Controller General of Defence Accounts

Ministry of Defence (Finance)

Government of India

Volume - 3

Request for Proposal

For Selection of Agency For

Development & Implementation of

Comprehensive Pension Package

and Data Center Setup

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RFP Structure

This Request for Proposal (RFP) document for Project *Software Development & Implementation of Comprehensive Pension Package & Mini Data Center Setup* comprise of the following:

DAD through this Request for Proposal (RFP), seeks to select a System Integrator, with relevant experience and capabilities to design, procure/develop, supply, implement, operate and maintain Comprehensive Pension Package & Mini Data Center Setup, as described in this RFP. The content of this RFP has been documented as a set of three volumes explained below:

1. **Volume I: Scope of work**

    Volume I, along with its annexures, of this RFP includes the scope of work of the project including functional, technical and operational requirements of the Comprehensive Pension Package & Mini Data Center Setup solution.

2. **Volume II: General Instructions, Commercial and Bidding Terms**

    Volume II, along with its annexures, of this RFP includes the details on technical and commercial eligibility and evaluation criteria and their related forms, formats and guidelines.

3. **Volume III: Draft Agreement**

    Volume III, along with its annexures, of this RFP includes the draft Master Services Agreement (MSA), Service Level Agreement (SLA) and Non-Disclosure Agreement (NDA) to be signed between DAD and System Integrator.

    This document is volume III.

    The bidders are expected to examine all instructions, forms, terms, Project requirements and other information in the RFP documents. Failure to furnish all information required as mentioned in the RFP documents or submission of a proposal not substantially responsive to the RFP documents in every respect will be at the Bidder's risk and may result in rejection of the proposal.

Draft Master Services Agreement

This Agreement along with all its Articles, Schedules and Annexures (hereinafter referred to as the "**Agreement/MSA**", as defined hereinafter) is made on this <<day>> day of <<month>>, 201_ by and between:

a) DAD (Defence Accounts Department), represented by _____ having its office at _____ who is duly authorized by Ministry of Defence to execute this agreement, of the FIRST PARTY;

AND

b) ___<name of the company>___, a company registered under the Indian Companies Act, 1956 having its registered office at ___<address>____ and place of business at __<address>__(hereinafter referred to as "System Integrator/SI", which expression, unless excluded or the context otherwise required hereof includes its successors, administrators and assigns) represented through its __<Name & designation of authorized person>___, who is duly authorized to sign, execute vide a board resolution dated <<date>> passed by its board of directors being the Party of the SECOND PART.

DAD and Service Provider shall independently be called as "Party" and jointly as "Parties".

WHEREAS

A. Defence Accounts Department (DAD) intends to implement a Comprehensive Pension Package (CPP) and DC Project including scanning of Pensioner's records with five years operations and maintenance support, etc...

B. In furtherance of the same, DAD undertook the selection of a suitable Service Provider through a competitive bidding process for implementing the Project and in this behalf issued Request for Proposal (RFP) dated_____;

C. The Service Provider has been selected as the successful bidder to undertake and implement the CPP Project on the basis of the proposal dated _____ submitted by SP ("Proposal").

D. DAD intends to engage the Service Provider to undertake and implement the CPP Project on the terms and conditions set forth below.

E. The Service Provider in pursuance of its proposal undertakes to implement the CPP Project stated herein above.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS AND CONDITIONS HEREIN CONTAINED, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

DAD and the Service Provider have agreed to enter into this Agreement to govern the way in which the Service Provider will perform the required work under this Agreement and the Service Level Agreement ("SLA") in accordance with roles and responsibilities of DAD and its nominated agencies and the Service Provider as set forth in this agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized officers or representatives.

For and on behalf of DAD	For and on behalf of << SP >>
	An authorized signatory duly nominated pursuant to Board Resolution No.
(<<Name>>)	(<<Name>>)
<<Designation>>	<<Designation>>
Defence Accounts Department	<<Company Name>>
_____	
_____	

Date:	**Date:**
Place: New Delhi	**Place: New Delhi**
Witnessed by:	**Witnessed by:**
1.	**1.**
2.	**2.**

1   Article 1: Definitions & Interpretations

1.1   Definitions: In this Agreement, unless the context otherwise requires

1. **"Agreement/MSA"** means this agreement together with all the Articles, Schedules, Annexures and the contents and specifications of all the volumes of the Request for Proposal (RFP) and in all the attached schedules and any addendums, corrigendum issued and shall include any modifications, alterations, additions or deletions thereto agreed between the Parties in writing after the date hereof in terms of this Agreement. In the event of a conflict between this Agreement and the Schedules, the terms of the Agreement shall prevail;

2. **"Agreement Value"** means the total amount to be paid by the DAD to SI as mentioned in **Schedule VI: Payment Schedule**.

3. **"Applicable Laws"** includes all applicable statutes, enactments, acts of legislature or parliament laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental authority, tribunal, board, court or other quasi-judicial authority 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 execution of this Agreement and during the subsistence thereof, applicable to the Project.

4. **"Bill of Material" or "BoM"** means the bill of material provided by SI in its Proposal in **Schedule VII: Bill of Material.**

5. **"Project"** means CPP Project involving scope of work and terms and conditions defined in this RFP.

6. **"Confidential Information"** means all information as defined in **Article 16: Information Security and Audit Rights**.

7. **"Deliverables"** means the products, infrastructure and services agreed to be delivered by the System Integrator in pursuance of the Agreement as elaborated in Volume I of the RFP

8. **"Effective Date"** means the date on which the Agreement is executed by both the Parties.

9. **"Equipment"** means the computer hardware, machinery and other tangible equipment used for the Project, pursuant to the Agreement.

10. **"Intellectual Property Rights"** means rights as defined in **Article 13: Intellectual property rights**;

11. **"Adverse Effect"** means material adverse effect on (a) the ability of a party to 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.

12. **"Material Breach"** means breach that has an effect on (a) the ability of a party to perform/discharge any of its duties/obligations under and in accordance with the provisions of the Agreement; and/or (b) the legal validity, binding nature or enforceability of the Agreement;

13. **"Operative Period of Agreement" or "Term"** means the period of the Agreement commencing from the Effective Date and continuing till the last day of Operations and Maintenance Service, or the date of termination, in case of earlier termination of the Agreement.

14. **"Performance Guarantee" and "Performance Bank Guarantee"** shall mean the guarantee provided by a Nationalized Bank/Scheduled Bank to DAD on behalf of the System Integrator for the amount specified in **Schedule VI: Payment Schedule** of this document;

15. **"Project Location"** shall have the same meaning as mentioned in **Volume I** of this RFP.

16. **"Go-Live"** shall have the same meaning ascribed to it in **"Project milestones" section of RFP Volume I**.

17. **"Stabilization Phase"** shall have the same meaning ascribed to it in **"Project go-live" and "Project timelines" section of RFP Volume I**.

18. **"Proprietary Information"** means processes, methodologies and technical and business information, including drawings, designs, formulae, flow charts, data and computer programs already owned by, or granted by third parties to a Party hereto prior to its being made available under this Agreement, or the SLA;

19. **"Request for Proposal/ (RFP)"** unless otherwise specified means this document along with other two volumes (Volume I & II) and corrigendum(s) if any.

20. **"Replacement System Integrator"** means any third party that DAD may appoint to replace the System Integrator upon expiry of the Term or otherwise termination of this Agreement or the SLA to undertake the Services or part thereof;

21. **"Service Level"** means the level of service and other performance criteria which will apply to the services delivered by the SI as set out in Service Level Agreement;

22. **"Service Level Agreement (SLA)"** means the Operation and Maintenance SLA, executed by and between System Integrator and DAD;

23. **"Working Day"** means any day on which any of the office of DAD will be functioning, including gazetted holidays, restricted holidays or other holidays, Saturdays and Sundays.

1.2   Interpretation

In this Agreement, unless otherwise specified:

1.   References to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;

2.   Use of any gender includes the other genders;

3.   References to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;

4. References to a 'person' shall be construed to include any individual, partnerships, firms, companies, public sector units, corporations, joint ventures, trusts, associations, organizations, executors, administrators, successors, agents, substitutes and any permitted assignees or other entities (whether or not having a separate legal entity). A reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.

5. 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;

6. Any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;

7. References to a 'business day' shall be construed as a reference to a day (other than a Sunday) on which DAD and its other offices are generally open for business;

8. References to times are to Indian Standard Time;

9. 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

10. All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.

11. System Integrator (SI) or Implementation Agency (IA) or Service Provider (SP) has been used for the same entity i.e. bidder selected for the project.

12. The words importing singular shall include plural and vice versa;

13. Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Article or Schedule. The words "include" and "including" shall not be construed as terms of limitation;

14. The words "in writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated. Any reference to attorneys' fees shall include fees of the professional assistants of such attorneys;

15. The headings and use of bold type in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement;

16. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;

17. Any agreement, consent, approval, authorization, notice, communication, Information or report required under or pursuant to this Agreement from or by any Party or the independent engineer and/or a statutory auditor and/or any other authority shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the independent engineer and/or statutory auditor or any other authority, as the case may be, in this behalf and not otherwise;

18. Unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include either such days or dates;

19. A reference to knowledge of a person includes Information that a reasonable person in the circumstances of that person would have known by reasonable inquiry;

1.3   Measurements and Arithmetic Conventions

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

1.4   Ambiguities and Discrepancies within Agreement

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

a)   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)   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)   Between any value written in numerals and that in words, the value in words shall prevail.

d)   Between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

1.5   Priority of documents

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

a)   This Agreement along with the SLA agreement, NDA agreement, Articles, Schedules and Annexures;

b)   Request for Proposal and Addendum / Corrigendum to the Request for Proposal (if any).

c)   The Proposal of the System Integrator;

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   Article 2: Structure

2.1   Overview

This Agreement shall operate as a legally binding Agreement for the Project specifying the terms which apply to the Parties under this Agreement, including but not limited to terms in relation to operate and maintain the System with commitment for delivering the solution/software and services specified under this Agreement in accordance with roles and responsibilities set herein for maximum total consideration of Rs. _____ **inclusive of all taxes except VAT/CST and service tax (or any new statutory tax introduced by the Government replacing VAT/CST and service tax)** which will be payable at the applicable rate from time to time.

2.2   Service Level Agreement (SLA)

1. Service Level Agreement (SLA) shall be a separate Agreement in respect of this Agreement and shall be entered into concurrently with this Agreement between DAD and Service Provider. In relation to any future SLA entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein.

2. The SLA shall be a separate divisible Agreement in respect of this Agreement.

3. 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 DAD and SP in accordance with the Change Control Schedule set out in **Schedule –II: Change Control** of this Agreement.

4. Save for the express terms of the Payment Schedule set out in **Schedule VI: Payment Schedule** of this Agreement, DAD or its nominated agencies and its users may purchase any particular category of Services that may become necessary as per the Change Control

Schedule set out in **Schedule –II: Change Control** of this Agreement, without the need to go for a separate procurement process.

2.3 Obligations under the SLA

1. The SLA shall be a separate agreement in respect of this Agreement and shall be entered into concurrently with this Agreement between DAD and Service Provider;

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.

2.4 Change of Control

1. In the event of a change of control of the Service Provider during the Term, the Service Provider shall promptly notify DAD and/or its nominated agencies of the same.

2. In the event that the net worth of the surviving entity is less than that of Service Provider prior to the change of control, the DAD 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 Service Provider from a guarantor acceptable to the DAD or its nominated agencies (which shall not be Service Provider or any of its associated entities).

3. If such a guarantee is not furnished within 30 days of the DAD or its nominated agencies requiring the replacement, the DAD 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.

4. Pursuant to termination, the effects of termination as set out in this Agreement shall follow.

5. For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Service Provider 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.

2.5   Term and duration of the agreement

This Agreement shall come into effect on _____ (hereinafter the 'Effective Date') and shall be valid for a period of FIVE years after CPP Application Rollout.

2.6   Conditions precedent & effective date

2.6.1   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, DAD may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the System Integrator.

2.6.2   Conditions Precedent of the System Integrator

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

a) To provide a Performance Bank Guarantee (as defined in Section **Performance Bank Guarantee** of the Agreement) to the DAD; and

b) To provide the DAD certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the System Integrator.

For the avoidance of doubt, it is expressly clarified that the obligations of the Parties except the financial obligations of DAD under this Agreement shall commence from the fulfilment of the Conditions Precedent as set forth above.

2.6.3   Extension of time for fulfilment of Conditions Precedent

1. The Parties may, by mutual agreement extend the time for fulfilling the Conditions Precedent.

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

2.6.4 Non-fulfilment of the System Integrator's Conditions Precedent

1. In the event that any of the Conditions Precedent of the System Integrator have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by DAD, this Agreement shall cease to exist;

2. In the event that the Agreement fails to come into effect on account of non-fulfilment of the System Integrator's Conditions Precedent, the DAD shall not be liable in any manner whatsoever to the System Integrator and the DAD shall forthwith forfeit the Performance Guarantee.

3. In the event that possession of any of the DAD facilities has been delivered to the System Integrator prior to the fulfilment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to DAD, free and clear from any encumbrances or claims.

2.7 Agreement Documents

1. The following documents shall be deemed to form and be read and construed as part of the Agreement,

   a) This Agreement and all the attached Schedules.

   b) The Request for Proposal Document published on _____, the addenda, corrigendum's and pre-bid clarifications issued subsequent to the release of Request for Proposal Document are attached as: **Annexure <To be filled up after the finalization of the service provider>.**

   c) The undertakings submitted by the SI as part of the bid response and attached as **Annexure <To be filled up after the finalization of the service provider>**.

   d) The Technical Proposal dated _____ submitted by SI, subsequent clarifications submitted by SI and the technical presentation submitted by the SI in response to the RFP and attached as **Annexure <To be filled up after the finalization of the service provider>**.

e) The Commercial bid proposal submitted by the SI in response to the RFP dated _____ and attached as Annexure _____.

f) Letter of Intent to Award of Offer for the S. No: _____ and dated _____ and Attached as **Annexure <To be filled up after the finalization of the service provider>**.

In the event of any ambiguity or conflict between the Agreement Documents listed above, the order of precedence shall be the above chronological order in which the Agreement

2. Documents are listed, provided the Terms of this Agreement and Schedules attached thereof take precedence over all other documents as listed above. 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.

In case of conflict between RFP document, as amended, and proposal of SI, the provisions mentioned in the RFP document, its annexures, addenda and pre-bid clarifications issued for the RFP shall prevail.

2.8   Extension of the agreement

This Agreement may be extended by DAD in its sole and absolute discretion for a further term of up to two years, in blocks of one year each, by giving to the SI written notice of at least three months prior to the expiration date of the Initial Term. In no case, the extension of term beyond two years shall be given by DAD.

In case of extension of the O&M period beyond five years of O&M, the extension shall be given on the mutual terms and conditions.

3   Article 3: Project Scope

3.1   Scope of Work for the System Integrator

<<The scope of work for the SI will be as per the scope defined in the Volume I of the RFP>>

The roles and responsibilities of the Parties under this Agreement have been set out in detail in the **Volume I of this RFP**.

For the avoidance of doubt, it is expressly clarified that this Agreement shall govern the provision of the contracted professional services under the SLA to the DAD and its nominated agencies. Any additional/optional- equipment/service/items supplied by SI-as per the SI's commercial proposal (on DAD's request) shall also be governed by the terms and conditions set out in this agreement.

It is anticipated that new or renewal agreements may be undertaken by creating a separate SLA, with schedules and annexures as required, under this Agreement for each additional engagement.

3.2   Interpretation of the Scope of Work

1. DAD retains the right of the final say in the interpretation of the scope of the Project. The possible variations to the processes from the way they are specified in the scope of work should not be considered as deviations or extensions to the original process specifications.

2. Sign-off on the deliverables by DAD does not necessarily indicate the complete approval of the deliverables. Any gap that is found in a deliverable with respect to the above, even after the sign-off, will have to be addressed by the SI without any additional cost to DAD.

4   Article 4: Payment Terms

4.1   Terms of Payment

1. In consideration of the Services and subject to the provisions of this Agreement and of SLA, the DAD shall pay the Service Provider for the Services rendered in pursuance of this agreement (to the Lead Bidder in case of consortium), in accordance with the Payment Schedule set out as **Schedule VI: Payment Schedule** of this Agreement.

2. DAD is entitled to deduct following sums from the payments to be made to SI in pursuant to this Agreement:

   a) Liquidated Damages as per **Section 4.4.**

   b) Penalties for not meeting SLAs: If SI fails to meet minimum Service Levels for a particular Service Level, DAD shall deduct the amount of penalties related to the severity of violation, calculated as per Service Level Agreement.

3. Save and except as otherwise provided for herein or as agreed between the Parties in writing, the DAD shall not be required to make any payments in respect of the services other than those covered by the terms of payment as stated in the **Schedule VI: Payment Schedule** of the Agreement be read along with Service Level Agreement and SLA Methodology Document.

4. 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.

4.2   Invoicing and Settlement

This Project is a Hybrid (Turnkey + IT Service Delivery + Scanning & Migration) Project, and not simply a project involving supply goods and construction of works. In respect of its remuneration for the Project, the Lead Bidder shall be eligible to receive payments in

accordance with the **Schedule VI: Payment Schedule** of the Agreement be read along with the Service Level Agreement and SLA methodology document.

a) Subject to the specific terms of the Project Milestone & SLA, the Service Provider shall submit its invoices in accordance with the following principles:

   i. During Development & Implementation Phase - On achievement of milestones as described in **Section 4.6** of the RFP. It shall be in the sole discretion of DAD to certify the fulfilment of condition to declare a milestone achieved.

   ii. During O&M Phase- IT Service Delivery: For IT services delivery the Service Provider shall raise the invoice for each quarter after completion of the quarter. The payments will be made in accordance with the SLAs.

   iii. Scanning: For this activity SP shall raise the invoice for each Quarter after completion of the quarter. The payments will be made in accordance with the SLAs.

   iv. Any invoice presented in accordance with this Article shall be in a form agreed with the DAD.

b) The Bidder/Lead Bidder alone shall invoice all payments after receiving due approval from the competent authority.

c) Invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in the **Schedule VI: Payment Schedule** of the Agreement shall be applied to the next payment invoice.

d) The Service Provider shall waive any charge for a Service that is not invoiced within six months after the end of the month in which the change relating to such Service is authorized or incurred, whichever is later.

e) The DAD shall be entitled to delay or withhold payment of any invoice or part of it delivered by the System Provider under **Schedule VI: Payment Schedule** of this

Agreement where the DAD 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 after the issue is resolved. Any exercise by the DAD under this Clause shall not entitle the System Provider to delay or withhold provision of the Services.

f) The System Provider shall be solely responsible to make payment to its Consortium Partner/Sub-contractors.

g) Subject to completion of respective milestone and submission of complete and correct invoices, DAD shall make payment to the SI against the submitted invoice within **30 working days** of the date of submission of the account.

4.3 Taxes

1. The DAD shall be responsible for withholding taxes from the amounts due and payable to the System Provider wherever applicable as per the Applicable Law. The System Provider 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.

2. The DAD shall provide System Provider with the original tax receipt of any taxes deducted at source and paid for the Project on payments under this Agreement. The System Provider agrees to reimburse and hold the DAD 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 DAD or its nominated agencies, the System Provider and third party subcontractors.

3. If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by the DAD for providing the services i.e. service tax or any such other applicable tax from time

to time, which increase or decreases the cost incurred by the IA in performing the Services, then the remuneration and reimbursable expense otherwise payable to the SI under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in **Schedule VI: Payment Schedule.** However, in case of any new or fresh tax or levy imposed after submission of the proposal the System Integrator shall be entitled to reimbursement on submission of proof of payment of such tax or levy.

4. VAT/CST & Service tax or any other tax in lieu thereof levied by the central government from time to time on the services rendered by the SI to DAD shall be paid by DAD to the SI over and above the payment schedule, subject to the SI submitting his bills/ invoices therefor in the format prescribed under rule 4A (1) of the Service Tax Rules, 1994 or other relevant laws, as the case may be.

5. 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.

4.4   Liquidated Damages

Time is the essence of the agreement and the delivery dates are binding on the System Integrator. DAD shall be entitled at its option to recover from the SI, a penalty on account of delay or non-performance in achieving the project milestones as defined in Volume I of the RFP. This penalty shall be equal to 1% per week of the corresponding payment milestone value of the delayed milestone (as defined in Schedule VI: Payment Schedule).This penalty is

subject to the maximum of 10% of the value of corresponding payment milestone value of the delayed milestone. This right to levy any penalty shall be without prejudice to other rights and remedies available to DAD under the Agreement and/or any other law. Once the maximum deduction is reached the DAD may consider termination of the Contract.

4.5 Payment Terms in other conditions

4.5.1 Premature Termination Prior to Project Commencement by the SP

In the event of premature termination of this Master Service Agreement prior to the commencement of the Project by the Service Provider, the Service Provider shall not be eligible to receive any compensation or payment.

4.5.2 Premature Termination Post Commencement of Operations

The DAD shall pay to the SP a termination payment equal to the market price of the Assets. The term market price as stated hereinabove means the market value of the Assets on as is where basis is prevailing on the date of issue of notice of termination, which is defined as cost of purchase of all Project Assets less depreciation if any, till date of termination, less payment already made for the deliverables. The DAD may also deduct from the amount paid by it the costs associated with replacing the incumbent SP with the Replacement SP. This payment shall be made after deduction of any dues recoverable by DAD as on the termination date. DAD will have option to invoke the Performance Bank Guarantee furnished by the SP in case of SP's event of default.

4.5.3 Expiry of this Agreement

In the event of the expiry of this Agreement, DAD shall retain the Performance Bank Guarantee till their validity period. Subsequently, the Performance Bank Guarantee shall be released provided an agency appointed by DAD certifies and DAD accepts that the handing over procedure as stated in Exit Management Schedule has been duly complied with. In the event that the compliance is not completed, the Performance Bank Guarantee shall be invoked and the amount appropriated and forfeited. DAD will not pay any costs of Service Provider's conduct of business. There will be no payments to SP to compensate for loss business.

4.5.4   Termination of this Agreement

In the event of termination for any reason whatsoever the bidder shall be paid for all the goods delivered/services rendered and accepted by DAD till the effective date of termination.

5   Article 5: Representation and Warranties

5.1   Representations and warranties of the System Integrator

The System Integrator represents and warrants to the DAD that:

1. It possesses and has the required professional skills, personnel and technical resources to deliver the Services and have offered to provide the Services, on the terms and conditions set forth in this Agreement.

2. It is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder.

3. It has full power and authority to execute, deliver and perform its obligations under this Agreement.

4. This Agreement is executed by a duly authorized representative of the SI.

5. This Agreement constitutes the legal, valid and binding obligation of SI, enforceable against it in accordance with the terms hereof.

6. It is a competent provider of a variety of Information technology and business process management services;

7. 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;

8. From the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

9. In providing the Services, it shall use reasonable endeavours not to cause any unnecessary disruption to DAD's normal business operations

10. The information furnished in the tender documents and as updated on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement;

11. 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;

12. There are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;

13. 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;

14. 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. Further, System Integrator warrants that it will comply, at its cost, with all applicable laws, rules, regulations, ordinances, and codes (including identifying and procuring required permits, certificates, approvals, and inspections). System Integrator warrants that it will comply with all privacy and data protection laws, rules, and regulations that are or that may in the future be applicable to the Services or to information relating to customers and employees of DAD.

15. All its rights and interests in the Project Assets that are to be transferred to the DAD, pursuant to this Agreement shall pass to and vest in the DAD or its nominee on the Transfer Date free and clear of all liens, claims and encumbrances, without any further act or deed on its part or that of DAD, and that none of the Project Assets that are acquired by DAD shall be acquired by it.

16. No representation or warranty by it contained herein or in any other document furnished by it to DAD 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

17. 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 DAD or its nominated agencies in connection therewith.

18. SI warrants that it will provide full support in terms of operations and maintenance services during the Transition Period and such support shall continue till the Replacement SI solely takes charge of the Project. SI further warrants and undertakes that it will be responsible for the continuity of the Services throughout the Term of this Agreement and during the Transition Period.

19. It shall co-operate and co-ordinate with Replacement SI as per provisions of **Schedule III: Exit Management** of this Agreement.

20. It shall provide a monthly SLA Report, in the prescribed format to DAD at the end of every month containing the summary of all Incidents reported to it and SI's related performance measurement for that period. The monthly SLA Report will be deemed to be accepted by DAD upon review and signoff by both SI and DAD.

21. It must deploy an enterprise management system and other tools as required and develop additional scripts (if required) for capturing the required data for service level report generation in automated way. These tools shall play a critical role in monitoring the service level compliance and hence will have to be customized accordingly. These tools should generate the Service Level monitoring report at the end of every month which is to be shared with DAD on a monthly basis. The tools should also be capable of generating Service Level reports on a monthly/quarterly/half-yearly basis. As part of pre Go-Live audit the tools and the scripts shall also be audited. During O&M phase, the system generated SLA reports for a quarter shall be made a part of the invoice raised for the quarter.

22. It will achieve all the Service Levels within the time lines defined in Service Level Agreement and in its failure of achieving the same, it shall be liable to pay penalties to DAD.

23. SI shall comply with all the requirements of RFP.

24. Project Assets

    a) SI warrants that the Project Assets supplied under this Agreement conform to technical specifications and functional requirement specifications prescribed in RFP and shall perform according to the said technical specifications.

    b) SI represents and warrants to DAD to supply to DAD the components that form the Bill of Materials proposed for the System. The commitment shall cover procurement costs (including multiple units of software licenses and all infrastructure associated with the deployment of the solution and its components) and the cost of ownership / maintenance.

    c) SI warrants that the Project Assets supplied under this Agreement shall be of the highest grade and quality and consistent with the established and accepted standards. The Project Assets shall be in full conformity with the specifications and shall operate

properly and safely. All recent design improvements in Project Assets, unless provided otherwise in the Agreement shall also be made available.

d) SI warrants that the Project Assets shall be free from all encumbrances and defects / faults arising from design, material, manufacture or workmanship or from any act or omission of SI that may present a snag/fault, under normal use of the same.

e) SI warrants during the Agreement duration period, the Project Assets and/or services supplied under this Agreement and each component used in the software thereof shall be free from all types of defects / failures.

f) In case complete delivery of the Project Assets are delayed beyond the period stipulated in this Agreement, then SI undertakes that the annual maintenance period for such Project Assets shall be extended to that extent.

g) SI hereby warrants that necessary service back up during the annual maintenance shall be provided and it will ensure that the performance, availability, and other metrics for application is as per Service Levels described in Service Level Agreement.

h) SI warrants that it will maintain Equipment and Software to the extent that the System Integrator has maintenance responsibility for such assets so that they operate in accordance with their specifications, including (I) maintaining Equipment in good operating condition, subject to normal wear and tear; (ii) undertaking repairs and preventive maintenance on Equipment in accordance with the applicable Equipment manufacturer's recommendations; and (iii) performing Software maintenance in accordance with the applicable Software SI's documentation and recommendations.

i) SI hereby warrants that it will collect and maintain all the information collected from various offices of DAD. All such information will be treated as Confidential Information by the SI and will not be disclosed and used by it other than the purposes set out in this Agreement.

j) **Professional Services**: System Integrator warrants that it will provide the Services with promptness, diligence and in a workmanlike and professional manner, in accordance with the terms of the Agreement and with the practices and professional standards used in well-managed operations performing services similar to the Services.

k) **Personnel**: System Integrator warrants that it will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Services. SI shall be responsible for the acts of its employees, sub-contractors, or any other persons deployed by it for performing its obligations pursuant to the Project. DAD reserves its right to initiate criminal action against the agents/ employees of SI for fraud or misappropriation, besides stringent penalties. The management of SI should also be made liable for action in case of fraud, under the applicable laws.

l) **Viruses, Malware and/or Disabling Devices**: SI hereby warrants that it will use industry best practices to identify, screen, prevent and not introduce malware/viruses and/or disabling devices (that is, counter, time lock, worms or Trojan horses) into the environment.

m) **Non-Infringement**: System Integrator warrants that it will perform its responsibilities under the Agreement in a manner that does not infringe any patent, copyright, trademark, trade secret, or other proprietary rights of DAD or any third party.

n) System Integrator warrants that it will use commercially reasonable efforts to ensure that no forms of harmful surreptitious code or other contaminants, including commands, instructions, devices, techniques, bugs, or web bugs, or other Malware are introduced into any computer system, database, software, equipment, web site, or processes used to provide the Services. If a Malware program is found to have been introduced into any environment/system described above, the System Integrator promptly shall notify DAD in writing of the introduction and shall take all necessary steps in reducing the effects of the Malware program, and if the Malware program

causes an interruption of the Services, a loss of operational efficiency or loss of data, SI shall mitigate and restore such losses.

o) For any Software used in the provision of the Services, the System Integrator warrants that it will not insert into such Software any code that would have the effect of disabling or otherwise shutting down all or any portion of the Services. With respect to any disabling code that may be part of Software, the System Integrator will represent and covenant that it shall not invoke such disabling code at any time without DAD's prior written consent.

p) The SI represents and warrants to the DAD that the SI shall be bound by the undertakings submitted to DAD as part of the proposal submitted by the SI.

q) SI hereby warrants that it will fulfil its entire obligations listed in all the volumes of RFP and the Agreement in pursuant to the Project.

r) Compliance and Sizing of Infrastructure

   i. SI warrants that it has sized the infrastructure and all software (including all required licenses) based on the solution proposed and in accordance with the Service Level requirements and assure DAD that the sizing is for all the functionality envisaged in the RFP document and taken into consideration the indicative growth percentage projected by DAD as mentioned in the RFP.

   ii. SI warrants that solution has been sized and synergised in consultation with the respective OEMs.

   iii. SI warrants that the proposed storage at the Mini Data Center and Disaster Recovery Centre as per its sizing will be sufficient to meet the DAD Project's requirements during the Term of the agreement.

   iv. SI warrants that it shall monitor, maintain, and comply with the service levels stated in the RFP to provide quality service to DAD.

v.   SI warrants that any augmentation of the proposed solution or storage or sizing (software, hardware) or any additional component required or resources in order to meet the requirements and/or the requisite Service Level requirements given by DAD will be carried out at no additional cost to DAD.

25. The Project, including all the system(s) and other Services provided, shall be free from any defect or deficiency in the material, design, engineering, and performance/workmanship that prevent the Project and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the Project and/or any of its system(s) as per the performance guarantee / warranty period defined in the Schedule. If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services provided by the System Integrator , the System Integrator shall promptly, in consultation and agreement with DAD, and at the System Integrator 's sole cost repair, replace, or otherwise make good (as the System Integrator shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the Project caused by such default, defect or deficiency. If the Project or any of its System cannot be used by reason of such default, defect or deficiency and/or making good of such default, defect or deficiency, the warranty period for the Project shall be extended by a period equal to the period during which the Project or any of its system could not be used by the DAD because of such defect and/or making good of such default, defect or deficiency.

26. **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.

5.2   Representations and warranties of the DAD

DAD represent and warrant to the System Integrator that:

1. 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;

2. 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;

3. It has the financial standing and capacity to perform its obligations under the Agreement;

4. It is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;

5. 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;

6. 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;

7. 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;

8. 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 DAD 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;

9. It has complied with Applicable Laws in all material respects;

10. 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

11. Upon the System Integrator performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the System Integrator, in accordance with this Agreement.

5.3   Performance Bank Guarantee

A Performance Bank Guarantee (PBG) of 10% of value of the contract would be furnished by the successful bidder in the form of a Bank Guarantee as per the format provided in the RFP from Scheduled Indian Banks. The PBG should be furnished within 30 working days from the date of notice of award and should be valid till the entire term of the agreement and for an additional period of 90 days after the completion of term of agreement including warranty obligations.

In case any claims or any other contract obligations are outstanding, the Service Provider will extend the Performance Bank Guarantee as asked by the DAD till such time the Service Provider settles all claims and completes all contract obligations.

Notwithstanding what has been stated elsewhere in this Contract and the Schedules attached herein, in the event the Service Provider is unable to meet the obligations pursuant to the implementation of the Project and/or provide the operations and maintenance Services and any related scope of work as stated in this Contract, the DAD will, inter alia, have the option

to invoke the Performance Bank Guarantee after serving a written notice fifteen days in advance on the SP. Such right of the SP shall be without prejudice to any other rights or remedies available under law or contract. In case the contract is extended, the PBG has to be valid for 90 days beyond the extended period.

5.4   Mutual covenants, representation and warranties of the DAD and SI

The Parties represent and warrants to each other that they will be responsible for fulfilling all their responsibilities as per the Agreement.

5.5   Insurance cover

SI warrants and represents that it shall maintain adequate standard forms of comprehensive insurance including liability insurance and any other insurance for the personnel, assets, Data, Software etc. and further agrees to provide to the DAD on request copies of such policy of insurance and evidence that the premiums have been paid. SI also warrants and represents that it shall keep all their respective directors, partners, advisers, agents, representatives and or employees adequately insured in respect of business travel and further agrees to provide to the DAD on request copies of such policy of insurance and evidence that the premiums have been paid.

6   Article 6: Obligation and Compliance

6.1   Statutory Obligations

1. The Agreement shall be governed by and construed in accordance with the laws of the Republic of India.

2. SI represents and warrants to DAD that the performance of obligations under this Agreement will not conflict with or result in a breach of any of the terms, conditions or provisions of or constitute a default or require any consent under, any instrument or arrangement to which SI is a party or violate any other Applicable Laws or any writ, order, injunction or judgment by which SI is bound.

6.2   Compliance with Laws

1. Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to it) at all times comply with all applicable laws, rules and regulations. For the avoidance of doubt the obligations of the Parties to this Agreement are subject to their respective compliance with all applicable laws and regulations.

2. **Compliance with all applicable laws:** SI agrees and undertakes to observe, adhere to, abide by, comply with and notify DAD about all laws in force or as are or as made applicable in future, pertaining to or applicable to them, their business, their employees or their obligations towards them pursuant to the Project and shall indemnify, keep indemnified, hold harmless, defend and protect the DAD and its employees/officers/staff/ personnel/representatives/agents from any failure or omission on its part to do so and against all claims or demands of liability and all consequences that may occur or arise for any default or failure on its part to conform or comply with the above and all other statutory obligations arising there-from.

3. **Compliance in obtaining approvals/permissions/licenses:** SI has already obtained all such consents, permissions, approvals, licenses, etc., as may be necessary or required for any of the purposes of this Agreement or for the conduct of its own business under any applicable Law, Government regulation/guidelines and shall keep the same valid and in

force during the term of this Agreement and shall also promptly obtain all such future approvals and consents from various departments as may be required in future under any amendments in law or notifications issued by the Government, and in the event of any failure or omission to do so, shall indemnify, keep indemnified, hold harmless, defend, protect and fully compensate the DAD and its employees/ officers/ staff/ personnel/ representatives/agents from and against all claims or demands of liability and all consequences that may occur or arise for any default or failure on its part to conform or comply with the above and all other statutory obligations arising there-from.

6.3 Obligations of the DAD

Without prejudice to any other undertakings or obligations of the DAD under this Agreement, wherever applicable, the DAD shall perform the following:

1. To provide support through personnel to perform user acceptance test during the term;

2. To provide any support through personnel and/or test data during development, rollout, stabilization phase, 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;

3. If required, to authorize the SI to interact for implementation of the Project with external entities.

4. **Assistance and Exemptions:** Unless otherwise specified, the DAD shall use its best efforts to ensure the following:

    a. Provide the SI with work permits and such other documents as shall be necessary to enable the SI to perform the Services.

    b. Issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

5. **Payment:** In consideration of the Services performed by the SI under this Contract, the DAD shall make to the SI such payments and in such manner as provided in **Article 4: Payment Terms.**

6.4   Obligations of the system integrator

1. It shall provide to the DAD, the Deliverables as set out in **Schedule – I: Deliverables & Milestones** of this Agreement.

2. It shall perform the Services as set out in **Article 3: Project Scope** of this Agreement and in a good 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.

3. It shall ensure that the Services are being provided as per the Project Timelines set out as defined in **Volume I** of this RFP.

7   Article 7: Force Majeure Events and Events of Default

7.1   Definition of Force Majeure

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

7.2   Force Majeure events

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

1. IS beyond the reasonable control of the affected Party;

2. Does not result from the negligence of such Party or the failure of such Party to perform its obligations under this Agreement;

3. Is of an incapacitating nature and prevents or causes a delay or impediment in performance; and

4. May be classified as all or any of the following events:

Non Political Events:

a) Act of God not confined to the premises of the Party claiming the Force Majeure, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions;

b) Radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the Service Provider's use of radiation or radioactivity or biologically contaminating material;

c) Strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances as the case may be not arising on account of the acts or omissions of the Service Provider and which affect the timely implementation and continued operation of the Project; or

d) Any event or circumstances of a nature analogous to any of the foregoing which is not caused at the instance of the Party claiming Force Majeure;

Political Events:

a) Change in Law, other than any Change in Law for which relief is provided under this Agreement;

b) Expropriation or compulsory acquisition by the DAD of any material assets or rights of the System Integrator /Implementing Partner;

c) Unlawful or unauthorised revocation of, or refusal by DAD or any of its agencies to renew or grant any clearance or Required Consents required by the System Integrator to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the System Integrator 's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;

d) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the System Integrator in any proceedings for reasons other than failure of the System Integrator to comply with Applicable Laws or Required Consents or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement;

e) Unlawful or unauthorized revocation of, or refusal by any authority other than the DAD to renew or grant any Required Consents required by the System Integrator to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the System Integrator 's inability or failure to comply

with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;

f) Any requisition of the Project by any other authority; or

g) Any requisition of the Project by the DAD.

h) For the avoidance of doubt, suspension of the Project in accordance with the provisions of this Agreement shall not be considered a requisition for the purposes of Force Majeure event.

Other Events:

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

For the avoidance of doubt, it is expressly clarified that the failure on the part of the System Integrator under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event.

For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking aren't the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure".

In so far as applicable to the performance of Services, System Integrator will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability there from.

7.3   Avoidance of doubt

For the avoidance of doubt, it is expressly clarified that the failure on the part of the Service Provider under this Agreement to implement any disaster contingency planning and back-up and other data safeguards 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).

7.4   Notification Procedure for Force Majeure Event

1. The affected Party seeking to rely on Force Majeure shall promptly notify the other Party of a Force Majeure event within seven (7) days of occurrence of such event with particulars detailed in writing to the other Party and shall demonstrate that it has and is taking all reasonable measures to mitigate the events of Force Majeure. If the other Party disputes the claim for relief under Force Majeure it shall give the claiming Party written notice of such dispute within thirty (30) days of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism given in RFP.

2. Upon cessation of the situation which led the Party claiming Force Majeure, the claiming Party shall within two (2) days hereof notify the other Party in writing of the cessation and the Parties shall as soon as practicable thereafter continue performance of all obligations under this Agreement.

7.5   Allocation of Cost arising out of Force Majeure

1. Upon the occurrence of any Force Majeure Event prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

2. Upon occurrence of a Force Majeure Event after the Effective Date, the costs incurred and attributable to such event and directly relating to the Project ('Force Majeure Costs') shall be allocated and paid as follows:

   a) Upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.

   b) Upon occurrence of an Other Event of Force Majeure, all Force Majeure Costs attributable to such Other Event, and not exceeding the insurance cover for such other event, shall be borne by the System Integrator/Implementing Partner.

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

7.6   Consultation and duty to mitigate

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

8 Article 8: Governing law and Dispute Resolution

8.1 Informal dispute resolution

The parties agree to attempt to resolve all disputes arising under the Agreement, equitably and in good faith. To this end, the parties agree to provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate discussions between them/their representatives or senior officers.

The parties should attempt to resolve disputes between themselves. The dispute should be escalated through various levels within DAD, and corresponding levels within the SI's organization, starting with the parties' representatives, then the project team leader and the SI's counterpart, designated officer of **CGDA**, and a director of the SI.

Both the parties must be represented by people who can take decisions including those of financial in nature. Meetings should involve pre-work, from both the parties which should involve the following:

1. Understanding the key reason for the dispute and the responsibility. The potential reasons should be attributable to the SI OR DAD or more than one of the above depending on the understanding of the information provided in the RFP document, Proposal and subsequent instruction/ decision.

2. The commitments made by the DAD either in the RFP document or in project meetings earlier

3. The commitments and assumptions made by the SI in their proposal

4. Establishing the deviations made by either of the parties from

    a) The written commitments made by the SI or the DAD in meetings or letters

    b) The assumptions in the Approach & methodology, Solution proposed by SI

    c) Work Plan of the SI & DAD

d) Comparing with other similar projects (if relevant)

e) Any previous communication made by either of the party on the identified deviations and the reasons thereof

f) Any unforeseen

5. Based on the above, the potential resolution should be classified as either Financial OR Non-Financial

6. In case the potential resolution involves financial consideration, the financial impact of such a deviation for either of the party should be computed on the basis of Commercial Proposal or industry standards.

8.2   Dispute Resolution

Any dispute arising out of or in connection with this Agreement or the SLA shall in the first instance be dealt with in accordance with the informal dispute resolution procedure as set out in this article

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

a) Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.

b) The mediator shall use his best endeavours to conclude the mediation within a certain number of days of his appointment.

c) If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to Experts for advising on the issue.

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

a) Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the timeframe of 30 days and requesting for expert advisory. This is to be sent with a copy to the mediator.

b) Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute.

c) The expert panel shall use his best endeavours to provide a neutral position on the issue.

d) If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.

8.3   Arbitration

1. Any unresolved dispute or difference whatsoever arising between the parties to this Agreement out of or relating to the construction, meaning, scope, operation or effect of this Agreement or the validity of the breach thereof shall be dealt as per arbitration provisions below.

2. Any dispute between the parties as to matters arising pursuant to this contract, which cannot be settled amicably within thirty (30) days after receipt by one party of the other party's request for such amicable settlement, may be submitted by either party for settlement. If the dispute(s) is not resolved amicably then it shall be referred to arbitration and shall be dealt as per the provisions of the Indian Arbitration and Conciliation Act of 1996 by a sole Arbitrator.

    a) Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein.

b) If the parties cannot agree on the appointment of the Arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of New Delhi/ ------------------ --, India.

c) The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof.

d) The Arbitration proceedings will be held at -------------, India. Any legal dispute will come under the sole jurisdiction of New Delhi, India / state jurisdiction of ----------- India.

e) The request for arbitration, answer to the request, terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

f) Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

g) The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid equally by respective Parties subject to determination by the arbitrator.

h) The arbitrator may provide in the arbitral award for the reimbursement to the successful party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the Party.

i) Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is made; the Parties shall continue to perform all of their obligations under this Contract without prejudice to a final adjustment in accordance with such award.

9 Article 9: Termination and Transfer

9.1 Material Breach

1. 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 (s). In case the Material Breach continues, after the notice period, DAD 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:

   a) If the System Integrator is not able to deliver the services as per the SLAs defined in **Annexure C: SLA Agreement & Service Levels** of this document which translates into Material Breach, then the DAD 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 DAD will have the option to terminate this Agreement. Further, the DAD may after affording a reasonable opportunity to the System Integrator to explain the circumstances leading to such a delay.

   b) If there is a Material Breach by the DAD which results in not providing support for effecting data migration or not providing the certification of User Acceptance, then the System Integrator will give a one month's notice for curing the Material Breach to the DAD. After the expiry of such notice period, the System Integrator will have the option to terminate the Agreement

2. The DAD may by giving a one month's written notice, terminate this Agreement if a change of control of the System Integrator has taken place. For the purposes of this Clause, in the case of System Integrator, change of control shall mean the events stated in Section **Change of Control**, and such notice shall become effective at the end of the notice period as set out in **point no. 3 of Change of Control**.

3. In the event that System Integrator undergoes such a change of control, DAD may, as an alternative to termination, require a full Performance Guarantee for the obligations of System Integrator by a guarantor acceptable to DAD. If such a guarantee is not furnished within 30 days of DAD's demand, the DAD may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the System Integrator.

4. The termination provisions set out in this Clause shall apply mutatis mutandis to the SLA.

9.2   Effects of termination

1. In the event that DAD terminates this Agreement pursuant to failure on the part of the System Integrator to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by System Integrator shall be forfeited.

2. Upon termination of this Agreement, the Parties will comply with **Schedule III: Exit Management**.

3. In the event that DAD or the System Integrator terminates this Agreement, the compensation will be decided in accordance with the Payment Schedule set out as **Schedule VI: Payment Schedule** of this Agreement.

9.3   Termination of this Agreement due to bankruptcy of System Integrator

The DAD may serve written notice on System Integrator at any time to terminate this Agreement with immediate effect in the event that the System Integrator reporting an apprehension of bankruptcy to the DAD.

9.4   Obligations during Termination Period

During Termination Period, Service Provider shall, subject to where applicable to the provisions of this Article, continue to perform its obligations under this Contract including and not limited to co-operation and co-ordination with Replacement SP of this Contract, failing which the Service Provider shall compensate DAD for any loss or damage occasioned or

suffered on account of the underlying failure/breach. Even on termination of this Agreement, Service Provider will be responsible for the continuity of the services to the Stakeholders during the Transition Period

9.5 SI obligations during Termination Period

1. Transfer of assets: In case of termination, DAD shall provide a list of the Project Assets, third party contracts, and licenses to the Third Party Software used by the Service Provider in pursuant to the Project, which it intends to obtain from the Service Provider. Service Provider shall transfer all such assets, third party contracts, Third Party Software etc. mentioned in the list to the DAD at the prices quoted by it in the Bill of Materials in its Proposal, on the specifications stated by the DAD more elaborately detailed in RFP and accepted by the DAD. In case certain payments are pending for the assets, third party contracts, Third Party Software, etc. to be transferred in favour of the DAD, then the Service Provider will make all the required payments prior and pursuant to such transfer. All the ownership rights, etc. on the application, infrastructure, and all the assets will always remain vested with DAD. DAD may also require SP to transfer any of the SP Assets at prices mutually agreed between the Parties. The warranties, etc. or any other Project Asset purchased by SP pursuant to the Project shall be transferred to the DAD.

2. DAD Supplied Equipment and facilities: SP shall handover the peaceful possession of all the equipment and facilities supplied by the DAD including and not limited to DAD Supplied Equipment and to the Project Sites, pursuant to the Project. DAD shall be entitled to claim the damages in case of damage to any of the above mentioned equipment, facilities and sites etc. by the SP.

9.6 Risks

Until transfer in accordance with the Contract, during the Project, the Project Assets shall remain at the sole risk of SP except for any loss or damage caused to or suffered by SP due to any direct default on the part of the DAD under this Contract.

10   Article 10: Use of Undue Influence

10.1 Undertaking by SI

1. SI undertakes that it has not given, offered or promised to give, directly or indirectly any gift, consideration, reward, commission, fees brokerage or inducement to any person in service of the DAD or otherwise in procuring the Agreement or forbearing to do or for having done any act in relation to obtaining or execution of the Agreement or any other agreement with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other agreement with the Government. Any breach of the aforesaid undertaking by SI or any one employed by it or acting on its behalf (whether with or without the knowledge of SI) or the commission of any offence by SI or anyone employed by it or acting on its behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1988 or any other acts/legislations enacted for the prevention of corruption shall entitle the DAD to forthwith terminate the Agreement and all or any other Agreements with SI and recover from SI the amount of any loss arising from such cancellation. The decision of the DAD or its nominee to the effect that a breach of the undertaking had been committed shall be final and binding on SI.

2. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of SI towards any officer/employee of the DAD or to any other person in a position to influence any officer/employee of the DAD for showing any favour in relation to this or any other Agreement, shall render SI to such liability/ penalty as the DAD may deem proper, including but not limited to termination of the Agreement, imposition of penal damages, forfeiture of the bank guarantees (including Performance Bank Guarantee) and seek immediate refund of the amounts paid by the DAD.

11   Article 11: Non-Disclosure Agreement

11.1 Undertaking by SI

Except as provided under the Contract, SP shall not disclose and cause other parties (connected with the Project, who have been disclosed the Information on Contract as per the terms of the Contract) not to disclose the Contract or any provision, specification, plan, design, pattern, sample or Information thereof to any third party, without prior written consent of the DAD. For the aforesaid purpose Parties to the Contract shall enter into the Non-Disclosure Agreement ("NDA") in the format placed at Annexure B of this document.

12   Article 12: Assets and Third Party Contracts

12.1 Purpose

1. This Article sets out the provisions relating to management of Assets deployed or developed for the purpose of the Project, in terms of ownership, usage, maintenance and transfer.

2. It sets out the provisions for transfer of assets on termination or expiration of the Agreement to allow the orderly and efficient transition of the Services to DAD or its nominee/Replacement SI, as the case may be, and DAD/Replacement SI, will be able to offer the services to its stake holders without interruptions.

3. The provisions of this Article are applicable to all the assets related to the project both physical assets and assets of intellectual property.

12.2 The Assets Categories and Description

1. For the purpose of administering this Agreement the assets under management include all kinds of physical assets like premises, buildings, computer hardware etc. and all kinds of intangible assets like intellectual property viz. software and software tools.

2. The third party contracts for works and services deployed for the purpose of this project are also governed by this Article.

3. For the purpose of administering this Agreement both physical assets and intellectual property assets are grouped into the following categories based on the nature of ownership and usage.

   a) Assets of DAD allowed to be used by the SI to deliver the services;

   b) Assets bought and deployed exclusively for the purpose of this Project by SI and has been paid by DAD;

c)   Assets bought or deployed for the project by SI but not the exclusively for the Project;

d)   Assets owned by the SI but deployed for the Project either for a fee or not;

4.   For the purpose of administering this Agreement, the provisions are applicable to assets irrespective of the time of deployment of the assets. It is applicable to

a)   Assets listed for deployment during the initial periods of the Agreement as committed in the proposal;

b)   Assets deployed during the project duration to meet the service requirements or performance requirements or as requested by DAD.

12.3 DAD's Assets

1.   DAD will be the sole and exclusive owner of the following:

a)   All supplied assets owned by DAD as of the Effective Date;

b)   All assets acquired by DAD from Third Parties after the Effective Date;

c)   All assets developed by DAD after the Effective Date;

d)   All assets procured, replaced, deployed and developed by the System Integrator or its subcontractors under this Agreement, including foreign intellectual property rights in such assets and all modifications, enhancements, and derivative works of such assets;

2.   The System Integrator will cease use of DAD assets upon expiration or termination of the Agreement.

12.4 DAD Supplied Assets

1.   Supplied assets include the office space, the physical assets associated with the office, computer hardware, software, internet domains, or any other intellectual property

assets, belonging to DAD and earmarked for the purpose of the Project and used by SI for the Project are treated as the DAD Supplied assets for the Project.

2. The ownership of the various offices and Supplied assets shall always remain vested with the DAD. The SI shall neither assign, transfer, sublet, create any charge or encumbrance, nor shall the SI create or permit creation of any third party rights whatsoever, on whole or any part of the Supplied assets or various offices. It is expressly agreed that the SI rights in the various offices and/or the Supplied assets shall cease without the need for any action to be taken by the DAD upon the termination of this Agreement for any reason whatsoever.

3. The SI shall not without the prior written consent or approval of the DAD use the Supplied assets for any purpose other than for the purposes of the Project and Services and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the DAD.

4. The details of the assets earmarked for the purpose of the Project and used by SI shall be listed in a register duly signed by the representatives of SI and DAD.

5. SI is responsible for ensuring that the supplied assets are used for the purpose of the Project only.

6. If SI is found to be using the supplied assets for any other activity other than, directly or indirectly, related to the Project, the DAD has the rights to terminate the Agreement forthwith, in addition to initiate appropriate proceedings and claim relief (including damages) against SI for the misuse of the supplied assets.

7. The supplied assets shall not be transferred or moved by SI either within or outside the premises without the prior written consent of the DAD.

8. The SI is not allowed to use the DAD/Project domain name for publicizing its own brand images or any other purpose other than the ones related to the Project.

12.5 Third Party Contracts

1. The contracts executed by SI to procure any of the services or Project Assets to be used by SI in the Project, including but not limited to development tools, testing facilities, outsourcing contracts during the Project are to be treated as third party contracts.

2. The third party contracts are owned by SI and the liability for these contracts lies solely with SI.

3. The agreements with the OEMs for supply of goods and service including but not limited to hardware, Network components, COTS solution applications & other software applications, service contracts for warranty support and technical support, specialized services for audit/testing etc. will be assigned to DAD and will indicate DAD as "End Users" as per the Agreement.

4. SI will share these contracts and licenses in entirety with DAD.

5. The DAD will have the right to overrule any restrictive clauses or clauses limiting the ownership of these contracts.

6. In the event of termination of the Agreement, SI shall transfer/assign or cause to be transferred/assigned to the DAD such third party contracts which are valid and subsisting and which the DAD has chosen to take over at its sole discretion as per **Schedule III: Exit Management** hereof.

12.6 Transfer of Project Assets

1. The risk and title in all Project Assets shall be transferred to DAD upon delivery of the same

2. However SI will be responsible for maintaining Project Assets as per the warranty clauses and will be fully accountable for the warranty clauses.

12.7 Use of assets by the SI

During the Term the System Integrator shall:

1. Take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the System Integrator exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the "Project Assets") in proportion to their use and control of such Assets; and

2. Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) and/or the intangible Assets suitably upgraded subject to the relevant industry standards (including those stated in **Volume I of the RFP**) as at the date the System Integrator takes control of and/or first uses the Assets and during the entire Term of the Agreement.

3. Ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the System Integrator will be followed by the System Integrator and any person who will be responsible for the use of the Assets;

4. Take such steps as may be properly recommended by the manufacturer of the Assets and notified to the System Integrator or as may, in the reasonable opinion of the System Integrator , be necessary to use the Assets in a safe manner;

5. Ensure that the Assets that are under the control of the System Integrator , are kept suitably housed and in conformity with Applicable Law;

6. Procure permission from the DAD 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;

7. Not, knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.

8. SI is free to bring in and move out of the Project, all SI Assets for own Use by following the procedure listed below

a) The details of the assets required be bringing in / taking out of the DAD premises, will be approved by an official designated by the DAD for the purpose.

b) When the assets have to be brought in to the DAD premises, a requisite permission will be sought and the Assets would move in on an approval slip signed by designated official.

c) When the assets have to be taken out of the DAD premises, SI is required to follow the procedures laid down by DAD or the security procedure in vogues to take out assets out of its premises.

9. SI will keep a register of all the assets brought into the DAD Area and inform DAD or its designated agency of this movement. It is the responsibility of SI to ensure the safety security and up keeping of the physical assets brought into the DAD Area.

10. DAD shall not be liable for the safety, security and upkeep of any of the assets of SI.

12.8 Management of Assets

1. The asset list under different heading are prepared and submitted to DAD or its nominees every six months with details of usage conditions, metrics of usage for licenses, the validity period, ownership, the name of the parties etc.

2. For all the licensed software, the contracts for support like AMC for hardware or ATS, etc should be valid for a period of at least one year.

3. The third party contracts should be valid for a period of at least one year.

4. The assets bought during the project also need to be included – the software and hardware which may or may not be included in the BOM, but deployed during the project phase – hardware and software.

5. All the licenses or assets or third party contracts should be bought in at the same conditions as dictated in the RFP like the assignment clause.

12.8.1 Asset condition prior to transfer

1. In the event, if the Assets to be transferred are mortgaged to any financial institutions by the SI, the SI shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to the DAD or its nominees.

2. All risk in and title to the Assets to be transferred / to be purchased by the DAD pursuant to this Article shall be transferred to DAD, on the last day of the exit management period.

3. Payment to the outgoing SI shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements and project milestones.

4. The outgoing SI will pass on to DAD and/or to the Replacement SI, the subsisting rights in any leased properties/ licensed products on terms not less favourable to DAD/ Replacement SI, than that enjoyed by the outgoing SI.

12.8.2 Required Consents

The Service Provider will be responsible for obtaining all consents required to implement any transfer of Assets or to secure any rights of use of or access to any Assets required by the Service Provider in providing the Services, including Equipment, Software, or Third-Party Contracts ("Required Consents").

The Service Provider will be responsible for the financial costs of and any liability resulting from its failure in obtaining Required Consents (e.g., for any transfer or upgrade fees). DAD will cooperate with the Service Provider in obtaining Required Consents.

12.8.3 Exercise of Rights

For Equipment leases, Software licenses, or Third-Party Contracts for which the Service Provider has financial responsibility but DAD retains legal responsibility, Service Provider shall exercise termination or extension rights as directed by the DAD or after consultation with DAD, provided that the Service Provider shall be responsible for the costs, charges, and fees associated with the exercise of such rights.

12.8.4 Compliance with Terms

To the extent that DAD provides the Service Provider with access to or use of leased Equipment, licensed Software, or Third-Party Contracts for which DAD retains legal responsibility, the Service Provider will comply with all the obligations of such leases, licenses, and Third-Party Contracts. The Service Provider will cease use of such items upon expiration or termination of the Agreement.

12.8.5 Refresh and Standardization

The Service Provider shall be responsible for Refresh of technology under its control as necessary to meet Service Levels under the Agreement and as specified in the scope of work. DAD will have the flexibility to waive Refresh of assets under its control subject to an assessment of any impact on the applicable Service Levels, if any. DAD's approval will be required for changes that may involve risk to the business.

If the Service Provider's proposed solution involves the use of Service Provider Facilities or services to be shared with other Service Provider customers, the Service Provider will describe in detail the Service Provider's suggested standards and the process for regulating Change to the environment and accommodating DAD's specific needs.

13   Article 13: Intellectual property rights

13.1   Products and fixes

All products and related solutions and fixes provided pursuant to this work order shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. System Integrator 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 DAD 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.

13.2   Bespoke development

Subject to the provisions of **Sections Pre-existing work** and **Residuals** below, the IPR rights for source code along with the documentation of any bespoke development done during the implementation of the Project will lie with DAD.

13.3   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 System Integrator should grant DAD a non-exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to DAD 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. DAD's license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that SI leaves with DAD at the conclusion of performance of the services.

13.4 Residuals

In no event shall System Integrator be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables, set-out in this Agreement or Annexure. In addition, subject to the confidentiality obligations, System Integrator shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services which either Party, individually or jointly, develops or discloses under the Agreement; except to the extent such use infringes the intellectual property rights of the other Party or Third Parties or breaches its confidentiality or other obligations under the Agreement or other agreements with the other Party or Third Parties.

13.5 Infringement of Intellectual Property Rights

1. SI confirms that there shall be no infringement of any patent or intellectual & industrial property rights as per the applicable laws of relevant jurisdictions, having requisite competence, in respect of the Assets or any part thereof, supplied under this Agreement. SI shall indemnify the DAD against all cost/claims/legal claims/liabilities arising from third party claim at any time on account of the infringement or unauthorised use of patent or intellectual & industrial property rights of any such parties, whether such claims arise in respect of manufacture or use. Without prejudice to the aforesaid indemnity, SI shall be responsible for the completion of the development and uninterrupted use of such Asset or any part thereof by the DAD and DAD and persons authorised by the DAD, irrespective of the fact of claims of infringement of any or all the rights mentioned above.

2. If, as a result of such claim, the DAD is injuncted from using such Asset or any part thereof or in is likely to be injuncted, SI, at its expense, shall (I) modify such Asset (provided its functionality is not impaired) so that it is no longer infringing and obtains a certificate to

the said effect from the party claiming infringement, (ii) replace such Asset with a functionally equivalent of the same, or (iii) obtain the right for the DAD to continue using such Assets.

3. For a third party product supplied by SI, SI shall pass on to DAD all the indemnities offered by the third party.

13.6 Trademarks, Publicity

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

14   Article 14: Audit & Certifications

The primary goal of Audit and Certification is to ensure that the Project not only meets the requirements, standards, specifications and performance, as envisaged in the RFP, but also adheres to the Industry standards and best practices. The audits will be carried by DAD OR a 3rd party nominated by DAD at its own expense. The service provider shall be responsible for getting the audit completed by the nominated agency of DAD and shall ensure all necessary support for such audits are provided. The observations and suggestions of the auditor shall be addressed by the service provider.

DAD will establish appropriate processes for notifying the Service Provider of any shortcomings from defined requirements at the earliest instance after noticing the same to enable the Service Provider to take corrective action. All gaps identified shall be addressed by the service provider at the earliest. It is the responsibility of the service provider to take any corrective action required to remove all shortcomings. It is to be noted that the involvement of the third party for acceptance testing and certification, does not absolve the service provider of his responsibilities to meet all SLAs as laid out in this RFP.

The audit shall cover all domains of the project, to validate the implementation as per the RFP. Following are the list of areas that will be audited:

14.1 Mini Data Center Audit

The agency shall perform the Mini Data Center Compliance Review to verify the conformity of the Infrastructure [both IT, non IT as well as Network infrastructure (if any)] supplied by the selected Bidder against the requirements and specifications provided in the RFP and/or as proposed in the proposal submitted by the selected Bidder. The audit shall also include:

1. Security aspects of Mini Data Center such as Audit of Network (within DC only), Servers, Storage, Software components, etc.

2. Standard operating processes at Mini Data Center

Compliance review shall not absolve the vendor from ensuring that proposed infrastructure meets the SLA requirements.

14.2 CPP Application & Data Audit

The software developed/customized shall be audited by the agency for performance, compliance with RFP requirements, security and controls perspective. Following are the broad activities to be performed as part of audit.

- Assessment of authentication mechanism provided in the application /components/modules

- Assessment of data encryption mechanisms implemented for the solution

- Assessment of data access privileges, retention periods and archival mechanisms

- Server and Application security features incorporated, etc.

- Application Security mechanisms should be implemented in compliance with the IT Act 2000,2008 Amendment and IT rules 2011, such that it maintains data/information Integrity, Confidentiality, Non-repudiation

- Audit of Security mechanisms so that they are in compliance with the latest Guidelines by Controller of Certifying authority (CCA), IT Act, and ISO27001.

- Project Documentation: The Agency shall review the project documents developed by the selected Bidder including requirements, design, source code, installation, training and administration manuals, version control etc.

- Data Quality: The Agency shall perform the Data Quality Assessment for the Data digitized by selected Bidder and the data migrated by the vendor to the new system. The errors/gaps identified during the Data Quality Assessment shall be addressed by the vendor before moving the data into production environment, which is a key mile stone for Go-live of the solution

- Availability: The solution should be designed to remove all single point failures. Appropriate redundancy shall be built into all the critical components to provide the ability to recover from failures. The agency shall perform various tests including network, server, security, DC/DR fail-over tests to verify the availability of the services in case of component/location failures. The agency shall also verify the availability of the project services to all the users in the defined locations.

14.3 SLA Reporting System Audit

The selected Bidder shall design, implement/customize the Enterprise Management System (EMS) including SLA monitoring tools and shall develop any additional tools required to monitor the performance indicators listed as per the SLAs mentioned the RFP. The auditor shall verify the accuracy and completeness of the information captured by the SLA monitoring system implemented by the vendor and shall certify the same. The EMS deployed for the project, based on SLAs, shall be configured by the selected Bidder to calculate the payment to be paid by the department after deducting the necessary penalties.

It is to be noted that the involvement of the third party for audit, does not absolve the vendor of his responsibilities to meet all requirements as laid out in this RFP document.

15   Article 15: Personnel

15.1 Supervision and Management

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

2. SI agrees that no right of any employment with DAD shall accrue or arise, by virtue of engagement of employees, agents, contractors, subcontractors etc. by SI pursuant to this Agreement.

3. All remuneration, claims, wages, dues of such employees, agents, contractors, subcontractors of SI is agreed to be paid by SI alone and that DAD does not have any direct or indirect liability or obligation, to pay any charges, claims or wages of any of employee, agents, contractors, and subcontractors of SI.

4. The System Integrator shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, remittance of income taxes and social security taxes, workmen's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to applicable laws.

5. The System Integrator shall use its best efforts to ensure that sufficient System Integrator personnel are assigned to perform the Services and those personnel have appropriate qualifications to perform the Services.

6. DAD or its nominated agencies shall have the right to seek the removal or replacement of any System Integrator personnel or its subcontractor (in case of gross misconduct, under performance, misbehaviour, moral turpitude or any other reasons detrimental to the interest of the DAD) performing work under this Agreement. In the event that DAD or its nominated agencies requests that any System Integrator personnel be replaced, the

substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.

7. In the event that the DAD and System Integrator identify any personnel of System Integrator as "Key Personnel", then the System Integrator shall not remove such personnel from the Project without the prior written consent of DAD or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.

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

9. SI shall define a succession plan for the key personnel and submit the same to DAD.

10. Under exceptional circumstances when the Key Personnel are to be replaced or removed, SI shall put forward the profiles of personnel being proposed as replacements. These profiles should be either equivalent or better than the ones being replaced. However whether these profiles are better or equivalent to the ones being replaced will be decided by the DAD or its authorised representative. The DAD or its authorised representative will have the right to accept or reject these substitute profiles.

11. 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.

12. 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.

13. SI agrees to be responsible for managing the activities of its personnel or the personnel of its subcontractors (if any) and shall be accountable for both.

14. SI shall be vicariously liable for any acts, deeds or things done by their employees, agents, contractors, subcontractors, etc. which is outside the scope of power vested or instructions issued by the DAD.

15. It is the responsibility of SI to ensure that all the personnel deployed by SI for the Project are not involved in any criminal or antinational activities.

15.2 The Minimum Proficiency

The DAD has identified certain roles of the Project team being deployed by SI during the implementation of Project, as key roles defined in **RFP Volume I**. This list is indicative and DAD may identify more roles as key roles during the project implementation and operations phase. These key roles are identified to be critical to the success of the Project and it is expected that these key roles will be staffed with personnel with adequate proficiency. The minimum proficiency of the already identified key roles in terms of expertise, skills and educational qualifications are listed in **RFP Volume I**.

15.3 Clearance for Personnel

It is the responsibility of SI to ensure that all the personnel deployed by SI for the Project are not involved in any criminal or antinational activities.

15.4 Personnel during Exit Management

1. At any time during the exit management period, SI shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the DAD a list of all employees (with job titles) of SI dedicated to providing the services at the commencement of the exit management period.

2. On the termination of the Agreement during annual operations & maintenance phase, the DAD will have the right to identify SI personnel and demand their presence for knowledge transfer to the DAD or the Replacement SI.

If the DAD hires the services of another agency on the termination/expiry of the Agreement, or before that, to carry out the next phase of "roll out" of the application, SI shall cooperate with the new agency in knowledge transfer and the DAD shall have the right to demand the presence of the required personnel from SI for this purpose.

16 Article 16: Information Security and Audit Rights

16.1 Information Security

1. The System Integrator shall comply with the relevant security, safety and other requirements specified in the Information Technology Act (wherever applicable) and any other directions issued from time to time by the Government of India, DAD or its nominated agencies and follow the industry standards related to safety and security (such as Information security standards like ISO 27001 and including those as stated in the **RFP Volume I**), insofar as it applies to the provision of the Services.

2. Each Party to the SLA/Agreement shall also comply with DAD or the Government of India, and the respective State's security standards and policies in force from time to time at each location of which DAD or its nominated agencies make the System Integrator aware in writing insofar as the same apply to the provision of the Services.

3. 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 DAD as the case may be or any of their nominees data, facilities or Confidential Information.

4. The System Integrator shall upon reasonable request by the DAD as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.

5. As per the provisions of the SLA or this Agreement, the System Integrator shall promptly report in writing to the DAD 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 DAD as the case may be.

6. The Parties acknowledge that high level of security needs to be maintained. SI undertakes to treat information passed on to them under this Agreement as classified. Such

Information will not be communicated/published/advertised by SI to any person without the express permission of the DAD.

7. Any private, proprietary or classified Information which has to be made available by the receiving party (SI) to a third party for the execution of this Agreement, shall be submitted to such a third party with the same restrictions as included in this Article.

8. SI undertakes to meet the laid down security requirements/stipulations. All the matters related to the Agreement will be treated as classified and highly confidential and shall not be communicated to anybody (except for the purpose of this Agreement) or published/advertised without the written consent of the DAD.

16.2 Confidentiality

1. The DAD or its nominated agencies shall allow the System Integrator to review and utilize highly confidential public records and the System Integrator shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.

2. Additionally, the System Integrator shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.

3. The DAD or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the System Integrator regarding any forbidden disclosure.

4. The System Integrator shall ensure that all its employees, agents and sub-contractors execute individual non-disclosure agreements, which have been duly approved by the DAD with respect to this Project.

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

   a) information already available in the public domain;

b) information which has been developed independently by the System Integrator;

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

d) Information which has been disclosed to the public pursuant to a court order.

5. To the extent the System Integrator shares its confidential or proprietary information with the DAD for effective performance of the Services, the provisions of this section shall apply mutatis mutandis on DAD.

16.3 Confidential Information

1. SI recognizes that during the term of the Agreement, sensitive Data will be procured and made available to it, its sub-contractors and agents and others working for or under SI. Further, SI also recognizes that any improper and unauthorised disclosure or usage of the Project Data by any such recipient may constitute a breach of applicable laws causing harm not only to DAD but also the Stakeholders whose data is used. SI, its sub-contractors and agents shall demonstrate utmost care, sensitivity and strict confidentiality. SI, its sub-contractors and agents shall strictly follow the provisions of IT Rules, 2011 especially with regard to sensitive information. Any breach of any confidentiality obligation set out in the Agreement including Articles will result in DAD a right to seek injunctive relief and damages suffered or are reasonably likely to be suffered and the cost incurred to mitigate the implication of such disclosure or usage, from the SI.

2. "Confidential Information" means any and all information that is or has been received by either Party (the "Receiving Party") from the other Party (the "Disclosing Party") and that: (a) relates to the Disclosing Party; and (b) is designated by the Disclosing Party as being confidential or is disclosed in circumstances where the Receiving Party would reasonably understand that the disclosed information would be confidential or (c) is prepared or performed by or on behalf of the Disclosing Party by its employees, officers, directors, agents, representatives or consultants.

3. Without limiting the generality of the foregoing, Confidential Information shall mean and include any information, data, analysis, compilations, notes, extracts, materials, reports, designs, specifications, graphs, plans, charts, studies, memoranda or other documents, or materials relating to the Software, the modules, the Program Documentation, the Source Codes, the object codes and all Enhancements and Updates, services, systems processes, ideas, concepts, formulas, methods, know how, trade secrets, designs, research, inventions, techniques, processes, algorithms, schematics, testing procedures, software design and architecture, computer code, internal Documentation, design and function specifications, product requirements, problem reports, analysis and performance information, business affairs, Projects, technology, finances (including revenue projections, cost summaries, pricing formulae), clientele, markets, marketing and sales programs, client and customer data, appraisal mechanisms, planning processes etc. or any existing or future plans, forecasts or strategies in respect thereof.

4. "Confidential Materials" shall mean all tangible materials containing Confidential Information, including, without limitation, written or printed documents and computer disks or tapes, whether machine or user readable.

16.4 Managing Confidential Information

1. The Receiving Party agrees to regard, preserve and keep as secret and confidential, all confidential information and materials of the Disclosing Party howsoever obtained and agrees that it shall not, without obtaining the written consent of the Disclosing Party:

    a) Disclose, transmit, reproduce or make available any such Confidential Information and materials to any person, firm, Company or any other entity other than its directors, partners, advisers, agents or employees, who need to know the same for the purposes of the Project. The Receiving Party agrees to be responsible for ensuring that the usage and confidentiality by its directors, partners, advisers, agents or employees is in accordance with the terms and conditions of this Agreement; or

b) Unless otherwise agreed herein, use any such Confidential Information and materials for its own benefit or the benefit of others or do anything prejudicial to the interests of the Disclosing Party or its customers or their projects.

2. In maintaining confidentiality hereunder the Receiving Party on receiving the Confidential Information and materials agrees and warrants that it shall:

a) Take at least the same degree of care in safeguarding such Confidential Information and materials as it takes for its own Confidential Information of like importance and such degree of care shall be at least that which is reasonably calculated to prevent such inadvertent disclosure.

b) Keep the Confidential Information and materials and any copies thereof secure and in such a way so as to prevent unauthorized access by any third party.

c) Limit access to such Confidential Information and materials to those of its directors, partners, advisers, agents or employees who are directly involved in the consideration/evaluation of the Confidential Information and bind each of its directors, partners, advisers, agents or employees so involved to protect the Confidential Information and materials in the manner prescribed in this Agreement; and

d) Upon discovery of any unauthorized disclosure or suspected unauthorized disclosure of Confidential Information, promptly inform the Disclosing Party of such disclosure in writing and immediately return to the Disclosing Party all such Information and materials, in whatsoever form, including any and all copies thereof.

3. The Receiving Party who receives the Confidential Information and materials agrees that on a regular basis or in receipt of a written demand from the Disclosing Party:

a) Immediately return all Confidential Materials and all copies thereof provided to, or produced by it or its advisers, as the case may be, which is in Receiving Party's possession or under its custody and control;

b) Hand over all analyses, compilations, notes, studies, memoranda or other documents prepared by it or its associates to the extent that the same contain, reflect or derive from Confidential Information relating to the Disclosing Party.

c) Expunge any Confidential Information relating to the Disclosing Party or its projects from any computer, word processor or other device in its possession or under its custody and control; and

4. The restrictions in this clause 16.4 shall not apply to:

a) Any information that is publicly available at the time of its disclosure or becomes publicly available following disclosure (other than as a result of disclosure by the Disclosing Party contrary to the terms of this Agreement); or

b) Any disclosure required by law or by any court of competent jurisdiction, the rules and regulations of any recognized stock exchange or any enquiry or investigation by any governmental, statutory or regulatory body which is lawfully entitled to require any such disclosure provided that, so far as it is lawful and practical to do so prior to such disclosure, the Receiving Party shall promptly notify the Disclosing Party of such requirement with a view to providing the Disclosing Party an opportunity to obtain a protective order or to contest the disclosure or otherwise agree to the timing and content of such disclosure; or

c) Is identified in writing by the Discloser as no longer proprietary or confidential.

5. The Receiving Party agrees that its obligation under this Section with respect to confidentiality will survive the termination of this Agreement.

6. Confidential Information shall be and remain the property of the Discloser and nothing in this Article shall be construed to grant either Party any right or license with respect to the other Party's Confidential Information otherwise than as is expressly set out in this Agreement.

7. Both Parties agree that monetary damages would not be a sufficient remedy for any breach of this Article by the other Party and that the DAD shall be entitled to equitable relief, including injunction and specific performance as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by a Party of this Article, but shall be in addition to all other remedies available at law or equity to the damaged Party.

8. In connection with the Project under this Agreement, the DAD may from time to time undertake one or more quality assessment reviews for the purpose of improving quality of the Project. In order for such reviews to be frank and candid, for the greatest benefit to the DAD and SI, they shall be kept confidential to the greatest extent possible. The Parties agree that any Documentation created in connection with such quality assessment reviews shall be Confidential Information of the DAD which is licensed to SI for any internal use except that in no event shall such Documentation or the results of such reviews be discoverable or admissible (or used for any purpose) in any arbitration or legal proceedings against the DAD related to this Agreement or the Project.

9. SI agrees that all information processed, stored, or transmitted by SI equipment belongs to the DAD. By having the responsibility to maintain the equipment, SI agrees not to acquire implicit access rights to the information or rights to redistribute the information.

10. SI understands and agrees that civil, criminal, or administrative penalties may apply for failure to protect information appropriately.

16.5 Information Ownership

11. DAD Data will be and remain the property of DAD. The System Integrator and its subcontractors, if any, will not utilize DAD Data for any purpose other than that of rendering the Services under the Agreement.

12. All operational data developed, maintained, or otherwise used by the System Integrator in delivering the Services shall be considered DAD Data, except for information regarding

the System Integrator's personnel and the System Integrator's costs. DAD shall have an unrestricted right to use, or to have Third Parties use on its behalf, such operational data.

13. As requested by DAD at the end of Term or at termination of the Agreement (regardless of the type of termination), DAD Data shall be returned to DAD in a form acceptable to DAD or shall be destroyed as directed by DAD.

14. System Integrator shall provide to DAD and its Affiliates access to the DAD Data in System Integrator's or System Integrator's contractors possession or control on demand.

15. The System Integrator will (I) comply with all DAD security policies, information protection, and privacy policies, procedures, standards, requirements, and specifications provided to the System Integrator; (ii) provide appropriate Equipment and Software to implement security solutions; (iii) segregate all DAD Data from that of any other client; (iv) provide direct access to assets and information pertinent to DAD's investigations, compliance reviews, and audits and (v) be in line with ISO27001 standards.

16. SI agrees that all information processed, stored, or transmitted by the SI's Project Assets or SI Assets for Own Use belongs to the DAD. By having the responsibility to maintain the equipment, SI agrees not to acquire implicit access rights to the information or rights to redistribute the information.

17. SI understands and agrees that civil, criminal, or administrative implications may arise for failure to protect information appropriately.

18. SI agrees that:

    a) All customers', supplier's, associated organisations and process information related information of the DAD is considered as sensitive and will be protected from unauthorized disclosure, Modification or access.

    b) Any sensitive information of the DAD would be protected from unauthorized disclosure, Modification or access.

c) The type of sensitive information that will be found on the DAD systems that SI agrees to support or have access to includes but not limited to , process information, user rights, security features & guidelines, disaster management practices etc.

16.6 Privacy and Security Safeguards

1. SI agrees not to publish or disclose in any manner, under any circumstances the details of any security safeguards designed, developed, or implemented by SI under this Agreement or existing at any of the DAD offices.

2. SI agrees to develop procedures and implementation plans to ensure that IT resources (being used during the testing phase or annual maintenance phase) leaving the control of the assigned user (such as being reassigned, removed for repair, replaced, or upgraded) are cleared of all the DAD information, data and sensitive application software.

3. SI understands and agrees to the fact that very sensitive Confidential Information about the DAD and general public will be made available to it, pursuant to the Project. SI agrees not to disclose and/or use such information in any manner whatsoever except for fulfilling its obligations under the Agreement and pursuant to the Project.

4. The System Integrator shall establish and maintain safeguards against the unauthorized access, destruction, loss, or alteration of DAD Data in the possession of the System Integrator or its subcontractors that are no less rigorous than the most rigorous practices of DAD or the System Integrator as of the Effective Date. DAD shall have the right to establish backup security for DAD Data and to keep backup and files for such data in its possession if it chooses. System Integrator personnel and subcontractors will not attempt to access or allow access to DAD Data that is not required for the performance of the Services by such personnel. The System Integrator will promptly notify DAD of any breach or potential breach of security relating to DAD Data and will investigate and remediate the effects of such breach or potential breach.

5. Each Party's confidential information shall remain the property of that Party. Each Party shall use at least the same degree of care, but no less than a reasonable degree of care,

to safeguard the confidential information of the other as it employs with respect to its own information of a similar nature. The System Integrator shall require that its employees, agents, and subcontractors comply with the confidentiality restrictions of the Agreement. In the event of unauthorized disclosure or loss of confidential information, the receiving Party shall immediately notify the furnishing Party in writing. These responsibilities shall survive the expiration or termination of the Agreement.

16.7 Access for audit

1. SI shall be obliged to extend all co-operations to the DAD personnel or the experts appointed by the DAD for purposes of verifying that the Project Systems and the project facilities and the activities within the Project team are operated and maintained in compliance with Information Technology Security Policies of DAD.

2. Additionally, SI shall upon prior intimation by the DAD provide the DAD personnel or the authorized representatives of the DAD access to the SI's Project Assets/the project facilities and documents for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement.

3. Without prejudice to the generality of this provision, it is agreed that SI shall in particular extend all co-operation and information required by the experts appointed by the DAD for conducting a security audit and verifying that the Project/project facilities and Services are in strict compliance with the information security requirements.

4. These audits may include, but are not limited to, a review of access and authorization procedures, physical security controls, backup and recovery procedures, Network security controls and program change controls.

5. SI agrees to provide the DAD access to various monitoring and performance measurement systems (both manual and automated). The DAD has the right to get the monitoring and performance measurement systems (both manual and automated) audited without prior approval / notice to SI.

The audit, access, reporting and inspection rights of the DAD under this Article shall be governed by **Schedule IV: Audit, Access and reporting** of the Agreement.

17   Article 17: Indemnities, Limitations of Liability

17.1 Third Party Claims

1. Service Provider (the "Indemnifying Party") undertakes to indemnify DAD (the "Indemnified Party") from and against all losses, claims or damages 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. If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Indemnified Party. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by (a) Indemnified Party's misuse or modification of the Service; (b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party; (c) Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party; (d) Indemnified Party's distribution, marketing or use for the benefit of third parties of the Service; or (e) information, direction, specification or materials provided by Indemnified Party or any third party contracted to it. If any Service is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either (I) procure the right for Indemnified Party to continue using 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.

2. The indemnities set out in this Articles shall be subject to the following conditions:-

a) The Indemnified Party, as promptly as practicable, informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;

b) The Indemnified Party shall may at its option (but shall not be obligated to), 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;

c) 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;

d) 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;

e) All settlements of claims subject to indemnification under this Clause will:

   i. 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

   ii. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;

f) The Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;

g) The Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;

h) 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

i) if a Party makes a claim under the indemnity set out under **Clause 19.1** 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).

17.2 Limitation of Liability

1. SI's aggregate liability for actual damages shall be capped at 100% of the value of the Agreement. However, in the following cases, the liability of the SI shall be as per actual damages: 1) the bodily injury (including death) and damage to real property and tangible personal property caused by SI's negligence and/or 2) the intellectual property infringement claims as per **Article 13: Intellectual property rights**.

2. SI shall not in any event be liable for any indirect or consequential damages, or for loss of profit, business, revenue, goodwill, anticipated savings or Data, or third party claims except with respect to bodily injury (including death) and damage to real and tangible personal property.

3. Neither this Agreement nor the Services delivered by SI under this Agreement grants or creates any rights, benefits, claims, obligations or causes of action in, to or on behalf of any person or entity (including any third party) other than between the respective Parties to this Agreement, as the case may be.

4. Title and Risk of Loss: SI shall bear the risk of loss on Project Assets; up to the time they are transferred and handed over to the DAD - after which it shall stand transferred to the DAD. SI shall arrange and pay for insurance to cover such item until it is transferred and even after the transfer of the Project Assets till the insurance policies come up for a renewal.

18   Miscellaneous

18.1 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:

1.   Incur any expenses on behalf of the other Party;

2.   Enter into any engagement or make any representation or warranty on behalf of the other Party;

3.   Pledge the credit of or otherwise bind or oblige the other Party; or

4.   Commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

18.2 Sub-contractors

System Integrator shall not subcontract any work related to Mini Data Center services, Disaster Recovery Centre services, Backup Site Center service sand CPP solution. For any other work such as Scanning, Civil and Electrical works of DC to be subcontracted, the list of services planned to be sub contracted shall be as submitted by the SI in the technical bid.

For any additional requirement, the SI needs to obtain prior written consent from DAD. All obligations and requirements of the project such as timeliness of deliverables, SLA, etc. will be the responsibility of the Bidder/ SI. However in no case, can the total value of the subcontracted work shall exceed 30% of the total agreement value. However the System Integrator shall provide the list of all the other services planned to be sub contracted, within 15 days of signing the Agreement. It is clarified that the System Integrator shall be liable for all claims arising from the statutory liabilities or otherwise, concerning the sub-contractors. DAD shall not be liable for any claims arising from the liabilities statutory or otherwise,

concerning the sub-contractors. The System Integrator undertakes to indemnify the DAD from any claims on the grounds stated hereinabove.

The following are the key governing aspects of sub-contracts:

It is clarified that the System Integrator shall be liable for all claims arising from the statutory liabilities or otherwise, concerning the sub-contractors. DAD shall not be liable for any claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The System Integrator undertakes to indemnify the DAD or its nominated agencies from any claims on the grounds stated hereinabove.

Note: Any hardware and software including COTS procured in the name of DAD by the SI and its annual support/warranty/maintenance etc. will not qualify as subcontracted work.

18.3 Assignment

1. All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the DAD and their respective successors and permitted assigns.

2. The System Integrator shall not be permitted to assign its rights and obligations under this Agreement to any third party.

3. The DAD may assign or novate all or any part of this Agreement and Schedules/Annexures, and the System Integrator shall be a party to such novation, to any third party contracted to provide outsourced services to DAD or any of its nominees.

18.4 Notices

1. 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.

2. 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:

System Integrator

Tel:

Fax:

Email:

Contact:

3. 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.

4. 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).

5. 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.

18.5 Variations and Further Assurance

No amendment, variation or other change to this Agreement or the SLA shall be valid unless authorised in accordance with the change control procedure as set out in the Change Control Schedule set out in **Schedule –II: Change Control** 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.

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.

18.6 Severability and Waiver

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.

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.

18.7 Compliance with Applicable Law

Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to its business like the System Integrator as an information technology System Integrator) at

all times comply with all laws, rules and regulations of government and other bodies having jurisdiction over the area in which the Services are undertaken provided that changes in such laws, rules and regulations which result in a change to the Services shall be dealt with in accordance with the Change Control Schedule set out in **Schedule –II: Change Control** of this Agreement.

18.8 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.

18.9 Ethics

The System Integrator represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of DAD 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 DAD standard policies and may result in cancellation of this Agreement, or the SLA.

18.10 Amendment

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized officers or representatives.

For and on behalf of DAD	For and on behalf of SI
	An authorized signatory duly nominated pursuant to Board Resolution No.

(<<Name>>)

<<Designation>>

Defence Accounts Department

(<<Name>>)

<<Designation>>

<<Company Name>>

Date:

Place: New Delhi

Witnessed by:

1.

2.

Date:

Place: New Delhi

Witnessed by:

1.

2.

19   Schedule – I: Deliverables & Milestones

As per RFP **Volume 1**.

20   Schedule –II: Change Control

This Schedule describes the procedure to be followed in the event of any proposed change (whether in scope or out of scope) to the Scope of Work and SLA. Such change shall include, but shall not be limited to, changes in the scope of services provided by the System Integrator and changes to the terms of payment as stated in the Payment Terms & Schedule of **volume II of this RFP**.

DAD and SI recognise change is an inevitable part of delivering services and that a significant element of this change can be accomplished by re-organizing processes and responsibilities without a material effect on the cost. The SI will endeavour, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and DAD or its nominated agencies will work with the System Integrator to ensure that all changes are discussed and managed in a constructive manner. This Change Control Schedule sets out the provisions which will apply to all the changes to this agreement and other documents except for the changes in SLAs for which a separate process has been laid out in the SLA.

Note: The Change Control process excludes any work products that are still under development.

20.1 Framework for Change Requests

Given below is the overall Institutional Framework required to be setup for the project:

Role	Description

Change Control Board (CCB)	1. Members of Change Control Board (CCB):
	
	    a) CGDA officer (JS or equivalent rank)
	
	    b) System Integrator
	
	    c) Any agency nominated/engaged by CGDA

Role	Description
	2. CCB shall decide whether to approve or reject proposed changes for a specific project
	3. Authorized to review, approve and schedule all changes to the computing environment including software
	4. Decision of CCB will be final and binding on all parties involved
Evaluator	The Section/ official/ PMU whom CGDA asks to analyze the impact of a proposed Change
Modifier	The SI who is assigned responsibility for making changes in a work product in response to an approved change request; updates the status of the request over time
Originator	The person who submits a new change request
Verifier	The Section/ official who determines whether a change was made correctly

20.2 Change control note (CCN)

Change requests in respect of the Agreement, the scope of work, the Deliverables, the acceptance criteria for the Deliverables, the Project management, or the Annual Maintenance Services 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 on the CCN.

20.2.1 Change request Process and Responsibility matrix

The entire change request process will be implemented as below:

S.No.	Process	Responsibility
1.	CGDA nominated agency (PMU) (Originator) will initiate, complete part A of the Change Control Note (CCN) provided in Annexure 27.1 and submit to the Change Control Board	CGDA

S.No.	Process	Responsibility
2.	Change request shall be submitted to CCB members	CCB
3.	CGDA official and/or Nominated agency (PMU) by CGDA will evaluate the change request report for risks, process of evaluating & implementing change, time required for completing the change(s) and any other additional requirement/information needed to clarify the Change requested; and will submit the recommendations.	CCB
4.	The SI will maintain the change request log through the centralized IT helpdesk designed for the project.	SI
5.	The SI will be required to study the Change requested and record their queries/suggestions on the requested change.	SI
6.	CCB will discuss and provide adequate responses to the queries/suggestions from the SI on the requested change. CCB will further decide on the responses to the queries/suggestions.	CCB
7.	Based on the responses provided by CCB, the SI will prepare the change control note of Part–B in the prescribed format provided in Annexure 27.1 and submit to the CCB	SI
8.	CCB will review the evaluation and decide on the final status	CCB, CGDA
9.	If CCB approves the proposal in its entirety, the Change request shall be signed-off between CCB and the SI.	CCB/CGDA-nominated officer, SI
10.	During sign-off, the authorized signatory from CCB as well as the SI will sign the Change Request Evaluation and Finalization form (at first place) and accordingly a formal go ahead will be provided by CCB.	CCB/SI

S.No.	Process	Responsibility
11.	The SI will then initiate the change following a standard predefined procedure along with proper documentation at each stage.	SI
12.	Once the Change is completed as per agreed timelines and specifications, CCB representatives and/or CGDA nominated official and/or agency (PMU) will do the User Acceptance Testing (UAT) and Auditing respectively to provide Comments/recommendations to the committee members.	CCB/ CGDA
13.	The SI will deploy the changed solution and notify CCB.	SI
14.	CGDA will finally review and confirm the deployed solution as per agreed standard, specifications and requirements, and provide status to CCB.	CGDA
15.	A final sign-off will be done on the 'Change Request Evaluation & Finalization' form and Completion Certificate will be issued to the SI by CCB. A copy of this Completion Certificate will have to be submitted to CCB along with the invoices for this change implementation.	CCB/CGDA

20.3 Part B of CCN

1. The SI shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN. "Cost related estimates and Charges for Implementation under Change Control Note" are applicable only for out of scope changes. In completing Part B of the CCN, SI shall provide as a minimum:

a) A description of the change. This should also provide Name of functionality / feature being changed, Current functionality / feature (prior to change), New functionality / feature (post change)

b) A list of Deliverables required for implementing the change. A timetable for implementation.

c) An estimate of the timelines or effort of any proposed change.

d) The unit of measure to cost the change (either the resource cost as indicated in the proposal or as a work element as mentioned in the proposal of SI).

e) Any relevant acceptance criteria.

f) An assessment of the value of the proposed change.

g) Material evidence to prove that the proposed change is not already covered within the scope of the Project and the Implementation Services.

h) Description of the circumstances which influenced the origin of this change.

i) Alternative options possible to address the change if any and the implications of these alternative options.

j) Detailed break up of various categories of activities to be performed for implementing a proposed change along with details on where re-usable components are used to reduce the efforts

k) Details on software change estimation method used for the calculation of change effort estimation to provide information on how change is classified in various categories, what all items that require efforts & how efforts are estimated

l) Underlying Assumptions

m) Any other details that the DAD would require to assess the effort estimated provided by the SI

2. Prior to submission of the completed CCN to the DAD, or its nominated agencies, the System Integrator will undertake its own internal review of the proposal and obtain all

necessary internal approvals. As a part of this internal review process, the SI shall consider the materiality of the proposed change in the context of the Agreement, the scope of Implementation Services, the Deliverables, the Project Management, Operation and Maintenance affected by the change and the total effect that may arise from implementation of the change.

20.4 Change Control Procedure Guidelines

1. Change requests in respect of the Agreement, the Project Implementation, or the SLA will emanate from the Parties' respective authorized officials, who will be responsible for obtaining approval for the change and will initiate the Change Request.

2. Parties, while evaluating and finalizing the Change Request, 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 sign-off version of all required documents.

3. Change requests will be reported monthly to CGDA/CCB who will prioritize and review progress. The SI shall be required to implement any proposed changes once approved with effect from the date agreed for implementation.

4. On receiving any Change Request from CCB/CGDA, the SI must submit its proposal with all the required information in the prescribed format for CCB/CGDA perusal within 15 working days.

5. The SI may also submit any queries/clarifications that it may have with respect to implementation of Change requested.

6. The SI must not deny the implementation of any Change requested by CCB/CGDA under any circumstances, unless technical feasibility is in question. In all such matters, CGDA decision will be final and binding on all parties.

7. The SI must take all necessary steps to implement the Change as per the project plan submitted without compromising on quality and performance standards. If the SI fails to comply with the acceptable standards & requirements of implementing of the Change requested, or denies implementation of the Change requested at any stage during the contract period, CCB will have complete authority to get the Change implemented from

any of the third party/nominated government agency independently. In all such cases the entire cost of Change implementation will be recovered completely from the SI, along with applicable interest. Also, CGDA/CCB reserves the right to impose the financial penalty (equivalent to the change request cost) and shall be adjusted from the quarterly payment for O&M period or legal penalties depending upon the gravity of impact on the Service Delivery due to non-implementation of the Change requested. In all such matters the decision of CCB will be final and binding on all the parties.

20.5 Reporting

Change requests and CCNs will be reported monthly to each Party's Programme Managers who will prioritize and review progress.

20.6 Costs

The cost for the changes will be calculated on the basis of blended person-month cost quoted by SI in its bid and approved effort by CCB.

21 Schedule III: Exit Management

21.1 Purpose

This schedule sets out the provisions, which will apply prior to the expiry of the Agreement or when termination of the Agreement is initiated, or when DAD intends to facilitate an understanding of the operations and the systems for DAD or any of its nominees during the Project implementation and Operations & Maintenance phase of the project and management of SLA.

It sets out the provisions which will ensure that DAD will be able to offer the services to its Stakeholders without any interruptions on expiry or termination of the Agreement.

Continuity and performance of the Services at all times including the duration of the Agreement and post expiry of the Agreement is a critical requirement of the DAD. It is the prime responsibility of SI to ensure continuity of service at all times of the Agreement including exit management period and in no way any facility/service shall be affected/degraded. Further, SI is also responsible for all activities required to train and

transfer the knowledge to the Replacement SI to ensure similar continuity and performance of the Services post expiry of the Agreement. SI will be required to carry out a gap analysis of the facilities and arrangements made by the Replacement SI and specifically inform DAD. It sets out the mechanisms for Exit Management Services the System Integrator is to provide on termination or prior to expiration of the Agreement to allow the orderly and efficient transition of the Services to DAD or its nominee.

It sets out the mechanisms for managing the knowledge enablement services the System Integrator has to provide to allow the DAD to create an understanding of the operations and technology of the systems for itself or its nominees or any designated agencies.

The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this schedule.

21.2 Initiation

1. The provisions for Exit Management Services are invoked at least six months prior to the expiry of the Agreement or on the day of notice of termination in case of termination till the time exit management services are executed to the satisfaction of the DAD.

2. The DAD has the right to alter in consultation with the SI, the timelines mentioned here based on the circumstances prevailing at the time of availing the Exit Management Services.

3. However if the DAD in the intervening period invokes the provisions of the Agreement and extends the term of the Agreement for the particular service, the provisions of the schedule will not come into effect at that time but at the expiry of such extended period, provisions of this schedule of the Agreement shall apply.

21.3 Exit management plan

The System Integrator shall provide the DAD or its nominated agency with a recommended exit management plan (EMP) which shall deal with all aspects of exit management in relation to the MSA as a whole and in relation to the Project Implementation, and the Operation and Management SLA.

21.4 Exit Management Services

The following are some of the key services which will be provided by the SI as part of the Exit Management Services

1. Provide DAD or its nominee with the current media management or other storage media listing of inventory.

2. Provide DAD or its nominee with all incident logs reporting back at least two (2) years before the Termination Date or Expiration End Date.

3. Identify, record, and provide to DAD or its nominee control release levels for system Software.

4. If requested by DAD, freeze all or any discretionary Software changes, other than modifications necessary to address processing problems.

5. Provide and coordinate assistance in notifying System Integrator's outside vendors of the procedures to be followed.

6. Review all test, data and production Software libraries with DAD or its nominee's operations staff.

7. Provide reasonable assistance to DAD or its nominee in establishing or transferring naming conventions.

8. Subject to the intellectual property provisions of this Agreement, document and deliver all tools and databases used to provide the Exit Management Services, including those for tracking projects and service information requests, and those used for knowledge transfer.

9. Deliver technical specifications, materials, user documentation etc. for DAD-DMMP solution to DAD or its nominee.

10. Assist DAD or its nominee in making arrangements for the physical de-installation, transportation, and relocation of equipment and physical assets.

11. Provide documentation and diagrams, including IP addressing schema, architecture diagram, network diagram, managed device thresholds, and configurations.

12. Provide copies of DAD data and offsite storage of production data and DAD-DMMP application, as reasonably requested.

21.5 Duration of the Exit Management Services

1. The exit management services will be available to DAD or its nominees or the Replacement SI till all tasks set out in the Exit Management Plan have been completed.

2. The exit management services will be available to DAD or its nominees or the Replacement SI till the acceptance criteria set out in the Exit Management Plan have been met, as determined by DAD.

21.6 Transfer of assets

1. DAD shall be entitled to serve notice in writing on the SI at any time during the exit management period as detailed hereinabove requiring the SI to provide the DAD with a complete and up to date list of all products not in DAD's name but bought or used by the SI in the project and which are required for continued operations within 30 days of such notice. DAD shall then be entitled to serve notice in writing on the SI at any time prior to the date that is 30 days prior to the end of the exit management period requiring the SI to transfer these Assets on book value as per DAD accounting policy.

2. Transfer all rights, titles and interests in such Project Assets (as the DAD in its sole discretion may determine) to the DAD or its nominee and transfer information which are required to be transferred to the DAD in accordance with this Agreement and execute such deeds and documents as may be necessary for the aforesaid purposes including completing all legal or other formalities required in this regard.

3.   Hand over to the DAD or its nominee all documents including but not limited to, process specifications, testing specifications, test results, manuals and records relating to operation and maintenance of the software and hardware.

4.   Transfer/assign or cause to be transferred/assigned to the DAD or its nominee any OEM contracts which are valid and subsisting and those OEM contracts which the DAD has chosen to take over, and cancel or cause to be cancelled such OEM contracts not to be transferred/assigned to the DAD or its nominee. For this purpose, SI shall ensure that all OEM contracts are assignable in favour of the DAD or its nominee without any further action on part of the respective counterparties. SI shall entirely at its cost, terminate all such OEM contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the DAD.

5.   Transfer/assign all the warranties for the hardware and software, in favour of the DAD or its nominee, which are required by the DAD to continue to operate or use either during the design and development Stage or annual maintenance Stage.

6.   Third-Party Contracts

   a)   If requested by DAD, System Integrator must assign, novate, or assist DAD or its nominee in negotiating new Third-Party contracts (other than Software licenses with a Third Party) including any Subcontracts, which it was wholly or substantially using in the provision of the Exit management Services immediately before termination or expiry.

   b)   System Integrator must use all reasonable endeavours to ensure that no charge to DAD will be due upon transfer and must notify DAD in writing where such transfer costs apply and detail the costs or the method of determining the costs as part of the Exit Management Plan.

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

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

   a) in the event, if the Assets to be transferred are mortgaged to any financial institutions by the SI, the SI shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to the DAD.

   b) All risk in and title to the Assets to be transferred / to be purchased by the DAD pursuant to this Article shall be transferred to DAD, on the last day of the exit management period.

   c) The outgoing SI will pass on to DAD and/or to the Replacement SI, the subsisting rights in any leased properties/ licensed products on terms not less favourable to DAD/ Replacement SI, than that enjoyed by the outgoing SI.

21.7 Cooperation and provision of information

The SI shall provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with this agreement relating to any material aspect of the services (whether provided by the System Integrator or sub-contractors appointed by the System Integrator).

21.8 Confidential information, security and data

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

1. Information relating to the current services rendered and customer and performance data relating to the performance of sub-contractors in relation to the services;

2. Documentation relating to the Project's Intellectual Property Rights;

3. Documentation relating to sub-contractors;

4. all current and updated data of the Project as is reasonably required for purposes of DAD or its nominated agencies transitioning the services to its Replacement System Integrator in a readily available format nominated by the DAD or its nominated agency;

5. All other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable DAD or its nominated agencies, or its Replacement System Integrator to carry out due diligence in order to transition the provision of the Services to DAD or its nominated agencies, or its Replacement System Integrator (as the case may be).

Before the expiry of the exit management period, the System Integrator shall deliver to the DAD 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 System Integrator shall be permitted to retain one copy of such materials for archival purposes only.

Before the expiry of the exit management period, the DAD or its nominated agency shall deliver to the System Integrator all forms of System Integrator confidential information, which is in their possession.

SI shall retrieve and migrate the VMs, data in all formats, and all other elements to the new environment identified by DAD or Replacement SI on alternate cloud service provider's offerings and certify the VM and data destruction to the DAD as per stipulations and shall ensure that the data cannot be forensically recovered. The SI shall not delete any data at the end of the agreement or even after the end of the agreement without the express approval of the DAD.

21.9 Employees

Promptly on reasonable request at any time during the exit management period, the System Integrator shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the DAD or its nominated agency a list of all employees

(with job titles) of the System Integrator dedicated to providing the services at the commencement of the exit management period.

Ensure that all the employees who worked on the Project have followed the clauses in the **Article 15: Personnel** and **Article 16: Information Security and Audit Rights** of this Agreement.

21.10 Knowledge transfer

1. SI will undertake the following activities as demanded by DAD to ensure that the knowledge about the entire Information Technology System including but not limited to the infrastructure at Mini Data Center, Disaster recovery Center, the Network, Applications, customized solution, the design and operational characteristics of these systems are transferred to the DAD Team or the Replacement SI. The activities will be aimed at:

   a) Knowledge transfer of operations.

   b) Knowledge transfer of technology.

   c) Knowledge transfer of processes.

   d) Knowledge transfer of any other processes, etc. not covered by (a) to (c) above.

2. Some of the key activities to be carried out by SI for knowledge transfer will be :-

   a) Documents walkthrough to explain design and characteristics.

   b) The code walkthrough to explain the characteristics of the software applications.

   c) Joint operations of key activities or services.

   d) Briefing sessions on process and process Documentation.

   e) Walkthrough of the logs of the bugs, the changes to the codes etc.

   f) Briefing sessions on applications, the way these are deployed and integrated.

3. Transfer technology and up-to-date know-how relating to operation and maintenance of the software and hardware.

4. Some of the key activities/obligations for effective knowledge transfer will be

   a) Participate in workshops, meetings, and "hands-on" activities where requested by DAD.

   b) Provide DAD or its nominee with information about the Services as necessary for DAD or its nominee to assume responsibility for continued performance of the Services in an orderly manner so as to minimize disruption to the operations of DAD

   c) Permit DAD and/or DAD's nominee to bring laptops and recording devices to, and use other equipment and connectivity at System Integrator Sites to facilitate knowledge transfer.

   d) Provide training to DAD or its nominee's personnel in the performance of the Services that are to be transferred.

   e) Permit DAD to assign DAD Personnel or DAD's nominee's personnel to work with System Integrator Personnel to facilitate knowledge transfer from System Integrator to DAD or its nominee.

   f) Provide access to System Integrator Personnel who have worked or are working on the DAD account (even if they are not dedicated to the DAD account).

   g) If known, provide a contact listing of current potential alternative sources of resources, including skilled labour and spare equipment parts.

   h) Provide a list of all Statements of Work and other "in-flight" work current at the commencement of the Exit Management Period with the list to be updated by System Integrator at the end of the Exit Management Period.

21.11 Transfer of certain agreements

On request by the DAD or its nominated agency the System Integrator shall effect such assignments, transfers, licenses and sub-licenses as DAD or its nominated agencies or its Replacement System Integrator in relation to any equipment lease, maintenance or service provision agreement between System Integrator and third party lease providers, vendors, and which are related to the services and reasonably necessary for the carrying out of replacement services by the DAD or its nominated agency or its Replacement System Integrator .

21.12 Rights of access to premises

At any time during the exit management period, where Assets are located at the System Integrator's premises, the System Integrator shall 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 DAD or its nominated agency and/or any Replacement System Integrator in order to make an inventory of the Assets.

The System Integrator shall also give the DAD or its nominated agency(s), or any Replacement System Integrator right of reasonable access to the Implementation Partner's premises and shall procure the DAD or its nominated agency(s) and any Replacement System Integrator rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to the DAD or its nominated agency, or a Replacement System Integrator.

21.13 General obligations of the system integrator

1. Within 7 days of initiation of Exit Management Services the SI shall provide an updated list of Assets being transferred to DAD and notify the core team.

2. The System Integrator shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the DAD or its nominated agency or its Replacement System Integrator and which the System Integrator has in its possession or control at any time during the exit management period.

3. For the purposes of this Schedule, anything in the possession or control of any System Integrator, associated entity, or sub-contractor is deemed to be in the possession or control of the System Integrator.

4. The System Integrator shall commit adequate resources to comply with its obligations under this Schedule.

5. The Exit Management Services as per the accepted plan, will come into effect when each party will appoint, and notify the other party of, a suitably qualified representative to act as its single point of contact for the Exit Management Services.

6. The SI will deploy the right personnel with relevant background knowledge for Exit Management to ensure efficient and timely completion of the Exit Management activities.

7. The task of SI with reference to the Exit Management is deemed to be complete only when the Project manager of the DAD issues a satisfactory completion certificate for the Exit Management Plan

22   Schedule IV: Audit, Access and reporting

This Schedule details the audit, access and reporting rights and obligations of the DAD or its nominated agency and the System Integrator.

1. DAD or its nominated agency may audit the project / services being delivered by the SI as per the agreed timetable or anytime as decided by DAD.

2. The System Integrator shall provide to the DAD or its nominated agency reasonable access to employees, subcontractors, suppliers, agents and third party facilities as detailed in **Volume I & II of the RFP** including leased premises, Mini Data Centers, documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. DAD or its nominated agency shall have the right to copy and retain copies of any relevant records. The System Integrator shall make every reasonable effort to co-operate with them.

3. The System Integrator shall use reasonable endeavours to achieve the same audit and access provisions as defined in this Schedule with sub-contractors, suppliers and agents who supply labour, services, equipment or materials in respect of the services.

4. The System Integrator will provide relevant reports to the DAD in context of the audit and access information as required by the DAD or its nominated agency.

5. Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the DAD or its nominated agency and the System Integrator Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of this contract.

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

23   Schedule V: Governance Schedule

23.1 Project governance structure

As defined in **RFP Volume-1**

23.2 Governance procedures

1. The System Integrator shall document the agreed structures in a procedures manual.

2. Meetings will be held at various levels (as per the Governance structure) between the SI and DAD facilitate smooth implementation and operations of the entire project.

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

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

5. Any unresolved issue(s) would be escalated to the next higher level as per the Project governance structure.

24   Schedule VI: Payment Schedule

24.1 Performance Bank Guarantee

1. A Performance Bank Guarantee ("PBG") will be issued in the form of a bank guarantee by (...........SI's BANK.............) through a Nationalized/Scheduled Bank for a sum equal to 10% of the Agreement value. The PBG should be valid till the entire term of the agreement and for an additional period of one year after the completion of term of agreement including warranty obligations.

2. In case any claims or any other Agreement obligations are outstanding, the System Integrator will extend the Performance Bank Guarantee as asked by DAD till such time the System Integrator settles all claims and completes all Agreement obligations.

3. The Performance Bank Guarantee will be subject to encashment by DAD, in case, conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the Agreement are not fulfilled by the SI.

4. In case the Agreement is extended, the Performance Bank Guarantee has to be valid for one year beyond the extended period.

   Note: The specimen of the Performance Bank Guarantee is provided in the **Volume II** of RFP

24.2 Payment Schedule and Milestones

This is a Hybrid (Turnkey + IT Service Delivery + Scanning & Migration) Project, hence during the project phase the payments will be linked to milestones and during O&M (Operations and Maintenance) Phase, the payment will be linked with the measurable quality of services as defined in SLA's.

Refer RFP **Volume-I Section 9.1 for Project Phases and milestones**.

24.2.1 Payments during Development & Implementation Phase:

S. No.	Description	Milestones			
	Projects	**MS1**	**MS2**	**MS3**	**MS4**
Project – A					
1.	Comprehensive Pension Package Development *	10%	-	50%	
2.	Mini Data Center 1 - (50% servers and system software licenses etc.)	0%	30%	50%	
3.	Mini Data Center 2	0%	90%	10%	
4.	Mini Data Center 1 – (Remaining 50% servers and system software licenses etc.)				80%
Project – B					
5.	Scanning (Bid Template Annexure 1.8.5)	100% payment for Scanning activity will be made quarterly as per the quoted rate against the actual number of pages scanned and SLA values achieved.			
Others					
6.	Data Entry (Bid Template Annexure 1.8.6)	100% payment for Data Entry will be made on successful completion of the activity as per the quoted rate against the actual number of records.			
7.	Training (S. No. 2 of Bid Template Annexure 1.8.3.1)	100% payment on successful completion of the activity as per the quoted rate.			
8.	Change Request (Bid Template Annexure 1.8.7)	80% Payment as per unit rate quoted on satisfactory UAT completion. Remaining 20% shall be paid after 6 months.			

* Payment against respective sub-components of CPP Software Development and Training as defined in Commercial Bid Formats section of **RFP Volume II**.

1. The payment of MS1, MS2 & MS3 milestones of Development & Implementation phase are illustrated below:

   a. MS1 Value = this payment value is equal to 10% of the value of the CPP cost quoted by the Service Provider i.e. Annexure **1.8.3.1 of RFP Volume II**.

b. MS2 Value = this payment value is equal to as following:

   i. 30% of Mini Data Center 1 Phase 1 Components (Hardware, System Software/Tools Licenses etc. cost of the delivered items) cost quoted by the Service Provider i.e. Annexure **1.8.3.2 of RFP Volume II**.**.

   ii. 90% of Mini Data Center 2 Components (Hardware, System Software/Tools Licenses etc. cost of the delivered items) cost quoted by the Service Provider i.e. Annexure **1.8.3.4 of RFP Volume II**.

c. MS3 Value = this payment value is equal to as following:

   i. 50% of Mini Data Center 1 Phase 1 Components (Hardware, System Software/Tools Licenses etc. cost of the delivered items) cost quoted by the Service Provider i.e. Annexure **1.8.3.2 of RFP Volume II**..

   ii. 10% of Mini Data Center 2 Components (Hardware, System Software/Tools Licenses etc. cost of the delivered items) cost quoted by the Service Provider as per i.e. Annexure **1.8.3.4 of RFP Volume II**.

   iii. 50% of the CPP cost quoted by the Service Provider as per i.e. Annexure **1.8.3.1 of RFP Volume I**.

d. MS4 Value = this payment value is equal to as following:

   i. 80% of Mini Data Center 1 Phase 2 Components (Hardware, System Software/Tools Licenses etc. cost of the delivered items) as per. Annexure **1.8.3.3 of RFP Volume II**.

2. The balance amount of the Development & Implementation Phase (i.e. 20% of Data Center 1 Phase 1 & Phase2 and 40% of CPP Application) will be paid at the end of the First Quarter after Application Rollout phase subject to:

   a. Successful Rollout of CPP

b. All the application defects identified during UAT and Rollout phase are resolved

c. Meeting quality of services as define in SLAs

In case the Service Provider is not able to meet the defined SLAs in the first quarter, the payment shall be released in the subsequent quarter subject to meeting condition specified in 2(b).

24.2.2 Payments during Operations & Maintenance Phase

Operation & Maintenance Phase Payment: The timeline for O&M Phase is indicated in the **Section – 15 of RFP Vol-I**. The value of amount to be paid in O&M phases i.e. will be linked with the SLA Values achieved for that quarter. The SLA value for any quarter, in case of non-availability of SLA Values due to delay in "Development and Implementation Phase" on account of Service Provider, will be considered as ZERO. If the delay is due to DAD, the SLA value for that quarter will be considered as 100%.

a) Quarterly payment value for O & M phase (Q) = Total Amount quoted by the Bidder for the respective year () / 4

b) SLA Value achieved for the said Quarter = X%

c) Quarterly Payment value for Q&M Phase = X % of Q.

24.2.3 Scanning Activity

The RFP defines scope and timeline of the scanning activity Phase1 and Phase 2. The SI should submit execution plan in the technical proposal to complete scanning activity in the given time frame.

The SI will have to complete number of records (with the quality processes as defined in Annexure C of RFP Volume I) every quarter as per the submitted proposal. Any delay in the scanning activity will be observed and calculated against the proposal.

SP shall raise the invoice to DAD for each Quarter at the end of every quarter. The payments will be made in accordance with:

100% pages as per proposal	**Payment** = No. of pages completed * Rate quoted in Commercial Bid
Less than 100%	X = **No. of pages proposed in a quarter** − **No. of pages Completed** **Payment** = (No. of pages completed-X) * Rate quoted in Commercial Bid **Note:** (X * Rate quoted in Commercial Bid) will be retained by DAD until cumulative delay is covered.
More than 100%	**Payment** = No. of pages completed * Rate quoted in Commercial Bid

25   Schedule VII: Bill of Material

Detailed Bill of Materials (along with technical specifications) with Complete Break-up of Costs and Pricing for Different Items.

- To be filled up after the finalization of the service provider as per the proposed BOM.

26   Schedule VIII: Cost and Pricing

To be filled up after the finalization of the service provider as per the proposed BOM.

27   Annexures

27.1 Annexure A: Format for change control notice

Change Control Note		CCN Number:
Part A: Initiation		
Title:		

Change Control Note		CCN Number:	
Part A: Initiation			
Originator:			
Sponsor:			
Date of Initiation:			
Details of Proposed Change			
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)			
Authorised by DAD		**Date:**	
Name:			
Signature:		**Date:**	
Received by the IA			
Name:			
Signature:			
Change Control Note		**CCN Number:**	
Part B : Evaluation			
Brief Description of Solution:			

Change Control Note	CCN Number:
Part A: Initiation	
Impact:	
Timeline & Deliverables:	
Applicable Effort (in Mandays/ Man-month):	
Other Relevant Information: **(including value-added and acceptance criteria)**	
Authorised by the System Integrator	**Date:**
Name:	
Signature:	

Change Control Note	CCN Number :
Part C : Authority to Proceed	
Implementation of this CCN as submitted in Part A, in accordance with Part B is: (tick as	
Change Request Type - A / B A. Free of Cost as per section 13.9 of RFP Volume B. Paid (mandays)	
Approved	

Rejected Requires Further Information (as follows, or as Attachment 1 etc.)	
For DAD its nominated agencies	For the System Integrator
Signature	Signature
Name	Name
Title	Title
Date	Date

27.2 Annexure B: Format for Non-Disclosure Agreement

Published as a separate document

27.3 Annexure C: SLA Agreement & Service Levels

Published as a separate document

27.4 Annexure D: Service Levels

Published as a separate document

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End of RFP Volume 3