

# **Master Service Agreement**

## **REQUEST FOR PROPOSAL**

**Volume III : Draft Master Service Agreement**

**FOR**

**SELECTION OF SERVICE OPERATOR  
TO OPERATE, MAINTAIN AND MANAGE  
SEWA KENDRAS  
IN THE STATE OF PUNJAB  
(Reference No. PSeGS/UCSDC/2015)**

**PUNJAB STATE e-GOVERNANCE SOCIETY  
Department of Governance Reforms  
SCO 162-164, SECTOR 34 A  
CHANDIGARH**

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**November, 2015**

*This is Draft  
Master  
Service  
Agreement  
(MSA)  
Changes will  
be  
incorporated  
based upon  
any  
corrigendum,  
clarification,  
bidder  
proposal,  
legal vetting  
etc.*

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**MASTER SERVICES AGREEMENT**

**THIS Master Service Agreement ("Agreement")** is made on this the [●] day of Month, 2015 at Chandigarh, India.

**Between**

**Punjab State e-Governance Society** having its office at **SCO 162-164, Sector 34-A, Chandigarh – 160022, Punjab, India** hereinafter referred to as Punjab State e-Governance Society (hereinafter called the "**Authority**", which expression shall, unless the context otherwise requires, include its permitted successors and assigns **OF THE ONE PART**

**AND**

[insert company name], a company incorporated under the Companies Act, 1956/Companies Act, 2013, having its registered office at [●] represented by its duly authorized signatory [●] (hereinafter referred to as the "**Service Operator**" which expression shall, unless the context otherwise requires, include its successors and permitted assigns **OF THE OTHER PART**

Or

[[insert name of partnership firm], a partnership firm formed under the provisions of the Indian Partnership Act, 1932 and having its principal place of business at [insert address of principal place of business], (herein referred to as the "**Service Operator**", which expression shall unless it be repugnant to the context or meaning thereof, mean and include each of the partners and each of the survivor(s) of them and the partners from time to time (both in their personal capacity and as partners of the firm) and their respective heirs, legal representatives, executors, administrators, successors of the firm and/or permitted assigns)] **OF THE OTHER PART**

Or

[[insert name of limited liability partnership], a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008 and having its registered office at [insert address of registered office] (herein referred to as the "**Service Operator**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns)] **OF THE OTHER PART**

Or

[[insert name of HUF], (herein referred to as the "**Service Operator**", which expression shall, unless it be repugnant to the context or meaning thereof, shall mean and include the Karta of the HUF and any or each of the members/coparceners of the HUF and the survivor(s) of them and their respective heirs, legal representatives, executors, administrators and permitted assigns, successors)] **OF THE OTHER PART**

Or

[[insert name of the sole proprietorship], a sole proprietary concern and having its place of business at [insert address of place of business] (herein referred to as the "**Service Operator**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include the proprietor(ess) (both in his/her personal capacity and as proprietor(ess) of the concern) and his/her heirs, legal representatives, executors, administrators, successors of the concern and /or permitted assigns)] **OF THE**

**OTHER PART**

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

**WHEREAS:**

1. Punjab State e-Governance Society is desirous to implement the Project.
2. In furtherance of the same, the Authority undertook the bidding process for selection of Service Operator through a competitive bidding process for implementing the Project and had issued Request for Proposal (RFP) dated **DD.MM.YYYY**.
3. Prsuant to the bidding process in terms of the RFP, the Service Operator has been selected as the Successful Bidder and LOA [●]<sup>1</sup> had been issued by the Authority to undertake the Project.

**NOW, THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

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<sup>1</sup> Insert details of the LOA

## ARTICLE 1 - DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including the definitions and the introduction) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedule I of this Agreement.

### 1.2 Interpretation

1.2.1 In this Agreement, unless otherwise specified:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of Punjab, laws of India or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of Punjab and India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;
- (f) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation, equipping, installation and other activities incidental thereto, and "**develop**" shall be construed accordingly;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday) on which banks in Punjab are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (k) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or

dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;
- (n) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (o) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction to which such person belongs or is incorporated or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (p) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (q) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;
- (r) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (s) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
- (t) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty ("**Damages**"). If, for any reason, any provisions regarding the payment of Damages are held to be void, invalid or otherwise inoperative and so as to disentitle either Party from claiming Damages, then such Party will be entitled to claim against the other Party for general damages for the relevant default.

1.2.2 Unless expressly provided otherwise in this Agreement, any document required to be provided or furnished by the Service Operator to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such document with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the



parties responsible for the drafting and preparation thereof, shall not apply.

- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and for these purposes, the General Clauses Act, 1897 shall not apply.

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

All measurements and calculations shall be in the metric system and calculations done to 4 (four) 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 this Agreement and the Schedules/Annexures, the Agreement shall prevail; and
- III. as between any value written in numerals and that in words, the value in words shall prevail.

### **1.5 Priority of documents, Clauses and Schedules**

#### **1.5.1 Priority of documents**

This Agreement, including its Schedules, Annexures and Appendixes, thereof represents the entire agreement between the Parties. 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 the Agreement, then such documents shall be relied upon and interpreted in the following descending order of priority:

- I. This Agreement along with the Schedules and Annexures other than mentioned at point number 1.5 (II) and 1.5 (III) as below;
- II. Request for Proposal and Addendum/Corrigendum to the Request for Proposa.
- III. LOA
- IV. Letter of acceptance by the Servie Operator; and
- V. Bid submitted by the Service Operator.

#### **1.5.2 Priority of Clauses and Schedules**

- (i) This Agreement, including its Schedules, Annexures and Appendixes and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement.
- (ii) Subject to the provisions of Clause 1.5.2(i), in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail; and
- (d) between any value written in numerals and that in words, the latter shall prevail.

## ARTICLE 2 - SCOPE OF THE PROJECT & OBLIGATIONS

### 2.1 Scope of the Project

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the Term of this Agreement:

- (a) operation and maintenance and management of work of the Project be as per the Schedule II to this Agreement;
- (b) the operator shall operate and maintain and manage of the Project in accordance with the provisions of this Agreement;
- (c) performance and fulfilment of all other obligations of the Service Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Service Operator under this Agreement.

### 2.2 Service Operator

The Service Operator shall observe and perform all the Services as set out in the Annexure B of this Agreement. In addition to other consequences stipulated in this Agreement, in case of non-compliance of the Services, the Service Operator shall also be liable for the penalties as stated in the Annexure B.

### ARTICLE 3- GRANT OF RIGHTS

#### 3.1 The Grant of Rights

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Service Operator the exclusive right, licence and authority to operate, maintain and manage the Sewa Kendras during the Term in accordance with the terms of this Agreement.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the rights hereby granted for the Term shall oblige or entitle (as the case may be) the Service Operator to:
- (a) operate, maintain and manage, the Sewa Kendras in terms of the Scope of Work;
  - (b) perform and fulfil all of the Service Operator's obligations under and in accordance with this Agreement; and
  - (c) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Service Operator under this Agreement.

#### 3.2 Conditions Precedent to the Appointed Date

- 3.2.1 Save and except as provided in Articles 1, 3.7, 4, 5, 10, 11 and 15 and related Schedules or unless the context otherwise requires, the respective rights and obligations of the Parties under this Contract shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 3.2 (the "**Conditions Precedent**"), save and except to the extent of waiver partially or fully, if any, that the Authority may grant in accordance with the provisions of Clauses 3.2.2.

#### 3.2.2 Conditions Precedent of the Service Operator

- (i) The Service Operator shall within [15 (fifteen) days] from the date of this Agreement fulfill the Conditions Precedent:
  - (a) extend the validity of the EMD and submit to the Authority the Performance Bank Guarantee and other guarantees/payments as and when required to the Authority;
  - (b) to provide the Authority certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Service Operator; and
  - (c) submit to the Authority the Legal Opinion of the Service Operator with respect to authority of the Service Operator to enter in to this Agreement and enforceability of the provisions thereof.
- (ii) **Extension of the fulfilment of the Conditions Precedent**
  - a. Provided that upon request in writing by the Service Operator, the Authority or its nominee may, in its discretion, waive any or all of the Conditions Precedent set forth in this Clause 3.2.2 or grant extension of time for fulfilment thereof, as the case may be. For the avoidance of doubt, the Authority may in its sole discretion grant any waiver hereunder with such conditions as it may deem fit. However, such waiver/extension of time for fulfilment of the Conditions Precedent shall be subject to imposition of damages as stated in Clause 3.2.5 below on the Service Operator linked to the delay in fulfilment in Conditions Precedent.

- b. In the event that this Agreement fails to come into effect on account of non-fulfillment of the Service Operator's Conditions Precedent, the Authority shall not be liable in any manner whatsoever to the Service Operator and the Authority shall forthwith forfeit the EMD and/or Performance Bank Guarantee.
- c. In the event that possession of any of the Authority facilities/sewa kendras have been delivered to the Service Operator prior to the fulfillment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to the Authority, free and clear from any Encumbrances or claims.

### 3.2.3 **Conditions Precedent of the Authority**

Subject to the Service Operator fulfilling all its Conditions Precedent as specified in Clause 3.2.2 (other than any Condition Precedent that has been waived by the Authority), the Authority shall, within a period of 45 (forty five) days from the date of the notice from the Service Operator notifying fulfillment of its Conditions Precedent, fulfil the following Conditions Precedent:

- i. Handing over of Sewa Kendras/Sites;
- II. Necessary clearances; and
- III. Approval of the Project by a competent authority (if required and applicable).

For the avoidance of doubt, it is expressly clarified that the obligations of the Parties shall commence from the fulfillment of the Conditions Precedent as set forth above.

### 3.2.4 **Appointed Date**

The date on which the Authority fulfils its Conditions Precedent in accordance with Clause 3.2.3 shall be the "**Appointed Date**".

For the avoidance of doubt, the Authority may complete the handing over of the Sewa Kendras/Site or fulfil its other obligations under Clause 3.2.3 in a staggered manner, in which case the Appointed Date shall be the date on which all of the Conditions Precedent has been fulfilled or waived.

### 3.2.5 **Damages for Delay by the Service Operator**

In the event that: (i) the Service Operator does not procure fulfillment or waiver of any or all of its Conditions Precedent set forth in Clause 3.2.2 within the period specified in respect thereof; and (ii) the delay has not occurred due to Force Majeure, the Service Operator shall pay to the Authority Damages calculated at the rate of [Rs. 10,000 (Rupees ten thousand)] for each day's delay until the fulfillment or waiver of all Conditions Precedent, subject to a maximum of [Rs. 12,00,000 (Rupees twelve lakh)].

## 3.3 **Termination upon delay**

Without prejudice to the provisions of Clause 3.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason other than breach by the Party seeking termination or Force Majeure, within 180 days from the date of this Agreement, then the Party who is entitled to have the Conditions Precedent set out in Clause 3.2 satisfied shall be entitled to terminate this Agreement forthwith by issuing a written notice to the other Party for that other Party's failure. Upon such termination, all rights, privileges, claims and entitlements of the Parties under or arising out of this Agreement shall be deemed to have been

waived by, and to have ceased with the concurrence of the Parties.

Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Service Operator, the Performance Security of the Service Operator or the Bid Security of the [Selected Bidder]/[Consortium] shall be encashed and appropriated by the Authority as Damages thereof in accordance with Clause 8.3.

### **3.4 Term**

3.4.1 This Agreement shall be in full force and effect for a period commencing on the Appointed Date and shall continue to be in effect, unless extended or terminated earlier in accordance with the terms of this Agreement, until the expiration of [63.50 months] commencing from the Appointed Date ("**Term**").

3.4.2 If the Authority is satisfied, on or before the expiration of Term, that the Service Operator shall have discharged its obligations in compliance with this Agreement, the Term shall be extended by Authority at its sole discretion for an additional term of [1 years] on the terms and conditions set out herein (other than the right of extension under this Clause 3.4.2) before expiration of this Agreement. For the avoidance of doubt, on such extension, Term shall include such extended period of [1 years].

### **3.5 Change in Control**

- i. In the event of a change in Control of the Service Operator during the Term, the Service Operator shall promptly notify the Authority of the same in the format set out as Schedule III of this Agreement.
- ii. In the event that the net worth of the surviving/changed entity is less than that of Service Operator prior to the change in Control, the Authority will within 30 (thirty) days of becoming aware of such change in Control, require in addition to the existing Performance Bank Guarantee furnished by the Service Operator, a additional performance guarantee (in the same format as Performance Bank Guarantee) from a guarantor acceptable to the Authority (which shall not be Service Operator).
- iii. If such a guarantee is not furnished within 30 (thirty) days of the Authority requiring the additional performance guarantee and time to furnish such additional performance guarantee is not extended by the Authority in writing by the Authority, the Authority may exercise its right to terminate this Agreement by providing a 30 (thirty) days written notice, which shall be effective from the date of such notice.
- iv. Pursuant to termination, the effects of termination as set out in Clause 14.2 of this Agreement shall follow.

For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Service Operator shall not be deemed an event of a change in Control for purposes of this Clause unless the surviving entity is of less net worth than the predecessor entity.

### **3.6 Performance Bank Guarantee**

#### **A. Submission of Performance Bank Gurantee**

- (i) The Service Operator shall submit to the Authority on or before the date of

execution of this Agreement, an irrevocable, unconditional and on-demand bank guarantee from a Scheduled Bank for a sum of Rs. [●] (Rupees [●] only)<sup>2</sup> that is payable or confirmed for payment in Chandigarh, Punjab in the form set forth in Schedule VII (the "**Performance Bank Guarantee**"), to secure the due performance of the Service Operator's obligations and the discharge of the Service Operator's liabilities under this Agreement, whether during or after the Term.

- (ii) Until such time that the Performance Bank Guarantee is submitted by the Service Operator, the Service Operator shall ensure that the EMD submitted by the Service Operator shall remain in full force and effect.
- (iii) If the validity of the EMD is scheduled to expire prior to submission of Performance Security and the validity of the EMD is not extended or if the EMD is not replaced by the Service Operator [or the Selected Bidder/the Consortium] at least 15 (fifteen) days prior to such scheduled expiry date, the Authority shall be entitled to forfeit and appropriate the total amount of the EMD as Damages and terminate the Agreement in accordance with Clause 3.3.
- (iv) Upon submission of the Performance Bank Guarantee in accordance with Clause 3.8 (i), the Authority shall release the EMD to the Service Operator.
- (v) Notwithstanding anything to the contrary contained in this Agreement, if the Performance Bank Guarantee is not submitted by the Service Operator within a period of 21 days from the date of this Agreement, the Authority may encash the EMD and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Service Operator under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Service Operator. Further, the Authority shall be entitled to terminate this Agreement in accordance with Article 11.

#### **B. Validity of Performance Bank Guarantee**

- (i) The Performance Bank Guarantee shall remain in full force and effect from the date of its issuance until the expiration of sixty (60) days following the Transfer Date.
- (ii) If the Performance Bank Guarantee is scheduled to expire prior to the period specified in Clause 3.8 (B) (i), then, no less than sixty (60) days prior to the scheduled expiry of the Performance Bank Guarantee, the Service Operator shall arrange for an extension or replacement of the Performance Bank Guarantee meeting the requirements of this Agreement. If the Service Operator fails to extend or replace the Performance Bank Guarantee within the specified time period, the Authority shall be entitled to encash and appropriate the full value of the Performance Security as Damages and to terminate this Agreement in accordance with Article 11.

#### **C. Appropriation of Performance Bank Guarantee**

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<sup>2</sup> Amount to be specified in terms of the LOA

- (i) Upon occurrence of a Service Operator' Material Breach or failure by the Service Operator to pay any amount due or to discharge any liability to the Authority in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Bank Guarantee as Damages.
- (ii) Upon such encashment and appropriation from the Performance Bank Guarantee, the Service Operator shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the Performance Bank Guarantee, and in case of appropriation of the entire Performance Bank Guarantee provide a fresh Performance Bank Guarantee, as the case may be, and the Service Operator shall, within the time so granted, replenish or furnish fresh Performance Bank Guarantee as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 11. Provided that upon failure of the Service Operator to replenish the Performance Bank Guarantee in case of partial appropriation, the Authority shall also be entitled to encash and appropriate the remaining value of the Performance Bank Guarantee.
- (iii) Upon replenishment of the Performance Bank Guarantee, whether by renewal or replacement, the Service Operator shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Service Operator's Material Breach or other failure that resulted in the encashment and appropriation of the Performance Bank Guarantee. If the Service Operator fails to cure the Service Operator' Material Breach or other failure within such 30 (thirty) day period, the Authority shall be entitled to encash and appropriate the full value of the Performance Bank Guarantee as Damages, and to terminate this Agreement in accordance with Article 11.

### 3.7 Operational Readiness and Acceptance

- (i) The Project shall be governed by the mechanism of operational readiness to be put into place by Service Operator in terms criteria set out in Schedule I of this Agreement ("**Operational Readiness**") within the period of 60 (sixty) days from the date of possession of the Sewa Kendra after approval from PSeGS. Upon the Operational Readiness of the Project in terms of the Schedule I and to the satisfaction of the Authority, the Authority shall issue an operational readiness certificate ("**Operational Readiness Certificate**"). The Service Operator shall be entitled for the Service Fee in terms of the Article 8.
- (ii) **Damage for delay**

If the Service Operator fails to complete the Operational Readiness in terms of Clause 3.7 (i) before he [60<sup>th</sup>] days, unless the delay is on account of the reason solely attributable to the Authority or due to the Force Majeure, the Service Operator shall pay damages to the Authority as defined in Annexure B.
- (iii) If the Service Operator fails to complete the Operational Readiness within [180 days] of the Appointed Date for any reason whatsoever, Notwithstanding anything contrary contained in this Agreement, this



Agreement shall be deemed to have been terminated by mutual consent of the Parties. Upon such termination, all rights, privileges, claims and entitlements of the Parties under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Parties. Upon termination, the Authority shall be entitled to encash the Performance Bank Guarantee and appropriate the proceeds thereof as Damages; provided, however, that if Operational Readiness is not completed for the reasons solely attributable to the Authority or due to the Force Majeure, it shall, upon termination, return the Performance Bank Guarantee to the Service Operator forthwith.

**ARTICLE 4- REPRESENTATIONS AND WARRANTIES****4. Representations and Warranties****4.1 Representations and warranties of the Service Operator**

The Service Operator represents and warrants to the Authority that:

- i. it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under the Agreement and other agreements and to carry out the transactions contemplated hereby;
- ii. it is a competent provider of a variety of information technology and/or business process management services;
- iii. 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 the Agreement;
- iv. from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of the Agreement;
- v. in providing the Services, it shall as far as possible not cause any unnecessary disruption to the Authority normal business operations;
- 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 hereof;
- vii. the information furnished in the RFP Document and as updated on or before the date of this Agreement is to the best of its knowledge true and accurate in all material respects as on the date of the Agreement;
- viii. the execution, delivery and performance of the 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;
- ix. 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 the 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;
- x. 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 the Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under the Agreement;

- xi. 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 the Agreement;
- xii. no representation or warranty by it contained herein or in any other document furnished by it to Authority in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
- xiii. 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 the Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.

#### **4.2 Representations and warranties of the Authority**

The Authority represent and warrant to the Service Operator that:

- i. 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 the Agreement, exercise its rights and perform its obligations, under the Agreement and carry out the transactions contemplated hereby;
- ii. it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of the Agreement and to validly exercise its rights and perform its obligations under the Agreement;
- iii. it has the financial standing and capacity to perform its obligations under the Agreement;
- iv. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of the Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- iv. the 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 the Agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;
- v. the execution, delivery and performance of the 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;
- vi. there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach/ Material Breach of this Agreement or which individually or in the aggregate may result in any material impairment of

its ability to perform its material (including any payment) obligations under the Agreement;

- vii. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on the Authority ability to perform its obligations under the 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;
- viii. it has complied with Applicable Laws in all material respects;
- ix. all information provided by it in the RFP Document in connection with the Project is, to the best of its knowledge, true and accurate in all material respects; and
- x. upon the Service Operator performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Service Operator, in accordance with the Agreement.

#### **4.3 Disclosure**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

**ARTICLE 5 - DISCLAIMER****5.1 Disclaimer**

5.1 The Service Operator acknowledges that prior to the execution of this Agreement, [the Selected Bidder/the Consortium] has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, this Agreement, the Scope of the Project, the condition of the existing Assets and existing structures, local conditions, physical qualities of ground, availability of power, water and other utilities, availability of human resources, Applicable Laws and Applicable Permits and all information provided by the Authority or obtained procured or gathered otherwise and has made its own assessment as to all relevant factors for quoting the service fee for the Project. The Service Operator is deemed to have knowledge of and to be satisfied with all such findings, information and assessments.

5.2 The [Successful Bidder/the Consortium] and consequently, the Service Operator have determined to their satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards that are likely to arise or that may be faced by the Service Operator in the course of performance of its obligations hereunder.

Without prejudice to the foregoing, the Service Operator acknowledges and confirms that any failure of the Selected Bidder/the Consortium or its own failure to: (a) acquaint itself with the Department and Offices or existing facilities or such information; or (b) its failure to make a reasonable assessment as to the costs or other matters; or (c) identify any defect or deficiency in the design, construction, installation or maintenance of the Department and Offices or the existing facilities and Assets, shall not relieve the Service Operator from its responsibility for properly estimating the difficulty or cost of successfully performing its obligations under the Agreement.

The Service Operator shall keep harmless and indemnify the Authority against all losses, liabilities, damages, costs, expenses, actions, claims, proceedings incurred by or made against the Authority as a result of any adverse conditions or defects or environmental damage at or affecting the Project or the existing Assets (whether pre-existing or caused by or arising from the use of the Project). Such indemnity shall cover all consequential, indirect or extraordinary damages.

5.3 The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any statement or information provided by it or any assessment or assumption made by the Selected Bidder/the Consortium and the Service Operator and the Service Operator confirms that it shall have no claim whatsoever against the Authority in this regard.

5.4 The Service Operator acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby acknowledges and agrees that the Authority shall not be liable or responsible to the Service Operator, the Selected Bidder/any Member of the Consortium or any of their Associate or any person claiming through or under any of them for the same in any manner whatsoever, whether in contract, tort, for breach of statutory duty or otherwise arising.

5.5 The Parties agree that any mistake or error in or relating to any of the matters set forth above shall not vitiate this Agreement, or render it voidable.

5.6 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Service Operator and the Authority shall not be liable in any manner for such risks or the consequences thereof.

## ARTICLE 7 - OPEARTION OF THE PROJECT

### 6.1 Obligations of the Authority or its Nominated Agencies

Without prejudice to any other undertakings or obligations of the Authority under the Agreement, the Authority shall perform the following:

- (i) To provide any support through personnel to test the system during the Term;
- (ii) To provide any support through personnel and/or test data during development, rollout, steady state operation, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons; and
- (iii) To authorize the Service Operator to interact for implementation of the Project with external entities such as the participating departments, state treasury, authorized banks, trademark database etc.

### 6.2 Obligations of the Service Operator

- (i) It shall provide to the Authority, the Deliverables and Services as set out in Annexure B of this Agreement.
- (ii) It shall perform the Services as set out in Annexure C of this Agreement and in a good and workman like manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, and so as to comply with the applicable Services set out with the Agreement.
- (iii) It shall ensure that the Services are being provided as per the Project Timelines & guidelines set out as Annexure C to this Agreement.

### 6.3 Approvals and Required Consents

- (i) The Parties shall cooperate to procure, maintain and observe all relevant and regulatory and governmental licenses, clearances and applicable approvals (hereinafter the "**Required Consents**") necessary for the Service Operator to fulfil its obligation and provide the Services as per the Scope of Work. The costs of such Approvals shall be borne by the Party normally responsible for such costs according to local custom and practice in the locations where the Services are to be provided.
- (ii) The Authority shall as far as possible assist Service Operator to obtain the Required Consents or vice versa, depending on the Scope of work. In the event that any Required Consent is not obtained, the Service Operator and the Authroity will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the Authority to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Required Consent is obtained, provided that the Service Operator shall not be relieved of its obligations to provide the Services until the Required Consents are obtained if and to the extent that the Service Operator's obligations are not dependent upon such Required Consents.

### 6.4 Use of Assets by the Service Operator

- (i) During the Term the Service Operator shall:
  - a. take all reasonable and proper care of the entire assets, present and future

including but not limited to civil infrastructure, furniture, fixtures, gadgets, hardware (IT and Non-IT) and Software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the Service Operator exclusively in terms of ensuring their usability for the delivery of the Services as per the Agreement (hereinafter the "**Assets**") in proportion to their use and control of such Assets; and

- b. Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Service Operator takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- c. ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Service Operator will be followed by the Service Operator and any person who will be responsible for the use of the Assets;
- d. take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Service Operator or as may, in the reasonable opinion of the Service Operator, be necessary to use the Assets in a safe manner;
- e. ensure that the Assets that are under the control of the Service Operator, are kept suitably housed and in conformity with Applicable Law;
- f. procure permission from the Authority and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- g. not, knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.

(ii) **Access to the Authority locations/Existing Facilities**

- a. For so long as the Service Operator provides services in terms of this Agreement, on a non-permanent basis and to the extent necessary, the Authority shall, subject to compliance by the Service Operator with any safety and security guidelines which may be provided by the Authority and notified to the Service Operator in writing, provide the Service Operator with:
  - b. reasonable access to its employees, in the same manner granted to the Authority;
  - c. reasonable work space, access to office equipment as mutually agreed and other related support services in such location, as may be reasonably necessary for the Service Operator to perform its obligations hereunder.
  - d. Access to locations, office equipment's and services shall be made available to the Service Operator on an "as is, where is" basis by the Authority. The Service Operator agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in the Agreement for the following purposes:
    - e. for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character or for any other illegal purpose

- f. in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality) or violation of any applicable laws.



## ARTICLE 7 - OPEARTION OF THE PROJECT

### 7.1 Governance

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

### 7.2 Use of Services

- (i) The Authority will undertake and use the Services in accordance with any instructions or procedures as per the acceptance criteria as set out in this Agreement or any agreement that may be entered into between the Parties from time to time;

### 7.3 Changes

Unless expressly dealt with elsewhere in this Agreement, any changes under or to this Agreement in relation to the Scope of Work or otherwise shall be dealt with in accordance with the Change Control Schedule set out in Schedule III of this Agreement.

### 7.4 Security and Safety

- (i) The Service Operator shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act or Telegraph Act or any other applicable laws including the regulations issued by Dept. of Telecom (wherever applicable), IT Security Policy/Guidelines/Manual of the Authority as specifically stated in the Agreement and follow the industry standards related to safety and security (including those as stated in the RFP), insofar as it applies to the provision of the Services.
- (ii) Each Party to the Agreement shall also comply with the Authority or the Government of India, and Government of Punjab security standards and policies in force from time to time at each Sewa Kendras/facilities (under the Scope of Work) of which the Authority make the Service Operator aware in writing insofar as the same apply to the provision of the Services.
- (iii) The Parties to Agreement shall as far as possible report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Authority, any of their nominees data, facilities or Confidential Information.
- (iv) The Service Operator shall participate in regular meetings when safety and information technology security matters are reviewed by the Authority.
- (v) As per the provisions of the Agreement, the Service Operator shall promptly report in writing to the Authority, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of the Authority, as the case may be.

## 7.5 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.

Further, each Party agrees to co-operate with the contractors and subcontractors of the other Party as reasonably requested in order to accomplish the purposes of this Agreement.

## ARTICLE 8 - FINANCIAL MATTERS

### 8.1 Terms of Payment

- i. In consideration of the Services and subject to the provisions of this Agreement, the Authority shall pay the Service Operator for the Services rendered in pursuance of this agreement, in accordance with the Terms of Payment Schedule set out as Schedule VII of this Agreement.
- ii. All payments are subject to the application of penalties as provided for in the Annexure B. For the avoidance of doubt, it is expressly clarified that the Authority will calculate the applicable penalties and debit the same against the terms of payment as set out in Schedule VII of this Agreement as a result of the failure of the Service Operator to meet the Service requirement as set out in the Annexure C.
- iii. Save and except as otherwise provided for herein or as agreed between the Parties in writing, the Authority shall not be required to make any payments in respect of the Services other than those covered in Schedule VII of this Agreement. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.

### 8.2 Invoicing and Settlement

- i. The Service Operator shall submit its invoices in accordance with the following principles:
  - a) The Service Operator will collect the money on behalf of the Authority from the citizens as per pre-defined per service rates which includes facilitation charges & statutory fee defined by the Authority/State Government.
  - b) Facilitation charges to be charged from the citizens for delivering the services through these Sewa Kendras will be decided by the Authority.
  - c) The Service Operator will ensure that statutory/government fee collected at Sewa Kendra shall be deposited in the designated Bank and/or any other agency as per guidelines issued by the Authority and/or State Government from time to time.
  - d) The Service Operator will submit its invoices to the Authority on monthly basis by 7th of subsequent month duly supported with all requisite documents as required by Authority.
  - e) Such invoices will be accurate and include all adjustments to or changes in the terms of payment. The Authority reserves the right to ask Service Operator to provide all the information/ clarifications/ additional supporting documents required to verify the invoice.
  - f) The Service Operator will reconcile & settle the money so collected and deposited on fortnightly basis. Any surplus money after retaining his proportionate charges, will be transferred to Authority designated bank account on fortnightly basis i.e. on 5th & 20th of every month, failing which an interest @ 18% (eighteen percent) per annum will be levied on the due amount.
  - g) In case, if money so collected is not commensurate with the proportionate charges of the Service Operator, the Authority will make the payment of such deficit after proper verification of invoices submitted by the Service Operator.

- h) Final payment will be settled/made within 60 days of the receipt of invoice along with supporting documents, subject to:
  - i. All supporting documents being in order;
  - ii. necessary verification of all supporting documents and invoice;
  - iii. deduction of all applicable penalties; and
  - iv. acceptance & approval of invoice by the Authority.
- i) The Authority will be entitled to delay or withhold part of the payment of any invoice which is under a dispute. The withheld amount shall be limited to disputed amount. The disputed amount shall be referred to the escalation procedure as set out in the Agreement. Any exercise by the Authority under this Clause shall not entitle the Service Operator to delay or withhold provision of the Services.
- j) The Service Operator will be solely responsible to make payment to its sub-contractors, if any.
- k) All applicable penalties (if any), will be deducted from the:
  - i. Amount payable to the Service Operator
  - ii. amount pending for reimbursement to the service operator,
  - iii. subsequent month's payment or
  - iv. by invoking the PBG.
- l) In the event of delay in payment of undisputed amount beyond 60 days from receipt of invoice, Service Operator shall be entitled to a late payment interest @1% per completed month for the delay beyond 60 days.

**ARTICLE 9 - TAX****9.1 Tax**

- i. The Authority shall be responsible for withholding taxes from the amounts due and payable to the Service Operator wherever applicable. The Service Operator shall pay for all other taxes in connection with this Agreement, Scope of Work and any other engagement required to be undertaken as a part of this Agreement, including statutory dues, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.
- ii. The Authority shall provide Service Operator with the original tax receipt of any withholding taxes paid by the Authority on payments under this Agreement. The Service Operator agrees to reimburse and hold the Authority harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among the Authority, the Service Operator and third party subcontractors.
- iii. If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by the Authority for providing the services i.e. service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the Service Operator in performing the Services, then the remuneration and reimbursable expense otherwise payable to the Authority under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule VII. However, in case of any new or fresh tax or levy imposed after submission of the proposal the Service Operator shall be entitled to reimbursement on submission of proof of payment of such tax or levy.
- iv. The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with the following:
  - a. any resale certificates;
  - b. any relevant information regarding out-of-state or use of materials, equipment or services; and
  - c. any direct pay permits, exemption certificates or information reasonably requested by the other Party.

## ARTICLE 10 - FORCE MAJEURE

### 10.1 Definition of Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in Punjab of any or all Non-Political Events or occurrence in India of any or all Political Events, as defined in Clauses 9.2 and 9.3 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

### 10.2 Non-Political Events

- (i) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion not attributable to the Service Operator);
- (ii) strikes or boycotts (other than those involving the Service Operator or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting for the continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being a Political Event set forth in Clause 10.3;
- (iii) any failure or delay of a Service Provider but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Service Operator;
- (iv) any judgement or order of any court of competent jurisdiction or statutory authority made against the Service Operator in any proceedings for reasons other than (i) failure of the Service Operator to comply with any Applicable Law or Applicable Permits, or (ii) on account of breach of any Applicable Law or Applicable Permits or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (v) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (vi) any event or circumstance of a nature analogous to any of the foregoing.

### 10.3 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, revolution, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) Change in Law, only if consequences thereof cannot be dealt with under

and in accordance with the provisions stipulated in this Agreement;

- (c) expropriation or compulsory acquisition by the Authority or any of their nominated agencies of any material assets or rights of the Service Operator;
- (d) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any Applicable Permits required by the Service Operator to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Service Operator's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Applicable Permits;
- (e) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in a year;
- (f) any civil commotion, boycott or political agitation which prevents rendering of Services by the Service Operator for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (g) any requisition of the Project by any other authority;
- (h) any requisition of the Project by the Authority or any of the nominated agencies. For the avoidance of doubt, suspension of the Project in accordance with the provisions of this Agreement shall not be considered a requisition for the purposes of Force Majeure event; and
- (i) any event or circumstance of a nature analogous to any of the foregoing.

For the avoidance of doubt, it is expressly clarified that the failure on the part of the Service Operator 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 Service Operator will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).

#### **10.4 Duty to report Force Majeure Event**

- (i) Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other within [15 days] of occurrence of such Force Majeure Event. Any notice pursuant hereto shall include full particulars of:
  - (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 10 with evidence in support thereof;
  - (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Service Operator's performance of its obligations under this Agreement;
  - (c) the measures which the affected party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
  - (d) any other information relevant to the affected party's claim.

- (ii) The Service Operator shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the Authority or its nominee of the occurrence of the Force Majeure Event and given particulars of the probable material effect that the Force Majeure Event as soon as reasonably practicable, and in any event no later than 15 (fifteen) days after the Service Operator knew, or ought reasonably to have known, of its occurrence.
- (iii) For so long as the Service Operator continues to claim to be materially affected by such Force Majeure Event, it shall provide the Authority or its nominee with regular (and not less than weekly) reports containing information as required by Clause 10.5 (i), and such other information as the other Party may reasonably request the Affected Party to provide.

#### **10.5 Mitigation of Force Majeure Event**

Upon receipt of a Force Majeure notice, the Service Operator shall:

- (a) mitigate or minimise the effects of the Force Majeure Event to the extent reasonably practicable; and
- (b) take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of the affected party's failure to carry out its obligations under this Agreement.

#### **10.6 Effect of Force Majeure Event**

- (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:
  - a. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
  - b. upon occurrence of an Other Events of Force Majeure, all Force Majeure Costs attributable to such Other Event(s), shall be borne by the Service Operator. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, operation and maintenance expenses, any increase in the cost of the Services on account of inflation and all other costs directly attributable to the Force Majeure Event.
  - c. 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.
  - d. Due to any occurrence of a Force Majeure Event after the Effective Date, taking into consideration its nature and impact, the extension of Term of this Agreement shall be mutually discussed and decided by both the parties.





## ARTICLE 11 - TERMINATION

### 11.1 Material Breach

- (i) In the event that either Party believes that the other Party is in Material Breach of its obligations under this Agreement, such aggrieved Party may terminate this Agreement upon giving 30 (thirty) days written notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, the Authority or Service Operator, as the case may be will have the option to terminate the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events and the termination will become effective:
- a. If the Service Operator is not able to deliver the Services or fulfil its obligations as per the Agreement which translates into Material Breach, then the Authority may serve a 30 (thirty) days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the Authority will have the option to terminate this Agreement after affording a reasonable opportunity to the Service Operator to explain the circumstances leading to such a breach.
  - b. If there is a Material Breach by the Authority as per the Agreement, then the Service Operator may serve a 30 (thirty) days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the Service Operator will have the option to terminate this Agreement after affording a reasonable opportunity to the Authority to explain the circumstances leading to such a breach.
- (ii) The Authority may by giving 30 days written notice, terminate this Agreement if a change in Control of the Service Operator has taken place. For the purposes of this Clause, in the case of Service Operator, change in Control shall mean the events stated in Clause 3.5, and such notice shall become effective at the end of the notice period as set out in Clause 3.5 (iii).
- (iii) In the event that Service Operator undergoes such a change in Control, the Authority may, as an alternative to termination, require an additional performance guarantee for the obligations of Service Operator in terms of this Agreement by a guarantor acceptable to the Authority. If such a guarantee is not furnished within 30 days of the Authority's demand, the Authority may exercise its right to terminate this Agreement in accordance with this Clause by giving 30 days further written notice to the Service Operator.

### 11.2 Effects of termination

- i. In the event that the Authority terminates this Agreement pursuant to failure on the part of the Service Operator to comply with the terms and conditions as contained in this Clause, Performance Bank Guarantee and additional performance guarantee (if any) furnished by Service Operator shall be forfeited.
- ii. Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule IV of this Agreement.
- iii. In the event that the Authority or the Service Operator terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as Schedule VII of this Agreement.
- iv. The Authority agrees to pay Service Operator for i) all charges for Services Service Operator provides and any Deliverables, Services and/or system (or part

thereof) Service Operator delivers upto termination, and ii) reimbursable expenses Service Operator incurs upto termination.

### **11.3 Termination of this Agreement due to bankruptcy of Service Operator**

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

### **11.4 Termination for Convenience**

On or after the one year of the Operational Readiness Certificate date, the Authority reserves the right to modify the Scope of Work, by prior written notice of 180 days, at any time for its convenience. The notice of termination shall specify that termination is for Authority convenience, the extent to which Scope of Work under the Agreement is modified, and the date upon which such modification becomes effective. In such event, the Service Operator shall perform its obligations under the Agreement as per the modified Scope of Work. The Authority would pay to the service operator eligible due payment for services performed till the last day of the notice period after approval of competent authority.

**ARTICLE 12 - INDEMNITY****12.1 Indemnification & Limitation of Liability**

**12.1 Subject to Clause 12.2** below, Service Operator (the "Indemnifying Party") undertakes to indemnify the Authority (the "Indemnified Party") from and against all losses on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or willful default/Material Breach in performance or non-performance under this Agreement. In case a third party claims against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Indemnified Party. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by (a) Indemnified Party's misuse or modification of the Service; (b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party; (c) Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party; (d) Indemnified Party's distribution, marketing or use for the benefit of third parties of the Service; or (e) information, direction, specification or materials provided by Indemnified Party or any third party contracted to it. If any Service is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either (i) procure the right for Indemnified Party to continue using it, (ii) replace it with a noninfringing equivalent, (iii) modify it to make it noninfringing.

12.2 The indemnities set out in Clause 12.1 shall be subject to the following conditions:

- i. the Indemnified Party as promptly as practicable, informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
- ii. the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the 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 Clause, the Indemnified Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be recoverable from the Indemnifying Party;
- iv. the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
- v. all settlements of claims subject to indemnification under this Clause will:
  - a. be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release of the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and
  - b. include any appropriate confidentiality agreement prohibiting

disclosure of the terms of such settlement;

- vi. the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
  - vii. the Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;
  - viii. in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Clause, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and
  - ix. if a Party makes a claim under the indemnity set out under Clause 15.1 above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).
- 12.3 The liability of Service Operator (whether in contract, negligence, 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 Annual Contract Value (to be calculated based on the Total Project Cost as mentioned in Schedule VII of this Agreement ). The liability cap given under this Clause 12.3 shall not be applicable to the indemnification obligations set out in Clause 12.1 and breach of Clause 12.4 and 13.
- 12.4 In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) nor for any third party claims (other than those set-forth in Clause 12.1) even if it has been advised of their possible existence.
- 12.5 The allocations of liability in this Article 12 represent the agreed and bargained-for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

**ARTICLE 13 - CONFIDENTIALITY**

- 13.1 The Authority shall allow the Service Operator to review and utilize highly confidential public records and the Service Operator shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- 13.2 Additionally, the Service Operator shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- 13.3 The Authority shall retain all rights to prevent, stop and if required take the necessary punitive action against the Service Operator regarding any forbidden disclosure.
- 13.4 The Service Operator shall execute individual non-disclosure agreements with all its employees, agents and sub-contractors with respect to this project and shall submit a declaration in writing to the Authority regarding the same. The Authority may ask Service Operator to share all or any of such non disclosure agreement.

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

- a. information already available in the public domain;
  - b. information which has been developed independently by the Service Operator;
  - c. information which has been received from a third party who had the right to disclose the aforesaid information;
  - d. Information which has been disclosed to the public pursuant to a court order.
- 13.5 To the extent the Service Operator shares its confidential or proprietary information with the Authority for effective performance of the Services, the provisions of the Clause 13.1 to 13.3 shall apply mutatis mutandis on the Authority.

**ARTICLE 14 - DISPUTE RESOLUTION****1. Governing Law and Dispute Resolution**

- (i) This Agreement shall be governed by and construed in accordance with the laws of India.
- (ii) Any dispute arising out of or in connection with this Agreement shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as Schedule VI of this Agreement.
- (iii) In case the escalations do not help in resolution of the problem within 3 weeks of escalation, both the parties should agree on a mediator for communication between the two parties. The process of the mediation would be as follows:
  - a. Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.
  - b. The mediator shall use his best endeavors to conclude the mediation within a certain number of days of his appointment.
  - c. If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to Experts for advising on the issue.
- (iv) In case the mediation does not help in resolution and it requires expertise to understand an issue, a neutral panel of 3 experts, agreeable to both parties should be constituted. The process of the expert advisory would be as follows:
  - a. Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the timeframe and requesting for expert advisory. This is to be sent with a copy to the mediator.
  - b. Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute.
  - c. The expert panel shall use his best endeavors to provide a neutral position on the issue.
  - d. If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.
- (v) Any dispute or difference whatsoever arising between the parties to the Agreement out of or relating to the construction, meaning, scope, operation or effect of the Agreement or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the Arbitrator within a period of 45 days from the receipt of notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of Punjab & Haryana at Chandigarh, India. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at Chandigarh, India. Any legal dispute will come under the sole jurisdiction of Chandigarh, India.
- (vi) Compliance with laws: Each party will comply with all applicable export and import laws and regulations.

- (vii) Risk of Loss: For each hardware item, Service Operator bears the risk of loss or damage during tenure of project.
- (viii) Third party components: Service Operator will provide all third party components solely on a pass-through basis in accordance with the relevant third party terms and conditions.



**ARTICLE 15 - MISCELLANEOUS****15.1 Audit, Access and Reporting**

The Service Operator shall allow access to the Authority to all information which is in the possession or control of the Service Operator and which relates to the provision of the Services as set out in the Schedule – V i.e. Audit, Access and Reporting Schedule and which is reasonably required by the Authority to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule VI of this Agreement.

**15.2 Intellectual Property Rights****i. Products and fixes:**

All products and related solutions and fixes provided pursuant to this work order shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. Service Operator shall be responsible for arranging any licenses associated with products. "Product" means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to the Authority for license which is published by product owner or its affiliates, or a third party. "Fixes" means product fixes that are either released generally (such as commercial product service packs) or that are provided to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.

**ii. Bespoke development:**

Subject to the provisions of Clause 15.2 (iii) and 15.2 (iv) below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie with the Authority. Service Operator shall be entitled to a broad license back in the bespoke development for its internal usage and other e-governance project.

**iii. Pre-existing work:**

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

iv. **Residuals:**

In no event shall Service Operator be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables set-out in this Agreement. In addition, subject to the confidentiality obligations, Service Operator shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services.

15.3 **Implied Warranty:**

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

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

15.4 **Liquidated Damages**

Time is the essence of the Agreement and the performance and Services under this Agreement are binding on the Service Operator. In the event of delay or any gross negligence for causes attributable to the Service Operator in meeting the deliverables, Services and meeting its obligations, the Authority shall be entitled at its option to recover from the Service Operator, liquidated damages of a sum of 0.5% of the value of the deliverable which suffered delay or gross negligence for each completed week or part thereof subject to a limit of 5% of the relevant deliverable value. The value of the respective deliverables shall be worked out based on the details provided in Annexure D (for unit rate) and E (items and qualities).

15.5 **Versioning**

The Service Operator shall be responsible for the procurement, deployment as well as operations & maintenance of the Software(s) developed and maintained by him including requisite Software provisioning and also for maintaining source code for the tenure of this Agreement, with no additional cost implication to the Authority at all.

15.6 **Insurance Cover**

i. **Obligation to maintain insurance**

The Service Operator shall effect and maintain at its own cost, during the term of this Agreement, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice to protect the interests of the Service Operator and the Authority. The Service Operator shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Service Operator during the terms of the Agreement.

ii. Without prejudice to the provisions contained in Clause 15.6 (i), the Service

Operator shall, during the term or termination of the Project and one year thereafter, procure and maintain Insurance Cover, for an amount not less than insurance cover specified in the Schedule I, including but not limited to the following:

- a. public liability;
- b. professional indemnity and errors and omissions;
- c. product liability;
- d. workers' compensation as required by law; and
- e. any additional types specified in Schedule I; and

iii. **Termination for non-compliance**

The Authority may, at its discretion, terminate this Agreement upon the failure of Service Operator, to maintain the required insurance coverage in terms of this Clause 15.6. Inadequate insurance coverage for any reason shall not relieve Service Operator of its obligations under this Agreement.

iv. **Remedy for failure to insure**

If the Service Operator shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Service Operator.

v. **Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Service Operator pursuant to this Clause 15.6 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

vi. **Service Operator's waiver**

The Service Operator hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Service Operator may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Service Operator pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

vii. **Application of insurance proceeds**

The proceeds from all insurance claims, except proceeds received towards loss of life and injury and proceeds received under the third party liability insurance, shall be paid to the Service Operator and it shall, notwithstanding anything to the contrary contained in this Agreement, firstly apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of in relation to the Project.

15.7(A) **Personnel**

- i. The personnel assigned/ deployed (directly or indirectly) by Service Operator to perform the Services shall be employees of Service Operator or its subcontractor(s), and under no circumstances shall such personnel be considered employees of the Authority or state Governemnt. The Service Operator 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 Laws.
- ii. The Service Operator shall use its best efforts to ensure that sufficient Service Operator personnel are assigned to perform the Services and that such personnel have appropriate qualifications to perform the Services. After discussion with Service Operator, the Authority shall have the right to require the removal or replacement of any Service Operator personnel performing work under this Agreement based on bonafide reasons. In the event that the Authority requests that any Service Operator personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.
- iii. In the event that the Authority and Service Operator identify any personnel of Service Operator as "**Key Personnel**", then the Service Operator shall not remove such personnel from the Project without the prior written consent of the Authority unless such removal is the result of an unavoidable circumstance like resignation, termination and medical leave.
- iv. Except as stated in this Clause, nothing in this Agreement will limit the ability of Service Operator to freely assign or reassign its employees; provided that Service Operator shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. The Authority shall have the right to review and approve Service Operator's plan for any such knowledge transfer. Service Operator shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced. However all resource substitution/replacement related penalties shall remain applicable.
- v. 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.
- vi. Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.

**15.7(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:

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

obtaining the other Party's prior written consent.

**14.5(C) Sub-contractors**

The Service Operator shall not subcontract any work related to the Agreement without Authority's prior written consent. However the Service Operator shall provide the list of services planned to be sub contracted, within 45 days of signing the Agreement or at least 45 days before the start of proposed subcontracted work. It is clarified that the Service Operator shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the subcontractors. The Service Operator undertakes to indemnify the Authority from any claims on the grounds stated hereinabove. The Service Operator shall not allow a sub-contractor to assign or enter into further secondary subcontract for any of the work to be carried out by the sub-contractor.

**15.8 Assignment and Charge**

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

Subject to Clause 3.5, the Service Operator shall not be permitted to assign its rights and obligations under this Agreement to any third party.

The Authority may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Service Operator shall be a party to such assignment or novation after mutual discussion, to any third party contracted to provide outsourced services to Authority or any of its nominees.

The Service Operator shall not create or permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights or interests in the Project, the existing or future Assets or the facilities of the Project.

**15.9. Trademarks, Publicity**

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

**15.10 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, email or by fax.
- (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:

**For Authority**

Member Secretary  
Punjab State e-Governance Society,  
Department of Governance Reforms,  
SCO 162-164, Sector 34-A, Chandigarh - 160022  
Tel: (0172) – 2600971 Fax: (0172) - 2646320  
Email: [dgr@punjab.gov.in](mailto:dgr@punjab.gov.in)

With a copy to:

[Other authorized official of Authority]  
Punjab State e-Governance Society, Department of Governance Reforms  
Address: SCO 162-164, Sector 34-A, Chandigarh - 160022  
Tel: (0172) – 2661808 (Ext: 137) Fax: (0172) - 2666265  
Email: [•]

**For Service Operator:**

[•]  
Address:  
Tel: [•]  
Fax: [•]  
Email: [•]

- (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) between the hours of 9.00 am and 5.00 pm of any business day 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 (seven) days from the date of posting (if by letter).
- (iv) The Party to this Agreement may change its address, telephone number, fax number and nominated contact within India, for notification purposes by giving the other party prior written notice of the new information and its effective date.

**15.11 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 Change Control Schedule set out in Schedule III of this Agreement. 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.

**15.12 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.

#### 15.13 **Compliance with Applicable Law**

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

#### 15.14 **Change in Law**

##### (i) **Increase in costs**

If as a result of Change in Law, the Service Operator suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 10,00,000/- (Rupees Ten Lakhs Only) in any Accounting Year, the Service Operator may so notify the Authority and the Parties shall mutually agree for compensation parameters so as to place the Service Operator in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Service Operator, the Parties shall meet, as soon as reasonably practicable, but no later than [30 (thirty)] days from the date of notice, and agree on mutually agreed arrangement:

Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Service Operator may by notice require the Authority to pay an amount that would place the Service Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Service Operator, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 15.14 (i) shall be restricted to Changes in Law directly affecting the Service Operator's costs of performing its obligations under this Agreement.

##### (ii) **Reduction in costs**

If as a result of Change in Law, the Service Operator benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 10,00,000/- (Rupees Ten lakhs only), the Authority may so notify the Service Operator and the Parties shall mutually agree for making necessary adjustments in compensation or other relevant parameters, as the case may be, so as to place the Service Operator in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other

financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable, but no later than [30 (thirty)] days from the date of notice, and agree on mutually agreed arrangement:

Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Authority may by notice require the Service Operator to pay an amount that would place the Service Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Service Operator shall pay the amount specified therein to the Authority; provided that if the Operator shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 15.14 (ii) shall be restricted to Changes in Law directly affecting the Service Operator's costs of performing its obligations under this Agreement.

(iii) **Restriction on cash compensation**

The Parties acknowledge and agree that the demand for cash compensation under this Article 15.14 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than [2 (two)] years from the close of such Accounting Year.

15.15 **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.

15.16 **Ethics**

The Service Operator 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 the Authority 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 Authority standard policies and may result in cancellation of this Agreement.

15.17 **Entire Agreement**

This Agreement including its Schedules and Annexures and the contents and specifications of the RFP Document 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.

15.18 **Amendment**

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

15.19 **Language**

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant



to this Agreement shall be in writing and in the English language.

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

WITNESSES:

SIGNED AND DELIVERED for and on behalf of [•] by [•], Director/Authorised Reresentative and the Common Seal of [•] has been hereunto affixed pursuant to the resolution of its Board of Directors passed at the Meeting held on [•], in the presence of [•], Director who has set his signatures hereto in token thereof.

Or

SIGNED AND DELIVERED for and on behalf of [•] by [•], Partner/Sole Proprietor/ Authorised Reresentative who has set his signatures hereto in token thereof.

SIGNED AND DELIVERED for and on behalf of the Authority, by the hand of [ ] its authorized official.

**SCHEDULES****SCHEDULE – I – DEFINITIONS**

<b>Adverse Effect</b>	means material adverse effect on (a) the ability of the Service Operator to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legal validity, binding nature or enforceability of this Agreement;
<b>Agreement or Contract</b>	includes Master Services Agreement, together with all Articles, Annexures, Schedules thereof and the contents and specifications of the RFP;
<b>Applicable Law(s)</b>	Includes 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;
<b>Applicable Permits</b>	means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the operation, maintenance and Management of the Project, during the subsistence of this Agreement.
<b>Assets</b>	shall have the same meaning ascribed to it in Clause 6.4 (i) (a)
<b>Authority</b>	Shall mean Punjab State e-Governance Society or its nominated agencies as the case may be;
<b>Software</b>	means the software designed, developed / customized, tested and deployed by the Service Operator, if any for the purposes of the Project and includes the source code (in case of Bespoke development) along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products (including the COTS products used for the product), proprietary software components and tools deployed by the Service Operator;
<b>Business Hours</b>	<ul style="list-style-type: none"> <li>• For the Authority and other state Government departments, shall mean the working time which is 9:00 A.M to 5:00 P.M.</li> <li>• For the Server(s) and other components which enable successful usage of web portals of Authority including the IT maintenance, other batch process (like backup) etc. business hours shall mean 24 hours for all the days of the week (24*7).</li> <li>• For the Sewa Kendras, as decided by the Authority.</li> </ul>
<b>Change in Law</b>	means the occurrence of any of the following after the date of the Bid: (a) the enactment of any new Applicable Law as applicable to the State or the imposition, adoption or issuance of any new Applicable Law by any Government Instrumentality; (b) the repeal, modification, amendment, alteration or re-enactment of any existing Applicable Law; (c) the commencement of any Applicable Law which has not

	<p>entered into effect until the date of Bid;</p> <p>(d) a change in the interpretation, application or enforcement of any Applicable Law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or</p> <p>(e) any introduction of any new Taxes or change in the rates of any of the existing Taxes that have a direct effect on the Project,</p> <p>provided that such event was not reasonably foreseeable as on the date of the Bid;</p> <p>and provided further that any introduction of or amendments to or change in the rates of any direct Taxes, such as but not limited to income tax, wealth tax, etc. shall not be treated as a Change in Law, if occurring after the date of the Bid.</p>
<b>Confidential Information</b>	<p>means all information including <i>Authority</i> 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 as defined above (including such information received during negotiations, location visits and meetings in connection with this Project);</p>
<b>Control</b>	<p>means, in relation to any business entity, the power of a person to secure</p> <p>(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or</p> <p>(ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person's wishes and in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;</p>
<b>Deliverables</b>	<p>includes the products, infrastructure and services agreed to be delivered by the Service Operator in pursuance of the Agreement as elaborately defined in the RFP; includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related); inter-alia payment and/or process related etc., source code and all its modifications;</p>
<b>Department and Offices</b>	<p>Punjab Government department and offices in relation to the Sewa Kendras, existing suwidha Centres/field offices etc.</p>
<b>Effective Date</b>	<p>shall have the same meaning ascribed to it in <b>Clause 3.1</b></p>
<b>Encumbrance</b>	<p>means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment by way of security, retention of title, privilege or priority of any kind</p>

	having the effect of security interest or other arrangement or agreement having substantially the same effect, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy.
<b>Punjab State eGovernance Society Data</b>	means all proprietary data of the department generated out of operations and transactions, documents all taxpayers data and related information including but not restricted to user data which the Service Operator obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement.
<b>Operational Readiness</b>	Operational readiness is making the Sewa Kendras ready with all the infrastructure, manpower, training of manpower, standard operating procedures etc as per the scope of work so that they are ready for providing services to the citizens. This readiness will be checked and certified by the PSeGS  Post certification from PSeGS on the operational readiness of the Sewa Kendras, Service Operator will be required to launch the sewa kendras within 15 days from the date of said certification. Launch of Sewa Kendra would be the date the Sewa Kendras are opened for the public / citizens for delivering services.
<b>Force Majeure</b>	shall have the same meaning ascribed to it in <b>Article 10</b>
<b>Force Majeure Costs</b>	shall have the same meaning ascribed to it in <b>Clause 10.7</b>
<b>Indemnifying Party</b>	shall have the same meaning ascribed to it in <b>Article 12</b>
<b>Indemnified Party</b>	shall have the same meaning ascribed to it in <b>Article 12</b>
<b>Intellectual Property Rights</b>	means all rights in written designs and copyrights, moral rights, rights in databases and Bespoke Software / Pre-existing work including its up-gradation systems and compilation rights (whether or not any of these are registered including pending applications for registration);
<b>Insurance Cover</b>	Includes <ul style="list-style-type: none"> <li>- Public liability insurance for an insured amount of [INR 5% of Total Contract Value] per occurrence and not less than [INR 50% of the Total Contract Value] in aggregate</li> <li>- Professional indemnity and errors and omissions insurance for an insured amount of [INR 5% of Total Contract Value] per occurrence and not less than [INR 50% of the Total Contract Value] in aggregate.</li> <li>- Product liability for an insured amount of [INR 5% of Total Contract Value] per occurrence and not less than [INR 50% of the Total Contract Value] in aggregate.</li> <li>- Workers compensation as required by law</li> </ul>
<b>Letter of Award (LOA)</b>	Shall mean notification of award of the Project to the Successful Bidder by the Authority;
<b>Material Breach</b>	means a breach by either Party ( <i>Authority</i> or Service Operator) of any of its obligations and terms and conditions under the Agreement which has or is likely to have an adverse effect on the Project which such Party shall has failed to cure;
<b>Required Deliverables</b>	shall have the same meaning ascribed to it in Annexure C of this Agreement;
<b>Parties</b>	means <i>Punjab State eGovernance Society</i> and Service Operator for the purposes of this Agreement and " <b>Party</b> " shall be interpreted accordingly;

<b>Project</b>	mean operation, maintenance and management of the Sewa Kendras stated falling under [Zone I & Zone II and Zone III] <sup>3</sup> in the stated of Punjab in terms of this Agreement;
<b>Project Implementation Unit (PIU)</b>	may be constituted by <i>Authority</i> to monitor the activities, deliverables and progress of the Project. PIU will comprise of the staff members of the <i>Authority</i> , other officials from concerned department and external experts.
<b>Project Steering Committee</b>	shall be constituted by <i>Authority</i> to monitor the activities, deliverables and progress of the Project.
<b>Project Timelines</b>	shall have the same meaning ascribed to in <b>Annexure C</b>
<b>Providing Party</b>	shall have the same meaning ascribed to it in <b>Clause 12.5</b>
<b>Receiving Party</b>	shall have the same meaning ascribed to it in <b>Clause 12.5</b>
<b>Replacement Service Operator</b>	means any third party that <i>the Authority</i> appoint to replace Service Operator upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
<b>Required Consents</b>	means the consents, waivers, clearances and licenses to use <i>Authority's</i> Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the Software and other items that <i>Authority</i> or their nominated agencies are required to make available to Service Operator pursuant to the Agreement;
<b>Services</b>	means the services and service levels delivered to the Stakeholders of <i>the Authority</i> , employees of the Authority, and to professionals using the tangible and intangible assets created, procured, installed, managed and operated by the Service Operator including the tools of information and communications technology as per the list of services specified in Annexure B and includes any additional services necessary to deliver the scope of work of this Agreement.
<b>Service Fee</b>	means the fee payable by the Authority to the Service Operator after such additions, limitations and deductions as may be made in accordance with Article 8 in accordance with the terms of this Agreement, all of which shall be determined in accordance with Article 8 read with Schedule VII.
<b>Stakeholders</b>	includes the Departments, Citizens, Authority, employees of <i>Punjab State eGovernance Society's</i> and the Departments of State Government;
<b>Term</b>	shall have the same meaning ascribed to it in <b>Clause 3.1</b>
<b>Third Party Systems</b>	means systems (or any part thereof) in which the Intellectual Property Rights are not owned by the Authority or Service Operator and to which Service Operator has been granted a license to use and which are used in the provision of Services;
<b>Transfer Date</b>	means the date on which this Agreement expires pursuant to the provision of this Agreement or is terminated as per this Agreement;
<b>Unplanned Downtime</b>	means the total time for all the instances where required from the Service Operator are not available
<b>Network</b>	means all the IT assets installed by the Service Operator as part of the Project for networking;

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<sup>3</sup> To be modified as per the LOA.

**SCHEDULE – II – SCOPE OF THE PROJECT**

Scope of the Project as per RFP will be reproduced here

**SCHEDULE – III – CHANGE CONTROL SCHEDULE**

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

The Authority and Service Operator recognize that frequent change is an inevitable part of delivering services and that a significant element of this change can be accomplished by re-organizing processes and responsibilities without a material effect on the cost. The Service Operator will endeavor, as far as possible, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and the Authority will work with the Service Operator to ensure that all changes are discussed and managed in a constructive manner. This Change Control Schedule sets out the provisions which will apply to all the changes to the agreement and other documents.

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

**CHANGE MANAGEMENT PROCESS****A. CHANGE CONTROL NOTE ("**CCN**")**



- (i) Change requests in respect of the MSA, the Project Implementation, the operations, Scope of work, functional requirement specifications etc. will emanate from the Parties' respective authorized official who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached as Annexure A hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- (ii) The Service Operator and the Authority, during the validity of contract and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the RFP and is suggested and applicable only after the successful project execution as set out in this Agreement.
- (iii) It is hereby also clarified here that any change control suggested beyond 25 % of the value of this Project will be beyond the scope of the change control process and will be considered as the subject matter for a separate bid process and a separate contract. It is hereby clarified that the 25% of the value of the Project as stated in herein above is calculated on the basis of bid value submitted by the Service Operator and accepted by the Authority or as decided and approved by The Authority or its Nominated Agencies. For arriving at the cost / rate for change up to 25% of the project value, the payment terms and relevant rates as specified in Annexure D shall apply.

**B. Quotation**

- (i) The Service Operator shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN the Service Operator shall provide as a minimum:
  - a. a description of the change
  - b. a list of deliverables required for implementing the change;
  - c. a time table for implementation;
  - d. an estimate of any proposed change
  - e. any relevant acceptance criteria
  - f. an assessment of the value of the proposed change;
  - g. material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work
- (ii) Prior to submission of the completed CCN to the Authority, the Service Operator will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the Service Operator shall consider the materiality of the proposed change in the context of the Agreement affected by the change and the total effect that may arise from implementation of the change.

**C. Costs**

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the Service Operator meets the obligations as set in the CCN. In the event the Service Operator is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party will be borne by the Service Operator. However due government procurement procedure shall be followed by the Authority to get the work of such CCN completed by the Third party after

giving 15 days' notice to Service Operator.

D. **Obligations**

The Service Operator shall be obliged to implement any proposed changes once approval in accordance with above provisions has been given, with effect from the date agreed for implementation and within an agreed timeframe. Service Operator will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact.

**SCHEDULE –IV - EXIT MANAGEMENT SCHEDULE****1. PURPOSE**

- 1.1 This Schedule sets out the provisions, which will apply on expiry or termination of this Agreement.
- 1.2 In the case of expiry or termination of the Agreement, the Parties shall agree at that time whether, and if so during what period, the provisions of this Schedule shall apply ("**Exit Management Period**").
- 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 The Authority shall be entitled to serve notice in writing on the Service Operator at any time during the Exit Management Period as detailed hereinabove requiring the Service Operator and/or its sub-contractors to provide the Authority with a complete and up to date list of the Assets within 30 days of such notice. The Authority shall then be entitled to serve notice in writing on the Service Operator at any time prior to the date that is 30 days prior to the end of the Exit Management Period requiring the Service Operator to sell the Assets, if any, to be transferred to the Authority 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 the Authority, the Authority would reserve the right to ask Service Operator to continue running the Project operations for a period up to 12 months after termination orders are issued on same terms and conditions.
- 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 Operator, the Service Operator 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 Authority.
  - (ii) All risk in and title to the Assets to be transferred/to be purchased by the pursuant to this Agreement shall be transferred to the Authority, on the last day of the Exit Management Period.
  - (iii) the Authority shall pay to the Service Operator such sum representing the Net Block (procurement price less depreciation as per provisions of Companies Act, 2013 on written down value method (WDV)) of the Assets to be transferred as stated in the Terms of Payment Schedule.
  - (iv) Payment to the outgoing Service Operator shall be made to the tune of last set of completed services / deliverables, subject to terms of this Agreement.
  - (v) The outgoing Service Operator will pass on to the Authority and/or to the Replacement Service Operator, the subsisting rights in any leased properties/ licensed products on terms not less favorable to the Authority/ Replacement Service Operator, than that enjoyed by the outgoing Service Operator.

**3. COOPERATION AND PROVISION OF INFORMATION****3.1 During the Exit Management Period:**

- (i) The Service Operator will allow the Authority 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 Authority to assess the existing services being delivered;

- (i) promptly on reasonable request by the Authority, the Service Operator 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 Operator or sub-contractors appointed by the Service Operator). The Authority 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 Operator shall permit the Authority to have reasonable access to its employees and facilities as required by the Authority to understand the methods of delivery of the services employed by the Service Operator and to assist appropriate knowledge transfer.

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

4.1 The Service Operator shall promptly on the commencement of the Exit Management Period supply to the Authority 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 Authority transitioning the services to its Replacement Service Operator nominated by the Authority or its nominated agency in a readily available format.
- v. all other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable the Authority, or its Replacement Service Operator to carry out due diligence in order to transition the provision of the Services to the Authority, or its Replacement Service Operator (as the case may be).

4.2 Before the expiry of the Exit Management Period, the Service Operator shall deliver to the Authority all new or up-dated materials from the categories set out in Schedule IV and shall not retain any copies thereof, except that the Service Operator shall be permitted to retain one copy of such materials for archival purposes only.

4.3 Before the expiry of the Exit Management Period, unless otherwise provided under the MSA, the Authority shall deliver to the Service Operator all forms of Service Operator confidential information, which is in the possession or control of Chairperson, PIU/ or its users.

#### 5. **EMPLOYEES**

5.1 Promptly on reasonable request at any time during the Exit Management Period, the Service Operator shall, subject to applicable laws, rules and regulations (including in particular those relating to privacy) provide to the Authority or its nominated agency a list of all employees (with job titles) of the Service Operator 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 Operator to the Authority, or a Replacement Service Operator ("Transfer Regulation") applies to any or all of the employees of the Service Operator, then the Parties shall comply with their respective obligations under such Transfer Regulations.

- 5.3 To the extent that any Transfer Regulation does not apply to any employee of the Service Operator, department, or its Replacement Service Operator may make an offer of employment or contract for services to such employee of the Service Operator and the Service Operator shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the Authority or any Replacement Service Operator.

6. **TRANSFER OF CERTAIN AGREEMENTS**

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

7. **RIGHTS OF ACCESS TO PREMISES**

- 7.1 At any time during the Exit Management Period, where Assets are located at the Service Operator's premises, the Service Operator 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 Authority and/or any Replacement Service Operator in order to make an inventory of the Assets.

- 7.2 The Service Operator shall also give the Authority, or any Replacement Service Operator right of reasonable access to the Implementation Partner's premises and shall procure the Authority and any Replacement Service Operator rights of access to relevant third party premises during the Exit Management Period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to the Authority, or a Replacement Service Operator.

8. **GENERAL OBLIGATIONS OF THE SERVICE OPERATOR**

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

9. **EXIT MANAGEMENT PLAN**

- 9.1 The Service Operator shall provide the Authority with a recommended exit management plan ("**Exit Management Plan**") which shall deal with all the Clauses 2 to 8 above and including but not limited to the following aspects of exit management in relation to the MSA.

- i. A detailed program of the transfer process that could be used in conjunction with a Replacement Service Operator 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 Operator's sub-contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the Authority's operations as a result of undertaking the transfer;
  - iii. proposed arrangements for the segregation of the Service Operator's networks from the networks employed by the Authority and identification of specific security tasks necessary at termination;
  - iv. Plans for provision of contingent support to the Authority, and Replacement Service Operator for a reasonable period of up to 12 months after transfer.
- 9.2 The Service Operator 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 Operator to and approved by the Authority.
- 9.4 The terms of payment as stated in the Terms of Payment Schedule include the costs of the Service Operator complying with its obligations under this Exit Management Schedule.
- 9.5 In the event of termination or expiry of MSA, including its Schedules, Annexures and Appendixes, each Party shall comply with the Exit Management Plan.
- 9.6 During the Exit Management Period, the Service Operator 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 Authority within 90 days from the Effective Date of this Agreement.

**SCHEDULE – V - AUDIT, ACCESS AND REPORTING****1. PURPOSE**

This Schedule details the audit, access and reporting rights and obligations of the Authority and the Service Operator.

**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. Such timetable during the Term of the Agreement, the Authority shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Service Operator any further notice of carrying out such audits.
- 2.2 The Authority 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 Service Operator, a security violation, or breach of confidentiality obligations by the Service Operator, provided that the requirement for such an audit is notified in writing to the Service Operator 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 Service Operator considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Governance Schedule.
- 2.3 The frequency of audits shall be a (maximum) half yearly, provided always that the Authority shall endeavor to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Service Operator. Any such audit shall be conducted by with adequate notice of 2 weeks to the Service Operator.
- 2.4 The Authority will ensure that any 3rd party agencies (except CAG) appointed to conduct the audit will not be the competitor of Service Operator and will be bound by confidentiality obligations.

**3. ACCESS**

The Service Operator shall provide to the Authority reasonable access to employees, subcontractors, suppliers, agents and third party facilities as detailed in the RFP, documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The Authority shall have the right to copy and retain copies of any relevant records. The Service Operator shall make every reasonable effort to co-operate with them.

**4. AUDIT RIGHTS**

- 4.1 The Authority shall have the right to audit and inspect suppliers, agents and third party facilities, data centres, documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify including but not limited to:

- i. The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of the Authority and documentation related thereto;
- ii. That the actual level of performance of the services is the same as specified in the Agreement;
- iii. That the Service Operator has complied with the relevant technical standards, and has adequate internal controls in place; and
- iv. The compliance of the Service Operator with any other obligation under the MSA.
- V. Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the Service Operator.

For the avoidance of doubt the audit rights under this Schedule shall not include access to the Service Operator's profit margins or overheads, any confidential information relating to the Service Operator employees, or minutes of its internal Board or Board committee meetings including internal audit, or 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 SUB-CONTRACTORS, SUPPLIERS AND AGENTS**

**5.1** The Service Operator shall as far as possible achieve the same audit and access provisions as defined in this Schedule with sub-contractors, suppliers and agents who supply labour, services, equipment or materials in respect of the services. The Service Operator shall inform the Authority prior to concluding any sub-contract or supply agreement of any failure to achieve the same rights of audit or access.

### **5.2 REPORTING:**

The Service Operator will provide quarterly reports to the Authority regarding any specific aspects of the Project and in context of the audit and access information as required by the Authority.

## **6. ACTION AND REVIEW**

**6.1** Any change or amendment to the systems and procedures of the Service Operator, or sub-contractors, where applicable arising from the audit report shall be agreed within reasonable time but not exceeding 60 (Sixty) working 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 the Authority and the Service Operator Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the MSA.

## **7. TERMS OF PAYMENT**

The Authority shall bear the cost of any audits and inspections. The terms of payment are exclusive of any costs of the Service Operator and the sub-contractor, for all reasonable assistance and information provided under the Agreement by the



Service Operator pursuant to this Schedule.

8. **RECORDS AND INFORMATION**

For the purposes of audit in accordance with this Schedule, the Service Operator shall maintain true and accurate records in connection with the provision of the services and the Service Operator shall handover all the relevant records and documents upon the termination or expiry of the MSA, including its Schedules, Annexures and Appendixes.

**SCHEDULE – VI - GOVERNANCE SCHEDULE****1. PURPOSE**

The purpose of this Schedule is to:

- i. establish and maintain the formal and informal processes for managing the relationship between the Authority and the Service Operator including the outputs from other Schedules to this Agreement;
- ii. define the principles that both Parties wish to follow to ensure the delivery of the Services;
- iii. ensure the continued alignment of the interests of the Parties;
- iv. ensure that the relationship is maintained at the correct level within each Party;
- v. create the flexibility to revise and maintain the relationship and this Agreement during the Term;
- vi. set out the procedure for escalating disagreements; and
- vii. enable contract administration and performance management.

**2. GOVERNANCE STRUCTURE**

- i. **Project Managers:** The relationship under this Agreement will be managed by the Project Managers appointed by each Party, who will provide the interface between the executive management of the respective Parties.
- ii. Within 15 working days following the signing of Agreement, the Authority and the Service Operator shall each appoint a Project Manager. In the event that either Party wishes to substitute its Project Manager it will do so in manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within 15 working days of the substitution.
- iii. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
- iv. **Project Steering Committee:** The Project Steering Committee will meet periodically, as required by the **Authority**, a. These meetings will cover, at least, the following agenda items: (i) consideration of Performance Reports; (ii) consideration of matters arising out of the Change Control Schedule; (iii) issues escalated in accordance with the escalation procedure as set out in the Governance Schedule; (iv) matters to be brought before the Project Steering Committee in accordance with the MSA and the Annexures, Schedules and Appendixes (v) any matter brought before the Project Steering Committee by the Service Operator under this Agreement; and (vi) any other issue which either Party wishes to add to the agenda.
- v. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in the Terms of Payment Schedule, the Parties agree to discuss in the Project Steering Committee any appropriate amendment to the Agreement or Statement of Works including any variation to the terms of payment as stated in the Terms of Payment Schedule. Any variation so agreed shall be implemented through the change control procedure as set out in the Change Control Schedule.

### 3. **GOVERNANCE PROCEDURES**

- 3.1 The Service Operator shall document the agreed structures in a procedures manual.
- 3.2 The agenda for each meeting of the Project Steering Committee shall be set to reflect the discussion items referred to above and extraordinary items may be added either with the agreement of the Parties or at the request of either Party. Copies of the agenda for meetings of the Project Steering Committee, along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.
- 3.3 All meetings and proceedings will be documented. Such documents shall be distributed to the Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.
- 3.3 The Parties shall ensure as far as reasonably practicable that the Project Steering Committee shall resolve the issues and resolve the objectives placed before them and that members representing that Party are empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achieve this.
- 3.4 In order formally to submit a Disputed Matter to the aforesaid for a, one Party ("Claimant") shall give a written notice ("Dispute Notice") to the other Party. The Dispute Notice shall be accompanied by (a) a statement by the Claimant describing the Disputed Matter in reasonable detail and (b) documentation, if any, supporting the Claimant's position on the Disputed Matter.
- 3.5 The other Party ("Respondent") shall have the right to respond to the Dispute Notice within 30 days after receipt of the Dispute Notice. In the event that the parties are unable to resolve the Disputed Matter within a further period of 30 days, it shall refer the Disputed Matter to next level of the dispute resolution for action as per the process mentioned in Clause 9.1
- 3.6 All negotiations, statements and / or documentation pursuant to these Clause shall be without prejudice and confidential (unless mutually agreed otherwise).
- 3.7 If the Disputed Matter is having a material effect on the operation of the Services (or any of them or part of them) the Parties will use all their respective reasonable endeavors to reduce the elapsed time in reaching a resolution of the Disputed Matter.

**SCHEDULE – VII - TERMS OF PAYMENT SCHEDULE**

Authority hereby covenants to pay the Supplier in consideration of the execution and completion of the Scope of Work as per this Agreement and any corrigendum thereon, if any, the Total Project Cost of Rs. ....../- (Rs. ....only)<sup>4</sup>. The payment will be made as per this Schedule.

**1. Payment Schedule**

In view of the different aspects of the Project, the payment for the entire Project for each of the zone shall be categorized into the following three broad categories which are detailed out subsequently:

- a) Payment Schedule for Operationalisation of Sewa Kendras
- b) Payment Schedule for Operationalisation of existing SUWIDHA Centres
- c) Payment Schedule for Additional Counters of SEWA Kendras (if any)

**2. Payment Schedule for Operationalization of Sewa Kendras**

The payment for the operationalization (i.e. from the date of launch) of Sewa Kendras for the concerned zone shall be made on the number and type of Sewa Kendras launched & operationalized and manpower deployed including district and zone level manager. This would include the cost per unit for the respective type of Sewa Kendra (i.e. Type 1, Type 2 or Type 3) on the following broad heads as provided by the Bidder in their Financial Proposal in the respective formats provided in this volume of the RFP and as reproduced below:

- a) C.Form II: Cost of hardware infrastructure required for SEWA Kendras
- b) C.Form III: Cost related to Operations, Maintenance and Management of SEWA Kendras

However, the payment for each type (Type 1, Type 2 or Type 3) of Sewa Kendra shall be made as per the month wise percentages defined in the table below which have been calculated as a proportion of the entire payment to be made for the cost of the respective Sewa Kendra over the entire contract period:

<b>Year of Launch</b>	<b>Payment Percentage on Monthly basis for respective type of Sewa Kendra</b>
Year 1	1.33% of the total value payable for each of the respective Type of Sewa Kendra (Type 1, Type 2 or Type 3) for the entire contract period, on monthly basis
Year 2	1.50% of the total value payable for each of the respective Type of Sewa Kendra (Type 1, Type 2 or Type 3) for the entire contract period, on monthly basis
Year 3	1.67% of the total value payable for each of the respective Type of Sewa Kendra (Type 1, Type 2 or Type 3) for the entire contract period, on monthly basis
Year 4	1.83% of the total value payable for each of the respective Type of Sewa Kendra (Type 1, Type 2 or Type 3) for the entire contract period, on monthly basis
Year 5	Equated monthly installment of the balance value payable for each of the respective Type of Sewa Kendra (Type 1, Type 2 or Type 3) on monthly basis.

It is to be noted that year 1 for the respective Sewa Kendra shall commence from the date of launch of the concerned Sewa Kendra.

Therefore, the payment to the Bidder for the concerned month shall be made on the number of actual Sewa Kendras of different types that are operational in the proportion of the concerned month wise percentage payment to be made for the

<sup>4</sup> To be inserted as per LOA

respective type of Sewa Kendras.

3. **Payment Terms Schedule for Operationalisation of existing SUWIDHA Centres**

Based on the per unit monthly cost quoted by the Bidder in their Financial Proposal for operationalization of one counter of SUWIDHA Centre for the concerned Zone (s) as per C. Form IV of the Financial Proposal format, the payment shall be made on monthly basis for the number of SUWIDHA Centre counters operationalized by the Service Operator.

4. **Payment Schedule for Additional Counters of SEWA Kendras (if any)**

The payment for additional counters of Sewa Kendras for the concerned Zone (s) shall be made as per the details given below;

- a) Cost of additional operational counters of SEWA Kendras (If any) shall be released on the basis of cost quoted in C. Form V on pro-rata basis
- b) As the operational period of these additional counter(s) may vary due to different start date(s) of the additional counters, payment for additional counters shall be calculated as below:
  - i. First component of the total additional counter cost i.e. 'Hardware infrastructure cost' as quoted in C. Form V shall be paid in the equal installments for number of remaining months of the contract.

For example, if a new additional counter is made operational at the beginning of 25th month of the contract period, hardware infrastructure cost shall be divided and paid equally in remaining 36 month (Total contract period = 60 months - (minus) Number of months already passed = 24 month).

- ii. Second component of the total additional counter cost i.e. 'Cost related to all Other Operations, Maintenance and Management of additional counter' shall be paid on monthly basis at actual as per price quoted in the C. Form V for every additional operational counter.

5. **Payment Terms for Reimbursements**

All types of reimbursements payable to the service operator e.g. Diesel, Electricity etc. shall be made at actual on monthly basis.

**Schedule – VII – Format for Performance Bank Guarantee**

[To be executed on Stamp paper of appropriate value]

B.G. No.

Dated:

1. In consideration of *Punjab State e-Governance Society (PSeGS), Department of Governance Reforms, having its office at SCO 162-164, Sector:34-A, Chandigarh, India* (hereinafter referred to as the "**Authority**", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to execute the Master Service Agreement dated [●] ("**MSA**"/"**the Agreement**") with \_\_\_\_\_ [*Insert name and details of the Service Provider as per the MSA*] (hereinafter referred to as the "Service Operator" which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the 'Operation, Maintenance and Management of the Sewa Kendras in the state of Punjab ("**Project**") pursuant to award of LOA dated \*\*\*\*\*, we [Name of the Bank] having our registered office at \_\_\_\_\_ and one of its branches at \_\_\_\_\_ (hereinafter referred to as the "Bank"), at the request of the Service Operator, do hereby in terms of the MSA and RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the MSA and RFP Document by the said Service Operator and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of [Rs. [●]] (Rupees [●]) as performance bank guarantee (hereinafter referred to as the "**Performance Bank Guarantee**") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Service Operator, if the Service Operator shall fail to fulfil or comply with all or any of the terms and conditions contained in the said RFP Document and the MSA.
2. Any such written demand made by the Authority stating that the Service Operator is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the RFP Document and MSA shall be final, conclusive and binding on the Bank.
  - a) We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Performance Bank Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Service Operator or any other person and irrespective of whether the claim of the Authority is disputed by the Service Operator or not merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Service Operator to fulfil and comply with the terms and conditions contained in the RFP Document and MSA for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Performance Bank Guarantee. However, our liability under this Performance Bank Guarantee shall be restricted to an amount not exceeding [Rs. [●]] (Rupees [●]).
  - b) This Performance Bank Guarantee shall be irrevocable and remain in full force for a period of not less than [60 (sixty)] days from expiry of the MSA or for such extended period as may be mutually agreed between the Authority and the Service Operator, and agreed to by the Bank.
  - c) We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Service Operator is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the RFP Document and MSA and the decision of the Authority that the Service Operator is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Service Operator or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
  - d) The Performance Bank Guarantee shall not be affected by any change in the constitution or winding up of the Service Operator or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

- e) In order to give full effect to this Performance Bank Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Performance Bank Guarantee from time to time to vary any of the terms and conditions contained in the RFP Document and MSA and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Service Operator or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Service Operator or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
- f) Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
- g) We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.
- h) It shall not be necessary for the Authority to proceed against the said Service Operator before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Service Operator or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
- i) We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
- j) The Bank declares that it has power to issue this Performance Bank Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Performance Bank Guarantee for and on behalf of the Bank.

Signed and Delivered by \_\_\_\_\_ Bank

By the hand of Mr./Ms \_\_\_\_\_, its \_\_\_\_\_ and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

**ANNEXURES**

**ANNEXURE – A – FORMAT FOR CHANGE CONTROL NOTICE**

<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.)		
Authorized by <i>Punjab State eGovernance Society</i>	Date:	
Name:		
Signature:	Date:	
Received by the SERVICE OPERATOR		
Name:		
<b>Signature:</b>		
<b>Change Control Note</b>		<b>CCN Number:</b>
<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 Implementation:</b> (including a schedule of payments)		
<b>Other Relevant Information:</b> (including value-added and acceptance criteria)		
<b>Authorized by the Service Operator</b>		<b>Date:</b>



<b>Name:</b>	
<b>Signature:</b>	

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

<b>Rejected Requires Further Information</b> (as follows, or as Attachment 1 etc.)	
<b>For Punjab State eGovernance Society and its nominated agencies</b>	<b>For the Service Operator</b>
Signature	Signature
Name	Name
Title	Title
Date	Date

**ANNEXURE – B - LIST OF SERVICES AND SERVICE LEVELS PROVIDED BY THE SERVICE OPERATOR**

Various services to be offered by the Service Operator will consist of:

<<List of Services as per RFP and bidder proposal will be produced here>>

**Note:**

*Punjab State eGovernance Society* will sign the end user license agreement for the Software brought from any 3<sup>rd</sup> party for the purpose of this Project however Service Operator shall be solely responsible to make payment for the cost of Software to such third party Software vendor.

**Services Levels**

In case of default in ensuring delivery of quality services to citizens, following penalties shall be applicable for each zone separately:-

**A) General SLAs**

Sr. No	Category	Definition	Baseline	Penalty Level	Method of Measurement
1.	Denial of Service	Denial of any service(s) to the applicant presents with all the prerequisite documents required for service delivery and yet service is not rendered.		Rs. 0.25 Lakhs per instance	a) Complaint lodged by the applicant b) Finding by PSeGS or its designated agency or by authorized person of PSeGS
2.	Non availability of Manpower	Non availability of manpower causing any impact on service deliver operations at counter during working hours.		Rs. 0.10 Lakh per person per instance	a) Biometric attendance record b) Monitoring by CCTVs by PSeGS designated gencies c) Finding by PSeGS or its designated agency or by authorized person of PSeGS
3.	Non operationalization of Center (Complete closure of center on a working day)	Sewa Kendra not operational on a given working day without any valid justification		Rs. 1 Lakh per day per center	a) Complaint lodged by the applicant b) Biometric attendance record Monitoring by CCTVs by PSeGS designated agencies c) Finding by PSeGS or its designated agency or by authorized person of PSeGS
4.	Non operationalization of a counter due to any reason	- Equipment downtime - Unavailability of equipment, consumables etc.	<30 minutes	Rs. 0.10 Lakh per day per counter	a) Complaint lodged by the applicant b) Biometric attendance record c) Monitoring by CCTVs by PSeGS designated gencies d) Login details of common user interface e) Finding by PSeGS or its designated agency or by

Sr. No	Category	Definition	Baseline	Penalty Level	Method of Measurement
					authorized person of PSeGS
5.	Non adherence to Center working hours	Sewa Kendras not operating during the defined working hours		Rs. 0.20 Lakh per day per instance	a) Complaint lodged by the applicant b) Biometric attendance record c) Monitoring by CCTVs by PSeGS designated gencies d) Finding by PSeGS or its designated agency or by authorized person of PSeGS
6.	Housekeeping non conformities (NC)	Untidy, unclean Sewa Kendras premises		Rs. 0.10 Lakh per NC	a) Complaint lodged by the applicant b) Finding by PSeGS or its designated agency or by authorized person of PSeGS
7.	Manpower not in Uniform	Deployed manpower presenting in attire other than the defined uniform Norms		Rs 0.02 Lakh per person	a) Monitoring by CCTVs by PSeGS designated agencies b) Finding by PSeGS or its designated agency or by authorized person of PSeGS
8.	Courteousness to citizens below 7 marks on the scale of 0-10 (10 being highest)	Satisfaction level of citizens as gauged by feedback forms or any other feedback mechanism	Consolidated feedback for a Calendar month for each Sewa Kendra >7 ratings	Rs 0.01 Lakhs per center	a) Complaint lodged by the applicant a) Finding by PSeGS or its designated agency or by authorized person of PSeGS b) Written feedback by Citizen
9.	Poor Quality of printing and stationary	a) Illegible outputs with respect to ink, graphics, transparency etc. b) Usage of paper quality not less than 70 gsm		Rs. 0.01 lakhs per instance	a) Complaint lodged by the applicant b) Finding by PSeGS or its designated agency or by authorized person of PSeGS
10.	Non adherence of pre-defined stock levels of spares and Consumables	Service Operator to maintain a minimum stock excluding diesel of 15 days operations	15 days	Rs. 0.25 Lakhs per center	Finding by PSeGS or its designated agency or by authorized person of PSeGS
11.	Non-functioning of	Non-functioning of electronic	1 working day	Rs. 0.10	Finding by PSeGS or its designated agency or by authorized

Sr. No	Category	Definition	Baseline	Penalty Level	Method of Measurement
	electronic equipment/fixtures	equipment/fixtures beyond permitted repair period with no justification		Lakhs per equipment per instance	person of PSeGS
12.	Non maintenance of civil works and furniture	Repair of breakage, leakage, damage beyond permitted repair period with no justification	2 working days	Rs. 0.10 lakhs per equipment per instance	Finding by PSeGS or its designated agency or by authorized person of PSeGS
13.	Unauthorized and/or commercial use of Sewa Kendra premises and its property for any activity beyond the scope of agreement	Any service beyond the permitted scope of work or without approval of PSeGS		1. Rs. 5.0 lakhs per center per instance for first 3 Instances. 2. Punitive action beyond such 3 instances	Finding by PSeGS or its designated agency or by authorized person of PSeGS
14.	Delay in deposit of Statutory/Government fees in Treasury account through designated banks.	Statutory/Government fee not deposited within defined time lines	By next working day	2% per day of the due amount along with interest 18% per annum for delay beyond three	Finding by PSeGS or its designated agency or by authorized person of PSeGS

Sr. No	Category	Definition	Baseline	Penalty Level	Method of Measurement
				working days	
15.	Theft, misplacement and/or mishandling of any Government record, filled forms, documents, certificates, holograms or any other specific stationary	Theft, misplacement and/or mishandling of any Government record, filled forms, documents, certificates, holograms or any other specific stationary due to negligence of the Service Operator	2 working days	Legal action as per government procedures	Finding by PSeGS or its designated agency or by authorized person of PSeGS
16.	Non adherence to timelines of getting Sewa Kendras operational within 60 days of possession of fully constructed sites		60 days	Rs 0.5 lakh per center per month after 60 days of possession of fully constructed sites	Finding by PSeGS or its designated agency or by authorized person of PSeGS

**B) Citizen Service Delivery SLAs**

SLA No.	SLA Parameter	Baseline Metrics		Lower Performance		Higher Performance		Breach		Method of measurement
		Metric	Score	Metric	Score	Metric	Score	Metric	Score	
<b>Service Delivery to Citizens</b>										
1.	Average Time Spent by the Citizens at Sewa Kendras for Group A Services (Services involving citizen photographs, scanning of documents etc.)	<30mins	15	30-50 minutes	10	<20 minutes	20	>50 minutes	(-10)	1. Average for one month for each Sewa Kendra. 2. Measured from the time a token is issued to the time when stakeholder leaves the counter and/or logs generated, as the case may be.
2.	Average Time Spent by the Citizens at Sewa Kendras for Group B Services (Services involving either citizen photographs or scanning of documents)	<20mins	15	20-35 minutes	10	<14 minutes	20	>35 minutes	(-10)	1. Average for one month for each Sewa Kendra 2. Measured from the time a token is issued to the time when stakeholder leaves the counter and/or logs generated, as the case may be.
3.	Average Time Spent by the Citizens at Sewa Kendras for Group C Services (Services which do not involve either citizen photographs or scanning of documents)	<10mins	15	10-25 minutes	10	<7 minutes	20	>25 minutes	(-10)	1. Average for one month for each Sewa Kendra 2. Measured from the time a token is issued to the time when stakeholder leaves the counter and/or logs generated, as the case may be.

**Note:**

- Above SLAs shall be calculated for every month for all services handled through all Sewa Kendras.
- The final SLAs shall be calculated on the basis of gross average SLAs after summing of all debit/credit points accrued during the month. Any net credit of points shall not be carried over for subsequent months.
- The applicable penalty on the gross average SLAs for the month shall be levied as below:
  - **Baseline:** No Penalty
  - **Lower Performance:** 0.5% of Monthly payout
  - **Breach:** 5% of monthly Payout. In case of continuous breach of 3 months, PSeGS reserves the rights to terminate the contract.
- In future, more SLAs may be defined with mutual agreement of PSeGS and Service Operator.
- In any case, overall total deduction from the payment due to Service Operator will not exceed 15% of monthly payment. This deduction is in addition to the other penalties/liquidity damages as mentioned in this RFP.
- All above penalties shall be levied on the Service Operator for any failure happened on his part in any of the agreed Timelines/SLAs/Terms & Condition. However, in any case, the total penalty value shall not be greater than 10% of the total contract value beyond which PSeGS reserves the right to terminate the contract.

**General Conditions of SLA****i ). Applicability and Exclusion of SLAs**

All the defined 'Operational SLAs' will not be applicable for first 90 days of launching of services at Sewa Kendra.

**ii ). SLA Review**

PSeGS will review the performance of the Service Operator against the SLA at any given time or duration. The supervision report about the performance of any Services pursuant to this SLA by the Service Operator or any other agency as appointed by PSeGS shall form the basis for imposing damages/ penalties for breach of contract. The results of said review will be shared by PSeGS with the Service Operator. PSeGS reserves the right to appoint a third party auditor/ agency to validate the Deliverables under this SLA. Based on the instructions of the PSeGS, the findings of the third party auditor/ agency shall be accepted and addressed by the Service Operator with the consultation of the PSeGS.

**iii ). Reporting Procedures**

The Service Operator's representative will prepare and distribute SLA performance reports in the format prescribed by PSeGS for the entire term (including renewal, if any, thereof) of the contract. These reports shall include "actual versus target" SLA performance, a variance analysis and discussion of appropriate issues or significant events. Service Operator will design the SLA reporting formats (daily, weekly, monthly and quarterly) and get sign off on these formats from the PSeGS.

**iv ). Issue Management Procedures**

The issue management process under this SLA, briefly stated, would be as under:

- Either the Service Operator or PSeGS may document any issue(s) which arises/ noticed at any time during the performance of this SLA (the "Issue(s)") and communicate the same to the other Party hereto within 7 days of it arising;



- The document referred to in sub-clause above shall contain an objective summary of the Issue(s), the viewpoints of both Service Operator and PSeGS and possible solutions thereof;
- Project Steering Committee will act as the issue resolution authority to resolve the Issue(s);
- A meeting will be conducted between the Parties and the issue resolution authority to resolve the Issue(s) in a timely manner. The documented Issue(s) will be distributed to the participants at least 24 hours prior to the discussion if the Issue(s) is not of an emergent nature requiring immediate attention;
- The selected issue resolution authority will resolve the Issue(s) and communicate the same to the Parties; and
- In the event any significant business Issue(s) is still unresolved, either Party may have recourse to the Dispute Resolution Procedure set forth in the Contract.

**v ). Management Escalation Procedures**

- The purpose of this escalation process is to provide a quick and orderly method of notifying both parties that an Issue is not being successfully resolved at the lowest possible management level. Implementation of this procedure will ensure that PSeGS and Service Operator are communicating at the appropriate levels. It is agreed that escalation should take place on an exception basis and only if successful Issue resolution cannot be achieved in a reasonable time frame
- All Issues would be raised to the PSeGS, which will be completely responsible for the day to day management of the implementation of Services and Deliverables under the Contract including this SLA. The Program Monitoring Unit team shall classify the Issues based on their severity level and resolve them within appropriate timelines ensuring that there are no delays in provision of Services.
- If the Program Monitoring Unit is unable to resolve an issue, the Issue would be escalated to the Project Steering Committee and further to Executive Committee of PSeGS with options/ risks detailed for decision. The PSeGS will make decisions based on the options/ risks presented by the Program Monitoring Unit

**ANNEXURE – C –REQUIRED DELIVERABLE AND ASSOCIATED TIMELINES**

The project shall commence for each zone simultaneously with tentative timelines as given below:

<b>S. No.</b>	<b>Description</b>	<b>Time for completion</b>
1.	Signing of Contract	T
2.	Possession of Sewa Kendras	T1 (T+30 days)
3.	#Operational Readiness and Acceptance	T2 (Within 60 days from the date of possession)
4.	##Launch of Sewa Kendras after Approval from PSeGS	T3 (Within 15 working days of T2)
5.	Operations & Maintenance Period	T5 (60 months from launch of Sewa Kendras)
6.	End of Contract	60 months from launch of all Sewa Kendras (T3 + 60 months)

The construction work of Sewa Kendras in all the districts is underway. However, PSeGS reserves the right to grant possession of Sewa Kendras in a phased manner. In such an eventuality, though same timelines will be followed for Sewa Kendras handed over at a later stage, same contract end date for the entire project will be applicable.

# Operational Readiness is making the Sewa Kendras ready with all the infrastructure, manpower, training of manpower, standard operating procedures etc as per the scope of work so that they are ready for providing services to the citizens. This readiness will be checked and certified by the PSeGS

## Post certification from PSeGS on the operational readiness of the Sewa Kendras, Service Operator will be required to launch the sewa kendras within 15 days from the date of said certification. Launch of Sewa Kendra would be the date the Sewa Kendras are opened for the public / citizens for delivering services.

**ANNEXURE – D - BID**

**1. TECHNICAL BID RESPONSE AND SUBSEQUENT CORRESPONDENCES**

**2. COMMERCIAL PROPOSAL RESPONSE:**

**ANNEXURE – E – BILL OF MATERIAL**

**<<Bill of Material will be produced here>>**

Note:

- In case of unavailability of the Service Operator to provide the above said products during the tenure of the Agreement, the Service Operator shall be liable to supply equivalent or better product. Also Service Operator shall submit a certificate from the respective OEM in this regard.
- The Authority shall have all the right to reduce quantity of various items/ services to be provided by the Service Operator as part of this bid. The payment to the Service Operator shall be made on the basis of actual items provided/ Services rendered by the Service Operator.
- Any augmentation of the proposed solution or sizing of any of the proposed solutions (including system Software, hardware and any other component) in order to meet the minimum RFP requirements and/or the requisite Service requirements given by Punjab State e-Governance Society will be carried out at no additional cost to Punjab State e-Governance Society during the entire period of Agreement.
- All Software shall be of latest version.

**ANNEXURE – F – ROLES AND RESPONSIBILITIES OF THE PARTIES**

**Roles and Responsibilities of Service Operator**

As per RFP and Bidder Proposal:

- 1.
- 2.
- 3.

**Roles and Responsibilities of *Punjab State eGovernance Society***

- 1.
- 2.
- 3.