



**Department of Health and Family Welfare  
Government of Chhattisgarh**

**Request for Proposal  
For  
“Selection of Service Provider for Fleet Management of 102 Mahatari Express”**

**Volume 3 – Master Service Agreement**

**RFP Number: 06/DHS/102/2023**

**Date: 21.03.2023**

**Last date for Bid Submission:**

**Client Details:**

**Directorate of Health Services,**

**Department of Health and Family Welfare**

**Government of Chhattisgarh,**

**Sector-19, North Block, Atal Nagar Raipur, Chhattisgarh**

**Website: [cghealth.nic.in](http://cghealth.nic.in)**

## Table of Contents

1.	DEFINITIONS AND INTERPRETATIONS .....	5
1.1	DEFINITIONS .....	5
1.2	INTERPRETATION.....	5
1.3	MEASUREMENTS AND ARITHMETIC CONVENTIONS .....	6
1.4	AMBIGUITIES WITHIN AGREEMENT .....	6
1.5.	PRIORITY OF DOCUMENTS .....	6
2.	SCOPE OF THE PROJECT.....	7
3.	TERM AND DURATION OF THE AGREEMENT .....	7
4.	CONDITIONS PRECEDENT & EFFECTIVE DATE.....	7
5.	OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENTS (SLAS).....	8
6.	FINAL ACCEPTANCE AND CERTIFICATION;.....	9
7.	REPRESENTATIONS AND WARRANTIES .....	9
8.	OBLIGATIONS OF DIRECTORATE OF HEALTH SERVICES .....	11
9.	ACCEPTANCE OF DELIVERABLES.....	12
10.	USE OF ASSETS BY THE AGENCY .....	15
11.	ACCESS TO AGENCY TO CERTAIN LOCATIONS .....	15
12.	MANAGEMENT OF THE PROJECT.....	16
12.1	GOVERNANCE .....	16
12.2	SECURITY AND SAFETY .....	16
12.3	COOPERATION.....	16
13.	FINANCIAL MATTERS .....	17
13.1	TERMS OF PAYMENT.....	17
13.2	TAX.....	19
14.	EVENT OF DEFAULT, TERMINATION AND SUSPENSION .....	20
15.	INDEMNIFICATION & LIMITATION OF LIABILITY .....	22
16.	FORCE MAJEURE .....	24
17.	CONFIDENTIALITY.....	26
18.	AUDIT, ACCESS, MONITORING AND REPORTING .....	27
19.	TRANSFER OF RISK AND OWNERSHIP IN GOODS.....	27
20.	INSURANCE COVER .....	28
20.1	OBLIGATION TO MAINTAIN INSURANCE .....	28
20.2	CERTIFICATES OF CURRENCY .....	28
20.3	NON-COMPLIANCE .....	28
21.	MISCELLANEOUS.....	29
22.	BANK GUARANTEES .....	34
23.	GOVERNING LAW AND DISPUTE RESOLUTION.....	34
24.	SCHEDULES.....	37
24.1	SCHEDULE I – DEFINITIONS .....	37
24.2	SCHEDULE II – CHANGE REQUEST SCHEDULE .....	41
24.3	SCHEDULE III - AUDIT, ACCESS AND REPORTING .....	44
24.4	SCHEDULE IV – GOVERNANCE SCHEDULE .....	47
24.5	SCHEDULE V– PAYMENT SCHEDULE.....	48
24.6	SCHEDULE – VI –PROJECT TIMELINES .....	48
24.7	SCHEDULE – VII – BIDDER’S PROJECT PLAN.....	50
24.8	SCHEDULE – VIII – FINANCIAL PROPOSAL.....	51
24.9	SCHEDULE – IX – TOTAL PRICE SUMMARY .....	51
24.10	SCHEDULE – X - EXIT MANAGEMENT SCHEDULE .....	51

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

BETWEEN

“Directorate of Health Services”, having its office at \_\_\_\_\_, India represented by \_\_\_\_\_ designated as \_\_\_\_\_ (hereinafter referred to as “**Department /Department/Authority/Directorate of Health Services**” which expression shall, unless the context otherwise requires, include its successors and permitted assigns) of the first part;

AND

<<Successful bidder's full name'>>, a company / society / trust incorporated / registered under the .....} and having its registered office at ..... (hereinafter referred to as 'Sole/Lead Bidder which expression shall, unless the context otherwise requires, include its permitted successors and permitted assignees).).

A Consortium comprised of the following entities

- {....., a company / society / trust incorporated / registered under the .....} and having its registered office at ..... (Including its successors and permitted assigns and substitutes) (Herein referred as the “Lead Bidder/Member”);
- {....., a company / society / trust incorporated / registered under the .....} and having its registered office at ..... (Including its successors and permitted assigns and substitutes (herein referred as the “Non-Lead Member”);
- {....., a company / society / trust incorporated / registered under the .....} and having its registered office at ..... (Including its successors and permitted assigns and substitutes (herein referred as the “Non-Lead Member”)

Each of the parties mentioned above are collectively referred to as the 'Parties' and individually as a 'Party' and /or as defined hereinabove

WHEREAS:

1. Directorate of Health Services is desirous of implementing the Fleet Management of Dial 102 Mahatari Express project (hereinafter referred to as the 'Project');
2. In furtherance of the same, Directorate of Health Services undertook the selection of a suitable agency for Fleet Management of Dial 102 Mahatari Express through a competitive bidding process for implementing the Project and in this regard issued a Request for Proposal bearing Reference Number .....dated 'Date' and subsequent corrigendum/addendum thereto (hereinafter together referred to as the 'RFP');
3. The bidder has been selected as the successful bidder on the basis of the proposal submitted by the bidder in response of the RFP as set out in Annexure ..... (hereinafter referred to as the 'Proposal', which term shall include all clarifications and additional documents submitted by the Successful Bidder with reference to the

Proposal), to undertake the Project of hiring of Service Provider for Fleet Management of 102 Mahatari Express and sustained operations and has been informed about the same vide Directorate of Health Services letter dated ..... (hereinafter referred to as the 'Letter of Award');

4. Parties now wish to enter into this Agreement to govern their mutual rights and obligations with respect to provision of goods and services and implementation of the Project.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties intend to be bound legally by the terms and conditions agreed in this Agreement, for implementation of the Project,

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

## **1. Definitions and Interpretations**

### **1.1 Definitions**

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out in Schedule I of this Agreement and/or as defined in the RFP. Other terms used in this Agreement are defined where they are used and have the meanings there indicated. Unless otherwise specifically defined, those terms, acronyms and phrases in this Agreement that are utilized in the information technology services industry or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context.

### **1.2 Interpretation**

In this Agreement, unless otherwise specified:

- i. references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexure are to clauses, sub-clauses, paragraphs, schedules and annexure to this Agreement;
- ii. words denoting the singular include the plural and vice versa and use of any gender includes the other genders;
- iii. references to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- iv. references to a 'person' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- v. a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- vi. any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- vii. references to a 'business day' shall be construed as a reference to a day (other than a Sunday) on which banks in Raipur are generally open for business;
- viii. references to times are to Indian Standard Time;
- ix. a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, notated or supplemented at any time;
- x. all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement;
- xi. Unless otherwise specified a reference to a clause number is a reference to all its sub-clauses; and

- xii. A reference to the Agreement shall, unless the context otherwise requires, include a reference to its Annexure, Schedules and every other documents forming part of this Agreement. If a term of this Agreement requires things to be done, undertaken or completed under the Agreement, the same, if relevant, shall, unless the context otherwise require, mean to include such things to be done, undertaken or completed under the relevant Schedules, Annexure of this Agreement.
- xiii. A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;

### **1.3 Measurements and Arithmetic Conventions**

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

### **1.4 Ambiguities within Agreement**

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

- i. as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- ii. as between the provisions of the RFP and any corrigendum/addendum issued thereafter, the provisions of corrigendum/addendum shall, to that extent only, prevail over the corresponding earlier provision of RFP;
- iii. as between the provisions of this Agreement and the Schedules/Annexure, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexure;
- iv. As between the provisions of this Agreement and the RFP and the Proposal, this Agreement shall prevail;
- v. As between the provisions of the RFP and the Proposal, unless otherwise decided by Directorate of Health Services, the RFP shall prevail; and
- vi. As between any value written in numerals and that in words, the value in words shall prevail.

### **1.5. Priority of Documents**

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

- i. This Agreement

- ii. NDA agreement and Integrity Pact,
- iii. Schedules and Annexure;
- iv. The RFP along with subsequently issued corrigendum
- v. Technical and financial/commercial proposal submitted by the successful bidder, along with subsequently issued clarifications furnished by the SERVICE PROVIDER in response to the RFP, to the extent they are not inconsistent with any terms of the RFP.

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

## **2. Scope of the Project**

In consideration of the award of the work under the RFP (Volume II Section 1 to 8) to the AGENCY and payments to be made by Directorate of Health Services to the AGENCY as hereinafter mentioned, the AGENCY hereby covenants with the Department to accomplish the Scope of Work (including provision of Goods and Services and to remedy defects therein) as provided in the RFP (Volume II Section) and clarifications, annexure, schedules etc. thereof and to perform all obligations mentioned in the RFP.

Directorate of Health Services hereby covenants to pay the AGENCY in consideration of the accomplishment of Scope of Work and for performance of all obligations mentioned in the RFP, the undisputed Total Project Cost or such other sum as may become payable under the provisions of the Agreement at the times and in the manner prescribed under the Agreement.

## **3. Term and Duration of the Agreement**

This Agreement shall come into effect on 'Date' 20--- (insert the same date as "T" in the timelines) (hereinafter the 'Effective Date') and, unless terminated earlier as per the terms of this Agreement, shall continue for a period of 60 months (i.e. 5 Years) from the date of Project Commissioning ("Term"). The Term may be extended by Directorate of Health Services at the sole discretion of Directorate of Health Services for a further term of up to 2 (two) years (or part thereof) on terms and conditions, as may be mutually decided by and between the Parties. However right to grant such an extension will be at the discretion of Department.

## **4. Conditions Precedent & Effective Date**

- i. Payment Obligations to take effect upon fulfillment of Conditions Precedent

Subject to express terms to the contrary, the rights of the Agency to receive payments, and obligations of Directorate of Health Services to make such undisputed payments under this Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out below. Notwithstanding the foregoing, Directorate of Health Services based on Committee recommendation may at any time waive fully or partially, in writing, any of the Conditions Precedent for the Agency provided no such waiver shall affect or impair any right, power or remedy that the Department may otherwise have.

Also waiver of one part may not be construed as waiver of other unless recorded explicitly in writing.

ii. Conditions Precedent of the Agency

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

- a. the AGENCY shall, within 15 working days after the receipt of Letter of Award from Directorate of Health Services, furnish Performance Bank Guarantee for value of 3% of the Total Project Cost to Directorate of Health Services from a nationalized or a scheduled bank in the format provided in Annexure 4 of the RFP Vol I. The Performance Security shall be valid for entire Term and expiry of six months thereafter;
- b. Bank Guarantee will be returned by Authority to the Bidder within 60 days of the expiration of each year of service during the term of this Agreement, upon delivery of satisfactory service for that year, after applicable deductions as per the Agreement, if any.
- c. The AGENCY provides an undertaking to Directorate of Health Services to the effect that it has entered into all relevant back end contracts with OEMs whose products / services it has quoted in the Proposal and the same are not in contradiction to this contract;
- d. Furnishing of such other documents, including Corporate Non-Disclosure Agreement and any other documents related to this Agreement as Directorate of Health Services may specify prior to the signing of this Agreement.

**5. Obligations under the Service Level Agreements (SLAs)**

5.1 The AGENCY shall commence the performance of its obligations under the Agreement from Effective Date and shall proceed to provide Goods and carry out the Services with diligence and expedition in accordance with any stipulation as to the time, manner, mode, and method of execution contained in this Agreement. The AGENCY shall be responsible for and shall ensure that all the Goods and Services are performed in accordance with the specifications and that the AGENCY's team complies with such specifications and all other standards, terms and other stipulations/conditions set out hereunder.

5.2 Any Goods to be supplied under this Agreement shall conform to the standards mentioned in the technical specifications given in the RFP, and, when no applicable standard is mentioned, to the authoritative standards, such standards shall be the latest issued by the concerned institution. Delivery of Goods shall be made by the AGENCY in accordance with the Agreement and the terms specified by the Department in Department order. In case if it is found that the Goods provided by AGENCY do not meet one/ more criteria, the AGENCY shall remain liable to provide / deliver a replacement for the same which meets all the required specifications, at no additional cost to the Department.



5.3 The AGENCY shall keep all backend contracts with all support agencies in force and up to date to ensure provision of goods and services as per the RFP and to meet all the SLAs.

5.4 The Agency shall accomplish the scope of work under this Agreement as per the Timelines and as per the Service Levels mentioned in the RFP. If the Agency fails to achieve the Timelines due to reasons attributable to it (including its agents, representatives and Agency's Team), or if it fails to achieve the Service Levels (in the SLAs) due to reasons attributable to the Agency (including its agents, representatives and team), the Agency shall be liable to pay liquidated damages. Payment of liquidated damages shall not be the sole and exclusive remedies available to Directorate of Health Services and the Agency shall not be relieved from any obligations by virtue of payment of such liquidated damages. The liquidated damages will be capped. If the liquidated damages cross the cap on liquidated damages, Directorate of Health Services shall have the right to terminate the Agreement for breach and consequences for such termination as provided in this Agreement shall be applicable.

## **6. Final Acceptance and Certification;**

The Project shall be governed by the mechanism of final acceptance and certification to be put into place by Directorate of Health Services and Agency as under:

- i. Final acceptance and certification criteria will lay down a set of guidelines following delivery of all documents, deployment of manpower, deployment of ambulances (including consumables);
- ii. Final acceptance and certification criteria will be finalized from the inception stage to ensure that the guidelines are being followed and to avoid large scale modifications later;
- iii. Final acceptance and certification criteria will consider conducting specific checks on the deployed ambulances, consumables in ambulances, Drivers availability, manpower at centralized locations and all other aspects;
- iv. Final acceptance and certification criteria will establish appropriate processes for notifying the Agency of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the Agency to take corrective action; etc.

## **7. Representations and Warranties**

### **7.1 Representations and warranties of the Agency:**

- i. The Agency represents and warrants to Directorate of Health Services
- ii. It is duly organized and validly existing under the all applicable laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- iii. It is a competent provider of a variety of similar fleet management solutions as envisaged under this Agreement;
- iv. 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;
- v. That it has the power and the authority that would be required to enter into this Agreement and the requisite experience, the technical know-how and the financial

- wherewithal required to successfully execute the terms of this Agreement and to provide services sought by the Directorate of Health Services under this Agreement;
- vi. That it has the professional skills, personnel, infrastructure and resources/authorizations that are necessary for providing all such services as are necessary to fulfill the scope of work stipulated in the RFP and this Agreement;
  - vii. It has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement; this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
  - viii. The information furnished in the Proposal is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement and no material information related to the requirements of the RFP has been concealed;
  - ix. 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;
  - x. There are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
  - xi. It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any adverse effect 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;
  - xii. 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;
  - xiii. No representation or warranty by it contained herein or in any other document furnished by it to Directorate of Health Services 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
  - xiv. 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 Directorate of Health Services in connection therewith.
  - xv. Department recognizes no employer-employee relationship between itself and the drivers deployed by the successful bidder. Driver remains employee of the service provider at all times.
  - xvi. The successful bidder shall indemnify Department against all other damages / charges for which Department or its officials/ patients who will be seating in the vehicle may be held liable on account of negligence of the successful bidder or their driver or any person under their control whether in respect of accident /injury to the person or damages to the property of any member of the public or any person and against all claims and demand thereof. Department will not be responsible financially or otherwise for any challan, loss, damage to the car or any other car, injury caused to

any person, animal and/or property caused due to act/omission of Agency and/or its Drivers during the course of performing the duties.

- xvii. Agency is not allowed to Sub-contract, Sub-let and /or assign any part of this agreement without written consent of Department.

## **7.2 Representations and warranties of Directorate of Health Services**

- i. Directorate of Health Services represent and warrant to the Agency that:
- ii. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- iii. It has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- iv. It has the financial standing and capacity to perform its obligations under the Agreement;
- v. 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;
- vi. This Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;
- vii. 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;
- viii. 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 Directorate of Health Services 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;
- ix. It has complied with Applicable Laws in all material respects.

## **8. Obligations of Directorate of Health Services**

- i. Without prejudice to any other undertakings or obligations of Directorate of Health Services or its nominated agencies under this Agreement or the RFP, Directorate of Health Services shall perform the following:
- ii. To provide any reasonable support through personnel;
- iii. To provide any reasonable support through personnel, rollout, steady state operation, as well as, for any changes/enhancements in the process whenever required due to

scope change that may arise due to business, delivery or statutory/regulatory reasons, provided that any changes etc. to the process shall always be subject to prior written approval of Directorate of Health Services;

- iv. It may authorize the Agency to interact for implementation of the Project with entities internal or external to the extent deemed necessary by Directorate of Health Services.

## **9. Acceptance of Deliverables**

### **A. Acceptance of Deliverables**

The successful completion of the Project requires the acceptance by Directorate of Health Services of all deliverables (like Ambulances, consumables, drivers etc.) and delivered pursuant to the Project. The acceptance procedure described in this clause is in addition to, and not in derogation of, the acceptance procedure of the RFP and the two are to be read harmoniously. Upon completion of a Deliverable, Agency will notify in writing that the Deliverable has been completed as per the RFP terms & conditions. Promptly after receiving such notice, Directorate of Health Services will evaluate the Deliverable for acceptance in accordance with this Clause 9 or specific provisions provided in the RFP. The acceptance process outlined below shall not be deemed to extend the Timelines / scheduled completion date for any Deliverable specified in the RFP.

### **B. Acceptance Procedure**

Acceptance by Directorate of Health Services (“Acceptance”) requires that the Deliverables mentioned in RFP Volume 2 be confirmed in writing by Directorate of Health Services to meet applicable acceptance criteria (“Acceptance Criteria”) which, in the case of Operational Deliverables, will include the successful completion of agreed acceptance criteria, will include meeting the specifications, performance standards and functional requirements set out in the RFP. In the case of Deliverables that are component parts of the System, in addition to acceptance of the component Deliverables, the System will also be subject to Acceptance in its entirety. Agency shall submit relevant documents (like deployment of drivers, SOP documents etc.) to fulfill the Acceptance Criteria for each Deliverable and shall be subject to agreement by Directorate of Health Services.—The Acceptance of the documents shall be sufficiently broad in scope and rigorous so as to verify that the all Deliverables meet all applicable specifications, acceptance criteria. Acceptance procedures for written Deliverables (which are all Deliverables other than Operational Deliverables) and Operational Deliverables are as follows:

#### **a) Written Deliverables:**

- i. The Agency may submit interim drafts of written deliverables as per RFP to Directorate of Health Services for review. Directorate of Health Services agrees to review each interim draft within a reasonable period of time after receiving it from the Agency. When the Agency delivers a final written Deliverable to Directorate of Health Services, Directorate of Health Services will have the opportunity to review such written Deliverable for an acceptance period of 15 days or such other period as is stated in the RFP or the agreed Project Plan (the “Acceptance Period”). In all cases, Directorate of Health Services obligation to

review a written Deliverable within the applicable Acceptance Period will be contingent on such written Deliverable being delivered to the Directorate of Health Services as scheduled. If and to the extent any written Deliverable is delivered earlier or later than scheduled, the Acceptance Period for such written Deliverable shall be extended as reasonably necessary to accommodate the availability of Directorate of Health Services personnel responsible for reviewing such Deliverable. Similarly, if and to the extent multiple written Deliverables are delivered to Directorate of Health Services within an Acceptance Period, the Acceptance Period for all such written Deliverables shall be extended as reasonably necessary to accommodate the availability of Directorate of Health Services personnel responsible for reviewing them.

- ii. Directorate of Health Services agrees to notify the Agency in writing by the end of the Acceptance Period either stating that the applicable written Deliverable is accepted / rejected in the form delivered by the Agency or describing with reasonable particularity any deficiencies that must be corrected prior to acceptance of such written Deliverable. If the Agency does not receive any such notice from Directorate of Health Services by the end of the Acceptance Period, Agency shall promptly notify Directorate of Health Services in writing that no such notice has been received. If the Agency does not receive the required notice within 15 days after Directorate of Health Services receives such written notification from the Agency, such written Deliverable will be deemed to be accepted by Directorate of Health Services.
  - iii. If Directorate of Health Services delivers to the Agency a timely notice of rejection/deficiencies, the Agency will correct the described deficiencies as quickly as possible and, in any event, within ten (10) days after Directorate of Health Services notifies the Agency of the rejection/deficiencies (unless otherwise specified in the agreed Project Plan). Upon receipt of a corrected written Deliverable from the Agency, Directorate of Health Services will have a period of 15 days to review the corrected written Deliverable.
- b) Operational Deliverables:
- i. To the extent not already specified in the RFP or agreed Project Plan, prior to the date on which the Agency is scheduled to deliver each Operational Deliverable to Directorate of Health Services, both the Agency and Directorate of Health Services will agree upon the acceptance criteria for the Operational Deliverable, including without limitation detailed in SLA reports and other necessary documents. Directorate of Health Services will have the opportunity during the Acceptance Period to evaluate each Operational Deliverable and to suggest modifications in deliverables.
  - ii. When the Agency has completed an Operational Deliverable, it will deliver the Operational Deliverable at the locations approved by the Directorate of Health Services.

- iii. Directorate of Health Services shall notify the Agency in writing by the end of the Acceptance Period stating that the Operational Deliverable is accepted/rejected in the form delivered by the Agency or describing the defects as provided in Clause 9 (b) (iv) below. If the Agency does not receive any notice of defects from Directorate of Health Services by the end of the Acceptance Period, the Agency shall promptly notify Directorate of Health Services in writing that no such notice was received. If Agency does not receive a notice of deviations within seven (7) days after Directorate of Health Services receives such written notification from the Agency, such Operational Deliverable will be deemed accepted by Directorate of Health Services.
- iv. If Directorate of Health Services determines during the Acceptance Period that the Operational Deliverable as delivered by the Agency deviates from its approved criteria, Directorate of Health Services will inform the Agency in writing, describing the defect(s) in sufficient detail to allow the Agency to recreate/rectify them. The Agency will correct any deviation in an Operational Deliverable as quickly as possible after receiving Directorate of Health Services notice of the defects and, in any event, within ten (10) days after receiving such notice (unless otherwise specified in the Project Plan/RFP), and provide the corrected Operational Deliverable to Directorate of Health Services for revivification within such ten (10) day period.
- v. Directorate of Health Services will has a reasonable additional period of time after receipt of the corrected Operational Deliverable to verify. The Agency will correct any further deviations identified by Directorate of Health Services during the revivification as quickly as possible, but in no event more than ten (10) days after Directorate of Health Services notifies the Agency of the further defects, unless otherwise specified in the agreed Project Plan or RFP or agreed by Directorate of Health Services.
- vi. Correction of Deviations in Deliverables - If the Agency is unable to correct all deviations preventing Acceptance of a Deliverable for which it is responsible after a reasonable number of repeated efforts (but not more than three (3), Directorate of Health Services may at its sole discretion, which shall be final and binding on the Agency:
  - allow the Agency to continue its efforts to make corrections; or
  - accept the Deliverable with its Deficiencies and deduct such proportionate amounts from the Agency's fees as deemed appropriate by Directorate of Health Services; or
  - terminate this Agreement under Event of Default in accordance with the procedures set forth in Clause 14 (except that Directorate of Health Services is under no obligation to provide the Agency any further opportunity to cure as provided under the Event of Default and Consequences of Event of Default provisions of this Agreement) and recover its damages subject to the limitations set forth in this Agreement.

**C. Acceptance**

Directorate of Health Services shall be deemed to have accepted the Deliverables and/or System upon the date of delivery to the Agency by Directorate of Health Services of a notice (the “Acceptance Notice”) to that effect.

#### **10. Use of assets by the Agency**

- i. During the Term the Agency shall: Take all reasonable and proper care of the entire ambulances, Medical equipment’s and other consumables, IT hardware and physical Infrastructure provided in Integrated command center components used for the Project and other facilities leased / owned / operated by the Agency (for itself or for Directorate of Health Services or on behalf of Directorate of Health Services) exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the “Assets”);
- ii. Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Agency takes control of and/or first uses the Assets and during the entire Term of the Agreement;
- iii. Ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Agency will be followed by the Agency and any person who will be responsible for the use of the Assets;
- iv. Take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Agency or as may, in the reasonable opinion of the Agency, be necessary to use the Assets in a safe manner;
- v. Ensure that the Assets that are under the control of the Agency, are kept suitably housed and in conformity with Applicable Law and terms agreed with Directorate of Health Services;
- vi. 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;
  - a. Use best efforts to ensure that no lien, mortgage, hypothecation or any other charge is created over the Assets. Agency agrees that Agency will inform Directorate of Health Services immediately if Agency feels or comes to know that a charge may be / has been created over any Asset(s). In the event a charge is created over any of the Assets / Goods which are owned by Directorate of Health Services or the ownership of which is required to be transferred to Directorate of Health Services under this Agreement, Directorate of Health Services shall have the right to get the charge removed at the risk, cost, expense of the Agency and Agency shall make good all losses, damages, costs, fees, cess, duties, etc. borne or suffered by Directorate of Health Services due to creation of such charge and/or in removal of such charge and/or in discharging the obligations for removal of such charge.

#### **11. Access to Agency to Certain Locations**

Access to locations, office equipment and services shall be made available to the Agency on an “as is, where is” basis by Directorate of Health Services as the case may be or its nominated agencies. The Agency agrees to ensure that its employees, agents and contractors

shall not use the location, services and equipment referred to in RFP for the following purposes:

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

## **12. Management of the Project**

### **12.1 Governance**

The review and management process of this Agreement shall be carried out in accordance with a Governance Schedule that may be mutually agreed between the Parties and shall cover all the management aspects of the Project. AGENCY shall prepare a Governance Schedule in consultation with Directorate of Health Services and shall be obliged to get the same approved by Directorate of Health Services within one month from the Effective Date. The mutually agreed Governance Schedule shall form an integral part of this Agreement.

### **12.2 Security and Safety**

Department the Parties shall 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 Directorate of Health Services or any of its nominated agencies, as the case may be, data, facilities or Confidential Information.

- i. The Agency shall upon reasonable request by Directorate of Health Services or its nominated agencies participate in regular meetings when safety and security matters are reviewed.
- ii. As per the provisions of this Agreement, the Agency shall promptly report in writing to Directorate of Health Services 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 security at the facilities of Directorate of Health Services as the case may be.

### **12.3 Cooperation**

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

- i. does not require material expenditure by the Providing Party to provide the same;
- ii. is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement;



- iii. cannot be construed to be Confidential Information; and
- iv. Is capable of being provided by the Providing Party.
- v. Further, Agency agrees to co-operate with the consultants, stakeholders, TPA, and subcontractors of Directorate of Health Services as reasonably requested in order to accomplish the purposes of this Agreement.

### **13. Financial Matters**

#### **13.1 Terms of Payment**

- i. In consideration of the obligations undertaken by the Agency under this Agreement and subject to the provisions of this Agreement, Directorate of Health Services shall pay such undisputed amounts to the Agency for successful delivery of Services in pursuance of this Agreement, in accordance with the Terms of Payment Schedule set out in this RFP. Department shall make payments only to the AGENCY at the time and in the manner as set out in this Agreement subject always to the fulfillment by the AGENCY.
- ii. Directorate of Health Services shall not be responsible / obligated for making any payments or any other related obligations under this Agreement to the subcontractor, if any. The AGENCY shall be fully liable and responsible for meeting all such obligations and all payments to be made sub-contractors (if any) and any other third party engaged by the AGENCY in any way connected with the discharge of the Agency's obligation under the Agreement and in any manner whatsoever.
- iii. All payments agreed to be made by Directorate of Health Services to AGENCY in accordance with this Agreement shall be inclusive of all statutory levies, duties, taxes and other charges whenever levied/applicable including costs of maintenance, if any and Directorate of Health Services shall not be liable to pay any such levies/other charges under or in relation to this Agreement directly to any other party or authority.
- iv. Save and except as otherwise provided for herein or as agreed between the Parties in writing, Directorate of Health Services shall not be required to make any payments in respect of any services, goods, deliverables other than the Services, Deliverables, Goods, Systems and obligations mentioned in the RFP and this Agreement. It is expressly agreed that the price/fees mentioned in the Proposal by the AGENCY shall be deemed to include all ancillary and incidental costs and charges that are necessary for accomplishment of the scope of work and obligations mentioned in the RFP and this Agreement. No invoice for extra work/charge order on account of change order shall be submitted by the AGENCY unless the said extra work /change order has been authorized/approved by Directorate of Health Services in writing in accordance with the clause on Change Order.
- v. In the event of Directorate of Health Services noticing at any time that any amount has been disbursed wrongly to AGENCY or any other amount is due from AGENCY to Directorate of Health Services under this Agreement, Directorate of Health Services may, without prejudice to its rights to recover such amounts by other means, after notifying the Agency, deduct such amount from any payment falling due to the

- SI. The details of such recovery, if any, will be intimated to the Agency. The AGENCY shall receive the payment of undisputed amount under subsequent invoice for any amount that has been omitted in the previous invoice by mistake on the part of the Department or the Agency.
- vi. All payments are subject to deductions of applicable liquidated damages as provided for in the SLA section of the RFP. For the avoidance of doubt, it is expressly clarified that Directorate of Health Services will calculate a financial sum and debit the same against the terms of payment as set out in this Agreement as a result of the failure of the AGENCY to meet the Timelines and/or Service Levels.
  - vii. Invoicing and Settlement
    - i) The Agency shall submit its invoices in accordance with the following principles:
      - a) Generally, and unless otherwise agreed in writing between the Parties, the Agency shall raise an invoice as per Payment Schedule mentioned in the RFP and
      - b) Any invoice presented in accordance with this Clause shall be in a form acceptable to Directorate of Health Services.
  - viii. The Agency alone shall invoice all payments after receiving due approval/ acceptance of Deliverables/ Services/Goods from Directorate of Health Services or its nominated agency. Such invoices shall be correct and accurate and shall be raised in a timely manner.
  - ix. Subject to accomplishment of obligations of Agency and delivery of Services / Goods to the satisfaction of Directorate of Health Services, payment shall be made by Directorate of Health Services within 30 (thirty) working days of the acceptance of deliverable along with supporting documents. Payment will be subject to deductions of any liquidated damages or penalties levied on the Agency as per the RFP.
  - x. Notwithstanding anything contained in clause (III) above, Directorate of Health Services shall be entitled to delay or withhold payment of any invoice or part of it where Directorate of Health Services disputes such invoice or part of it provided the dispute is bonafide. The withheld amount shall be limited to that which is in dispute. A notice of such withholding shall be provided within 30 (thirty) days of receipt of the applicable invoice. The disputed / withheld amount shall be settled firstly in accordance with the escalation procedure as set out in the Governance Schedule within reasonable time after receipt of notice of reference. Directorate of Health Services shall release the disputed amounts as soon as reasonably possible, upon resolution of dispute. Any exercise by Directorate of Health Services under this clause shall not entitle the Agency to delay or withhold performance of its obligations or delivery of Deliverables/ Services/ Goods under this Agreement.
  - xi. Payments will be subject to availability of satisfactory SLA data to be submitted by successful bidder and acceptance of data by department in consultation with their assigned Third-Party Auditor (TPA).

- xii. Template of SLA report and essential data shall be finalized in consultation with successful bidder, Third-Party Auditor and Department during implementation phase of the project.

### **13.2Tax**

- i. The AGENCY shall pay for all taxes in connection with this Agreement, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, GST and all Income Tax levied under and other similar taxes or duties.
- ii. The AGENCY shall also be responsible for having his sub-contractors under its sub-contract(s) to pay all applicable taxes on account of payment received by the sub-contractors from the AGENCY for works done under the sub-contracts in relation to this Agreement and Directorate of Health Services will in no case bear any responsibility for such payment of taxes.
- iii. The AGENCY agrees to reimburse and hold Directorate of Health Services or its nominated agencies harmless from and against any claims, losses, expenses (including attorney fees, court fees) etc. arising out of deficiency (including penalties and interest) in payment of taxes that is the responsibility of the AGENCY or its subcontractors / OEMs.
- iv. All payments to the AGENCY shall be subject to the deductions of tax at source under Income Tax Act, and other applicable taxes and deductions as provided for under any law, rule or regulation. Directorate of Health Services shall provide the AGENCY with the original tax receipt of any withholding taxes paid by Directorate of Health Services or its nominated agencies on payments under this Agreement within reasonable time after payment.
- v. In case of change in taxes due to change in tax laws, appropriate parties shall pass the benefit of the same over and above the Total Project Cost to the other party. In case of such change, it shall be binding on the AGENCY to submit a formal request with necessary supporting documents to Directorate of Health Services. Directorate of Health Services shall verify these documents and if applicable and approved in writing by Directorate of Health Services, the AGENCY shall incorporate such changes into subsequent regular invoice for payment.

## **14. Event of Default, Termination and Suspension**

### **14.1 Events of Default by the Agency**

- i. The failure on the part of the AGENCY to perform any of its obligations or comply with any of the terms of this Agreement shall constitute an Event of Default on the part of the Agency. The events of default as mentioned above may include, inter-alia, the following:
  - a) the AGENCY has failed to perform the obligations under this Agreement; or
  - b) the AGENCY has exceeded cap on any liquidated damages;
  - c) the AGENCY has failed to conform with any of the service specifications as set out in the RFP or this Agreement;
  - d) the AGENCY has failed to demonstrate or sustain any representation or warranty made by it in this Agreement, with respect to any of the terms of its Proposal, the RFP and this Agreement;
  - e) there is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to the AGENCY;
  - f) the AGENCY has failed to comply with or is in breach or contravention of any Applicable Laws;
  - g) there is an undue delay in achieving the agreed timelines for delivering the services under this Agreement due to reasons solely attributable to the AGENCY or subcontractors;
  - h) where it comes to Directorate of Health Service's attention that the AGENCY is in a position of actual conflict of interest with the interests of the Department, in relation to any of terms of the Bidder's Proposal, the RFP or this Agreement;
  - i) if it comes to knowledge of Directorate of Health Services that the AGENCY (or any of their personnel or their sub-contractors or such sub-contractor's personnel) have been involved in any fraudulent or corrupt practices or any other practice of similar nature.
- ii. Where there has been an occurrence of such Event of Defaults, inter alia, as stated above, Directorate of Health Services shall issue a notice of default to the Agency, setting out specific defaults / deviances / omissions and providing a period of up to thirty (30) days to enable the AGENCY to remedy the default/ deviances / omissions committed.
- iii. Where despite the issuance of a default notice to the AGENCY by Directorate of Health Services, the AGENCY fails to remedy the default to the reasonable satisfaction of Directorate of Health Services, Directorate of Health Services may, where it deems fit, issue to the AGENCY another default notice or proceed to adopt such remedies as may be available to Directorate of Health Services including but not limited to the remedies provided in clause 14.2 below.

## **14.2 Consequences of Event of Default**

- i. Where an Event of Default subsists or remains uncured even after expiry of 30 days as mentioned in clause 14.1 (ii), Directorate of Health Services shall be entitled to:
  - a) Impose any such reasonable obligations and conditions and issue any clarifications as may be necessary to, inter alia, ensure smooth continuation of the Services and the project which the AGENCY shall be obliged to comply with. The AGENCY shall in addition take all available steps to minimize loss resulting from such event of default;
  - b) Suspend all corresponding and relevant payments to the AGENCY under the Agreement (except for milestones which have been successfully achieved) by written notice of suspension to the AGENCY provided that such notice of suspension shall (a) specify the nature of failure; and (b) request the AGENCY to remedy such failure within a specified period from the date of receipt of such notice of suspension by the Service Provider;
  - c) Terminate this Agreement in full or in part by giving the AGENCY a prior written notice of up to 30 days indicating its intention to terminate;
  - d) Invoke the Performance Bank Guarantee and other Guarantees furnished hereunder, enforce indemnity provisions, recover such other costs/losses and other amounts from the AGENCY which may have resulted from such default and pursue such other rights and/or remedies that may be available to the Department under Applicable Law;
- ii. Nothing herein shall effect the continued obligation of the subcontractor / other members of Agency's Team to perform all their obligations and responsibilities under this Agreement in an identical manner as were being performed before the occurrence of the event of default.

## **14.3 Termination for Default**

Directorate of Health Services shall have the right to terminate the Agreement as provided in clause 14.2 above. Directorate of Health Services may, in its sole discretion, afford a further reasonable opportunity to the Agency to explain the circumstances leading to such a breach and may increase the time limit for curing such breach before terminating the Agreement.

## **14.4 Termination for Convenience**

Directorate of Health Services may, by written notice of 60 (Sixty) days sent to the Agency, terminate the Agreement, in whole or in part at any time for its convenience. The notice of termination shall specify that termination is for the Directorate of Health Service's convenience, the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective. Directorate of Health Services may, at its discretion, relax or absolve the AGENCY from following the timelines and/or service levels related to the part of the Agreement which is being terminated.

#### **14.5 Effects of Termination**

- i. In the event Directorate of Health Services terminates this Agreement pursuant to an Event of Default, Performance Guarantee furnished by AGENCY may be forfeited
- ii. Upon termination (or prior to expiry/ upon expiry, as the case may be) of this Agreement, the Parties will comply with the Exit Management Schedule/ Plan set out as Schedule X of this Agreement (and as revised from time to time).
- iii. Directorate of Health Services agrees to pay the AGENCY for all charges for Services / Deliverables / Goods provided by AGENCY and accepted by Directorate of Health Services till the effective date of termination.
- iv. If Directorate of Health Services terminates without cause, Directorate of Health Services shall also pay any applicable reasonable adjustment expenses, mutually agreed between the Agency and Directorate of Health Services that the Agency incurs as a result of such termination (which it shall take reasonable steps to mitigate). Such applicable adjustment charges shall be decided by Directorate of Health Services in consultation with the Agency.
- v. Any and all payments under this clause shall be payable only after the Agency has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of Directorate of Health Services. In case of expiry of the Agreement, the last due payment shall be payable to the Agency after it has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of Directorate of Health Services
- vi. The termination provisions set out in this Section 14 are in addition to any termination rights that the Directorate of Health Services may have under this Agreement/RFP and are in addition to, and without prejudice to, other rights that Directorate of Health Services may have under law and this Agreement

#### **15. Indemnification & Limitation of Liability**

Agency (the "Indemnifying Party") undertakes to indemnify Directorate of Health Services and its nominated agencies (the "Indemnified Party") from and against all losses on account of bodily injury, death or damage to tangible personal property arising in favor of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's gross negligence, willful default or breach of terms of this Agreement.

If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Deliverables/ Services/ Goods / Materials provided by the Indemnifying Party infringes a copyright, trade secret or patents 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. If the Indemnifying Party fails to provide any of the foregoing (i), (ii), (iii) remedies, Directorate of Health Services shall have the right to claim refund for such infringing product if payment for the same has already been made and shall also have the right to terminate the Agreement, in part or in full, under Event of Default provisions of this Agreement.

The Indemnifying Party shall indemnify the Indemnified Party against all direct monetary losses, claims, damages, compensation, charges, finally awarded by a competent lower court

or arbitration tribunal or such other body or mutually negotiated and finalized between the Parties, arising out of data loss, data theft, data misuse, data tempering unauthorized use or disclosure of Confidential Information etc. attributable to the Indemnifying Party's negligence, willful default, lack of due care or breach of terms of this Agreement

The indemnities set out in Clause 14 shall be subject to the following conditions:

- i. Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings;
- ii. The Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such defense;
- iii. if the Indemnifying Party does not assume full control over the defense of a claim as provided in this Article, the Indemnifying Party may participate in such defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate as cost of indemnifying Party;
- iv. in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Clause, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates.

**a) Risk Purchase**

If the Agency fails to perform its obligations (or any part thereof) under this Agreement and Agency does not to make good such failure to the satisfaction of Directorate of Health Services within 30(thirty) days (or such other additional cure period deemed reasonable by Directorate of Health Services) of receipt of notice from Directorate of Health Services about such failure or if the Agreement is terminated by Directorate of Health Services due to breach of any obligations of the Agency under this Agreement, Directorate of Health Services reserves the right to procure same or equivalent Services / Goods/Deliverables from alternative sources at the Agency's risk and responsibility. Any incremental cost borne by Directorate of Health Services in procuring such services/goods/deliverables shall be borne by the Agency. Any such incremental cost incurred in the procurement of the material from alternative source will be recovered from the undisputed pending due and payable payments /Security Deposit / Performance Bank Guarantee provided by the Agency under this Agreement and if the value of the services/materials under risk purchase exceeds the amount of Security Deposit and / or Bank Guarantee, the same may be recovered if necessary by due legal process. The incremental cost that may be recovered by Directorate of Health Services from Agency under this clause shall be limited to 100% of the amount that was payable to Agency for the non-delivered goods/services/deliverables.

**b) Limitation of Liability**

- i. The liability of Agency (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event in the aggregate exceed the Total Project Cost.
- ii. Notwithstanding anything contained in the foregoing, the liability cap and exclusion for the Agency given under this Clause 15 (b) shall not be applicable to the indemnification obligations set out in Clause 15 and breach of Clause 12.3 and 17.
- iii. In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) even if it has been advised of their possible existence.
- iv. The allocations of liability in this Clause 15 represent the agreed and bargained-for understanding of the parties and compensation for the Services/Deliverables/Goods reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

**16. Force Majeure**

**A. Definition of Force Majeure**

The Agency or Directorate of Health Services 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').

**B. Force Majeure events**

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

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



- a) act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions;
- b) radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the Agency's use of radiation or radio-activity or biologically contaminating material;
- c) industry wide 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 Agency and which affect the timely implementation and continued operation of the Project; or
- d) 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 Agency and other member under this Agreement to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement 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, Agency 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 (wherever applicable).

**C. Notification procedure for Force Majeure**

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

**D. Allocation of costs arising out of Force Majeure**

- i. 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.

- ii. 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:
- upon occurrence of an event mentioned in Clause 16, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
  - 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.

**E. 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.

Notwithstanding anything stated in this RFP, Parties agree and acknowledge that current situation of outbreak of Covid-19 will not be considered as a Force Majeure for purposes of Services under this Agreement. Service Provider at all time will ensure to deliver its services as per the Scope of Work. Service Provider will be responsible for any failure to perform its obligations under this contract, unless if it is prevented in performing of those obligations by an event of Government Order subject to written instruction and approval from DHS in this regard.

**17. Confidentiality**

Directorate of Health Services may allow the Agency to utilize highly Confidential Information including confidential public records and the Agency shall maintain the highest level of secrecy, confidentiality, integrity and privacy with regard to such Confidential Information. The Agency shall use reasonable care, but no less care than it uses to protect its own similar confidential information of similar nature, to protect the confidentiality, integrity, secrecy and proprietary of the Confidential Information.

Additionally, the Agency shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities. The Agency shall use the information only to execute the Project.

Directorate of Health Services or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Agency regarding any forbidden disclosure.

The Agency may share the confidential information with its employees, agents only on a strict need to know basis. The Agency shall execute a corporate non-disclosure agreement with Directorate of Health Services in the format provided by Directorate of Health Services and shall ensure that all their employees and agents execute individual non-disclosure agreements, which have been duly approved by Directorate of Health Services with respect to this Project.

### **18. Audit, Access, Monitoring and Reporting**

The Agency shall allow access to Directorate of Health Services or its nominated agencies to all information which is in the possession or control of the Agency or its agents, suppliers etc. and which relates to the provision of the Services/ Deliverables as set out in the Audit, Access and Reporting Schedule and which is reasonably required by Directorate of Health Services to comply with the terms of the Audit, Access, monitoring and Reporting Schedule set out as Schedule IV of this Agreement. The AGENCY shall provide all such reports and documents as may be requested by Directorate of Health Services for Directorate of Health Service's internal compliance purposes within 15 days (or such other period allowed by Directorate of Health Services) of receipt of request from Directorate of Health Services.

### **19. Transfer of risk and ownership in Goods**

- i. Subject to the terms of this Agreement, Agency shall sell, assign, convey, transfer and deliver to Directorate of Health Services, and Directorate of Health Services shall purchase, receive and accept from the Agency, all right, title and interest in and to the Goods required to be provided by the Agency as per the RFP. The Agency shall not make any substitute for the Goods of any other model, capacity, or manufacturer without the prior written consent of Directorate of Health Services which consent shall not be unreasonably delayed or withheld.
- ii. The Agency shall arrange for delivery of the Goods to the delivery site identified by Directorate of Health Services (the "Delivery Site") as per the Timelines provided in the RFP unless otherwise notified by Directorate of Health Services. In addition to paying all transportation charges for the Goods, the Agency shall insure, and pay all insurance charges for the Goods till the time of transfer of title and ownership of Goods to the Department.
- iii. Title to and ownership of the Goods designated as being purchased by Directorate of Health Services shall remain vested in the Agency until written Acceptance and Go Live by Directorate of Health Services under the terms hereof, at which time title to and ownership of such Goods shall transfer to the Directorate of Health Services. Agency shall execute such documents as may be required by Directorate of Health Services for documenting the transfer of title and ownership of Goods. Upon transfer of ownership of the Goods to Directorate of Health

Services, the Agency shall treat such Goods as Assets as detailed above in this Agreement.

## **20. Insurance Cover**

### **20.1 Obligation to maintain insurance**

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

- i. For the Term, valid and enforceable insurance coverage for:
  - a) Public liability;
  - b) Professional indemnity;
  - c) Product liability
  - d) Workers' compensation as required by law; and
- ii. The above insurance policies shall be for appropriate values so as to cover risks of Agency under this Agreement.
- iii. Insurance of Goods: Directorate of Health Services shall take insurance for the Goods and other items after the transfer of title and ownership of the Goods and other items to Directorate of Health Services. Agency shall assist in procuring insurance and if requested by Directorate of Health Services, in assessing, making and settling claims with the insurer.
- iv. In the event of any failure by the Agency to comply with the insurance requirements set out in this Agreement, Directorate of Health Services may, without in any way compromising or waiving any right or remedy, at law or in equity, upon five (5) days' written notice to the Agency, purchase such insurance, at the Agency's expense, provided that Directorate of Health Services shall have no obligation to do so and if Directorate of Health Services shall do so, the Agency shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such reasonable costs incurred by Directorate of Health Services shall be promptly reimbursed by the Agency and/or may be withheld from any payment due to Agency. None of the requirements contained herein as to types, limits or Directorate of Health Services's approval of insurance coverage to be maintained by the Agency are intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by the Agency under this Agreement, or otherwise provided by law.

### **20.2 Certificates of currency**

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

### **20.3 Non-compliance**

Directorate of Health Services or its nominated agencies may, at its election, terminate this Agreement upon the failure of Agency, or notification of such failure,

to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve Agency of its obligations under this Agreement.

## **21. Miscellaneous**

### **A. Personnel**

- i. The personnel assigned by Agency to perform the Services shall be employees of Agency, and under no circumstances shall such personnel be considered employees of Directorate of Health Services or its nominated agencies. The Agency shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.
- ii. The Agency shall use its best efforts to ensure that sufficient Agency personnel (but in no event, less than the personnel specified in the RFP) are assigned to successfully and timely perform the obligations under this Agreement and the RFP and that such personnel have appropriate qualifications to perform the obligations. After discussion with Agency, Directorate of Health Services or its nominated agencies shall have the right to require the removal or replacement of any Agency personnel performing work under this Agreement based on bonafide reasons. In the event that Directorate of Health Services or its nominated agencies requests that any Agency personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.
- iii. For the personnel of the Agency identified as "Key Personnel", the Agency shall not remove such personnel from the Project without the prior written consent of Directorate of Health Services or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, death, medical physical incapacity, etc.
- iv. Each Party shall be responsible for the performance of all its obligations under this Agreement as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- v. During the Term and 12(twelve) months thereafter, 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.

### **B. Independent Contractor**

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

- i. incur any expenses on behalf of the other Party;

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

**C. Sub-contract**

Sub-contract is not allowed /permitted by selected Agency for any work under the RFP to any third party.

**D. Assignment**

- i. Except for subcontracting specifically permitted under the RFP, the AGENCY shall not assign / novate any of their rights / obligations under this Agreement to any third party. Directorate of Health Services may assign or novate all or any part of this Agreement and Schedules/Annexure, and the AGENCY shall be a party to such novation as per the term of the contract read with other conditions so stated.
- ii. Subject to the foregoing, the AGENCY shall have the right to undergo corporate change of ownership., as allowed under Applicable Laws, only after seeking prior written consent from Directorate of Health Services, which consent shall be provided forthwith by Directorate of Health Services subject to AGENCY executing/ furnishing such documents, agreements, undertakings (including, without limitation, enhanced performance security from new entity, novation agreements etc.) as may be deemed necessary by Directorate of Health Services ensuring the interests of Directorate of Health Services in this regard.

**E. Trademarks, Publicity**

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

**F. Notices**

- i. Any notice or other document which may be given by either Party under this Agreement shall be given in writing in person or by pre-paid recorded delivery post and email.

- ii. 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:
  - Address
  - Tel:
  - Fax:
  - Email:
  - Contact:
  - With a copy to:
    - Agency
    - Tel:
    - Fax:
    - Email:
    - Contact:

In relation to a notice given under the MSA, 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

- iii. 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).
- iv. Either Party to this Agreement 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.

#### **G. Variations and Further Assurance**

- i. No amendment, variation or other change to this Agreement shall be valid unless authorized in accordance with the change control procedure as set out in the Schedule II of this RFP. Such amendment shall be made in writing and signed by the duly authorized representatives of the Parties to this Agreement.
- ii. Each Party to this Agreement 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.

#### **H. Severability and Waiver**

- i. If any provision of this Agreement, 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 remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.
- ii. No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement of any right, remedy or provision of this Agreement 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.

#### **I. Compliance with Applicable Law**

The Agency accepts that its individual conduct (to the extent applicable to its business like the Agency as an information technology service provider) shall at all times comply with all laws, rules and regulations of government and other bodies having jurisdiction over the area in which the Services are undertaken provided that changes in such laws, rules and regulations which result in a change to the Services shall be dealt with in accordance with the Change Request as specified in the RFP.

#### **J. Professional Fees**

All expenses incurred by or on behalf of each Party to this Agreement, 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 shall be borne solely by the Party which incurred them.

#### **K. Ethics**

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

#### **L. Entire Agreement**

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



**M. Amendment**

Any amendment to this Agreement shall be made in accordance with the Change Request as mentioned in the RFP and shall not become effective unless executed in writing by mutual written consent of all the Parties.

**N. Conflict of Interest**

The Agency shall disclose to Directorate of Health Services in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the Agency, subcontractors or their employees) in the course of performing the Services as soon as practical after it becomes aware of that conflict

## **22. Bank Guarantees**

### **Performance bank guarantee**

- i. The AGENCY shall, within 30 days after the receipt of Letter of Award from Directorate of Health Services, furnish Performance Bank Guarantee for value of 3% of the Total Project Cost to Directorate of Health Services from a nationalized or a scheduled bank in the format provided in Annexure 4 of the RFP Vol I. The Performance Security shall be valid for entire Term and expiry of six months thereafter. If the Performance Security is liquidated /encashed, in whole or in part, during the currency of the Performance Security, the Vendor shall top up the Performance Security with the same amount as has been encashed within 15 days of such encashment without demur;
- ii. The Performance Security shall be encashable in Chhattisgarh;
- iii. Bank Guarantee will be returned by Authority to the Bidder within 60 days of the expiration of each year of service during the term of the resultant Agreement, upon delivery of satisfactory service for that year, after applicable deductions as per the Agreement, if any.
- iv. In case the Project is delayed beyond the Timelines as mentioned in RFP due to reasons attributable to Agency, the Performance Bank Guarantee (any one or both, if not returned) shall be accordingly extended by the Agency till completion of scope of work as mentioned in RFP.
- v. Department may invoke the performance Bank guarantee in case the Agency fails to discharge its contractual obligations during the agreement term. In the event of the Agency is being unable to service the Agreement for the reasons attributable to the Agency, its subcontractors, or any team members, Department shall have the right to invoke the Performance Bank Guarantee. Notwithstanding and without prejudice to any rights whatsoever of the Department under the Agreement in the matter, the proceeds of the guarantees shall be payable to the Department as compensation for any loss resulting from the failure of Agency, its subcontractors, or any team members to perform/comply its obligations under the contract. Department shall notify the bidder in writing of the exercise of its right to receive such compensation, indicating the contractual obligation(s) for which the Agency is in default.
- vi. Department shall also be entitled to make recoveries from the Agency's bills, guarantees, or from any other amount due to him, an equivalent value of any payment made to him due to inadvertence, error, collusion, misconstruction or misstatement in terms of RFP and/or contract.

## **23. Governing Law and Dispute Resolution**

- i. This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules. The parties

expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement and the performance of the parties contemplated under this Agreement.

- ii. Parties shall use all reasonable efforts to amicably resolve and settle any dispute arising out of or in relation to or in connection with this Agreement by firstly referring the dispute to Authorized Signatories of both the Parties.
- iii. In the case of dispute arising out of or in relation to or in connection with the Agreement between the Department and the Agency, which has not been settled in accordance with Section 23 (ii) above within 30 days from date of reference of the dispute to amicable resolution, any Party can submit any 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, the same shall be strived to settled between the authority and the bidder. Failing to resolve the dispute may referred for decision to the appellate authority i.e. Secretary, Department of Health and Family Welfare, Govt. of Chhattisgarh. If either party is not satisfied with the decision of the appellate authority i.e. Secretary, Department of Health and Family Welfare, Govt. of Chhattisgarh, then by the mutual agreement of both parties one Arbitrator will be appointed. Arbitration Proceedings shall be conducted in English Language. The Arbitration proceedings with its seat and venue will be held at *Raipur, Chhattisgarh* India.
- iv. 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 Chhattisgarh, India.
- v. The provisions of the Arbitration and Conciliation Act, 1996 and rules as amended from time to time will be applicable on the Arbitration Proceedings and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings with its seat and venue will be held at *Raipur, Chhattisgarh*, India. Parties agree to the sole and exclusive state jurisdiction of *Chhattisgarh*, India for reference of dispute in any court of law subject to

Arbitration Provisions.

- vi. Compliance with laws: Each party will comply with all applicable laws of India along with applicable export and import laws and regulations.

## 24. SCHEDULES

### 24.1 SCHEDULE I – Definitions

Head	Description
Agreement	Means this Master Services Agreement together with all Annexure, Schedules, reference documents and all amendments, corrigendum/addendum and changes thereto;
Applicable Law(s)	means applicable laws of India includes but not limited to any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
Assets	shall have the same meaning ascribed to it in Clause 10
AGENCY/ Service Provider	The bidder who is qualified & successful in the bidding process and is given the award of Contract and will be referred to as Agency or Service Provider
Confidential Information	means all information including Directorate of Health Services Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how, plans, budgets and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement);
Deliverables	means the Goods, Services, and all other products, infrastructure and services etc. to be delivered by the Agency in pursuance of the Agreement as defined more elaborately in the RFP and includes all Service, Deliverables documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines, inter alia payment and/or process related etc., all its modifications;
Downtime	means the total time for all the instances where services prepared by the Agency are not available except for the time when the system is down because of scheduled maintenance

Effective Date	Shall have the same meaning as ascribed to it in Clause 3
Force Majeure	shall have the same meaning as described to it in Clause 16;
Force Majeure Costs	shall have the same meaning ascribed to it in Clause 16;
Provisional Project Commissioning	Provisional Project Commissioning means that the Fleet Management of Dial 102 Mahatari Express System has been developed as per the requirements of the RFP and any change approved by Directorate of Health Services and all documents, deliverables of the implementation phase have been delivered by the AGENCY and the Fleet Management System is ready to be used by its users.
Final Project Commissioning	Final Project Commissioning means that the Fleet Management System has been operational for 1 month after Provisional Project Commissioning
Goods	Goods means to include all hardware, equipment, instruments, machinery, material, electronic items, networking equipment, switches, routers, cables and other tangible goods/items etc., and includes their user manuals, technical manuals, operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related) and all its modifications, provided or to be provided by Agency to Directorate of Health Services under this Agreement
Indemnifying Party	shall have the same meaning ascribed to it in Clause 15;
Agency's Team	Agency, who have to provide Goods and Services to Directorate of Health Services under the scope of this Agreement,. This definition shall also include any and/or all of the employees of the Agency, authorized partners/agents and representatives or other personnel employed or engaged either directly or indirectly by the Agency for the purposes of this Agreement.
Intellectual Property Rights	means all rights in trademark, designs and copyrights, moral rights, rights in databases and Bespoke Software / Pre-existing work including its up-gradation systems and compilation rights (whether or not any of these are registered and including application for registration);
Parties	means Directorate of Health Services and Agency and for the purposes of this Agreement and "Party" shall be interpreted accordingly;
Performance Guarantee	Means the Bank guarantee provided by any Nationalized bank in favor of the Agency;
Project	means Pilot, Project Implementation (roll out) and Maintenance in terms of

	the Agreement;
Project Implementation	means Project Implementation as per the standards and acceptance criteria prescribed by Directorate of Health Services;
Project Implementation Phase	shall be from the Effective Date of the Agreement to the date of final acceptance criteria as set out in Clause 3 of this Agreement;
Providing Party	shall have the same meaning ascribed to it in Clause 12.3;
Replacement Agency	means any third party that Directorate of Health Services or its nominated agencies appoint to replace Agency upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
Services	means the services delivered to the Stakeholders of Directorate of Health Services or its nominated agencies, employees of Directorate of Health Services or its nominated agencies, and to professionals, under this Agreement using the tangible and intangible assets created, procured, installed, managed and operated by the Agency including the tools of information and communications technology and includes but is not limited to the list of services specified in the RFP;
Service Level	means the level of service and other performance criteria which will apply to the Services delivered by the Agency and as described in the RFP;
SLA	means the Performance and Maintenance SLA mentioned in the RFP;
System	Means the Fleet Management of Dial 102 Mahatari Express as described in the RFP;
Stakeholders	Beneficiary's, Directorate of Health Services or its nominated agencies, Directorate of Health Services, employees and the Departments of State Government;
Term	Shall have the same meaning as ascribed to it in Clause 3
Timelines	Means the timelines of the scope of work as described in the RFP
Total Project Cost/ Total Project Value / Total Contract Value	means [_____] i.e. the amount quoted by the Agency (inclusive of taxes) in its commercial bid. For each increase of 25% in the Total Value of the Project due to change requests (individual or cumulative) in accordance with the terms of this Agreement, the Total Project Cost shall be deemed to increase to such applicable extent and Directorate of Health Services shall have the right to seek additional Performance Guarantee to such increased extent of Total Project Cost and the penalties/liquidated damages etc. getting affected by such increase would be calculated based on such increase from

	the effective date of such increased Total Project Cost.
Uptime	As defined in the RFP
Warranty	Shall mean the period of 60 months from the date of successful commissioning/ Project Commissioning.



## **24.2 SCHEDULE II – Change Request Schedule**

### **A. Change Orders / Alterations / Variations**

- a. The AGENCY agrees that the requirements given in the Bidding Documents are minimum requirements and are only indicative. It shall be the responsibility of the AGENCY to meet all the requirements contained in the RFP and any upward revisions and/or additions of quantities, specifications sizes given in the Bidding Documents required to be made during execution of the works, shall not constitute a change order and shall be carried out without a change order and shall be carried out without any time and cost effect to Department.
- b. Further upward revisions and or additions required to make Service Provider selected equipment and installation procedures to meet Bidding Documents requirements expressed and to make entire facilities safe, operable and as per specified codes and standards shall not constitute a change order and shall be carried out without any time and cost effect to Department .
- c. Any upward revision and/or additions consequent to errors, omissions, ambiguities, discrepancies in the Bidding Documents which the AGENCY had not brought out to the Department's notice in his bid shall not constitute a change order and such upward revisions and/or addition shall be carried out by AGENCY without any time and cost effect to Department.

### **B. Change Order**

- a. The Change Order will be initiated only in case (i) the Department directs in writing the AGENCY to include any addition to the scope of work covered under this Contract or delete any part of the scope of the work under the Contract, (ii) AGENCY requests to delete any part of the work which will not adversely affect the operational capabilities of the facilities and if the deletions proposed are agreed to by the Department and for which cost and time benefits shall be passed on to the Department , (iii) the Department directs in writing the AGENCY to incorporate changes or additions to the specifications already covered in the Contract.
- b. Any changes required by the Department over and above the minimum requirements given in the specifications and drawings etc. included in the Bidding Documents before giving its approval to detailed design or Engineering requirements for complying with technical specifications and changes required to ensure systems compatibility and reliability for safe operation (As per codes, standards and recommended practices referred in the Bidding Documents) and trouble free operation shall not be construed to be change in the Scope of work under the Contract.
- c. Any change order as stated in Clause 19.2 a. comprising an alteration which involves change in the cost of the works (which sort of alteration is hereinafter called a "Variation") shall be the Subject of an amendment to the Contract by way of an increase or decrease in the schedule of Contract Prices and adjustment of the implementation schedule if any.
- d. If parties agree that the Contract does not contain applicable rates or that the said rates are inappropriate or the said rates are not precisely applicable to the variation in question, then the parties shall negotiate a revision of the Contract Price which shall

represent the change in cost of the works caused by the Variations. Any change order shall be duly approved by the Department in writing.

- e. Within ten (10) working days of receiving the comments from the Department or the drawings, specification, purchase requisitions and other documents submitted by the AGENCY for approval, the AGENCY shall respond in writing, which item(s) of the Comments is/are potential changes(s) in the Scope of work of the RFP document covered in the Contract and shall advise a date by which change order (if applicable) will be submitted to the Department.

**C. Change Control Note Format**

<b>Change Control Note</b>		<b>CCN Number:</b>
<b>Part A: Initiation</b>		
Title:		
Originator:		
Sponsor:		
Date of Initiation:		
<b>Details of Proposed Change</b>		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)		
<b>Authorized by :</b>		
Name:		
Signature:	Date:	
<b>Part B : Evaluation</b>		
(Identify any attachments as B1, B2, and B3 etc.)		
Changes to Services, charging structure, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue.		
<b>Brief Description of Solution:</b>		
<b>Impact:</b>		
<b>Deliverables:</b>		
<b>Timetable:</b>		
<b>Charges for Operation &amp; Maintenance:</b> (including a schedule of payments)		
<b>Other Relevant Information:</b> (including value-added and acceptance criteria)		
<b>Authorized by the Implementation Partner</b>		<b>Date:</b>
Name:		
Signature:		

## **24.3 SCHEDULE III - Audit, Access and Reporting**

### **1. PURPOSE**

This Schedule details the audit, access and reporting rights and obligations of Directorate of Health Services or its nominated agency and the Agency

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

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

2.2. Directorate of Health Services or its nominated agency may conduct non-timetabled audits at his/ her own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Agency, a security violation, or breach of confidentiality by the Agency, provided that the requirement for such an audit is notified in writing to the Agency a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the Agency considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Governance Schedule.

2.3. The frequency of audits shall be a (maximum) half yearly, provided always that Directorate of Health Services or its nominated agency shall endeavor to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Agency. Any such audit shall be conducted by with adequate notice of 2 weeks to the Agency.

2.4. Directorate of Health Services will ensure that any 3rd party agencies (except CAG) appointed to conduct the audit will not be the competitor of Agency and will be bound by confidentiality obligations.

### **3. ACCESS**

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

#### 4. AUDIT RIGHTS

Directorate of Health Services or its nominated agency shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in the RFP), documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:

- 4.1. The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of Directorate of Health Services and documentation related thereto;
- 4.2. That the actual level of performance of the services is the same as specified in the SLA;
- 4.3. That the Agency has complied with the relevant technical standards, and has adequate internal controls in place; and
- 4.4. The compliance of the Agency with any other obligation under the AGENCY and SLA.
- 4.5. Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the Agency.
- 4.6. For the avoidance of doubt the audit rights under this Schedule shall not include access to the Agency's profit margins or overheads, any confidential information relating to the Agency' employees, or (iii) minutes of its internal Board or Board committee meetings including internal audit, or (iv) such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the MSA.

#### 5. AUDIT RIGHTS OF SUPPLIERS AND AGENTS

The Agency shall use reasonable endeavors to achieve the same audit and access provisions as defined in this Schedule with suppliers and agents who supply Labor, services, equipment or materials in respect of the services. The Agency shall inform Directorate of Health Services prior to concluding any supply agreement of any failure to achieve the same rights of audit or access.

**REPORTING:** The Agency will provide quarterly reports to the Chairperson, PIU / Steering committee regarding any specific aspects of the Project and in context of the audit and access information as required by Directorate of Health Services or its nominated agency.

#### 6. ACTION AND REVIEW

- 6.1. Any change or amendment to the systems and procedures of the Agency, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- 6.2. Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to Directorate of Health Services or its nominated agency and

the Agency Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the Agreement.

#### 7. TERMS OF PAYMENT

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

#### 8. RECORDS AND INFORMATION

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

#### **24.4 SCHEDULE IV – Governance Schedule**

1. The Director Health Services shall constitute a committee to monitor the services at the state level.
2. This committee shall monitor and analyze the data so produced every month so that any deficiency in the services or any improvement thereof may be done.
3. The Collector & District Magistrate/Chief Medical & Health Officer (CMHO) & other designated Health Officers will oversee the activity within their respective districts in District Health Societies meetings.
4. Provision for online dashboard for real time monitoring on a continuous basis should be made available at Integrated Command Center. Service Provider shall also give login rights to the designated health officers of the department (i.e. NHM and DHS) or authorized agency for online monitoring and evaluation.
5. The dashboard should have the facility to download the data available in it.
6. The dashboard must be monitored on a real time basis daily by the 102/Mahatari express cell of the Directorate of Health Services.
7. A daily report of Emergencies attended with response times should be prepared.
8. It should be done district wise.
9. Meetings with Mahatari express cell of the Directorate of Health Services with vendor must be done once every month.
10. A report of the same must be presented every month to Director Health Services. Random checking of calls and response time must be done on weekly basis.
11. A daily report of Emergencies attended with response times should be prepared.
12. Government reserves the right to evaluate the performance of the bidder on periodic basis by a third party.
13. Actions taken by the vendor, based on recommendations of state monitoring committee and inputs provided by the Third-Party Monitoring & Evaluation team shall be monitored.
14. Any changes/modifications in the scope (including approval of change request) should be duly approved the Committee.

## 24.5 SCHEDULE V – Payment Schedule

**24.5.1 Before commissioning of the project (Only few ambulances are operational by the new agency, whereas after the Establishment of new call center by new selected Agency, the payment will be made to new selected Agency as per old MOU rates.**

24.5.1.1 The payment of the old ambulances to be done to the New agency as per the number of the ambulances operated by them @ old rate (existing rate).

24.5.1.2 The payment of the New ambulances to be done to the new agency as per the number of ambulances operated by them @ new rate (L-1 rate).

### 24.5.2 After commissioning of the project

The payment of all 380 ambulances as discovered in the bidding process shall be paid to the new agency.

MILESTONE	PAYMENT DURATION	DELIVERABLES
FLEET MANAGEMENT	MONTHLY	Monthly SLA report along with following supporting documents: Attendance report of drivers Helpdesk report Fleet Management report and QA report

**Note:**

- Invoice will be submitted on the monthly basis. 85% of the monthly fixed cost quoted in financial bid will be disbursed within 30 working days of invoice submission along with SLA supporting documents.
- Remaining monthly payable amount will be disbursed post SLA computation of the relevant quarter by Third-Party Auditor (TPA) and submission of SLA Audit Report(s)
- Payments will be subject to availability of satisfactory SLA data to be submitted by successful bidder and acceptance of data by department in consultation with their assigned Third-Party Auditor (TPA).
- Template of SLA report and essential data shall be finalized in consultation with successful bidder, Third-Party Auditor and Department during implementation phase of the project.
- The quarterly payment will be done within 30 working days post submission of all SLA reports by the bidder to the satisfaction of department.

## 24.6 SCHEDULE – VI – Project Timelines

Stages	Activities	Completion Timeline (in days)	Major Deliverables



Implementation Phase	Contract Signing	T	<ul style="list-style-type: none"> <li>Master Agreement</li> </ul>
	Project Manpower Deployment	T+ 7	<ul style="list-style-type: none"> <li>Deployment of project manpower including project manager, supervisor fleet management,</li> </ul>
	Existing fleet survey and submission of report	T+15	<ul style="list-style-type: none"> <li>Conduct assessment of all existing operational fleet as on Contract Signing Date and submission of report</li> </ul>
	Driver - background verification	T+ 25	<ul style="list-style-type: none"> <li>Background Verification Report</li> <li>Bidder to ensure background verification of 100% manpower (Driver) required to take over existing fleet operations</li> </ul>
	Driver – onboarding and Training	T+ 25	<ul style="list-style-type: none"> <li>Training Completion certificate for each Driver and evaluation of staff by department</li> </ul> <p>Bidder to ensure on boarding of 100% manpower (Driver) required to take over existing fleet operations</p>
	Project Documents	T+ 30	<ul style="list-style-type: none"> <li>Submission of SOP documents, training documents</li> </ul>
	Transition Phase	T + 30	<p>Transition of all existing Ambulances</p> <p>Transition/handover documents</p> <ul style="list-style-type: none"> <li>Handover of all available spares from old to new service provider</li> </ul>
	Driver - background verification	T+ 55	<p>Background Verification Report</p> <p>Bidder to ensure background verification of 100% manpower (Driver) required to operate 380 ambulances</p>
	Driver - on boarding and Training	T+ 55	<p>Training Completion certificate for each Driver and evaluation of staff by department</p> <p>Bidder to ensure on boarding and training of 100% manpower (Driver) required to operate 380 ambulances</p>

	New Ambulance Deployment & Call Centre -Phase - I	T+ 60	<p>Deployment of Ambulances with branding and other equipment's</p> <p>Deployment of 200 new Ambulances</p> <p>Surrender of old Ambulances to ensure availability of 380 ambulances for 102 services as a combination of new and old ambulances</p> <ul style="list-style-type: none"> <li>▪ Department's inspection report on new Ambulances</li> <li>▪ Testing and establishment of new 30 seats call centre.</li> <li>▪ Establishment of new 30 seats call centre and to ensure its Functionality.</li> </ul>
	New Ambulance Deployment & Call Centre-Phase II	T+ 150	<p>Deployment of Ambulances with branding and other equipment's</p> <p>Deployment of remaining new Ambulances</p> <p>Surrender of remaining old Ambulances</p> <ul style="list-style-type: none"> <li>▪ Department's inspection report on new Ambulances</li> </ul>
	Project Commissioning	T+ 150	All Districts
Operation Phase		5 Years from date of Project Commissioning	<p>Monthly SLA report along with following supporting documents:</p> <p>Monthly Attendance report for all manpower deployed on this project</p> <p>Inventory Management report</p> <p>Helpdesk report</p> <p>Fleet Management report and QA report</p>

**24.7 SCHEDULE – VII – Bidder's Project Plan**

To be updated by the successful bidder

## **24.8 SCHEDULE – VIII – FINANCIAL PROPOSAL**

As submitted by successful Bidder

## **24.9 SCHEDULE – IX – Total Price Summary**

As submitted by successful Bidder

## **24.10 SCHEDULE – X - EXIT MANAGEMENT SCHEDULE**

The end to end exit management will be initiated 6 months before the date of expiry of contract.

### **1 PURPOSE**

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

### **2 TRANSFER OF ASSETS**

- 2.1** Department shall be entitled to serve notice in writing on the Agency at any time during the exit management period as detailed hereinabove requiring the Agency and/or its sub-contractors to provide the Department with a complete and up to date list of the Assets within 30 days of such notice. Department shall then be entitled to serve notice in writing on the SERVICE PROVIDER at any time prior to the date that is 30 days prior to the end of the exit management period requiring the SERVICE PROVIDER to sell the Assets, if any, to be transferred to Department or its nominated agencies at book value as determined as of the date of such notice in accordance with the provisions of relevant laws.

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

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

- (i) in the event, if the Assets to be transferred are mortgaged to any financial institutions by the SERVICE PROVIDER, the SERVICE PROVIDER 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 Department .
- (ii) All risk in and title to the Assets to be transferred / to be purchased by the Department pursuant to this Article shall be transferred to Department , on the last day of the exit management period.
- (iii) Department shall pay to the SERVICE PROVIDER on the last day of the exit management period such sum representing the Net Block (procurement price less depreciation as per provisions of Companies Act) of the Assets to be transferred as stated in Schedule V (Terms of Payment Schedule).
- (iv) Undisputed Payments to the outgoing SERVICE PROVIDER shall be made to the tune of last set of completed services / deliverables, subject to Service Levels requirements.
- (v) The outgoing SERVICE PROVIDER will pass on to Department and/or to the Replacement SERVICE PROVIDER, the subsisting rights in any leased properties/ licensed products on terms not less favorable to Department / Replacement SERVICE PROVIDER, than that enjoyed by the outgoing SERVICE PROVIDER.

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

**3.1** During the exit management period:

- (i) The SERVICE PROVIDER will allow the Department or its nominated agency access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the Department to assess the existing services being delivered;
- (ii) promptly on reasonable request by the Department , the SERVICE

PROVIDER 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 SERVICE PROVIDER or sub-contractors appointed by the SERVICE PROVIDER). The Department shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The SERVICE PROVIDER shall permit the Department or its nominated agencies to have reasonable access to its employees and facilities as reasonably required by the Chairman, PIU to understand the methods of delivery of the services employed by the SERVICE PROVIDER and to assist appropriate knowledge transfer.

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

**4.1** The SERVICE PROVIDER will promptly on the commencement of the exit management period

supply to the Department or its nominated agency the following:

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

**4.2** Before the expiry of the exit management period, the SERVICE PROVIDER shall deliver to the Department 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 SERVICE PROVIDER shall be permitted to retain one copy of such materials for archival purposes only.

- 4.3** Before the expiry of the exit management period, unless otherwise provided under the Agreement the Department or its nominated agency shall deliver to the SERVICE PROVIDER all forms of SERVICE PROVIDER confidential information, which is in its possession.

## **5. EMPLOYEES**

- 5.1** Promptly on reasonable request at any time during the exit management period, the SERVICE PROVIDER shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the Department or its nominated agency a list of all employees (with job titles) of the SERVICE PROVIDER dedicated to providing the services at the commencement of the exit management period.
- 5.2** Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the SERVICE PROVIDER to the Department or its nominated agency, or a Replacement SERVICE PROVIDER ("*Transfer Regulation*") applies to any or all of the employees of the SERVICE PROVIDER, then the Parties shall comply with their respective obligations under such Transfer Regulations.

## **6. TRANSFER OF CERTAIN AGREEMENTS**

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

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

- 7.1** At any time during the exit management period, where Assets are located at the Implementation Agency's premises, the SERVICE PROVIDER will be obliged to give reasonable rights of access to (or, in the case of Assets located on a third party's

premises, procure reasonable rights of access to) the Department or its nominated agency and/or any Replacement SERVICE PROVIDER in order to make an inventory of the Assets.

**7.2** The SERVICE PROVIDER shall also give the Department or its nominated agency or its nominated agencies, or any Replacement SERVICE PROVIDER right of reasonable access to the Implementation Partner's premises and shall procure the Department or its nominated agency or its nominated agencies and any Replacement SERVICE PROVIDER 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 AGENCY as is reasonably necessary to migrate the services to the Department or its nominated agency, or a Replacement SERVICE PROVIDER.

## **8. GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

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

**8.2** For the purposes of this Schedule, anything in the possession or control of any SERVICE

PROVIDER, associated entity, or sub-contractor is deemed to be in the possession or control of

The SERVICE PROVIDER.

**8.3** The SERVICE PROVIDER shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

## **9.EXIT MANAGEMENT PLAN**

**9.1** The SERVICE PROVIDER shall provide the Department or its nominated agency with are commended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the AGENCY as a whole and in relation to the Project Implementation, and the Operation and Management Service Levels. This section to be read harmoniously with section 5.9 (Transition and Exit Management) of Volume I of the RFP.

- (i) A detailed program of the transfer process that could be used in conjunction with a Replacement SERVICE PROVIDER including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
- (ii) plans for the communication with such of the SERVICE PROVIDER 's sub-contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the Department 's operations as a result of undertaking the transfer;
- (iii) (if applicable) proposed arrangements for the segregation of the SERVICE PROVIDER's networks from the networks employed by Department and identification of specific security tasks necessary at termination;
- (iv) Plans for provision of contingent support to Department and Replacement SERVICE PROVIDER for a reasonable period after transfer.

**9.2** The SERVICE PROVIDER shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.

**9.3** Each Exit Management Plan shall be presented by the SERVICE PROVIDER to and approved by the Department or its nominated agencies.

**9.4** The terms of payment as stated in the Schedule V (Terms of Payment Schedule) include the costs of the SERVICE PROVIDER complying with its obligations under this Schedule.

**9.5** In the event of termination or expiry of MSA, and Project Implementation, each Party shall comply with the Exit Management Plan.

**9.6** During the exit management period, the SERVICE PROVIDER shall use its best efforts to deliver the services.

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

**9.8** This Exit Management plan shall be furnished in writing to the Department or its nominated agencies within 90 days from the Effective Date of this Agreement.