



महाराष्ट्र शासन

CONTRACT AGREEMENT FOR SELECTION OF SYSTEM INTEGRATORS/ IMPLEMENTATION AGENCIES

Directorate of Information Technology

Government of Maharashtra

2019

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D.I.T. Government of Maharashtra, Draft Model RFP

MASTER SERVICES AGREEMENT

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

BETWEEN

----- having its office at -----
----- Maharashtra, India hereinafter referred to as 'Purchaser' /
'Purchaser' or '-----', which expression shall, unless the context otherwise requires,
include its permitted successors and assigns);

AND

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

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

WHEREAS:

1. Purchaser is desirous to implement the project of e-Governance for <Insert the type of project>.
2. In furtherance of the same, Purchaser 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 Implementation Agency on the basis of the bid response set out as Annexure D of this Agreement, 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 below:

Term	Meaning
Adverse Effect	means material adverse effect on (a) the ability of the Implementation Agency to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legal validity, binding nature or enforceability of this Agreement;
Agreement	means this Master Services Agreement, Service Level Agreement and Non-Disclosure Agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP;
Applicable Law(s)	means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
Assets	shall have the same meaning ascribed to it in Clause 10.1 (a)
Software	means the software designed, developed / customized, tested and deployed by the Implementation Agency for the purposes of the Project and includes the source code (in case of Bespoke development) along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products (including the COTS products used for the product), proprietary software components and tools deployed by the Implementation Agency;
Bespoke Development	Bespoke development means development of custom-built software for some specific organization.

Business Hours	<p>Shall mean the working time for Purchaser users which is 9:30 AM to 6:30 PM. Again for Web Server and other components which enable successful usage of web portals of Purchaser the working time should be considered as 24 hours for all the days of the week. It is desired that IT maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance;</p> <p><i>[Note: the office time should be customize as per the requirement of the project. The purpose of putting webserver is to ensure online services (if relevant to the project) 24X7]</i></p>
Certificate(s) of Compliance	Shall have the same meaning ascribed to it in Clause 5.4.;
Confidential Information	means all information including Purchaser Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations,

	<p>processes, data, design rights, know-how, plans, budgets and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement);</p> <p>All such information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly marked as "confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within <15 days> from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".</p>
Control	<p>means, in relation to any business entity, the power of a person to secure (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person's wishes and in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;</p>

Deliverables	means the products, infrastructure and services agreed to be delivered by the Implementation Agency in pursuance of the agreement as defined more elaborately in the RFP, Implementation and the Maintenance phases and includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related), inter alia payment and/or process related etc., source code and all its modifications;
Proprietary Information	shall have the same meaning ascribed to it in Clause 19.1
Effective Date	shall have the same meaning ascribed to it in Clause 3;
Purchaser Data	means all proprietary data of the department or its nominated agencies generated out of operations and transactions, documents all taxpayers data and related information including but not restricted to user data which the Implementation Agency obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement;
Final Acceptance	shall be conducted on completion of the following:

Test	1) Purchaser Data Centre operational, (if applicable) requisite 2) Deployment & operational hardware and networking at locations, 3) UAT of the overall integrated solution and portal.
Final Testing and Certification Agency	shall have the same meaning ascribed to it in Clause 5.4;
Force Majeure	shall have the same meaning ascribed to it in Clause 16.1;
Force Majeure Costs	shall have the same meaning ascribed to it in Clause 16.2.4 (b);
GoM	means the Government of Maharashtra;

<p>Go-Live</p>	<p>[Note: An objective definition of Go-Live must be customized basis the project requirements. A sample definition is provided below.]</p> <p>1.1.1</p> <p>(a) <i>Subject to partial acceptance of the System as described below, Go-Live shall occur in respect of the System, when (a) the Final Acceptance Tests, as specified in the agreed and finalized project plan have been successfully completed; or (b) the Final Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Purchaser within a period of <insert days> days from the date of installation or any other agreed-upon period; or (c) the Purchaser has put the System into production or use for 60 consecutive days. If the System is put into production or use in this manner, the Implementation Agency shall notify the Purchaser and document such use.</i></p> <p>1.1.2</p> <p>(b) <i>At any time after any of the events set out in Clause above have occurred, the Implementation Agency may give a notice to the Purchaser requesting the issue of an Final Acceptance Certificate.</i></p> <p>1.1.3</p> <p>(c) <i>After consultation with the Purchaser, and within fourteen (14) days after receipt of the Implementation Agency's notice, the Purchaser shall: (a) issue a Final Acceptance Certificate; or (b) notify the IA in writing of any defect or deficiencies or other reason for the failure of the Final Acceptance Tests; or (c) issue the Operational Acceptance Certificate, if the situation covered by sub-clause (a) arises.</i></p>
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	<p>1.1.4 (d) <i>The IA shall use all reasonable endeavours to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Final Acceptance Test that the Purchaser has notified the IA of. Once such remedies have been made by the IA, the IA shall notify the Purchaser, and the Purchaser, with the full cooperation of the IA, shall use all reasonable endeavours to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the Final Acceptance Tests, the IA shall notify the Purchaser of its request for Final Acceptance Certification, in accordance with sub clause (b) The Purchaser shall then issue to the IA the Final Acceptance Certification in accordance with sub clause (c), or shall notify the IA of further defects, deficiencies, or other reasons for the failure of the Final Acceptance Test. The procedure set out in this sub-clause (d) shall be repeated, as necessary, until a Final Acceptance Certificate is issued.</i></p> <p>1.1.5 (e) <i>If the System or Subsystem fails to pass the Final Acceptance Test(s) in accordance with these provisions, Clause 27.2, then either:</i></p> <p><i>i. the Purchaser may consider terminating the Contract, pursuant to termination provisions; or (b) if the failure</i></p>
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	<p><i>To achieve Final Acceptance within the specified time period is a result of the failure of the Purchaser to fulfil its obligations under the Contract, then the IA shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Agreement. ii. If within 14 days after receipt of the IA's notice the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the IA in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the System or Subsystem shall be deemed to have been accepted as of the date of the</i></p> <p><i>IA's said notice.</i></p> <p><i>iii. Partial Acceptance: If so specified in the Agreement, Installation and Commissioning shall be carried out individually for each identified major component or Subsystem(s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the Final Acceptance Test, shall apply to each such major component or</i></p> <p><i>Subsystem individually, and Operational Acceptance Certificate(s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in the below clause. iv. The issuance of Final Acceptance Certificates for individual major components or Subsystems pursuant to clause shall not relieve the IA of its obligation to obtain a Final Acceptance Certificate for the System as an integrated whole (if so specified in the Agreement) once all major components and Subsystems have been supplied, installed, tested, and commissioned.</i></p> <p><i>v. In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue a Final Acceptance Certificate within fourteen (14) days after the fittings and/or furnishings have been delivered and/or installed or the site works have been completed. The IA shall, however, use all reasonable endeavours to promptly remedy any defects or deficiencies in such minor components detected by the Purchaser or IA.</i></p>
Indemnifying Party	shall have the same meaning ascribed to it in Clause 15.1;

Indemnified Party	shall have the same meaning ascribed to it in Clause 15.1;
Intellectual Property Rights	means all rights in written designs and copyrights, moral rights, rights in databases and Bespoke Software / Pre-existing work including its up gradation systems and compilation rights (whether or not any of these are registered and including application for registration);
Escrow Agreement	An agreement that pursuant to Clause 22 provides for the regular deposit into escrow of all source code, object code, and documentation with

	<p>respect to all public material and Service Provider's proprietary material (and cumulative updates thereof), together with (a) continually updated instructions as to the compilation, installation, configuration, deployment and use of the Source Code, and (b) a list of all non-deposited third party software used in conjunction with the Source Code to provide the full functionality of the deposited materials.</p> <p><i>[Note: insert 'not applicable' if there is no provision for Escrow relevant to the Agreement]</i></p>
Insurance Cover	<ul style="list-style-type: none"> - Public liability insurance for an insured amount of INR <i><insert amount></i> per occurrence and not less than <i><insert amount></i> in aggregate - Either professional indemnity or errors and omissions insurance for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than [INR <i>insert amount</i>] in aggregate. - Product liability for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than [INR <i>insert amount</i>] in aggregate. - Workers compensation as required by law <p><i>[Note: insert amount required of any other type of insurance specified at "additional insurance" definition above]</i></p>
Additional Insurance	<i><insert any additional types of insurance the Service Provider is required to maintain. Otherwise insert 'not applicable'></i>
Material Breach	means a breach by either Party (Purchaser or Implementation Agency) of any of its obligations under this Agreement which has or is likely to have an Adverse Effect on the Project which such Party shall have failed to cure;
Required Deliverables	shall have the same meaning ascribed to it in Annexure F of this Agreement;

Parties	means Purchaser and Implementation Agency for the purposes of this Agreement and “ Party ” shall be interpreted accordingly;
Performance Guarantee	Means the guarantee provided by a Nationalized Bank in favour of the Implementation Agency. The amount of Performance Security shall be 10% of the overall cost of the project. This performance security shall be valid till six months after the completion of the project i.e. ---- years from the date of signing of contract or for such time as is required under this Agreement;
Planned Application Downtime	means the unavailability of the application services due to maintenance activities such as configuration changes, up gradation or changes to any supporting infrastructure wherein prior intimation (at least two working

	days in advance) of such planned outage shall be given and approval sought from the Purchaser as applicable;
Planned network outage	Means the unavailability of the network services due to infrastructure maintenance activities such as configuration changes, up gradation or changes to any supporting infrastructure. Prior intimation of such planned outage shall be given and approval sought from the Purchaser as applicable and shall be notified at least two working days;
Project	means Pilot, Project Implementation (roll out) and Maintenance in terms of the Agreement;
Project Implementation	means Project Implementation as per the testing standards and acceptance criteria prescribed by Purchaser or its nominated agencies;
Project Implementation Phase	shall be from the Effective Date of the Agreement to the date of final acceptance testing & certification as set out in Clause 5.4 of this Agreement;
Project Implementation Unit (PIU)	Shall be constituted by Purchaser to monitor the activities, deliverables and progress of the Project. PIU will comprise of the staff members of the Purchaser, other officials from concerned department and external experts (as defined in the RFP);
Project Timelines	shall have the same meaning ascribed to in Annexure F;
Providing Party	shall have the same meaning ascribed to it in Clause 12.5;
Receiving Party	shall have the same meaning ascribed to it in Clause 12.5;
Replacement Implementation Agency	means any third party that Purchaser or its nominated agencies appoint to replace Implementation Agency upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
Required Consents	means the consents, waivers, clearances and licenses to use Purchaser's Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the software and other items that Purchaser or their nominated agencies are required to make available to Implementation Agency pursuant to this Agreement;
Services	means the services delivered to the Stakeholders of Purchaser or its nominated agencies, employees of Purchaser or its nominated agencies, and to professionals, using the tangible and intangible assets created, procured, installed, managed and operated by the Implementation Agency including the tools of information and communications technology and includes but is not limited to the list of services specified in Annexure B;

Service Level	means the level of service and other performance criteria which will apply to the Services delivered by the Implementation Agency;
SLA	means the Performance and Maintenance SLA executed as part of this Master Service Agreement;
Stakeholders	means the students, Franchisee's, Investors, Citizens, Purchaser or its nominated agencies, Purchaser, employees and the Departments of State Government;
Term	shall have the same meaning ascribed to it in Clause 3.1;
Third Party Systems	means systems (or any part thereof) in which the Intellectual Property Rights are not owned by the Purchaser or Implementation Agency and to which Implementation Agency has been granted a license to use and which are used in the provision of Services;
Unplanned Application Downtime	means the total time for all the instances where services in the software requirement specification document prepared by the Implementation Agency are not available for more than 5 consecutive minutes;
Network	in Purchaser users refers to all the IT assets installed by the Implementation Agency as part of the Project for networking;
Unplanned network outage	means the total time for all the instances where services in the software requirement specification document prepared by the Implementation Agency are not available for more than 5 consecutive minutes;
Application	means the software application developed as a part of scope of work set out in Clause 2.1(a)
Application Downtime	Means the time for which user/s is not able to access the application. However, in calculating downtime, scheduled downtime (for example, backup time, batch processing time, routine maintenance time) would not be considered;
Network Uptime	Network Uptime refers to network availability between Purchaser's Head Quarters to Data centre. "%Uptime" means ratio of 'up time' (in minutes) in a month to Total time in the month (in minutes) multiplied by 100;
Warranty / AMC Period	shall be <insert number> years from the date of successful completion /Go-live.
Safety and Security	[Note: insert any safety and security requirements additional to those specified in clause 12.4, Otherwise insert 'not applicable']

1.2 Interpretation

In this Agreement, unless otherwise specified:

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

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to two decimal places, with the third digit of five or above being rounded up and below five being

rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

1.4 Ambiguities within Agreement

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

- (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
- (b) the SLA agreement,
- (c) NDA agreement,
- (d) Schedules and Annexures;
- (e) the RFP along with subsequently issued corrigenda
- (f) Technical and financial proposal submitted by the successful bidder, to the extent they along with subsequently issued clarifications furnished by the Implementation Agency in response to the RFP, to the extent they are not inconsistent with any terms of the RFP.

For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures / Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexures / Schedules and Annexures / Schedules shall prevail over the contents and specifications of the RFP.

2. SCOPE OF THE PROJECT

The Implementation Agency shall be required to: develop / customize and implement <Insert the details of solution>; manage and provide technical support to the solution for the period of <insert period> years from the date of Go-Live.

The roles and responsibilities of the Parties under this Agreement have been set out in detail as Annexure F of this Agreement.

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

2.1 Scope of work

Detailed scope of work for the selected bidder is as follows:

1. -----
2. -----
3. -----

3. TERM AND DURATION OF THE AGREEMENT

This Agreement shall come into effect on <***> 201- (hereinafter the 'Effective Date') and shall continue till operation and maintenance completion date which shall be the date of the completion of the operation and maintenance to the Purchaser or its nominated agencies, unless terminated earlier (as per clause 14), in which case the contract will get terminated on fulfilment of all obligations mentioned as per clause 14 and Schedule-II.

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 fulfilment of all the Conditions Precedent set out below. However, Purchaser or its nominated agencies may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the Implementation Agency.

For the avoidance of doubt, it is expressly clarified that the obligations of the Parties (or its nominated agencies) under this Agreement shall commence from the fulfilment of the Conditions Precedent as set forth below.

4.2 a. Conditions Precedent of the Implementing Partner

The Implementation Agency shall be required to fulfil the Conditions Precedent in which is as follows:

- i. to provide a Performance Security/Guarantee and other guarantees/ payments within <21 days> of the receipt of notification of award from the purchaser; and
- ii. To provide the Purchaser or its nominated agencies certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Implementation Agency (optional).

[Note: In no circumstance should Conditions Precedent include any performance obligations” should be included as: The Conditions Precedent should only be restricted to providing documents like board resolutions, constitutional documents etc. Conditions Precedent are only restricted to providing documentation needed to verify the authenticity of the bidder or at the maximum submission of the Performance Bank Guarantee.]

4.2 b. Conditions Precedent of the Purchaser (needs to be customized as per project

requirement) The Purchaser shall be required to fulfil the Conditions Precedents which are as follows:

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

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.

4.4 Non-fulfilment of the Implementation Agency's Conditions Precedent

- (a) In the event that any of the Conditions Precedent of the Implementation Agency have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by Purchaser or its nominated agencies, this Agreement shall cease to exist;
- (b) In the event that the Agreement fails to come into effect on account of non-fulfilment of the Implementation Agency's Conditions Precedent, the Purchaser or its nominated agencies shall not be liable in any manner whatsoever to the Implementation Agency and the Purchaser shall forthwith forfeit the Earnest Money Deposit.
- (c) In the event that possession of any of the Purchaser or its nominated agencies facilities has been delivered to the Implementation Agency prior to the fulfilment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to Purchaser or its nominated agencies, free and clear from any encumbrances or claims.

5. OBLIGATIONS UNDER THE SLA

5.1 The SLA shall be a separate contract in respect of this Agreement and shall be entered into concurrently with this Agreement between Purchaser and Implementation Agency;

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 Implementation Agency during the Term, the Implementation Agency shall promptly notify Purchaser and/or its nominated agencies of the same in the format set out as Annexure A of this Agreement.
- (b) In the event that the net worth of the surviving entity is less than that of Implementation Agency prior to the change of control, the Purchaser or its nominated agencies may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the Implementation Agency from a guarantor acceptable to the Purchaser or its

nominated agencies (which shall not be Implementation Agency or any of its associated entities).

- (c) If such a guarantee is not furnished within 30 days of the Purchaser or its nominated agencies requiring the replacement, the Purchaser may exercise its right to terminate the SLA and/ or this Agreement within a further 30 days by written notice, to become effective as specified in such notice.
- (d) Pursuant to termination, the effects of termination as set out in Clause 14 of this Agreement shall follow.

For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Implementation Agency 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 to be put into place by the Purchaser and Implementation Agency as under:

- (a) Final testing and certification criteria will lay down a set of guidelines following internationally accepted norms and standards for testing and certification for all aspects of project development and implementation covering software, hardware and networking including the processes relating to the design of solution architecture, design of systems and sub- systems, coding, testing, business process description, documentation, version control, change management, security, service oriented architecture, performance in relation to compliance with SLA metrics, interoperability, scalability, availability and compliance with all the technical and functional requirements of the RFP and this Agreement;
- (c) Final testing and certification criteria will be finalized from the development stage to ensure that the guidelines are being followed and to avoid large scale modifications pursuant to testing done after the application is fully developed;
- (d) Final testing and certification criteria will consider conducting specific tests on the software, hardware, networking, security and all other aspects;
- (e) Final testing and certification criteria will establish appropriate processes for notifying the Implementation Agency of any deviations from the norms, standards

or guidelines at the earliest instance after taking cognizance of the same to enable the Implementation Agency to take corrective action; etc.

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

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and warranties of the Implementation Agency

The Implementation Agency represents and warrants to the Purchaser or its nominated agencies that: [Note: 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 Maharashtra, 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 endeavours not to cause any unnecessary disruption to Purchaser'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 Implementation Agency's response to the RFP and any subsequent clarification pertaining to the evaluation process, furnished on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement;
- (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) no representation or warranty by it contained herein or in any other document furnished by it to Purchaser or its nominated agencies in relation to the Required

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

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

6.2 Representations and warranties of the Purchaser or its nominated agencies

Purchaser or its nominated agencies represent and warrant to the Implementation Agency that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- (b) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) it is subject to the laws of Maharashtra, India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;
- (f) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- (g) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on the Purchaser or its nominated agencies ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects;
- (j) all information provided by it in the RFP in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- (k) Upon the Implementation Agency performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Implementation Agency, in accordance with this Agreement.

7. OBLIGATIONS OF THE PURCHASER OR ITS NOMINATED AGENCIES

Without prejudice to any other undertakings or obligations of the Purchaser or its nominated agencies under this Agreement, the Purchaser or its nominated agencies shall perform the following:

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

system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;

- (c) Purchaser shall provide the data (including in electronic form wherever available) to be migrated.
- (d) To authorize the Implementation Agency to interact for implementation of the Project with external entities such as the state treasury, authorized banks, trademark database etc.
- (e) **Provide prompt Deliverable feedback:** *Within <XX working days> from the submission of a deliverable/SLA and performance reports, the <purchaser> shall provide a sign offs on the deliverable or its comments for changes.*

In case the <purchaser> fails to respond and provide feedback on above stated submission, the deliverables or SLA and performance reports will be deemed accepted. Post <xx working days> there will be no rework of the said deliverable except, in case the purchaser has provided an alternate date for acceptance. Any subsequent rework post acceptance / deemed acceptance would form the subject of a formal change request under the provisions of this Agreement.

8. OBLIGATIONS OF THE IMPLEMENTATION PARTNER

- 8.1** It shall provide to the Purchaser or its nominated agencies, the Deliverables as set out in Annexure F of this Agreement.
- 8.2** It shall perform the Services as set out in Section 2 of this Agreement and in a good and workmanlike manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, and so as to comply with the applicable Service Levels set out with this Agreement.
- 8.3** It shall ensure that the Services are being provided as per the Project Timelines set out in the RFP.

9. APPROVALS AND REQUIRED CONSENTS

9.1 The Parties shall cooperate to procure, maintain and observe all relevant and regulatory and governmental licenses, clearances and applicable approvals (hereinafter the “**Required Consents**”) necessary for the Implementation Agency to provide the Services. The costs of such Approvals shall be borne by the Party normally responsible for such costs according to local custom and practice in the locations where the Services are to be provided.

[Note: This responsibility of taking Governmental licenses, clearances and applicable approvals requires to be explicitly worded in the Scope of work in the RFP, only then this clause in its current shape would hold]

9.2 The Purchaser or its nominated agencies shall use reasonable endeavours to assist Implementation Agency to obtain the Required Consents *[or vice versa, depending on the Scope of work defined in the RFP]*. In the event that any Required Consent is not obtained, the Implementation Agency and the Purchaser or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the Purchaser or its nominated agencies to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Required Consent is obtained, provided that the Implementation Agency 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 Implementation Agency’s obligations are not dependent upon such Required Consents.

10. USE OF ASSETS BY THE IMPLEMENTATION AGENCY

10.1 During the Term the Implementation Agency 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 Implementation Agency 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 Implementation Agency 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 Implementation Agency will be followed by the Implementation Agency 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 Implementation Agency or as may, in the reasonable opinion of the Implementation Agency, be necessary to use the Assets in a safe manner;

(e) Ensure that the Assets that are under the control of the Implementation Agency, are kept suitably housed and in conformity with Applicable Law;

(f) Procure permission from the Purchaser or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;

(g) Not knowingly or intentionally use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.

11. ACCESS TO THE PURCHASER OR ITS NOMINATED AGENCIES LOCATIONS

11.1 For so long as the Implementation Agency provides services to the Purchaser or its nominated agencies location, as the case may be, on a non-permanent basis and to the extent necessary, the Purchaser as the case may be or its nominated agencies shall, subject to compliance by the Implementation Agency with any

safety and security guidelines which may be provided by the Purchaser as the case may be or its nominated agencies and notified to the Implementation Agency in writing, provide the Implementation Agency with:

- (a) reasonable access, in the same manner granted to the Purchaser or its nominated agencies employees, to the Purchaser as the case may be location twenty-four hours a day, seven days a week;
- (b) Reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other the Purchaser as the case may be location, if any, as may be reasonably necessary for the Implementation Agency to perform its obligations hereunder and under the SLA.

11.2 Access to locations, office equipment and services shall be made available to the Implementation Agency < on an “as is, where is” basis / in appropriate working condition (as per scope of work defined in the tender)> by the Purchaser as the case may be or its nominated agencies. The Implementation Agency 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 Schedule V of this Agreement and shall cover all the management aspects of the Project.

12.2 Use of Services

- (a) The Purchaser as the case may be or its nominated agencies, will undertake and use the Services in accordance with any instructions or procedures as per the

acceptance criteria as set out in the SLA or this Agreement or any agreement that may be entered into between the Parties from time to time;

- (b) The Purchaser as the case may be or its nominated agencies shall be responsible for the operation and use of the Deliverables resulting from the Services.

12.3 Changes

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

12.4 Security And Safety

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

act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of Purchaser as the case may be.

12.5 Cooperation

Except as otherwise provided elsewhere in this Agreement or the SLA, each Party ("**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 contractors and subcontractors of the other Party as reasonably requested in order to accomplish the purposes of this Agreement.

13. FINANCIAL MATTERS

13.1 Terms of Payment

- (a) In consideration of the Services and subject to the provisions of this Agreement and of the SLA, the Purchaser shall pay the Implementation Agency for the Services rendered in pursuance of this agreement, in accordance with the Terms of Payment Schedule set out as Schedule V of this Agreement.
- (b) Payments shall be subject to the application of liquidated damages (for period prior to "Go Live") or SLA penalties and its adjustments/corrections (for post "Go-Live") as may be provided for in the Agreement and the SLA from the relevant milestone(s),

[Note: The Purchaser (on request from successful bidders) can look at having a separate mechanism for settling penalties/ service credits rather than the set off against the invoice as this could revenue recognition issues. However, the successful bidder has to ensure that such settlement happens within a stipulated timeframe]

(c) Save and except as otherwise provided for herein or as agreed between the Parties in writing, the Purchaser shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the Implementation Agency performance of any obligations under this Agreement or the SLA) other than those covered in Schedule V of this Agreement. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.

13.2 Invoicing and Settlement

(a) Subject to the specific terms of the Agreement and the SLA, the Implementation Agency shall submit its invoices in accordance with the following principles:

- (i) The Purchaser shall be invoiced by the Implementation Agency for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the Implementation Agency shall raise an invoice as per Schedule V of this Agreement; and
- (ii) Any invoice presented in accordance with this Clause shall be in a form agreed with the Purchaser.

(b) The Implementation Agency alone shall invoice all payments after receiving due approval of completion of payment milestone from the competent authority. Such invoices shall be accurate with all adjustments or changes in the terms of payment as stated in Schedule V of this Agreement.

(c) Payment shall be made within <30 working days> of the receipt of invoice along with supporting documents by the Purchaser subject to deduction of applicable liquidated damages (till “Go Live”) or SLA penalties (post “Go Live”) . The penalties are imposed on the vendor as per the SLA criteria specified in the SLA. In the event of delay in payment of undisputed amount beyond <30 working days>, Implementation Agency shall be entitled to a late payment interest of **<Specify rate of Interest>** per annum from the date of completion of <30 working days>

after submission of invoice. This interest is subject to a limit of <10%> of the total contract value.

- (d) The Purchaser shall be entitled to delay or withhold payment of any invoice or part of it delivered by the Implementation Agency under Schedule V of this Agreement where the Purchaser disputes/withholds such invoice or part of it provided that such dispute is bona fide. , The withheld amount shall be limited to that which is in dispute. The disputed / withheld amount shall be settled in accordance with the escalation procedure as set out in Schedule V of this Agreement. Any exercise by the Purchaser under this Clause shall not entitle the Implementation Agency to delay or withhold provision of the Services.

- (e) Exchange rate variation:

[Option 1]The prices in this Agreement are based upon an exchange rate of Indian Rupee <exchange rate> to one (1) USD ("Base Rate") as on <base date>. The Parties agree to mutually review the Base Rate at the time of issue of invoice, using the daily exchange rate published in Reserve Bank of India (the "Exchange Rate"). The rates of exchange used for price adjustments shall be calculated to four (4) decimal places. In the event that the daily Exchange Rate for the day preceding the day of billing has fluctuated beyond <insert percentage threshold>% relative to the base rate, the Parties agree that the Implementation Agency and Purchaser will have the right to adjust the price accordingly. Any increase or decrease in customs duty by reason of the variation in the rate of exchange in terms of the contract will be to the Implementation Agency's account. In case delivery period is re-fixed/ extended, ERV will not be admissible, if this is due to default of the Implementation Agency.

The following documents should be furnished by the supplier for claiming exchange rate variation:

- (i) A bill of exchange rate variation claim enclosing working sheet
- (ii) Banker's certificate/debit advice detailing foreign exchange paid, date of remittance and Exchange Rate
- (iii) Copies of import order placed on supplier

(iv) Invoice of supplier for the relevant import order

[Option 2:] To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the due date of opening of tenders/seven days prior to the due date of opening of tenders (the purchase organization is to decide and adopt a particular suitable date).

The variation reimbursed to the vendor shall be calculated on the difference between

(a) The invoice value based on the previous three months average exchange rate; and (b) invoice value based on the price quoted by the vendor on the bid submission date.

The applicable exchange rates as above will be according to the TT Selling Rates of Exchange as quoted by authorized Exchange Bankers approved by the Reserve Bank of India on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus <2.5> percent. Any increase or decrease in the Customs Duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case Delivery period is re-fixed/ extended, ERV will not be admissible, if this is due to default of the supplier.

[Note:

- 1. The exchange rate variation clause in 13.2(f) shall be retained only for projects involving hardware procurement, wherein period of implementation/ Go-Live Date is beyond a period of one (1) year from Effective Date.*
- 2. At the time of executing the agreement the Purchaser shall specify the exchange rate and the base date, which shall be either the due date of opening of tenders/seven days prior to the due date of opening of tenders*
- 3. The applicable exchange rates will be according to the TT Selling Rates of Exchange as quoted by authorized Exchange Bankers approved by the Reserve Bank of India.]*

(f) The Implementation Agency shall be solely responsible to make payment to its sub-contractors.

13.3 Tax

- (a) The Purchaser or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the Implementation Agency wherever applicable. The Implementation Agency shall pay for all other taxes in connection with this Agreement, SLA, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.
- (b) The Purchaser or its nominated agencies shall provide Implementation Agency with the original tax receipt of any withholding taxes paid by Purchaser or its nominated agencies on payments under this Agreement. The Implementation Agency agrees to reimburse and hold the Purchaser or its nominated agencies harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among the Purchaser or its nominated agencies, the Implementation Agency 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 Maharashtra, India with respect to taxes and duties, which are directly payable by the Purchaser for providing the goods and services i.e. service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the Implementation Agency in performing the Services, then the remuneration and reimbursable expense otherwise payable to the Implementation Agency under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule V. However, in case of any new or fresh tax or levy imposed after submission of the proposal the Implementation Agency shall be entitled to reimbursement on submission of proof of payment of such tax or levy.

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

14. TERMINATION

14.1 FOR MATERIAL BREACH

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

- (i) If the Implementation Agency is not able to deliver the services as per the SLAs defined in RFP which translates into Material Breach, then the Purchaser may serve a 30 days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the Purchaser will have the option to terminate this Agreement. Further, the Purchaser may offer a reasonable opportunity to the Implementation Agency to explain the circumstances leading to such a breach.
- (ii) If there is a Material Breach by the Purchaser or its nominated agencies which results in not providing support for effecting data migration or not providing the certification of User Acceptance then the Implementation Agency will give a one month's notice for curing the Material Breach to the

Purchaser. After the expiry of such notice period, the Implementation Agency will have the option to terminate the Agreement.

- (b) The Purchaser may by giving a one month's written notice, terminate this Agreement if a change of control of the Implementation Agency has taken place. For the purposes of this Clause, in the case of Implementation Agency, 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).
- (c) In the event that Implementation Agency undergoes such a change of control, Purchaser may, as an alternative to termination, require a full Performance Guarantee for the obligations of Implementation Agency by a guarantor acceptable to Purchaser or its nominated agencies. If such a guarantee is not furnished within 30 days of Purchaser's demand, the Purchaser may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the Implementation Agency.
- (d) The termination provisions set out in this Clause shall apply *mutatis mutandis* to the SLA.

14.2 TERMINATION FOR CAUSE

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

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

- (a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to Clause 14.2.2 (d) (ii) below;

(c) remove all IA's Equipment from the site, repatriate the IA's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind; (d) in addition, the IA shall:

- (i) deliver to the Purchaser the parts of the System executed by the IA up to the date of termination;
- (ii) to the extent legally possible, assign to the Purchaser all right, title, and benefit of the IA to the System, or Subsystem, as at the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the IA and its Subcontractors;
- (iii) Deliver to the Purchaser all non-proprietary drawings, specifications, and other documents prepared by the IA or its Subcontractors as of the date of termination in connection with the System.

14.2.3. In the event of termination by the Customer, IA shall be paid for the:

- 1. Goods delivered
- 2. Services rendered
- 3. Work in progress
- 4. Unpaid AMCs
- 5. Unrecovered investments shall be paid by customer as per termination schedule till the date of termination

14.3 Effects of termination

- (a) In the event that Purchaser terminates this Agreement pursuant to failure on the part of the Implementation Agency to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by Implementation Agency may be forfeited.
- (b) Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule III of this Agreement.

- (c) In the event that Purchaser or the Implementation Agency terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as Schedule V of this Agreement.
- (d) Purchaser agrees to pay Implementation Agency for i) all charges for Services Implementation Agency provides and any Deliverables and/or system (or part thereof) Implementation Agency delivers through termination and any charges at the tendered rate, for extension period beyond termination as decided by the Nodal Agency as per Schedule 2, Clause 2.2 and ii) reimbursable expenses Implementation Agency incurs through termination.
- (e) If Purchaser terminates without cause, Purchaser also agrees to pay any applicable adjustment expenses to Implementation Agency incurs as a result of such termination (which Implementation Agency will take reasonable steps to mitigate.
- (f) In the event of termination of the Contract under 14.2, the Purchaser shall pay to the IA the following amounts:
 - (i) the Contract Price, properly attributable to the parts of the System executed by the IA as of the date of termination;
 - (ii) the costs reasonably incurred by the IA in the removal of the IA's Equipment from the site and in the repatriation of the IA's and its Subcontractors' personnel;
 - (iii) any amount to be paid by the IA to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
 - (iv) costs incurred by the IA in protecting the System and leaving the site in a clean and safe condition pursuant to Clause 14.2; and
 - (v) The cost of satisfying all other obligations, commitments, and claims that the IA may in good faith have undertaken with third parties in connection with the Contract and that are not covered by Clauses 14.3 (d) above.

14.4 Termination of this Agreement due to bankruptcy of Implementation Agency

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

15. INDEMNIFICATION & LIMITATION OF LIABILITY

15.1 Subject to Clause 15.4 below, Implementation Agency (the "Indemnifying Party") undertakes to indemnify, hold harmless the Purchaser (the "Indemnified Party") from and against all **3rd Party** claims, **and pay for all** liabilities, losses, expenses (including reasonable attorneys' fees), fines, penalties, taxes or damages (Collectively "Loss") **finally awarded against the Indemnified Party** on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or wilful default in performance or non-performance under this Agreement.

15.2 If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in Maharashtra, India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages, **that may be finally awarded against Indemnified Party.**

15.3 Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by

- a) Indemnified Party's misuse or modification of the Service;
- b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party;
- c) Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party;

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

- i. Procure the right for Indemnified Party to continue using it.
- ii. Replace it with a non-infringing equivalent
- iii. Modify it to make it non-infringing.

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

15.4 The indemnities set out in Clause 15 shall be subject to the following conditions:

- (i) the Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
- (ii) the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defence of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defence;
- (iii) if the Indemnifying Party does not assume full control over the Defence of a claim as provided in this Article, the Indemnifying Party may participate in such Defence at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses;
- (iv) the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
- (v) all settlements of claims subject to indemnification under this Clause will:
 - a. be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and

- b. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
 - (vi) the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
 - (vii) the Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;
 - (viii) in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defences of the Indemnified Party with respect to the claims to which such indemnification relates; and
 - (ix) if a Party makes a claim under the indemnity set out under Clause 15.1 above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).
- 15.5** The liability of either Party (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event exceed one time the total contract value payable under this Agreement. The liability cap given under this Clause shall not be applicable to the indemnification obligations set out in Clause 15 and breach of Clause 12.4 and 17.
- 15.6** In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) nor for any third party claims (other than those set-forth in Clause 15.1) even if it has been advised of their possible existence.

- 15.7** The allocations of liability in this Section 15 represent the agreed and bargained-for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

16. FORCE MAJEURE

16.1 Definition of Force Majeure

“Force Majeure” shall mean any event beyond the reasonable control of the Purchaser or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected.

16.2 Force Majeure events

A Force Majeure shall include, without limitation, the following:

- a. war, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
- b. strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
- c. earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;

16.2.1 If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.

16.2.2 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The time for achieving Final Acceptance shall be extended.

16.2.3 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under Clause 16.

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

- (a) constitute a default or breach of the Contract;
- (b) Give rise to any claim for damages or additional cost or expense occasioned by the delay or non-performance, if, and to the extent that, such delay or non-performance is caused by the occurrence of an event of Force Majeure.

16.2.5 If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.

16.2.6 In the event of termination pursuant to Clause 16, the rights and obligations of the Purchaser and the Supplier shall be as specified in the clause titled Termination.

16.2.7 Notwithstanding Clause 16.2.4, Force Majeure shall not apply to any obligation of the Purchaser to make payments to the Supplier under this Contract.

16.2.8 For the avoidance of doubt, it is expressly clarified that the failure on the part of the Implementation Agency under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking aren't the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure". In so far as applicable to the performance of Services, Service Provider will be solely responsible to complete the risk

assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).

17. CONFIDENTIALITY

- 17.1** The Purchaser or its nominated agencies shall allow the Implementation Agency to review and utilize highly confidential public records and the Implementation Agency shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- 17.2** Additionally, the Implementation Agency shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities. The Implementation Agency vide its nominated official(s) undertakes complete responsibility to honour the Organisational NDA (Non-Disclosure Agreement) executed with the Purchaser.
- 17.3** The Purchaser or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Implementation Agency regarding any forbidden disclosure.

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 Implementation Agency;
 - (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.
- 17.4** To the extent the Implementation Agency shares its confidential or proprietary information with the Purchaser for effective performance of the Services, the provisions of the Clause 17.1 to 17.3 shall apply mutatis mutandis on the Purchaser or its nominated agencies.

17.5 Any handover of the confidential information needs to be maintained in a list, both by Purchaser & SI, containing at the very minimum, the name of provider, recipient, date of generation of the data, date of handing over of data, mode of information, purpose and signatures of both parties.

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

18. AUDIT, ACCESS AND REPORTING

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

The audit shall be conducted solely at Purchasers' cost and expense. IA will not be obligated to share any information relating to IA's costs, IA's proprietary data, confidential information of IA's other customers and internal audit reports of IA. Such audit shall be conducted (a) upon prior written notice with reasonable notice period; (b) no more than once in every calendar year; (c) only in relation to the previous twelve months' activities; (d) during normal business hours; and (e) to the extent it does not interfere with IA's ability to perform the Services in accordance with the Agreement. To the extent any third party auditors are appointed for this purpose, they shall be subject to confidentiality obligations proposed by an IA.

19. INTELLECTUAL PROPERTY RIGHTS

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

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 Purchaser for license which is published by product owner or its affiliates, or a third party. “**Fixes**” means product fixes that are either released generally (such as commercial product service packs) or that are provided to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.

- 19.2 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 exclusively with the Purchaser.

[Note: Ministry of Electronic and Information Technology, Government of India, has notified “Policy on Collaborative Application Development by Opening the Source Code of Government Applications” in the Gazette of India on 6th May 2015. The same needs to be adopted.]

- 19.3 Pre-existing work:** All IPR including the source code and materials developed or otherwise obtained independently of the efforts of a Party under this Agreement (“**pre-existing work**”) including any enhancement or modification thereto shall remain the sole property of that Party. During the performance of the services for this agreement, each party grants to the other party (and their sub-contractors as necessary) a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the Implementation Agency should grant Purchaser a non-exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to Purchaser as part of the service or deliverables only for its internal business operations. Under such license, either of parties will have no right to sell the pre-existing work of the other party to a Third Party. Purchaser’s license to pre-existing work is conditioned

upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that bidder leaves with Purchaser at the conclusion of performance of the services.

- 19.4 Residuals:** In no event shall Implementation Agency 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, Implementation Agency 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 & MAINTENANCE

[Note: This clause is relevant to projects in the domain of System Integration/ hardware/ software and if irrelevant to the context may be deleted.]

- 20.1 Standard:** The Implementation Agency warrants that the Project, including all the system(s), materials and goods supplied pursuant to the Agreement, shall be free from any defect or deficiency in the material, design, engineering, and workmanship that prevent the system 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 system and/or any of its sub-system(s). Commercial warranty provisions of products supplied under the Agreement shall apply to the extent they do not conflict with the provisions of this Agreement.

20.1.1 The IA also warrants that the products, materials and other goods supplied under the Agreement are new, unused, **latest** and incorporate all recent improvements in design that materially affect the system's or subsystem's ability to fulfil the technical requirements specified in the RFP.

20.1.2 In addition, the IA warrants that: (i) all Goods components to be incorporated into the System form part of the IA/OEM's and/or Subcontractor's current product lines.

20.1.3 The warranty Period for Hardware & COTS Software shall start from the date of delivery.

The warranty period for Bespoke/ customized application software shall commence from the date of deployment of the code on the production server or commercial exploitation of the application by the Purchaser, whichever is earlier and shall extend for as follows:

Component	Period
<Standard Hardware>	<Till the end of the agreement OR <6 months> post completion of the agreement>
<COTS Software>	<Till the end of the agreement OR <6 months> post completion of the agreement>
<Bespoke Software>	<Till the end of the agreement OR <6 months> post completion of the agreement>

Purchaser/Government department should approve signoff within <15 days> from the submission of deliverables for Go-Live/Phased Go-live (as relevant, depending on project requirement) by the implementing agency.

In case the Purchaser/Government department fails to respond and provide feedback on the above stated submission, the deliverables will be deemed accepted for the commencement of warranty for the project.

The Purchaser / Government Department shall not force the bidder, post the elapse of the <15 days> approval period, to rework on the said project outputs/ outcomes. Such revisions may be limited to 3 (three) duly completed before the Sign-off of the UAT. Duration of these 3 (three) revisions will be capped to 15 days per revision.

20.1.4 If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services

provided by the Implementation Agency, the Implementation Agency shall promptly, in consultation and agreement with Purchaser, and at the Implementation Agency's sole cost repair, replace, or otherwise make good (as the Implementation Agency shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the system caused by such default, defect or deficiency. Any defective component, excluding hard disks, that has been replaced by the Implementation Agency shall remain the property of the Implementation Agency.

20.1.5 The IA may, with the consent of the Purchaser, remove from the site any product and other goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the Purchaser may give the IA notice requiring that tests of the defective part be made by the IA immediately upon completion of such remedial work, whereupon the IA shall carry out such tests. If such part fails the tests, the IA shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by the Purchaser and the Supplier.

20.1.6 If the IA fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within a reasonable time period, the Purchaser may, following notice to the IA, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Purchaser in connection with such work shall be paid to the Purchaser by the IA or may be deducted by the Purchaser from any amount due to the IA.

20.1.7 Items substituted for defective parts of the System during the Warranty Period shall be covered by the Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.

20.1.8 The Implementing Agency shall have no liability in the case of breach of this warranty due to (i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the Implementing Agency, (ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the Implementing Agency; (iii) the deliverables having been tampered with, altered or modified by Purchaser without the written permission of the Implementing Agency, or (iv) use of the deliverables otherwise than in terms of the relevant documentation.

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

21. LIQUIDATED DAMAGES

Time is the essence of the Agreement and the delivery dates are binding on the Implementation Agency. In the event of delay or any gross negligence in implementation of the project before Go-Live, for causes solely attributable to the Implementation Agency, in meeting the deliverables, the Purchaser shall be entitled at its option to recover from the Implementation Agency as agreed, liquidated damages, a sum of <0.5%> of the value of the deliverable which suffered delay or gross negligence for each completed week or part thereof subject to a limit of <10%> of the total contract value. This right to claim any liquidated damages shall be without prejudice to other rights and remedies available to Purchaser under the contract and law.

22. ESCROW AGREEMENT

[Note: Please refer Section 2.16 of the Guidance Note for applicability of this provision.]

22.1 Implementation Agency shall comply with the escrow provisions below for all Bespoke Development & customized codes (including subcontractor-owned

materials and other Third Party Material incorporated in Implementation Agency's Proprietary Material), except to the extent Implementation Agency demonstrates to the satisfaction of the Purchaser that compliance is not permitted by the nature of Implementation Agency's limited rights in such material.

22.2 Within <ninety (90) days> after the Purchaser's acceptance of the Solution, the Parties shall enter into a software escrow agreement ("Escrow Agreement") with a reputable, independent, third party that provides software escrow services among its principal business offerings ("Escrow Agent"). The Escrow Agreement shall provide for the regular deposit into escrow of all source code (including without limitation all make files, configurational files, data tables upon which execution is dependent, and the like, collectively the "Source Code"), object code, and documentation with respect to all Public Material and Implementation Agency's Proprietary Material (and cumulative updates thereof), together with (a) continually updated instructions as to the compilation, installation, configuration, deployment, and use of the Source Code, and (b) a list of all non-deposited third party software used in conjunction with the Source Code to provide the full functionality of the deposited materials. In the event of the termination or expiration of the initial Escrow Agreement or any successor agreement, with minimal delay the Parties shall enter into a substantially equivalent agreement with a successor provider of software escrow services (who shall then be known as the "Escrow Agent").

22.3 Implementation Agency will make its initial deposit of Source Code within fifteen (15) days after the effective date of the Escrow Agreement.

22.4 Implementation Agency shall periodically update the escrow deposit as the Parties shall agree in the Escrow Agreement. In addition to other usual and customary terms, the Escrow Agreement shall provide that the Purchaser shall be entitled to obtain the deposited materials from escrow upon the Purchaser's making a proper claim for release from escrow in the event that (c) proper written notice is given to the Escrow Agent that release of the copy of the deposited materials is pursuant

to applicable Central or Purchaser bankruptcy, insolvency, reorganization, or liquidation statute; (d) Implementation Agency files articles of dissolution (but not if Implementation Agency is consolidated or merged into another entity); (e) the Contract expires or terminates for Material Breach of Implementation Agency.

22.5 The release of deposited materials from escrow shall not confer upon the Purchaser any right of ownership in the deposited materials or the underlying intellectual property embodied therein. In the event of the release of deposited materials to the Purchaser from escrow, the Purchaser shall use the deposited materials solely for the benefit of the Purchaser and its constituents, consistently with the grants of license set forth in Clause 19 of this Agreement.

22.6 The release of materials from escrow, without more, shall not cause any further amounts to accrue as payable to Implementation Agency by the Purchaser, and the term of the Purchaser's possessory and usage rights with respect to the released materials shall be perpetual.

22.7 The Escrow Agreement shall provide for its automatic termination upon the earlier of five (5) years after the expiration or termination of this Contract, or, release of all Source Code to the Purchaser and the Purchaser's subsequent confirmation of compliance with the terms of the Escrow Agreement. Implementation Agency shall pay the escrow costs, as well as all costs associated with causing its subcontractors and other third parties to abide by the Escrow Agreement.

23. INSURANCE COVER

23.1 Obligation to maintain insurance

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

(a) for the Agreement Period, valid and enforceable insurance coverage for:

- (i) public liability;
- (ii) either professional indemnity or errors and omissions;
- (iii) product liability;

- (iv) workers' compensation as required by law; and
- (v) any additional types specified in Schedule I; and
- (b) For <one> year 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 Schedule I.

23.2 Certificates of currency

The Implementation Agency must, on request by the Purchaser, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 23. The Service Provider agrees to replace any coverage prior to the date of expiry/cancellation.

23.3 Non-compliance

Purchaser or its nominated agencies may, at its election, terminate this Agreement as per clause 14, upon the failure of Implementation Agency or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve Implementation Agency of its obligations under this Agreement.

24. MISCELLANEOUS

24.1 Personnel

- (a) The personnel assigned by Implementation Agency to perform the Services shall be employees of Implementation Agency or its subcontractor(s), and under no circumstances shall such personnel be considered employees of Purchaser or its nominated agencies. The Implementation Agency 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 Implementation Agency shall use its best efforts to ensure that sufficient Implementation Agency personnel are assigned to perform the Services and that such personnel

have appropriate qualifications to perform the Services. After discussion with Implementation Agency, Purchaser or its nominated agencies shall have the right to require the removal or replacement of any Implementation Agency personnel performing work under this Agreement based on bonafide reasons. In the event that Purchaser or its nominated agencies requests that any Implementation Agency personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule. (d) In the event that the Purchaser and Implementation Agency identify any personnel of Implementation Agency as “Key Personnel”, then the Implementation Agency shall not remove such personnel from the Project without the prior written consent of Purchaser or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.

(e) Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of Implementation Agency to freely assign or reassign its employees; provided that Implementation Agency shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. Purchaser or its nominated agencies shall have the right to review and approve Implementation Agency’s plan for any such knowledge transfer. Implementation Agency shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.

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

(g) Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.

24.2 Independent Contractor

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

(a) incur any expenses on behalf of the other Party;

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

24.3 Sub-contractors

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

24.4 Assignment

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

24.5 Trademarks, Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that Implementation Agency 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 alone 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 Implementation Agency may include Purchaser or its client lists for reference to third parties subject to the prior written consent of Purchaser not to be unreasonably withheld or delayed. Such approval shall apply to each specific case and relate only to that case.

24.6 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:

Implementation Agency

Tel:

Fax:

Email:

Contact:

In relation to a notice given under the MSA / SLA, a Party shall specify the Parties' address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause.

- (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.

24.7 Variations and Further Assurance

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

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

24.8 Severability and Waiver

(a) If any provision of this Agreement or the SLA, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this Agreement or the SLA or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.

(b) No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the SLA of any right, remedy or provision of this Agreement or the SLA shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any

other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision.

24.9 Compliance with Applicable Law

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

24.10 Professional Fees

All expenses incurred by or on behalf of each Party to this Agreement and the SLA, including all fees of agents, legal advisors, accountants and actuaries employed by either of the Parties in connection with the negotiation, preparation and execution of this Agreement or the SLA shall be borne solely by the Party which incurred them.

24.11 Ethics

The Implementation Agency represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of Purchaser or its nominated agencies in connection with this agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of Purchaser standard policies and may result in cancellation of this Agreement, or the SLA.

24.12 Entire Agreement

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

24.13 Amendment

Any amendment to this Agreement shall be made in accordance with the Change Control Schedule set out in Schedule I of this Agreement by mutual written consent of all the Parties. *[Please refer Section 2.12 of the Guidance Note for filling up of this schedule]*

25. GOVERNING LAW AND DISPUTE RESOLUTION

25.1 This Agreement shall be governed by and construed in accordance with the laws of Maharashtra, 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 The Bidder and the Purchaser shall endeavour their best to amicably settle all disputes arising out of or in connection with the Contract in the following manner:

a. In case a Party is of the opinion that a dispute has arisen under this agreement, the Party shall notify the other Party Of the detailed nature of the dispute, the right or obligation under this Agreement to which the dispute relates, and the relief sought by the Party raising the dispute

b. The Party raising a dispute shall address to the other Party a notice requesting an amicable settlement of the dispute within seven (7) days of receipt of the notice.

c. The matter will be referred for negotiation between <Nodal Officer> of Purchaser/Purchaser and the Authorized Official of the Bidder. The matter shall then be resolved between them and the agreed course of action documented within a further period of 15 days.

d. The Parties shall in the first instance attempt to resolve the dispute in good faith. In case, the Parties are unable to resolve the dispute, the matter shall be referred to the Empowered Committee set up by the Department.

25.3 The Parties shall in the first instance attempt to resolve the dispute in good faith. In case, the Parties are unable to resolve the dispute, the matter shall be referred to the Empowered Committee set up as per the point no 7.2.6 **Empowered Committee for Dispute Resolution** in accordance to this Agreement.

- 25.4** The Empowered Committee shall attempt to resolve the dispute in a meeting specially convened for the purpose. The representatives of all Parties shall be invited to participate in such meetings.
- 25.5** The negotiations between the Parties and the proceedings before the Empowered Committee shall be kept confidential unless Parties agree otherwise.
- 25.6** Each Party shall bear its own cost in relation to the dispute resolution as aforesaid.
- 25.7** In case, the Empowered Committee is Unable to resolve the dispute, the dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The Arbitration proceedings will be held at Mumbai, India. The arbitration shall be conducted in English and all documents shall, if not already in English, shall be translated into English by the Party relying upon the document.
- 25.8** The Principal Secretary, IT, GoM or an Officer of an equivalent rank nominated by the GoM shall be the sole Arbitrator for the purpose of the arbitration proceedings
- 25.9** 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.
- 25.10** The Parties agree that any decision or award of the arbitrator pursuant to this clause shall be a domestic award and final, conclusive and binding upon the parties and any person(s) affected by it. The Parties also agree that any court of competent jurisdiction may enforce any arbitration award rendered pursuant to this clause.
- 25.11** During any period of dispute resolution as hereinbefore provided, there shall be no suspension of this agreement.
- 25.12** Compliance with laws: Each party will comply with all applicable export and import laws and regulations.
- 25.13** Risk of Loss: For each hardware item, Implementation Agency bears the risk of loss or damage up to the time it is delivered to the Implementation/Purchaser-designated carrier for shipment to Purchaser or Purchaser's designated location.

25.14 Third party components: Implementation Agency 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 Purchaser**

(FIRST PARTY)

Signed by:

(Name and designation)

IMPLEMENTATION AGENCY

(SECOND PARTY)

(Name and designation) For and on behalf of Implementation Agency

Signed by:

26. **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 Implementation Agency and changes to the terms of payment as stated in the Terms of Payment Schedule.

The Purchaser and IA 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 IA will endeavour, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and Purchaser or its nominated agencies will work with the Implementation Agency 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 IA and the Purchaser or its nominated agencies, during the Project Implementation Phase and the Purchaser or its nominated agencies during the Operations and Management Phase and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the RFP and is suggested and applicable only after the testing, commissioning and certification of the Pilot Phase and the Project Implementation Phase as set out in this Agreement.
- iii. It is hereby also clarified here that any change of control suggested beyond 25 % of the value of this Project will be beyond the scope of the change control process and will be considered as the subject matter for a separate bid process and a separate contract. It is hereby clarified that the 25% of the value of the Project as stated in herein above is calculated on the basis of bid value submitted by the Implementation Agency and accepted by the Purchaser or its nominated agencies or as decided and approved by Purchaser or its Nominated Agencies. For arriving at the cost / rate for change up to 25% of the project value, the payment terms and relevant rates as specified in Annexure D shall apply.

b. Quotation

- i. The IA shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN the IA shall provide as a minimum:
 - 1. a description of the change
 - 2. a list of deliverables required for implementing the change;
 - 3. a time table for implementation;
 - 4. an estimate of any proposed change
 - 5. any relevant acceptance criteria
 - 6. an assessment of the value of the proposed change;
- 6. Material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work
- ii. Prior to submission of the completed CCN to the Purchaser, or its nominated agencies, the Service Provider will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process,

the IA 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 IA meets the obligations as set in the CCN. In case of recertification due to proposed changes, required cost will be borne by the party that initiated the change. In the event the IA 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 IA.

d. Obligations

The IA 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. IA will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact. The cost associated with any hardware/goods/License for COTS product should not exceed the price quoted in the bidder's proposal. Any costs associated with changes to Software specifications which cannot be arrived at on the basis of the IA's proposal shall be mutually agreed to between the IA and the Purchaser.

[Note: Please refer to guidance notes with regard to method of calculation of Change Requests.]

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

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

2 TRANSFER OF ASSETS

- 2.1 Purchaser shall be entitled to serve notice in writing on the IA at any time during the exit management period as detailed hereinabove requiring the IA and/or its sub-contractors to provide the Purchaser with a complete and up to date list of the Assets within 30 days of such notice. Purchaser shall then be entitled to serve notice in writing on the IA at any time prior to the date that is 30 days prior to the end of the exit management period requiring the IA to sell the Assets, if any, to be transferred to Purchaser 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 Purchaser, any period of operation should be mutually agreed to between the Parties.
- 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 IA, the IA shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to the Purchaser.
 - (ii) All risk in and title to the Assets to be transferred / to be purchased by the Purchaser pursuant to this Article shall be transferred to Purchaser, on the last day of the exit management period.
 - (iii) Purchaser shall pay to the IA 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 IA shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements.
 - (v) The outgoing IA will pass on to Purchaser and/or to the Replacement IA, the subsisting rights in any leased properties/ licensed products on terms not less favourable to Purchaser/ Replacement IA, than that enjoyed by the outgoing IA.

2.4 **In case of Cloud related procurement, assets excludes any hardware, software or resources deployed for the cloud service offerings that are under the control of the Cloud Service Provider.** For procurement of cloud services for a project DIT cloud policy and all references governed by Cloud Computing Policy Circular dated 29.1.2018 and subsequent addendums issued thereof along with all terms and conditions of the Cloud Computing Policy issued by Government of Maharashtra are binding and are to be treated in conjunction with this document. In case of any contrary provisions are contained in the RFP, DIT cloud policy GR and its subsequent addendums will prevail. Refer Annexure G.

3 COOPERATION AND PROVISION OF INFORMATION

3.1 During the exit management period:

- (i) The Implementation Agency will allow the Purchaser or its nominated agency access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the Purchaser to assess the existing services being delivered;
- (ii) promptly on reasonable request by the Purchaser, the IA 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 Implementation Agency or sub-contractors appointed by the Implementation Agency). The Purchaser shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The Implementation Agency shall permit the Purchaser 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 Implementation Agency and to assist appropriate knowledge transfer.

4 CONFIDENTIAL INFORMATION, SECURITY AND DATA

- 4.1 The Implementation Agency will promptly on the commencement of the exit management period supply to the Purchaser or its nominated agency the following:

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

4.2 Before the expiry of the exit management period, the Implementation Agency shall deliver to the Purchaser or its nominated agency all new or up-dated materials from the categories set out in Schedule above and shall not retain any copies thereof, except that the Implementation Agency 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, the Purchaser or its nominated agency shall deliver to the Implementation Agency all forms of Implementation Agency confidential information, which is in the possession or control of Chairperson, PIU or its users.

5 EMPLOYEES

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

6 TRANSFER OF CERTAIN AGREEMENTS

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

In case of Cloud Procurement, the Purchaser or its nominated agency chooses to continue with the same Cloud Service Provider, the IA shall, on request of the Purchaser or its nominated agency, effect assignment / transfers of the Agreement with the CSP to the Purchaser or its nominated agency.

7 RIGHTS OF ACCESS TO PREMISES

- 7.1 At any time during the exit management period, where Assets are located at the Implementation Agency's premises, the Implementation Agency will be obliged to give reasonable rights of access to (or, in the case of Assets located on a third party's premises, procure reasonable rights of access to) the Purchaser or its nominated agency and/or any Replacement Implementation Agency in order to make an inventory of the Assets.
- 7.2 The Implementation Agency shall also give the Purchaser or its nominated agency or its nominated agencies, or any Replacement Implementation Agency right of reasonable access to the Implementation Partner's premises and shall procure the Purchaser or its nominated agency or its nominated agencies and any Replacement Implementation Agency rights of access to relevant third party premises during the exit management period and for such period of time following