The Bidder shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to MHRD or its nominated agency or its Replacement Bidder and which the Bidder 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 Bidder, associated entity, or consortium partner is deemed to be in the possession or control of the Bidder.
- 8.3 The Bidder shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

9 EXIT MANAGEMENT PLAN

- 9.1 The Bidder shall provide MHRD or its nominated agency with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the MSA as a whole and in relation to the 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 Bidder 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 Bidder's consortium partners, staff,

suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on MHRD's operations as a result of undertaking the transfer;

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

(iv) Plans for provision of contingent support to MHRD, and Replacement Bidder for a reasonable period after transfer.

- 9.2 The Bidder 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 Bidder to and approved by MHRD or its nominated agencies.
- 9.4 The terms of payment as stated in the Terms of Payment Schedule include the costs of the Bidder complying with its obligations under this Schedule.
- 9.5 In the event of termination or expiry of MSA, and Project Implementation, each Party shall comply with the Exit Management Plan.
- 9.6 During the exit management period, the Bidder shall use its best efforts to deliver the services.
- 9.7 Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.
- 9.8 This Exit Management plan shall be furnished in writing to MHRD or its nominated agencies within 90 days from the Effective Date of this Agreement.

SCHEDULE III – AUDIT, ACCESS AND REPORTING

1 PURPOSE

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

2 AUDIT NOTICE AND TIMING

- 2.1 As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavours to agree to a timetable for routine audits (Other than those mentioned as part of the mandatory requirements for successful delivery and acceptance of the Integrated solution) during the Project Implementation Phase and the Operation and Maintenance Phase. Such timetable during the Implementation Phase, MHRD or its nominated agency and thereafter during the operation Phase, MHRD or its nominated agency shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Bidder any further notice of carrying out such audits.
- 2.2 MHRD or its nominated agency may conduct non-timetabled audits at his/ her own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Bidder, a security violation, or breach of confidentiality obligations by the Bidder, provided that the requirement for such an audit is notified in writing to the Bidder a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the Bidder considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Governance Schedule.
- 2.3 The frequency of audits shall be a (maximum) half yearly, provided always that the MHRD or its nominated agency shall endeavour to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Bidder. Any such audit shall be conducted by with adequate notice of 2 weeks to the Bidder.
- 2.4 MHRD will ensure that any 3rd party agencies (except CAG) appointed to conduct the audit will not be the competitor of Bidder and will be bound by confidentiality obligations.

3 ACCESS

The Bidder shall provide to MHRD or its nominated agency reasonable access to employees, subcontractors, suppliers, agents and third party facilities as detailed in the RFP, documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The Chairperson, PIU / Steering Committee shall have the right to copy and retain copies of any relevant records. The Bidder shall make every reasonable effort to co-operate with them.

4 AUDIT RIGHTS

- 4.1 MHRD or its nominated agency shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in the RFP), data centres, documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:
- (i) The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of MHRD 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 Bidder has complied with the relevant technical standards, and has adequate internal controls in place; and
- (iv) The compliance of the Bidder with any other obligation under the MSA and SLA.
- (v) Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the Bidder.
- (vi) For the avoidance of doubt the audit rights under this Schedule shall not include access to the Bidder's profit margins or overheads, any confidential information relating to the Bidder's employees, or (iii) minutes of its internal Board or Board committee meetings including internal audit, or (iv) such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the MSA.

5 AUDIT RIGHTS OF CONSORTIUM PARTNERS, SUPPLIERS AND AGENTS

- 5.1 The Bidder shall use reasonable endeavours to achieve the same audit and access provisions as defined in this Schedule with Consortium partners, suppliers and agents who supply labour, services, equipment or materials in respect of the services. The Bidder shall inform MHRD or its nominated agency prior to concluding any consortium or supply agreement of any failure to achieve the same rights of audit or access.
- 5.2 **REPORTING:** The Bidder will provide quarterly reports to the Chairperson, PIU / Steering committee regarding any specific aspects of the Project and in context of the audit and access information as required by MHRD or its nominated agency.

6 ACTION AND REVIEW

- 6.1 Any change or amendment to the systems and procedures of the Bidder, or Consortium partners, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- 6.2 Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to MHRD or its nominated agency and the Bidder Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the MSA.

7 TERMS OF PAYMENT

MHRD shall bear the cost of any audits and inspections. The terms of payment are exclusive of any costs of the Bidder and the Consortium partners, for all reasonable assistance and information provided under the MSA, the Project Implementation, Operation and Maintenance SLA by the Bidder pursuant to this Schedule.

8 RECORDS AND INFORMATION

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

9 ANNEXURE

ANNEXURE A –FORMAT OF PERFORMANCE GUARANTEE

ANNEXURE B -FORMAT FOR CHANGE CONTROL NOTICE - As per Section 2.7, Volume 2 of the RFP.

ANNEXURE C – PROJECT PLAN

ANNEXURE D – TECHNICAL BID RESPONSE

ANNEXURE E – FINANCIAL BID RESPONSE

ANNEXURE F – BILL OF MATERIAL

Section 2:

Non-Disclosure Agreement

Non-Disclosure Agreement

THIS AGREEMENT is made on this the <***> day of <***> 20--- at <***>, India.

BETWEEN

The President of India, acting through Ministry of Human Resource Development having its office at ----- India hereinafter referred to as '**MHRD**', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the *Companies Act, 1956*, having its registered office at <***> (hereinafter referred to as '**the Bidder**' which expression shall, unless the context otherwise requires, include its permitted successors, executors, administrators and assigns).

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

WHEREAS:

1. MHRD is desirous to implement the project of -----.
2. MHRD and Bidder have entered into a Master Service Agreement dated <***> (the "**MSA**") as well as a Service Level Agreement dated <***> (the "**SLA**") in furtherance of the Project.
3. Whereas in pursuing the Project (the "**Business Purpose**"), a Party ("Disclosing Party") recognizes that they will disclose certain Confidential Information (*as defined hereinafter*) to the other Party ("Receiving Party").
4. Whereas such Confidential Information (*as defined hereinafter*) belongs to Disclosing Party as the case may be and is being transferred to the Receiving Party to be used only for the Business Purpose and hence there is a need to protect such confidential information from unauthorized use and disclosure.

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

DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the same meanings set out in RFP Vol 1 Section 1.6.

1.2 Interpretation

In this Agreement, unless otherwise specified:

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

- (b) use of any gender includes the other genders;
- (c) references to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted;
- (f) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- (g) references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which banks in the state of <***> are generally open for business;
- (h) references to times are to Indian standard time;
- (i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (j) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

- (a) as between two clauses of this Agreement, the provisions of a specific clause relevant to the issue under consideration shall prevail over those in a general clause;
- (b) as between the provisions of this Agreement and the Schedules, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules; and
- (c) as between any value written in numerals and that in words, the value in words shall prevail.

1.5 Priority of agreements

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

2 . TERM

This Agreement will remain in effect for five years from the date of the last disclosure of Confidential Information (“**Term**”), at which time it will terminate, unless extended by the disclosing party in writing.

3. SCOPE OF THE AGREEMENT

- (a) This Agreement shall apply to all confidential and proprietary information of a Party to which the other Party has had or will have access in connection with discussions of the Business Purpose and all confidential and proprietary information disclosed by Disclosing Party to the Receiving Party and other information which the Disclosing Party identifies in writing or otherwise as confidential before or within (30) thirty days after disclosure to the Receiving Party (“Confidential Information”). Such Confidential Information includes without limitation certain specifications, documents, software, prototypes and/or technical information, and all copies and derivatives containing such Information that may be disclosed to the Disclosing Party for and during the Business Purpose, which a party considers proprietary or confidential.
- (b) Such Confidential Information may be in any form or medium, tangible or intangible, and may be communicated/disclosed in writing, orally, graphically, or machine readable form or through visual observation or by any other means to the Receiving Party.

OBLIGATIONS OF THE RECEIVING PARTY

The Receiving Party shall:

- (a) use the Confidential Information only for the Business Purpose and shall hold the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary confidential information. In no way, the Receiving Party use less than a reasonable degree of care to protect and preserve the Disclosing Party’ Confidential Information, and
- (b) grant access to Confidential Information only to its employees on a ‘need to know basis’ and restrict such access as and when not necessary to carry out the Business Purpose.
- (c) cause its employees, agents, representatives and consortium partner to comply with the provisions of this Agreement and the Receiving Party will assume full responsibility for any failure to comply with the terms of this Agreement by any such employees, agents, representatives and consortium partner;
- (d) prevent unauthorized disclosure of Confidential Information to third parties;
- (e) disclose the Confidential Information to its agents, employees, consultants, representatives, and consortium partners on a need to know basis; provided that by doing so, the Receiving Party agrees to bind such agents, consultants, employees, representatives and consortium partners a to terms at least as restrictive as those stated herein. The Receiving Party upon making a disclosure under this clause shall:
- (f) advise the agents, employees, consultants, representatives and consortium partners of the confidentiality obligations imposed on them by this clause.

- (g) upon the Disclosing Party's written request, the Receiving Party shall either return to the Disclosing Party all copies of the Confidential Information which is already in possession or within the control of the Receiving Party. Alternatively, with the Disclosing Party's prior written consent, Receiving Party may destroy such Confidential Information provided that the Confidential Information is destroyed in accordance with applicable law, rules and regulations and such Confidential Information is rendered unreadable, undecipherable and otherwise incapable of reconstruction, in which case and an officer of the Receiving Party shall certify in writing to the Disclosing Party that all media containing Confidential Information have been destroyed.
- (h) Provided, however, that an archival copy of the Confidential Information may be retained in the files of the Receiving Party's counsel, solely for the purpose of proving the contents of the Confidential Information.
- (i) not to remove any of the other Party's Confidential Information from the premises of the Disclosing Party without prior written approval.
- (j) exercise extreme care in protecting the confidentiality of any Confidential Information which is removed, only with the Disclosing Party's prior written approval, from the Disclosing Party's premises. Each Party agrees to comply with any and all terms and conditions the Disclosing Party may impose upon any such approved removal, such as conditions that the removed Confidential Information and all copies must be returned by a certain date, and that no copies are to be made off of the premises.
- (k) Upon the Disclosing Party's request, the Receiving Party shall promptly return to the Disclosing Party all tangible items containing or consisting of the Disclosing Party's Confidential Information all copies thereof.
- (l) not transfer or disclose any Confidential Information to any third party without the prior written permission of the Disclosing Party and without such third party having a contractual obligation to keep such Confidential Information confidential.

2. EXCEPTIONS TO CONFIDENTIAL INFORMATION

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

- (a) was independently developed by or for the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, or was received without restrictions; or
- (b) has become generally available to the public without breach of confidentiality obligations of the Receiving Party under this Agreement and independently of Receiving Party's knowledge of any Confidential Information; or
- (c) was in the Receiving Party's lawful and demonstrable possession without restriction prior to its receipt from the Disclosing Party ; or
- (d) is the subject of a subpoena, court order, statute, rule and regulation or other legal or administrative demand for disclosure; provided, however, that the Receiving Party has given the Disclosing Party prompt notice of such demand for disclosure and the Receiving Party reasonably cooperates with the Disclosing Party's efforts to secure an appropriate protective order; or

- (e) is disclosed with the prior consent of the Disclosing Party; or
- (f) the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the disclosing party.

3. OWNERSHIP OF THE CONFIDENTIAL INFORMATION

- (a) Each Party recognizes and agrees that all of the Disclosing Party's Confidential Information is owned solely by the Disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain.
- (b) By disclosing the Confidential Information or executing this Agreement, Disclosing Party does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right. The Disclosing Party disclaims all warranties regarding the information, including all warranties with respect to infringement of intellectual property rights and all warranties as to the accuracy or utility of such information.
- (c) Access to Confidential Information hereunder shall not preclude an individual who has seen such Confidential Information for the purposes of this Agreement from working on future projects for the Disclosing Party which relate to similar subject matters, provided that such individual does not make reference to the Confidential Information and does not copy the substance of the Confidential Information during the Term. Furthermore, nothing contained herein shall be construed as imposing any restriction on the Receiving Party's disclosure or use of any general learning, skills or know-how developed by the Receiving Party's personnel under this Agreement; provided the Receiving Party does not use the Confidential Information of the Disclosing Party in the development or acquisition of such skills or know-how.
- (d) Execution of this Agreement and the disclosure of Confidential Information pursuant to this Agreement do not constitute or imply any commitment, promise, or inducement by either Party to make any purchase or sale, or to enter into any additional agreement of any kind.

4. DISPUTE RESOLUTION

- (a) If a dispute arises in relation to the conduct of this Contract (Dispute), a party must comply with this clause 7 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 7.
- (b) A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.
- (c) During the 14 days after a notice is given under clause 7(b) (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to this Agreement out of or relating to the construction, meaning, scope, operation or effect of this Agreement or the validity of the breach thereof shall be referred to a sole arbitrator to be appointed by mutual consent of both the parties herein. If the Parties cannot agree on the appointment of the arbitrator

within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of the jurisdiction specified in this agreement. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at the jurisdiction specified in Item 27. Any legal dispute will come under the sole jurisdiction specified in Item 27.

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

5. VARIATION

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

6. WAIVER

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

- (a) shall be in writing
- (b) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (c) shall be executed by a duly authorized representative of the Party; and
- (d) shall not affect the validity or enforceability of this Agreement in any manner.

7. EXCLUSION OF IMPLIED WARRANTIES

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

8. ENTIRE AGREEMENT

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

9. SEVERABILITY

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate

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

10. NO PARTNERSHIP

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

11. THIRD PARTIES

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

12. SUCCESSORS AND ASSIGNS

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

13. NOTICES

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

If to MHRD:

*Attn: <***>*

Tel:

Fax:

Email:

Contact:

With a copy to:

*If to the Bidder: Attn. <***>*

*Phone: <***>*

*Fax No. <***>*

14 . LANGUAGE

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

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

15 . MITIGATION

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

16. REMOVAL OF DIFFICULTIES

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

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bidder by:

For and on behalf of MHRD by:

(Signature)

(Name)

(Signature)

(Designation)

(Name)

(Address)

(Designation)

(Fax No.)

(Address)

(Fax No.)

In the presence of:

- 1.
- 2.

Section 3:

Service Level Agreement

Service Level Agreement

THIS AGREEMENT is made on this the <***> day of <***> 20---- at <***>, India.

BETWEEN

The President of India, acting through Ministry of Human Resource Development having its office at -----

----- India hereinafter referred to as '**MHRD**' or '**Buyer**', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the *Companies Act, 1956*, having its registered office at <***> (hereinafter referred to as the '**Bidder**' which expression shall, unless the context otherwise requires, include its permitted successors, executors, administrators and assigns).

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

WHEREAS:

1. MHRD is desirous to implement the project of
2. MHRD and Bidder have entered into a Master Service Agreement dated <***> (the "**MSA**").

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out in RFP Vol 1 Section 1.6.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to clauses, Sub-clauses, Paragraphs and Schedules are to clauses, sub-clauses, paragraphs of and schedules to this Agreement;
- (b) use of any gender includes the other genders;
- (c) references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a '**person**' shall be construed so as to include any individual, firm,

company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);

- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (f) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- (g) references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which banks in the state of ----- are generally open for business;
- (h) references to times are to Indian Standard Time;
- (i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (j) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

- (a) as between two clauses of this Agreement, the provisions of a specific clause relevant to the issue under consideration shall prevail over those in a general clause;
- (b) as between the provisions of this Agreement and the Schedules, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules; and
- (c) as between any value written in numerals and that in words, the value in words shall prevail.

1.5 Priority of agreements

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

2. STRUCTURE

This SLA shall operate as a legally binding services agreement specifying terms which apply to the Parties in relation to the provision of the Services by the Bidder to the Buyer and its nominated agencies under this Agreement and the MSA.

The Bidder shall be required to ensure that the Service Levels which shall ensure the following:

- (a) Improving the efficiency of operations.
- (b) Leveraging the benefits in new system in order to:
 - (i) Reduce of manual records and replace with computerized standardized documents.
 - (ii) Infuse transparency in operations by enabling the stakeholders to have easy access to the records and provision of login ids and biometrics to infuse accountability in operations
 - (iii) Enable faster request processing in delivery of services with better turnaround time.
 - (iv) Generate meaningful MIS from the system.
 - (v) Provide inbuilt mechanism of security and quality control for crucial dealer data.

To meet the aforementioned objectives the Bidder will provide the Service Levels in accordance with the performance metrics as set out in detail in this Agreement. Further this Agreement shall govern the provision of the contracted professional services of the Bidder to MHRD and its nominated agencies after the Effective Date.

3. SCOPE OF SLA

This Agreement has been executed in relation to the outsourcing portion of the Project between the Parties. The detailed Service Levels have been set out in RFP Vol 2 Section 6.

This Agreement shall ensure the following:

- (a) Establishment of mutual responsibilities and accountability of the Parties;
- (b) Defining each Party's expectations in terms of services provided;
- (c) Establishment of the relevant performance measurement criteria;
- (d) Definition of the availability expectations;
- (e) Definition of the escalation process;
- (f) Establishment of trouble reporting single point of contact; and
- (g) Establishment of the framework for SLA change management

The following parties are obligated to follow the procedures as specified by this Agreement:

- (a) Buyer
- (b) Bidder

4. AGREEMENT OWNERS

The following personnel shall be notified to discuss the Agreement and take into consideration any proposed SLA change requests:

	Title	Telephone	Email
Buyer	Authorized Representative, MHRD	<***>	<***>
Bidder	<***>	<***>	<***>

5. CONTACT LIST

In the event that there is any change in the listed contacts, the same shall be communicated and updated prior to such change occurring. The Single Point of Contact (“**POC**”) for the Bidder shall be <***> and will be available 24X7.

	Title	Location	Telephone
Buyer	Authorized Representative, MHRD	<***>	<***>
Bidder	<***>	<***>	<***>

6. PRINCIPAL CONTACTS

The Buyer and the Bidder will nominate a senior staff member to be the principal contact regarding operation of this Agreement. At the date of signing of this Agreement, the nominated principal contacts are:

Buyer principal contact: _____

Bidder principal contact: _____

7. COMMENCEMENT AND DURATION OF THIS AGREEMENT

Agreement shall commence on the later date on which it is executed by the Buyer and the Bidder (hereinafter the “**Effective Date**”) and shall, unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties, expire on the date on which this Agreement expires or terminates, which shall be a period of five years starting from the date of the Final Acceptance Test.

8. EXCLUSIONS TO THE AGREEMENT

This Agreement shall not govern the following services:

- (a) Consulting services; and

(b) Bidder’s business processes not related to the Project.

9. TERMS OF PAYMENT AND PENALTIES

- (a) In consideration of the Services and subject to the provisions of the MSA and this Agreement, the Buyer shall pay the amounts in accordance with the Terms of Payment Schedule mentioned in RFP Vol 2 Section 5.
- (b) For the avoidance of doubt, it is expressly clarified that the Buyer and/or its nominated agencies may also calculate a financial sum and debit the same against the terms of payment as defined in the Terms of Payment Schedule mentioned in RFP Vol 2 Section 5 as a result of the failure of the Bidder to meet the Service Levels set out as RFP Vol 2 Section 6 of this Agreement, such sum being determined in accordance with the terms of the set out as RFP Vol 2 Section 6 of this Agreement.

10. UPDATING OF THIS AGREEMENT

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

11. DOCUMENT HISTORY

All revisions made to this Agreement shall be listed in chronological order as per the format set out below and a copy of the same shall be provided to the Parties:

Version	Date	Description of changes
<***>	<***>	<***>

12. SCOPE OF SERVICES

- (a) The Bidder shall ensure that Services are available at various locations as per the requirements of the project;
- (b) The Bidder shall provide support services for addressing problems related to the provision of services of the selected bidder through the POC. Such POC shall be available over telephone on <***> number 24 hours a day, 7 days a week
- (c) The Bidder guarantees that he shall achieve the Service Levels for the Project;
- (d) The Bidder shall be liable to penalties in case of failure to comply with the Service Levels. However any delay not attributable to the Bidder shall not be taken into account while computing adherence to the Service Levels.

13. PERFORMANCE REVIEW

The POC's of both the Buyer and the Bidder shall meet on a quarterly basis to discuss priorities, service levels and system performance. Additional meetings may be held at the request of either the Bidder or the Buyer. The agenda for these meetings shall be as follows:

- (a) Service performance;
- (b) Review of specific problems/exceptions and priorities; and
- (c) Review of the operation of this Agreement and determine corrective action to overcome deficiencies.

14. REPRESENTATIONS AND WARRANTIES OF BUYER

The Buyer hereby represents and warrants to the Bidder as follows:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- (b) it has taken all necessary actions under Applicable Law to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) 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 obligations against it in accordance with the terms thereof;
- (e) 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;

- (f) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;
- (g) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Bidder's ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement.

15. REPRESENTATIONS AND WARRANTIES OF THE BIDDER

The Bidder hereby represents and warrants to the Buyer as follows:

- (a) 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 to carry out the transactions contemplated hereby;
- (b) 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;
- (c) from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) in providing the Services, it shall use reasonable endeavours not to cause any unnecessary disruption to MHRD's normal business operations
- (e) this Agreement has been duly executed by it and constitutes its 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 obligations against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- (e) 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 material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (f) it has complied with Applicable Law 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 a material adverse effect on its ability to perform its obligations under this Agreement;
- (g) it and its consortium partner and personnel, have the necessary experience, skill, knowledge and competence to perform the Services;
- (h) it will not, nor will it suffer or permit any third party under its direction or control to negligently introduce into the Client's systems or any Deliverables any harmful code.
- (i) no representation or warranty by it contained herein or in any other document furnished by it to the Buyer or to any government instrumentality in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
- (j) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the Buyer in connection therewith.

16. INDEMNITIES

The Bidder agrees to indemnify MHRD under this Agreement in accordance with the terms and principles set out in the MSA.

17. DISPUTE RESOLUTION

Any dispute, difference or claim arising out of or in connection with the Agreement which is not resolved amicably shall be decided in accordance with the dispute resolution procedure as set out in the MSA.

18. MISCELLANEOUS

(a) Assignment and charges

This Agreement shall be binding on and endure for the benefit of each Party's successors in title. No Party shall assign, or declare any trust in favour of a third party over, all or any part of the benefit of, or its rights or benefits under, this Agreement.

(b) 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 the State of shall have jurisdiction over matters arising out of or relating to this Agreement.

(c) Waiver of sovereign immunity

The Parties unconditionally and irrevocably:

- (i) agree that the execution, delivery and performance by them of the Agreement constitute commercial acts done and performed for commercial purpose;
- (ii) agree that, should any proceedings be brought against a Party or its assets, property or revenues in any jurisdiction in relation to the Agreement or any transaction contemplated by the Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of such Party with respect to its assets;
- (iii) waive any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (iv) consent generally to the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

(d) Variation

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

(e) Waiver

- (i) Waiver including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - shall be in writing
 - shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
 - shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
 - shall not affect the validity or enforceability of this Agreement in any manner.

(f) Exclusion of implied warranties

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

(g) Survival

- (i) Termination or expiration of the Term shall:
 - not relieve the Bidder or the Buyer, as the case may be, of any obligations

hereunder which expressly or by implication survive hereof; and

- except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or expiration or arising out of such termination or expiration.
- (ii) All obligations surviving termination or expiration of the Term shall cease on termination or expiration of the Term.

(h) Entire Agreement

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

(i) Severability

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

(j) No partnership

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

(k) Third parties

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

(l) Notices

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

If to MHRD:

*Attn: <***>*

Tel:

Fax:

Email:

Contact:

With a copy to:

*If to the Bidder: Attn.
<***>*

*Phone: <***>*

*Fax No. <***>*

(m) Language

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

(n) Counterparts

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

(o) Mitigation

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

(p) Removal of Difficulties

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

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

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of the Implementation For and on behalf of the Buyer by:
Agency by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

In the presence of:

1.

2.

Integrity Pact

This Integrity Pact is entered into by and between

The President of India, acting through the Ministry of Human Resource Development, Government of India, having its office located at Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi (herein after referred to as “Purchaser”, which expression shall, unless excluded by or repugnant to the context, deemed to include its successor/s in office or assign) of the First Part;

AND

<***>, a Company incorporated under the Companies Act, 1956, having its registered office at <***> (hereinafter referred to as “Bidder” which expression shall, unless the context otherwise requires, include its permitted successors and assigns) of the Second Part.

Preamble

The Purchaser intends to award, under laid down organizational procedures, contract for development & maintenance of SWAYAM – a MOOC platform through an open tender process and has issued RFP bearing number _____. The Purchaser values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/ transparency in its relations with its Bidder(s) and /or Vendor(s) / Contractor(s).

In order to achieve these goals, the Purchaser wishes to enter into this Integrity Pact with the Bidder(s) for this tender process and execution of the Agreement and will appoint an Independent External Monitor (IEM), who will monitor the tender process and the execution of the Agreement for compliance with the principles mentioned above.

Section 1- Commitments of the Purchaser

- 1) The Purchaser commits itself to take all measures necessary to prevent corruption and to observe the following principles:-
 - a) No employee of the Purchaser, personally or through family members, will in connection with the RFP for, or the execution of the Agreement, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - b) The Purchaser will during this tender process treat all Bidder(s) with equity and reason. The Purchaser will in particular, before and during this tender process, provide to all Bidders the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to this tender process or the Agreement execution.
 - c) The Purchaser will exclude from the process all known prejudiced persons.
- 2) If the Purchaser obtains information on the conduct of any of its officers / employees which is a criminal offence under the Indian Penal Code 1860 and/or

Prevention of Corruption Act 1988, or if there be a substantive suspicion in this regard, the Purchaser will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

Section 2- Commitments of the Bidder

- a) The Bidder commits to take all measures necessary to prevent corruption. It commits itself to observe the following principles during its participation in this tender process and during the Agreement execution.
- b) The Bidder will not, directly or through any other persons or firm, offer promise or give to any of the Purchaser's employees involved in this tender process or the execution of the Agreement or to any third person any material or other benefit which he/ she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during this tender process or during the execution of the Agreement.
- c) The Bidder will not enter with other bidder(s) into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in this tender process.
- d) The Bidder will not commit any offence under the Indian Penal Code 1860 and / or Prevention of Corruption Act 1988; further the Bidder will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Purchaser as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- e) The Bidder will, when presenting its bid, disclose any and all payments it has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with this tendering process or the award of Agreement under this tendering process.
- f) The Bidder will not, directly or through any other person or firm, approach any Government officials, ministers, political persons public servants, or any external agencies in an effort to influence the bidding decision making process or to attain any undue favours to the Bidder.
- g) The Bidder shall exclude, from this tender process or execution of the Agreement, all known prejudiced persons including those employees / Directors /management representatives of the Bidder who have family relationships with the employees or officers of the Purchaser.
- h) The Bidder shall disclose the circumstances, arrangements, undertakings or relationships that constitute, or may reasonably be considered to constitute, an actual or potential conflict of interest with its obligations specified in the tender process or under any Agreement which may be negotiated or executed with the Purchaser. Bidder and its employees, agents, advisors and any other person associated with the Bidder must not place themselves in a position which may, or does, give rise to conflict of interest (or a potential conflict of interest) between the interests of the Purchaser or any other interests during this tender process or through operation of the Agreement.
- i) The Bidder will not indulge in any corrupt, fraudulent, coercive undesirable or restrictive practice in the tender process or the execution of the Agreement.

- j) The Bidder will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3: Disqualification from tender process and exclusion from future Contracts

If the Bidder, during the tender process or before award or during execution of the Agreement has committed a transgression through a violation of Section 2 above, or in any other form, such as to put his reliability or credibility in question, the Purchaser is entitled to disqualify the Bidder from this tender process or decide not to award the work or terminate the awarded Agreement or blacklist the Bidder.

Section 4: Compensation for Damages

- a) If the Purchaser has disqualified the Bidder from this tender process prior to the award according to Section 3, the Purchaser is entitled to forfeit the Earnest Money Deposit/ Bid Security deposited by the Bidder.
- b) If the Purchaser has terminated the Agreement according to Section 3, or if the Purchaser is entitled to terminate the Agreement according to Section 3, the Purchaser shall be entitled to demand and recover from the Bidder / Vendor the amount equivalent to Security Deposit / Performance Bank Guarantee in addition to any other penalties/ recoveries as per terms and conditions of the Agreement.

Section 5: Previous Transgression

- a) The Bidder declares that no previous transgressions occurred in the last three years with any other Central Government / State Government or Central PSU entity in India or any entity in any other country conforming to the anti-corruption approach that could justify Bidder's exclusion from this tender process.
- b) If the Bidder makes incorrect statement on this subject or hides any material information, the Purchaser is entitled to disqualify the Bidder from this tender process or action can be taken as per the procedure mentioned in "Guidelines on Banning of business dealings"

Section 6: Equal treatment of all Bidders

- a) The Bidder undertakes to demand from all subcontractors of the Vendor a commitment in conformity with this Integrity Pact, and to submit it to the Purchaser before signing of the Agreement with the Purchaser.
- b) The Purchaser will enter into individual Integrity Pacts with identical conditions as this one with all sub-contractors of the Vendor.
- c) Only if the Bidder has entered into this Integrity Pact with the Purchaser, the Bidder shall be eligible to participate in this tender process or execution of the Agreement.
- d) The Purchaser will have the right to disqualify the Bidder from this tender process if the Bidder does not get this Integrity Pact from Bidder's authorized signatory or violate any of its provisions.

Section 7: Criminal charges against violation Bidder/ Subcontractor(s)

If the Purchaser obtains knowledge of conduct of the Bidder or its Subcontractor, or of an employee or a representative or an associate of the Bidder or Subcontractor which constitutes corruption, or if the Purchaser has substantive suspicion in this regard, the Purchaser will inform the same to the Chief Vigilance Officer.

Section 8: Independent External Monitor/Monitors

- a) The Purchaser appoints competent and credible Independent External Monitor for this Integrity Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the Parties comply with the obligations under this Integrity Pact.
- b) The Monitor is not subject to instructions by the representatives of the Parties and performs his functions neutrally and independently. The Monitor shall report to MHRD
- c) The Bidder accepts that the Monitor has the right to access without restriction to all project documentation of the Purchaser including that provided by the Bidder. The Bidder will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors of the Vendor. The Monitor is under contractual obligation to treat the information and documents of the Bidder/ Subcontractor(s) of Vendor with confidentiality.
- d) The Purchaser will provide to the Monitor sufficient information about all meetings among the parties related to the tender process or the execution of the Agreement provided such meetings could have an impact on the contractual relations between the Purchaser and the successful Bidder. The Parties offer to the Monitor the option to participate in such meetings.
- e) As soon as the Monitor notices, or believes to notice, a violation of this Integrity Pact, he will so inform the Purchaser and request the Purchaser to discontinue or take corrective action, or to take other relevant action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- f) The Monitor will submit a written report to the Purchaser within 8 to 10 weeks from the date of reference or intimation to him by the Purchaser and, should the occasion arise, submit proposals for correcting problematic situations.
- g) If the Monitor has reported to the Purchaser, a substantiated suspicion of an offence under relevant Indian Penal Code 1860 and Prevention of Corruption Act 1988, and the Purchaser has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- h) The word 'Monitor' would include both singular and plural.

Section 9– Pact Duration

- a) This Integrity Pact begins when both Parties have legally signed it. It expires for

the successful Bidder 12 months after the last payment under the Agreement, and for all other bidders, 6 months after the execution of the Agreement with the Vendor.

- b) If any claim is made/ lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/ determined by the Purchaser.

Section 10 – Other provisions

- a) This Integrity Pact is subject to Indian Law, place of performance and jurisdiction is the Office of the Purchaser first above written, i.e. New Delhi.
- b) Changes and supplements of this Integrity Pact as well as termination notices need to be made in writing. Parties acknowledge that side agreements have not been made.
- c) Should one or several provisions of this Integrity Pact turn out to be invalid, the remainder of this Integrity Pact remains valid. In this case, the Parties will strive to come to an agreement to their original intentions.

**For & On Behalf of the Purchaser
Bidder**

(Official Seal)

Place: _____

Date: _____

Witness:

(Name & Address):

For & On Behalf of the

(Official Seal)

Place: _____

Date: _____

Witness:

(Name & Address):