

RFP Volume III

Contractual & Legal Specifications

SHORTLISTING OF AN AGENCY FOR THE IMPLEMENTATION OF THE
NATIONAL JUDICIAL REFERENCE SYSTEM (NJRS)

FOR
INCOME TAX DEPARTMENT, Government of India

October, 2013



Income Tax Department,
Ministry of Finance,

National Institute for Smart Government

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This Request for Proposal (RFP) for Selection of Implementation Agency is issued by the Income Tax Department (“ITD”), Ministry of Finance, Government of India.

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The information contained in this RFP is selective and is subject to updating, expansion, revision and amendment at the sole discretion of ITD. It does not, and does not purport to, contain all the information that a recipient may require for the purposes for making a decision for participation in this process. Each Party must conduct its own analysis of the information contained in this RFP, to correct any inaccuracies therein and is advised to carry out its own investigation into the proposed NJRS Project, the regulatory regime which applies thereto and by and all matters pertinent to the NJRS Project and to seek its own professional advice on the legal, financial and regulatory consequences of entering into any agreement or arrangement relating to the NJRS Project. ITD shall not be responsible for any direct or indirect loss or damage arising out of or for use of any content of the RFP in any manner whatsoever.

This RFP includes certain statements, estimates, projections, targets and forecasts with respect to the NJRS Project. Such statements, estimates, projections, targets and forecasts reflect various assumptions made by the management, officers, employees, consultants, and experts of ITD, which (the assumptions and the base information on which they are made) may or may not prove to be correct. No representation or warranty is given as to the reasonableness of forecasts or the assumptions on which they may be based and nothing in this RFP is, or should be relied on as, a promise, representation or warranty.

DGIT (L&R) shall be the sole and final authority with respect to qualifying a bidder through this RFP. The decision of DGIT (L&R) in selecting the Implementation Agency who qualifies through this RFP shall be final and DGIT (L&R) reserves the right to reject any or all the bids without assigning any reason thereof. DGIT (L&R) further reserves the right to negotiate with the selected agency to enhance the value through this project and to create a more amicable environment for the smooth execution of the project.

DGIT (L&R) may terminate the RFP process at any time without assigning any reason and upon such termination DGIT (L&R) shall not be responsible for any direct or indirect loss or damage arising out of



such a termination.

Consultants

Table 1: Consultants to the Project


1	Consultant		National Institute for Smart Government
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Table 2: List of Abbreviations & Definitions

Abbreviation	Definition
AAR	Authority for Advance Rulings
AARD	Authority for Advance Rulings and Dispute Resolution
ACIT	Assistant Commissioner of Income Tax
AD-DNS	Active Directory - DNS
ADIT	Additional Director General of Income Tax
ARMS	Appeals Repository & Management System
ASCII	American Standard Code for Information Interchange
BMP	Bitmap Image
BOM	Bill of Materials
CAS	Central Agency Section
CBDT	Central Board of Direct Taxes
CDPC	Central Data Processing Centre
CD-ROM	Compact Disc - Read Only Memory
CIT (A)	Commissioner of Income Tax (Appeals)
CIT (DR)	Commissioner of Income Tax (Departmental Representatives)
CIT (J)	Commissioner of Income Tax (Judicial)

CMS	Content Management System
CSS	Cascading Style Sheets
DB	Database
DC	Data Centre
DCIT	Deputy Commissioner of Income Tax
DGIT	Director General of Income Tax
DGIT (L&R)	Director General of Income Tax (Legal & Research)
DIT	Director of Income Tax
DMS	Document Management System
DNS	Domain Name Service
DR	Disaster Recovery
DRC	DR Centre
DSA	Digital Signature Algorithm
DSS	Digital Signature Standard
DTC	Direct Taxes Code
DTRTI	Direct Taxes Regional Training Institute
DVD	Digital Video Disk
EITM	Enterprise IT Management
EMS	Enterprise Management System
ER	Entity Relationship Diagram
FAQ	Frequently Asked Questions
FRS	Functional Requirement Specifications
GB	Gigabyte
Gol	Government of India
GUI	Graphical User Interface
HC	High Courts of India

HCR	Handprint Character Recognition
HLD	High Level Design
HTML	Hypertext Markup Language
HTTP	Hypertext Transfer Protocol
HTTPS	Hypertext Transfer Protocol - Secure
IA	Implementation Agency
ICR	Intelligent Character Recognition
IE	Internet Explorer
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical and Electronic Engineers
ISMS	Integrated Security Management System
ISO	International Standards Organization
ITAT	Income Tax Appellate Tribunal
ITD	Income Tax Department
ITIL	Information Technology Infrastructure Library
ITO	Income Tax Officer
ITSM	Information Technology Service Management
JPEG	Joint Photographic Experts Group
JRRS	Judicial Research & Reference System
KVA	Kilovolt Ampere
KVM	Keyboard-Video-Mouse
LAN	Local Area Network
LLD	Low Level Design
MA	Miscellaneous Application
MIS	Management Information System

MoF	Ministry of Finance
MoL	Ministry of Law
NCR	National Capital Region
NCW	New Comprehensive Website
NISG	National Institute for Smart Government
NJRS	National Judicial Reference System
OCR	Optical Character Recognition
OEM	Original Equipment Manufacturer
PAN	Permanent Account Number
PCI	Peripheral Component Interconnect
PDF	Portable document Format
PKCS	Public Key Crypto System
PKI	Public Key Infrastructure
PMBOK	Project Management Body of Knowledge
PMU	Program Management Unit
PPM	Pages Per Minute
PPP	Public Private Partnership
QA	Quality Assurance
RDBMS	Relation Database Management System
RFP	Request for Proposal
RSA	Rivest-Shamir-Adleman
SAN	Storage Area Network
SC	Supreme Court of India
SLA	Service Level Agreement

SLP	Special Leave Petition
SMS	Short Messaging Services
SOA	Service Oriented Architecture
SOAP	Simple Object Access Protocol
SOP	Standard Operating Procedures
SQL	Structured Query Language
SRS	System Requirement Specifications
TAXNET	Income Tax Network
TIFF	Tagged Image File Format
UAT	User Acceptance Testing
UDDI	Universal Description Discovery and Integration
UPS	Uninterruptible Power Supply
USB	Universal Serial Bus
W3C	World
WAN	Wide Area Network
WCMS	Web Content Management System
WSDL	Web services definition language
WYSIWYG	What you see is what you get
XML	Extensible Markup language

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RFP Structure

This RFP is meant to invite proposals from interested companies capable of delivering the services described herein. The content of this RFP has been documented as a set of three volumes explained below:

Volume I (Functional, Technical and Operational Requirements): Volume I of RFP intends to bring out all the details with respect to solution and other requirements that the Department deems necessary to share with the potential bidders. The information set out in this volume has been broadly categorized as Functional, Technical, and Operational covering multiple aspects of the requirements.

Volume II (Commercial and Bidding Terms): Volume II of RFP details out all that may be needed by the potential bidders to understand the scope of work, project implementation approach, commercial terms and bidding process details.

Volume III (Contractual and Legal Specifications): Volume III of RFP is essentially devoted to explain the contractual terms that the Department wishes to specify at this stage. It also includes a draft of Master Services Agreement.

This document is Volume III of this RFP.

Draft Master Service Agreement

MASTER SERVICES AGREEMENT (MSA)

THIS MASTER SERVICE AGREEMENT together with all its Schedules/Annexures (hereinafter referred to as the “**Agreement**”, as defined hereinafter) is made and executed at New Delhi on this [●] day of _____ two Thousand and _____, by and between:

(i) The President of India, acting through the **Director (Legal & Research), Income Tax Department, Government of India (GoI)**, having its office at 15th Floor, HT house, KG Marg, , New Delhi- 110001, hereinafter referred to as " **Project Director, NJRS Project / Project Director**", (which term or expression unless excluded by or repugnant to the subject or context shall mean and include its successors or nominees or assignees or legal representative) being the Party of the FIRST PART;

AND

(ii) ___<name of the company>___, a company registered under the Indian Companies Act, 1956 having its registered office at ___<address>___ and place of business at ___<address>___ (hereinafter referred to as the "**Implementation Agency**" or "**IA**", which expression, unless excluded or the context otherwise required hereof includes its successors, administrators and assigns) represented through its ___ <designation of authorized person>___, who is duly authorized vide a board resolution dated [●please insert] passed by the board of directors of the Implementation Agency to execute this Agreement being the Party of the SECOND PART.

Project Director, NJRS Project and Implementation Agency are collectively referred to as the “**Parties**” or individually referred to as a “**Party**” as the context may require. RFP volume I and RFP volume II and all the liabilities and obligations of the respective Parties under RFP volume I and RFP volume II shall form integral part of this Agreement unless otherwise expressly stated herein and all the terms and conditions of the RFP volume I and RFP volume II shall apply to this Agreement. The terms not defined in this Agreement shall have the same meaning as assigned to them in the RFP volume I and RFP volume II. In case of any conflict between RFP volume I & RFP volume II and this Agreement, the latter shall prevail.



WHEREAS

- A. The Project Director intends to enable the design, development, and implementation, management, & operation of the “NJRS (National Judicial Reference System)” (as defined hereinafter) involving, inter alia, the development of software & maintenance of NJRS in India with the ultimate objective of providing all NJRS Project related services to the officials of Income Tax Department in an efficient, effective & convenient manner under the NJRS Project (defined hereinafter).
- B. The Project Director undertook selection of a suitable Implementation Agency, adopting an open tender process, through competitive bidding for implementing NJRS Project and issued a Request for Proposal (“RFP”) dated [.../.../2013];
- C. The Implementation Agency has been selected as the successful bidder to undertake the NJRS Project involving the design and development of the solution, roll out, operation and maintenance to achieve the defined objectives as mentioned in Vol. 1 of this RFP and desired service levels for NJRS Project in India;
- D. The Project Director intends to accord to the Implementation Agency the mandate to undertake and implement NJRS Project on the terms and conditions set forth below.
- E. The Implementation Agency in pursuance of its proposal no. ----- dated ----- (“Proposal”) undertakes to implement NJRS Project stated hereinabove.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES HAVE AGREED TO ENTER INTO THIS AGREEMENT TO GOVERN THE MANNER IN WHICH THE IMPLEMENTATION AGENCY SHALL IMPLEMENT THE PROJECT AND DELIVER THE SERVICES SPECIFIED UNDER THIS AGREEMENT AND THE SERVICE LEVEL AGREEMENT (SLA). IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:



ARTICLES

1. ARTICLE I - DEFINITIONS, INTERPRETATION AND STRUCTURE

1.1 DEFINITIONS

a. In this Agreement, unless the context requires otherwise:

- i. **“Agreement/Contract/Master Service Agreement/MSA”** means this Master Service Agreement to be signed between the successful bidder and the Income Tax Department, including all attachments, appendices, all documents incorporated by reference thereto together with any subsequent modifications, all the volumes of the RFP, the bid offer, the acceptance and all related correspondences, clarifications, presentations;
- ii. **“Applicable Laws”** includes all applicable statutes, enactments, acts of legislature or parliament laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental authority, tribunal, board, court or other quasi-judicial authority;
- iii. **“Appeal Data”** shall mean all data related to direct tax appeals and any changes made to such data during the term of this Agreement and thereafter.
- iv. **“Conditions Precedent for the Go-Live Date”** shall have the meaning assigned to it in Article 1.4.2;
- v. **“Confidential Information”** means all information relating to the Project including Project Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, customers, suppliers, products, developments, operations, processes, data, trade secrets, designs, drawings, formulae, business strategies, flowcharts, know-how and information relating to the personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party (whether a Party to this Agreement or to the SLA) in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement or to the SLA).

- vi. **“Control”** means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of any entity, whether through the ownership of voting securities, by contract or otherwise;
- vii. **“Data Centre” or “DC”** means the primary centre where data, software, computer systems and associated components, such as telecommunication and storage systems, redundant or backup power supplies, redundant data communications, environment controls and security devices are housed and operated from;
- viii. **“Disaster Recovery Centre” or “DRC”** means the centre that is designed to act as the Data Centre on occurrence of a disaster / non-functioning of the DC;
- ix. **“Deliverables”** means the software, infrastructure and services agreed to be delivered by the Implementation Agency in pursuance of the Agreement as listed in Volumes I and II of the RFP in relation to the Project Implementation, Operations and Maintenance Phase and includes all documents related to the solution, user manual, business designs, training materials, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines and source code and all respective modifications;
- x. **“Department/ITD”** means the Income Tax Department, Government of India and which expression shall mean and include the Project Director, NJRS Project. For the purpose of this Agreement, Department and the Project Director have been used interchangeably unless required otherwise by the context;
- xi. **“Effective Date”** means the date on which the Agreement is signed by both the Parties;
- xii. **“Go-Live Date”** shall mean the date which falls immediately after the twenty six (26) weeks from the date of signing of the letter of award of contract by the successful bidder and shall have the meaning as defined in Section of Volume 1 of the RFP.
- xiii. **“Implementation Sites” or “Project Locations”** shall mean any or all the locations (including RSCs, DC , DRC and CDPC), where NJRS Project is to be implemented by Implementation Agency pursuant to the Agreement;
- xiv. **“Intellectual Property Rights”** means and includes all rights in the NJRS Application Software & Project Data and all its improvements, upgrades, enhancements, modified versions that may be made from time to time, database generated, compilations made, source code and

object code of the software including designs, copyrights, trademarks, patents, trade secrets, moral and other rights therein;

- xv. **“Judgment Data”** shall mean all judicial orders in the direct tax matters including the proprietary data of the IA and any changes made to such data during the term of this Agreement and thereafter.
- xvi. **“Listed Assets”** means the software or any other information technology infrastructure components which are to be purchased or developed or deployed by the IA for delivering the Services under the Project for and on behalf of Project Director.
- xvii. **“Material Adverse Effect”** means material adverse effect on (a) the ability of the IA to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or SLA; and/or (b) the legal validity, binding nature or enforceability of this Agreement and/or the SLA.
- xviii. **“NJRS Application Software”** shall mean ARMS application software and JRRS application software.
- xix. **“Operations and Maintenance”** or **“O&M”** means the services to be rendered, during the period commencing from the “Go-Live date” till the expiry or termination of the Master Service Agreement;
- xx. **“Operations and Maintenance Phase”** means the phase in which O&M is to be carried out by the IA.
- xxi. **“Performance Guarantee”** or **“Performance Bank Guarantee”** shall mean an unconditional and irrevocable bank guarantee provided by a Nationalized Bank or a Scheduled Bank to Project Director on behalf of the Implementation Agency amounting to 10% of the bid amount, within the timeline as specified in Clause 9.5 of RFP Volume II. The Performance Guarantee shall be valid for a period of six months beyond the Term of Agreement or any extension thereof.
- xxii. **“Project / NJRS Project”** means the “National Judicial Reference System” (NJRS) and its solution design, development, implementation, operations and maintenance etc. as per the agreed terms and conditions laid down in the RFP.



- xxiii. **“Project Assets” or “Assets”** shall mean to include (i) Listed Assets and (ii) entire hardware and software, network or any other information technology infrastructure components used for the NJRS Project and other facilities leased / owned by the Implementation Agency to be used for the delivery of the Services pursuant to the Agreement.
- xxiv. **“Project Data”** shall mean Appeal Data and Judgment Data including all other data and information provided to or collected by the Implementation Agency for providing the Services, data generated out of the Project operations and transactions, documents and related information including but not restricted to user data which the Implementation Agency obtains, possesses or processes in the context of providing the Services to the Stakeholders pursuant to this Agreement and include all modifications, enhancements and other derivative works of such data.
- xxv. **“Project Implementation”** means the implementation of NJRS Project as per the testing standards and acceptance criteria prescribed in the Agreement;
- xxvi. **“Project Implementation Phase”** means the period between the Effective Date and the Go-Live Date;
- xxvii. **“RFP” or “Request for Proposal”** means the documents containing the Technical, Functional, Operational, Commercial and Legal specifications for the implementation of the Project, issued in 3 volumes (referred to as Volume I, Volume II and Volume III) and includes the clarifications, explanations and amendments issued by Project Director from time to time.
- xxviii. **“Replacement Implementation Agency”** means any third party that the Project Director may appoint to replace the Implementation Agency upon expiry of the Term or otherwise termination of this Agreement to undertake the Services or part thereof;
- xxix. **“Service Level”** means the level of service and other performance criteria which will apply to the Services as set out in the SLA;
- xxx. **“Service Level Agreement” or “SLA”** means the Service Level Agreement, executed by and between Implementation Agency and Project Director, in terms of the Service Level requirements as per the model set out in this Agreement;

- xxxi. **"Services"** means the services to be to be performed by the Implementation Agency in pursuant to the Agreement more elaborately provided in the RFP including but not limited to the services to be rendered during the Project Implementation, Operation, and Management Phase and the services to be delivered to the Stakeholders using the tangible and intangible assets created, procured, installed, managed and operated by the Implementation Agency including the tools of information and communications technology;
- xxxii. **"Stakeholders"** means the key Important stakeholders and other stakeholders, as defined in Volume I of the RFP;
- xxxiii. **"Third Party Systems"** means systems (or any part thereof) in which the Intellectual Property Rights are owned by a third party and to which Implementation Agency has been granted a license to use and which are used in the provision of Services;
- xxxiv. **"Third Party Agency"** means the agency appointed by the Project Director for the purpose of certification by conducting various types of testing like acceptance testing.

1.2 INTERPRETATION:

In this Agreement:

- a. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it.
- b. Words denoting the singular shall include the plural and vice versa and words denoting natural persons shall include firms and corporations and vice versa. A word denoting a gender includes all genders.
- c. Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Article or Schedule. The term Articles, refers to Articles of this Agreement. The words "include" and "including" shall not be construed as terms of limitation. The words "day" and "month" mean "calendar day" and "calendar month" unless otherwise stated. Where, because of a difference in time zone, the calendar day or calendar month in one Country differs from another Country, then the calendar day or calendar month shall be deemed to be the calendar day or calendar month applicable to India. The words "writing" and "written" mean "in documented form", whether electronic or hard copy,



unless otherwise stated. Any reference to attorneys' fees shall include reasonable fees of the professional assistants of such attorneys.

- d. The headings and use of bold type in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement.
- e. **Ambiguity and Discrepancy:** In case of ambiguities or discrepancies within the Agreement, the following shall apply:
 - i. Between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Article;
 - ii. Between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;
 - iii. Between any value written in numerals and that in words, the latter shall prevail; and
 - iv. Between the provisions of this Agreement and any other documents forming part of the Agreement, the former shall prevail.

1.3 STRUCTURE

i) Overview:

This Agreement shall operate as a legally binding services agreement specifying the master terms which apply to the Parties under this Agreement and to the provision of the Services by the Implementation Agency to the stakeholders of the NJRS Project in strict compliance with the duly executed SLA in accordance with roles and responsibilities set herein.

ii) Service Level agreement (SLA):

- (a) The Service Level Agreement (SLA) in respect of the implementation, operations and maintenance is being entered into concurrently with this Agreement between the Implementation Agency and Project Director. In respect of any future SLAs entered into between the Parties, each of the Parties shall observe and perform the obligations set out therein.
- (b) The SLA shall be a separate divisible contract in respect of this Agreement.



(c) The Parties shall each ensure that the range of the Services under the SLA shall not be varied, reduced or increased except with the prior written agreement between the Project Director and Implementation Agency in accordance with the Change Control Schedule as set out in this Agreement.

iii) Term/ Duration:

This Agreement shall come into effect on the Effective Date and shall continue for a period of five (5) years from the Go-Live Date (hereinafter referred to as “Term”). Time shall be the essence of this Agreement as well as of SLA. The Project Director has the option to extend the Agreement. The decision on the extension will be taken exclusively by the Department.

1.4 CONDITIONS PRECEDENT

Subject to express terms to the contrary, the rights and obligations under this Agreement shall be effective (at any point of time during the course of the Agreement) only upon fulfillment of all the conditions precedent set out in Articles 1.4.1 and 1.4.2 (hereinafter referred to as “Conditions Precedent”). However, the Project Director, may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the Implementation Agency.

1.4.1 Conditions Precedent fulfilled before the Effective Date:

The Implementation Agency has already fulfilled the following Conditions Precedent before the Effective Date:

- a. Provided the Performance Bank Guarantee to the Project Director, within the timelines as specified in section 9.5 of Vol. II of this RFP;
- b. Provided the Project Director with the certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement and the SLA;

1.4.2 Conditions Precedent to be fulfilled before the Go - Live Date:

The following conditions precedent need to be fulfilled by the Implementation Agency on or before the Go-Live Date:

- a. the NJRS Application Software is designed, developed, tested, audited and certified in accordance with related provisions of the RFP including security certification by a Third Party Agency;
- b. the Data Centre, Disaster Recovery Centre, Central Data Processing Centre, Regional Scanning Centres & Helpdesk is ready with the required IT & non-IT infrastructure and the networks has been established as per the requirements and certified by a Third Party Agency;
- c. The existing database of judgements of the bidder identified at the technical evaluation stage has been ported to the NJRS system and certified by the Third Party Agency;
- d. All appeals at the Income Tax Appellate Tribunals, Authority for Advance Ruling, High Courts and the Supreme Court that were instituted after 1/4/2009 have been incorporated in the NJRS Application Software imported from the tribunal/ court registries and certified by the Third Party Agency;
- e. the ownership of the assets namely NJRS Application Software (i.e. the solution and Software including the source code) Project Data and COTS product (in the form of licenses obtained in favour of Project Director) is passed on to Project Director within a period of 15 days from the date of certification of such assets by the Third Party Agency appointed by the Project Director. It is clarified here that for the IA proprietary information only a perpetual license would be granted to the ITD.

1.4.3 Extension of time for fulfillment of Conditions Precedent:

Extension of time for the fulfilment of Conditions Precedent:

- i. The Parties may, by mutual agreement extend the time for fulfilling the Conditions Precedent and the Term of this Agreement.
- ii. For the avoidance of doubt, it is expressly clarified that any such extension of time may involve imposition of penalties as per the RFPs on the Implementation Agency linked to the delay in fulfilling the Conditions Precedent.

1.4.4 Non-fulfillment of Conditions Precedent to be fulfilled before the Go - Live Date:

Non-fulfillment of Conditions Precedent which need to be fulfilled before the Go Live Date:

- a. Notwithstanding anything contained to the contrary, in the event of termination of this Agreement, on account of non-fulfilment of the Conditions Precedent which need to be fulfilled before the Go Live Date, the Project Director shall not be liable in any manner whatsoever to the Implementation Agency and the Project Director shall forthwith forfeit the earnest money deposit or invoke the Performance Guarantee and forfeit the guaranteed amount. Such termination and forfeitures shall be without prejudice or other rights of the Project Director under law or Agreement.
- b. In the event that vacant possession of any of the Project facilities and/or Project Data has been delivered to the Implementation Agency prior to the fulfilment of all of the Conditions Precedent for the Project Implementation Phase, upon the termination of this Agreement such possession shall immediately revert to the Project Director, free and clear from any encumbrances or claims.
- c. Instead of terminating this Agreement as provided above, the Project Director may extend the time for fulfilling the Conditions Precedent and the milestones set out in this Agreement. It is clarified that any extension of time maybe subject to imposition of agreed liquidated damages on the Implementation Agency linked to the delay in achieving the milestone.

2. ARTICLE II - INITIALIZATION PHASE

2.1 SCOPE OF AGREEMENT

This Agreement shall govern the provision of the services by the Implementation Agency, listed hereunder and more fully described in Volume I of the RFP, in conformance with the SLA, to all the Stakeholders. It is anticipated that new or renewal agreements may be undertaken by creating a separate SLA, with schedules and exhibits as required, under this Agreement for each engagement.

Detailed scope of work for the selected bidder is described in Volume 1 of the RFP. The Project Director retains the right of the final say in the interpretation of the scope of the Project. The possible variations to the processes from the way they are specified in the scope of work should not be considered as deviations or extensions to the original process specifications.

2.2 ROLE OF THE DEPARTMENT



As owner of the Project, the role of Department in the successful implementation of NJRS Project includes discharging the following responsibilities:

- a. Assisting the IA during system study;
- b. Laying down the procedures/policies relating to NJRS project as may be required;
- c. Reviewing the performance of the Implementation Agency (IA);
- d. Facilitating the participation and support of the key stakeholders.
- e. Identifying & nominating appropriate personnel from the Department and constituent organizations to facilitate project execution and participate in the user acceptance testing.
- f. Engaging a third party audit agency for acceptance testing and audit of the NJRS project components.
- g. Ensuring the participation of target personnel in the training programs that will be conducted by the IA as required in the RFP.

2.3 ROLE OF IMPLEMENTATION AGENCY

1. It shall provide to the ITD, the Deliverables as set out in Volume I of the RFP
2. It shall perform the Services as set out in 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 Service Levels set out with this Agreement.
3. It shall ensure that the Services are being provided as per the Project timelines set out in Volume 1 of the RFP.
4. The Implementation Agency represents that it is a competent and efficient provider of a variety of information technology and business process management services. The Implementation Agency will keep abreast of the relevant technical, managerial and operational requirements applicable to the provision of the Services and best practices in this area and will share their knowledge with the Project Director, regarding matters which would assist the Project Director, in its use of the Services, provided that Implementation Agency shall not be obligated to share other client information or Confidential Information of the Implementation Agency not relevant to the Agreement.
5. Implementation Agency shall not engage, and shall also cause its personnel, agents, consultants, contractors and their personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict, with the activities assigned to Implementation Agency or them under or pursuant to this Agreement. Implementation Agency undertakes not to accept any other Assignment that, by its nature, may be in conflict with its obligations under this Agreement.

2.4 < deleted >

2.5 COMMENCEMENT AND DURATION OF THE SERVICE LEVEL AGREEMENT

- a. The SLA shall be executed along with the Agreement, however, it will commence from the date when the Project Implementation has been completed to the satisfaction of the Project Director, and certified in accordance with the terms of the Agreement and shall, unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties, expire on the date on which this Agreement expires or terminates for any reason.
- b. The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Agreement and SLA shall be read together and construed harmoniously. In the event of any conflict between the Agreement and SLA, the provisions contained in the Agreement shall prevail over SLA.
- c. The SLA shall operate as a legally binding services agreement specifying terms which apply to the Parties and to the provision of the Services by the IA to the Project Director under this Agreement and the SLA.

2.6 APPROVALS AND REQUIRED CONSENTS

- a. The Implementation Agency shall procure, obtain, maintain and observe all relevant and customary regulatory and governmental licenses, clearances, consents and applicable approvals (hereinafter the “Approvals”) necessary for the Implementation Agency to undertake implementation of the NJRS Project and provide the Services. The costs of such Approvals shall be borne by the Implementation Agency.
- b. Both Parties will give each other all co-operation and information reasonably required to meet their respective obligations under the Agreement.
- c. The Project Director shall use reasonable endeavours to assist Implementation Agency in obtaining the required Approvals. In the event that any required Approval is not obtained, the Implementation Agency and the Project Director will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the Project Director, to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Approval is obtained, provided that the Implementation Agency shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the required Approvals are obtained except to the extent that the Implementation Agency's obligations are dependent upon such Approvals.

2.7 USE AND ACQUISITION OF PROJECT ASSETS

During the Term of the Agreement, the Implementation Agency shall:

- a. Take all reasonable and proper care of the Project Assets and control of such Project Assets which will include all upgrades/ enhancements and improvements to meet the current needs of the NJRS Project;
- b. Keep all the tangible Project Assets in as good and serviceable condition and/or the intangible Project Assets suitably upgraded, subject to the relevant standards as stated in Volume I of the RFP as at the date the Implementation Agency takes control of and/ or first uses the Project Assets and during the entire Term of the Agreement;
- c. Ensure that any instructions or manuals supplied and provided by the manufacturer of the Project Assets for their use to the Implementation Agency will be followed by the Implementation Agency and any person(s) who will be responsible for the use of the Assets;
- d. Take such steps as may be properly recommended by the manufacturer of the Project Assets and notified to the Implementation Agency or as may, in the reasonable opinion of the Implementation Agency, be necessary to use them in a safe manner;
- e. To the extent that the Project Assets are under the control of the Implementation Agency, keep the Project Assets suitably housed and in conformity with any statutory requirements from time to time applicable to them;
- f. Provide permission to the Project Director and any persons duly authorized by him/ her to enter any land or premises on which the Project 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 Project Assets to be used in contravention of any statutory provisions or regulation or to law;
- h. Use the Project Assets exclusively for the purpose of providing the Services as appropriate;
- i. Not sell, offer for sale, assign, mortgage, pledge, sub-let or lend out any of the Project Assets;
- j. Use the Project Assets only in accordance with the terms of this Agreement and those contained in SLA;



- k. Obtain and/ or maintain standard forms of comprehensive insurance policy including liability insurance, system and facility insurance and any other insurance for the personnel, assets, data, software, etc. to be used for the Project; and
- l. Transfer the control and or ownership (where assets are owned by the IA) of all the Project Assets (not already with the Project Director, including but not limited to the project documentation which is the work product of the development efforts involved in the Project) within 30 days of the acceptance of the same by Project Director upon testing and/ or audit, to the Project Director in accordance with the terms of this Agreement.

2.8 ACCESS TO IA OR ITS NOMINATED AGENCIES TO PROJECT LOCATION

- a. For so long as the Implementation Agency provides Services from any Project Location on a non-permanent basis and to the extent necessary for the Implementation Agency to provide the Services and at no cost to the Implementation Agency, the Project Director, shall, subject to compliance by the Implementation Agency with any safety and security guidelines which may be notified by the Project Director to the Implementation Agency in writing, provide the Implementation Agency with:
 - i. reasonable access, in the same manner granted to Project employees, to Project Locations; and
 - ii. Access to office equipment as mutually agreed and other related support services in such location and at such other Project Location, if any, as may be reasonably necessary for the Implementation Agency to perform its obligations hereunder and under the SLA.
- b. Locations and items shall be made available to the Implementation Agency on an "as is, where is" basis by the Project Director. The Implementation Agency agrees to ensure that its employees, agents and contractors do not use the location, services and items :
 - i. for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
 - ii. 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).

3. ARTICLE III -MANAGEMENT

3.1 GOVERNANCE

The review and management process of this Agreement shall be carried out in accordance with the Governance Schedule (Schedule IV of this Agreement) and shall cover all the management aspects as set out in the RFP.

3.2 USE OF SERVICES

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

3.3 CHANGES

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

3.4 SECURITY AND SAFETY

- a. The Implementation Agency will comply with the directions issued from time to time by the Project Director and the standards related to the security and safety as per best practices and standards prevalent in the industry and those stated in the RFP, in so far as it applies to the provision of the Services.
- b. Each Party to the SLA/Agreement shall also comply with Project's information technology security standards and policies in force from time to time at each location of which the Project Director makes the Implementation Agency aware in writing in so far as the same apply to the NJRS Project.
- c. The Parties to the SLA/Agreement shall use reasonable endeavours to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons

(including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Project's data, facilities or Confidential Information.

- d. The Implementation Agency shall upon reasonable request by the Project Director or its nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- e. The Parties to the SLA/ Agreement shall promptly report in writing to each other 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 Project Location.
- f. Any private, proprietary or classified information of the disclosing party which has to be made available by the receiving party to a third party , shall be submitted to such a third party with the same restrictions as included in this Article.
- g. IA undertakes to meet the laid down security requirements/stipulations. All the matters related to the Agreement will be treated as classified and highly confidential and shall not be communicated to anybody (except for the purpose of this Agreement) or published/advertised without the consent of the Project Director.

3.5 CO-OPERATION

- a. Except as otherwise provided elsewhere in this Agreement or the SLA, each Party ("**Providing Party**") to this Agreement or to the SLA undertakes promptly to provide the other Party ("**Receiving Party**") with all such information and co-operation which the Receiving Party reasonably requests, provided that such information and co-operation:
 - i. is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement or the SLA;
 - ii. is not Confidential Information; and
 - iii. is capable of being provided by the Providing Party.
- b. Each Party agrees to co-operate with the contractors and sub-contractors of the other Party as reasonably requested in order to accomplish the purposes of the Agreement.



4. ARTICLE IV - FINANCIAL TERMS

4.1 TERMS OF PAYMENT

- a. In consideration of the Services and subject to the provisions of this Agreement and of the SLA, the Project Director shall pay the Implementation Agency, in accordance with the Terms of Payment Schedule (Schedule VI of this Agreement).
- b. All payments are subject to the application of penalties and liquidated damages defined and provided for in this Agreement and the SLA. It is clarified here that the Project Director will pay for the service as stated in accordance with the Terms of Payment Schedule as set out in Schedule VI of this Agreement and the Project Director can also calculate a financial sum and debit the same against the terms of payment in accordance with the Terms of Payment Schedule as set out in Schedule VI of this Agreement, as a result of the failure of the Implementation Agency to meet the Service Level under the SLA and generally not meet its obligations under the Agreement, such other sum being determined in accordance with the terms set out in this Agreement.
- c. Except as otherwise provided for herein or as agreed between the Parties in writing, the Project Director shall not be required to make any payments in respect of the Services other than those covered by the terms of payment as stated in the Terms of Payment Schedule as set out in Schedule VI 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 (other than Service Tax) which are addressed in this Article.
- d. The IA shall be solely responsible to make payment to its sub-contractors.

4.2 INVOICING AND SETTLEMENT

The provisions of the Invoicing & Settlement Schedule as set out in Schedule V of this Agreement shall apply.

4.3 TAX

- a. The Project Director shall be entitled to deduct withholding taxes, levies, cess, duties etc. from the amounts due and payable to the Implementation Agency wherever applicable as per the Applicable Laws. The Implementation Agency shall pay for all other taxes in connection with the Agreement, and SLA including, but not limited to, property, sales, use, excise duty, value-added, goods and services, consumption and other similar taxes or duties. The Project Director shall provide Implementation Agency with the Certificates of any withholding taxes paid for NJRS Project on payments under the Agreement. The Implementation Agency agrees to reimburse and hold the Project Director harmless from any deficiency (including penalties and interest) relating to taxes that are its responsibility under this paragraph. For the purposes of this Agreement, taxes shall include taxes incurred on transactions connected with the Project involving the Project Director, the Implementation Agency and/or any third party.
- b. In the event of any increase or decrease of the rate of taxes (excluding service tax) due to any statutory notification/s during the Term the consequential effect shall be to the account of the Implementation Agency.
- c. 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 (i) any resale certificates, (ii) any relevant information regarding use of out-of-state materials, equipment or services and (iii) any exemption certificates or information reasonably requested by the other Party.

4.4 LIQUIDATED DAMAGES/PENALTIES

- a. If IA fails to complete/achieve the milestones before the scheduled date or the extended date for various specified activities given in the RFP Volume I, the Project Director, at its discretion, may without prejudice to any other right or remedy available to the Project Director under the Agreement, recover from the IA Rs. 2 lakh per week in the form of Penalty/Liquidated Damages and no further proof regarding loss would be required.
- b. In the event, the Service Provider fails to meet the project responsibilities including target performance metrics as stipulated in the SLAs or any damages caused by IA including its employees, contractors, sub-contractors to the ITD properties, personnel, data etc., the Service



Provider shall be liable for penalty stipulated in the SLAs in terms of the SLA contained the RFP and additional penalty towards such damages.

- c. The ITD may without prejudice to its right to affect recovery by any other method, deduct the amount of liquidated damages/penalties from any money belonging to the IA in its hands or which may become due to the IA. Any such recovery or liquidated damages shall not in any way relieve the IA from any of its obligations to complete the works or from any other obligations and liabilities under this Agreement.
- d. ITD shall without prejudice to his other rights and remedies, reserve the rights to invoke the entire performance bank guarantee and even terminate the Agreement if IA fails to perform the responsibilities and obligations as set out in this RFP to the complete satisfaction of the ITD.
- e. The amount of liquidated damages/penalties under this Agreement shall not exceed the total value of the Agreement.

5. ARTICLE V: BREACHES, RECTIFICATIONS AND TERMINATION

5.1 BREACH, RECTIFICATION AND TERMINATION

In the event that the IA is in material breach of its obligations under this Agreement or the SLA, the ITD may terminate this Agreement upon notice to the IA. Any notice served pursuant to this Article shall give reasonable details of the material breach, which could include the following events:

- a. If there is breach, which translates into default in providing Services by the Implementation Agency pursuant to the Agreement continuously for more than one week, then the Project Director, will serve a thirty days' notice to IA for curing such breach. In case the breach continues after the notice period, the Project Director will have the option to terminate the Agreement at the end of the notice period.
- b. Because time is the essence of the Agreement, in case, for reasons prima facie attributable to the Implementation Agency, if there is a delay of more than 6 weeks in the Project Implementation Completion or Go-Live, the Project Director, NJRS may terminate this Agreement after affording a reasonable opportunity to the Implementation Agency to explain the circumstances leading to such a delay.



- c. However, if the Implementation Agency, having been notified, fails to remedy the defect(s) within the specified period in the Agreement, Project Director may proceed to take such reasonable remedial action as may be necessary, at the Implementation Agency's risk and expense and without prejudice to any other rights.

5.2 TERMINATION ON OTHER GROUNDS

Without prejudice to any other rights and remedies available to the Project Director, the Project Director may serve written notice on Implementation Agency at any time to terminate this Agreement in the following events:

- a. With immediate effect, in the event of change of Control of the Implementation Agency.
- b. With immediate effect, in the event the Implementation Agency has merged, amalgamated such that the net worth of the surviving entity is less than that of Implementation Agency prior to such merger or amalgamation.

It is clarified that in case of events set out in Article 5.2 (a) and Article 5.2 (b), the Project Director may, as instead of terminating the Agreement, at its sole discretion, require a full performance guarantee of the obligations of the IA by a guarantor acceptable to the Project Director. If such a guarantee cannot be procured within 30 days of the Project Director's demand therefore, the Project Director shall terminate this Agreement in accordance with this Article.

- c. In the event of a reasonable apprehension of bankruptcy of the Implementation Agency:
 - i. Implementation Agency shall in the event of an apprehension of bankruptcy immediately inform the Project Director well in advance (at least 3 months) about such a development;
 - ii. Conversely if the Project Director apprehends a similar event regarding the Implementation Agency, he/ she can exercise the right of termination in the manner stated hereinabove.

- d. In the event of fraud by the employees/agents of IA, the Project Director reserves its right to initiate civil as well as criminal action against the agents/ employees of the IA for fraud or misappropriation, besides claiming damages and indemnification. The management of the IA would also be made liable for action in case of fraud, under the applicable laws and Project Director may terminate the Agreement and SLA, if Project Director finds it necessary to do so.

5.3 Termination for Convenience by ITD:

ITD, may, by prior written notice of three (3) months to the IA terminate the Agreement, in whole or in part at any time for its convenience. The notice of termination shall specify that termination is for ITD's convenience, the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective. In such eventuality:

- i. ITD shall take over the assets.
- ii. IA is liable to get paid for all the EQI's due till date of termination.
- iii. ITD shall pay to IA depreciated value of assets being transferred.
- iv. All expenses related to transfer of assets shall be borne by ITD.

6.1 THIRD PARTY PERSONNEL

- (a) In pursuance of the commitment made in the Agreement, IA undertakes to take the services of experts from the OEM for the specific activities for the third party software and products.
- (b) The OEM personnel and the services rendered by them will be paid by IA.
- (c) The OEM personnel will report directly to the Department on their work, observations and audit findings.
- (d) Project Director will seek the deployment of the OEM personnel through IA within the framework of this Agreement.
- (e) OEM personnel will not be treated as employees of the Department in any circumstances whatsoever and hence will not be held responsible for payment of any compensation etc. to them regarding their work pursuant to the Project.



- (f) OEM personnel will be bound by all the provisions of the Agreement including and not limited to the confidentiality provisions provided herein.

5.4 EFFECTS OF TERMINATION

- a. In the event that the Project Director, or the Implementation Agency, terminates this Agreement pursuant to Article 5.1 and 5.2, compensation will be decided in accordance with the Terms of Payment Schedule (Schedule VI of this Agreement) and Performance Guarantee furnished by the Implementation Agency may be forfeited.
- b. Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule (Schedule III of this Agreement).
- c. On termination of this Agreement for any reason, the SLA shall automatically terminate forthwith and the Project Director will decide the appropriate course of action.
- d. The termination provisions set out in Article V of this Agreement shall also apply to the SLA and “this Agreement” used in this Article shall be deemed to refer to the SLA.



6. Article VI: PERSONNEL

6.1 Supervision and Management

- (a) Personnel assigned by IA to implement the Project shall be employees of IA, and under no circumstances will such personnel be considered employees of the Department or the Government.
- (b) IA agrees that no right of any employment with Department shall accrue or arise, by virtue of engagement of employees, agents, contractors, sub-contractors etc. by IA, pursuant to this Agreement.
- (c) All remuneration, claims, wages, dues of such employees, agents, contractors, sub-contractors of IA is agreed to be paid by IA alone and the Department shall not have any direct or indirect liability or obligation, to pay any charges, claims or wages of any of employee, agents, contractors, and sub-contractors of IA.
- (d) IA has the responsibility for payment of such personnel's entire compensation, including salary, withholding of income taxes and other taxes as applicable, worker's compensation, employee and disability benefits and the like and shall be responsible for all employer obligations under all applicable laws.
- (e) IA shall have the sole responsibility for supervision and control of its personnel and ensuring that they carry out their assigned job in a professional manner.
- (f) IA shall use its best efforts to ensure that sufficient IA personnel are employed to perform the services pursuant to the Project, and also that such personnel have appropriate qualifications to perform the services.
- (g) The Department has the right to seek the replacement of any member of the Project team being deployed by IA or its sub-contractor, based on the assessment of the Department that the person in question is incompetent to carry out the tasks expected of him/her or found that

person does not really possess the skills /experience/qualifications as projected in his/her profile or on the ground of security concerns or breach of ethics.

- (h) Except as stated in this Article, nothing in this Agreement will limit the ability of IA to assign or reassign its employees; provided that IA shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. The Department shall have the right to review and approve IA's plan for any such knowledge transfer. IA shall maintain the same standards for skills and professionalism among replacement personnel as in personnel being replaced.
- (i) In the event that the Department requests that any IA personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule but not later than 15 working days from the date of such requests.
- (j) The Department would like to identify those persons whose profiles were the basis for the evaluation of the competence of IA to carry out the implementation of the Project at the Department as the "Key Personnel" as listed in Schedule IX. It is the responsibility of IA to deploy these resources either on a full time or part time basis for the activities they have been proposed to be deployed during the Project as per the response to the RFP submitted by IA.
- (k) In the event that the Department identifies any personnel of IA as "Key Personnel", then IA shall not remove or replace such personnel without the prior written consent of the Department under the applicable section of this Agreement.
- (l) Under exceptional circumstances when the Key Personnel are to be replaced or removed, IA shall put forward the profiles of personnel being proposed as replacements. These profiles should be either equivalent or better than the ones being replaced. However whether these profiles are better or equivalent to the ones being replaced will be decided by the Department or its authorized representative. The Department or its authorized representative will have the right to accept or reject these substitute profiles.
- (m) In the event that any Key Personnel is to be replaced for reasons not attributed to the Department the substitution of such personnel shall be accomplished pursuant to a mutually



agreed upon schedule but not later than 7 working days from the date of exit of such personnel.

- (n) In the event that the Key Personnel are to be replaced, it can be done only by following the procedure as set out in Schedule IX of this Agreement.
- (o) Each Party shall be responsible for the performance of all its obligations under this Agreement and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- (p) IA warrants that its personnel shall at all times comply with security regulations in effect from time to time at the Department premises and externally for materials belonging to the Department.
- (q) IA will comply with the directions issued from time to time by the Department and the standards related to the security and safety insofar as it applies to the personnel operating out of the Department premises.

6.2 The Minimum Proficiency

The Department would like to identify certain roles of the Project team being deployed by IA during the implementation of Project, as key roles as per Schedule IX. These key roles are identified to be critical to the success of the Project and it is expected that these key roles will be staffed with personnel with adequate proficiency. The minimum proficiency in terms of expertise, skills and educational qualifications of the key resources are listed in Annexure 6 of RFP Volume 2.

6.3 Clearance for Personnel

- (a) In pursuance of the conditions in the RFP, IA undertakes that all the personnel being deployed by IA for the Project are Indian nationals.

- (b) It is the responsibility of IA to ensure that all the personnel deployed by IA for the Project are not involved in any criminal or anti-national activities.
- (c) IA should submit the police verification records of any of the personnel of IA/ sub-contractors.

6.4 Sub Contract Liabilities

Any sub-contracting by IA shall be as per the terms of the Agreement. It is understood by the Parties that IA shall be liable for any such sub-contracting and further IA shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. IA undertakes to indemnify the Department or its nominated agencies from any claims on the grounds stated hereinabove.

6.5 Liability for Actions of the Personnel.

- (a) IA agrees to be responsible for managing the activities of its personnel or the personnel of its sub-contractors (if any) and shall be accountable for both.
- (b) The IA agrees and shall be vicariously liable for any acts, deeds or things done by their employees, agents, contractors, subcontractors, etc., which is outside the scope of power vested or instructions issued by the Department.
- (c) IA agrees and shall be the principal employer of the employees, agents, contractors, sub-contractors, OEM personnel etc. engaged by IA and shall be vicariously liable for all the acts, deeds or things, whether the same is within the scope of instructions or outside the scope of instructions set out in the Agreement.
- (d) IA agrees to hold the Project Director and/or Department, its successors, assignees, employees, representatives and administrators fully indemnified and harmless against loss or liability, claims actions or proceedings, if any, that may arise from whatsoever nature caused to the Department through the action of its employees, agents, contractors, subcontractors, OEM Personnel etc.

- (e) The Department agrees to inform IA of all breaches and claims of indemnification and agrees to grant IA sole authority to defend, manage, negotiate or settle such claims; and make available all reasonable assistance in defending the claims and the expenses of such activities are directly borne by IA.

6.6 Personnel during Exit Management

- (a) At any time during the exit management period, IA shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the Department a list of all employees (with job titles) of IA dedicated to providing the services at the commencement of the exit management period.
- (b) If the termination happens and the exit management provisions need to be invoked during the design and development stage, the Department will have the right to request the services of the Key Personnel of IA to facilitate transfer of knowledge to the Department or the Replacement IA as per the Schedule IX.
- (c) On the termination of the Agreement during annual maintenance stage, the Department will have the right to identify IA personnel and demand their presence for knowledge transfer to the Department or the Replacement IA.
- (d) If the Department hires the services of another agency on the expiry of the Agreement, or before that, to carry out the next phase of “roll out” of the application, IA shall cooperate with the new agency in knowledge transfer and the Department shall have the right to demand the presence of the required personnel from IA for this purpose.

6.7 Non Hiring

- (a) During the term of the Agreement and for a period of one year thereafter, except as otherwise provided under this Agreement neither Party shall (either directly or indirectly through a third party) employ, solicit to employ, cause to be solicited for the purpose of employment or offer

employment to any employee/s or sub-contractor/s of the other Party, or aid any third person to do so, without the specific written consent of the other Party.

- (b) The clause does not prevent hiring based on responses by employees to public advertisement on any media that are not specifically targeted at the other Party's employees.

7. ARTICLE VII: PROTECTION AND LIMITATIONS

7.1 Warranties

- a. The Implementation Agency warrants and represents to the Project Director that:
- i. it has full capacity and authority and all necessary approvals to enter into and to perform its obligations under the Agreement;
 - ii. this Agreement is executed by a duly authorized representative of Implementation Agency;
 - iii. it shall discharge its obligations under this Agreement with due skill, care and diligence so as to comply with Article 2.3.
 - iv. there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement and the SLA.
 - v. it has the financial standing and capacity to undertake the NJRS Project in accordance with the terms of this Agreement and the SLA.
 - vi. the execution, delivery and performance of this Agreement and the SLA will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association 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.



- vii. 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 authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and/or the SLA no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement and/or the SLA.
 - viii. 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 a Material Adverse Effect on its ability to perform its obligations under this Agreement and/or the SLA.
 - ix. no representation or warranty by it contained herein or in any other document furnished by it to the Project Director or its nominee including the Proposal or to any Government Authority contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.
 - x. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Project Director in connection therewith.
- b. In the case of the SLA, the Implementation Agency additionally warrants and represents to the Project Director, that:
- i. the Implementation Agency has full capacity and authority and all necessary approvals to enter into and perform its obligations under the SLA and to provide the Services;
 - ii. the SLA has been executed by a duly authorized representative of the Implementation Agency;
 - iii. the Implementation Agency is experienced in managing and providing works similar to the Services;
 - iv. the Services will be provided and rendered by appropriately qualified, trained and experienced personnel;

- v. Implementation Agency has and will have all necessary licenses, approvals, consents of third parties and all necessary technology, hardware and software to enable it to provide the Services;
 - vi. the Services will be supplied in conformance with all applicable laws, enactments, orders and regulations;
 - vii. Implementation Agency will use its reasonable endeavours to ensure that the equipment, software and hardware supplied and/or used in the course of the provision of the Services, are updated, new, operational and functional; and
 - viii. if Implementation Agency uses, in the course of the provision of the Services, components, equipment, software and hardware manufactured by any third party which are embedded in the Deliverables or are essential for the successful use of the Deliverables, it will pass through third party manufacturer's warranties relating to those components, equipment, software and hardware to Project Director to the extent possible. In the event that such warranties cannot be enforced by the Project Director, the Implementation Agency will enforce such warranties on behalf of the Project Director and pass on to the Project Director, the benefit of any other remedy received in relation to such warranties.
- c. Warranties regarding Project Assets :- Without limiting the warranty obligations set out in Volume II of the RFP, the IA warrants that:
- i. the Project Assets purchased by it on behalf of Project Director pursuant to the Agreement conform to technical specifications prescribed in RFP and shall perform according to the said technical specifications. The IA further warrants that such Assets are of latest version, non-refurbished, unused and recently manufactured. They shall not be nearing end of sale/ end of support.
 - ii. The Project Assets shall be free from all encumbrances and defects / faults arising from design, material, manufacture or workmanship or from any act or omission of the IA, which may present a snag/fault, under normal use of the same.
- d. Representations and warranties of Project Director:- Project Director represents and warrants to the IA that:

- i. it has full power and authority to execute, deliver and perform its obligations pursuant to the Agreement.
 - ii. it has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the SLA.
- e. 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 obligation of either Party under the Agreement.
- f. Notwithstanding what has been stated elsewhere in this Agreement and the Schedules attached herein, in the event the Implementation Agency is unable to meet the obligations pursuant to the implementation of the Projects and/or provide the Operations and Maintenance Services and any related scope of work as stated in this Agreement and the Schedules attached herein, the Project Director will, inter alia, have the option to invoke the Performance Guarantee after serving a written notice, fifteen days in advance on the Implementation Agency. Such right of the Project Director shall be without prejudice to any other rights or remedies available under law or contract.

7.2 Third Party Claims

- a. Subject to Article 7.2 (c) below, Implementation Agency (the "**Indemnifying Party**") undertakes to indemnify the Project Director (the "**Indemnified Party**") from and against all losses, claims or damages on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's performance or non-performance under this Agreement or the SLA.
- b. The indemnities set out in Articles 7.2 (a) and (b) 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 may at its option (but shall not be obligated to), at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the defence of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such defence;
- iii. if the Indemnifying Party does not assume full control over the defence of a claim as provided in this Article, the Indemnified Party may at its option participate in such defence at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnifying Party will be included in Losses;
- iv. the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
- v. all settlements of claims subject to indemnification under this Article will: (a) be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant 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; and
- vii. in the event that the Indemnifying Party is obligated to indemnify the Indemnified Party pursuant to this Article, 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.

7.3 Limitation of Liability

- a. Notwithstanding any other term, there shall be no limitation of liability of the IA in case of (i) any damages for bodily injury (including death) and damage to real property and tangible personal property (ii) wilful fraud and/or (ii) the intellectual property infringement claims under this Agreement or SLA.



- b. In all other cases not covered by 'a' above, the total financial liability of the Implementation Agency shall be limited to the value of the Agreement, arrived at as the sum of Capital Expenditure (CapEx) incurred by the Implementation Agency till the relevant date on which such liability is to be calculated and Operational Expenditure (OpEx) for a year, the CapEx being determined on the basis of the original purchase value of all the Assets being considered for CapEx calculation less depreciation and OpEx being determined in accordance with the market rate, prevailing as on the relevant date, for all service elements being considered for OpEx calculation. IA will provide the list of CapEx and OpEx items with their respective costs when asked by Project Director for the same and Project Director will have the right to get that list verified by any Third Party Agency (ies) before accepting it.
- c. Neither this Agreement nor the SLA grants or creates any rights, benefits, claims, obligations or causes of action in, to or on behalf of any person or entity (including any third party) other than between the respective Parties to this Agreement or the SLA, as the case may be.
- d. Any claim or series of claims arising out or in connection with this Agreement or the SLA shall be time barred and invalid if legal proceedings are not commenced by the relevant Party against the other Party within such period as may be permitted by applicable law without the possibility of contractual waiver or limitation.
- e. The Project Director, NJRS shall be entitled to claim the remedy of specific performance under this Agreement or the SLA.

7.4 Force Majeure

- a. Neither Party to this Agreement or to the SLA shall be liable to the other for any loss or damage which may be suffered by the other due directly to the extent and for the duration of any cause beyond the reasonable control of the Party unable to perform ("**Force Majeure**") events such as but not limited to acts of God not confined to the premises of the Party claiming the Force Majeure, flood, drought, lightning or fire, earthquakes, strike, lock-outs beyond its control, labour disturbance not caused at the instance of the Party claiming Force Majeure, acts of government or other competent authority, war, terrorist activities, military operations, riots, epidemics, civil commotions etc. No failure, delay or other default of any contractor sub-contractor to either Party shall entitle such Party to claim Force Majeure under this Article.

- b. The Party seeking to rely on Force Majeure shall promptly, within two (2) days, notify the other Party of the occurrence of a Force Majeure event as a condition precedent to the availability of this defence with particulars detailed in writing to the other Party and shall demonstrate that it has taken and is taking all reasonable measures to mitigate the events of Force Majeure.
- c. In the event the Force Majeure substantially prevents, hinders or delays the Implementation Agency's performance of Services necessary for project's implementation or the operation of Project's critical business functions for a period in excess of 5 days, the Project Director may declare that an emergency exists. However, when the situation arising out of Force Majeure comes to an end in the assessment of Project Director, the following conditions shall apply:
- i. **Prior to commencement of operations:** If the event of Force Majeure had occurred prior to commencement of operations, upon its coming to an end the Implementation Agency shall resume normal activities under the Agreement immediately. The Project Director, if it considers it necessary, may grant an extension of time to the Implementation Agency for resuming normal activities under this Agreement. If the Implementation Agency does not resume normal activities immediately or within the extended period, if any, granted by the Project Director, the Project Director will have the option to invoke the Performance Guarantee, levy liquidated damages, obtain substitute performance from an alternate supplier at the cost of Implementation Agency and/or terminate this Agreement.
 - ii. **Post commencement of operations:** If Force Majeure had occurred post commencement of operations, upon its coming to an end, the Implementation Agency shall resume normal services under this Agreement immediately. The Project Director, if he considers it necessary, may grant an extension of time to the Implementation Agency for resuming normal services under this Agreement. However, the Project Director, or its nominee will deduct for each day of the extension period a percentage proportionate to the number of days and the volume(s) (measured in terms of ratio to the overall volume as recorded in the previous month) expected in the affected area(s) from the next payable amount as per Terms of Payment Schedule. If normal services are not resumed immediately or within the extended time, the Project Director, will have the option to invoke the Performance Guarantee and/or obtain substitute performance from an alternate supplier at the cost of Implementation Agency and/or terminate the Agreement.



- d. All payments pursuant to termination due to Force Majeure event shall be in accordance with the Terms of Payment Schedule as set forth in Schedule VI of this Agreement).
- e. Notwithstanding the terms of this Article, the failure on the part of the Implementation Agency under the Agreement or terms under the SLA to implement any disaster contingency planning and back-up and other data safeguards against natural disaster, fire, sabotage or other similar occurrence shall not be an event of Force Majeure.

7.5 Data Protection and Use

- a. In the course of providing the Services the Implementation Agency may be compiling, processing and storing Project Data relating to the users.
- b. The Implementation Agency and each user are responsible for complying with its respective obligations under the applicable data protection laws and regulations governing the Project Data.
- c. As a processor of Project Data, the Implementation Agency will process Project Data in accordance with the terms of this Agreement.
- d. The Implementation Agency shall not transfer any Project Data unless otherwise authorized by the Project Director, Department in this regard.
- e. Upon reasonable written request from a Party to the SLA, the other Party to the SLA will provide the requesting Party with such information that it has regarding the Project, Data and its processing which is necessary to enable the requesting party to comply with its obligations under the applicable data protection law or regulation.
- f. IA shall also comply with the Information Technology security and standards policies in force from time to time at the project site of the Department and IA, and which the Department makes IA aware insofar as the same apply to the Project.
- g. IA shall upon request by the Department participate in regular meetings when safety and Information Technology security matters are reviewed.
- h. The IA shall promptly report in writing any act or omission which it is aware that could have an adverse effect on the proper conduct of safety and information technology security at the project site.



7.6 Confidentiality

- a. The Project Director or Department may permit the Implementation Agency to come into possession of confidential public records as per the needs of the Project and the Implementation Agency shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- b. Additionally, the Implementation Agency shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/ facilities.
- c. Subject to the rights in its proprietary information and unless specifically stated in this Agreement, the Implementation Agency shall be prohibited from using the NJRS Project related data in whatever manner, for purposes other than handling transactions through the NJRS. Implementation Agency shall undertake, on behalf of its agents and employees, that no NJRS Project related data shall be copied in any manner (paper, electronic, or human memory) and transferred to any entity (human or machine) other than that being through the NJRS Project for delivering job responsibilities defined for each individual.
- d. The Project Director or Department shall retain all rights to prevent, stop and if required take the necessary punitive action against the Implementation Agency regarding any forbidden disclosure of the Confidential Information.
- e. The aforesaid provisions shall not apply to the information:
 - i. already in the public domain;
 - ii. information which has been developed independently by the Service Provider;
 - iii. disclosed to the public due to a court order or under the Right to Information Act; and
 - iv. information required to be furnished to the Parliament and/or its Committees.

7.7 Audit, Access and Reporting

- a. The Parties shall comply with Audit, Access and Reporting Schedule provided in Schedule II.
- b. The Implementation Agency shall, on request, allow access to the Project Director and its nominees to all information which is in the possession or control of the Implementation Agency,

which relates to the provision of the Services as set out in the Audit, Access and Reporting Schedule and is reasonably required to comply with the terms of the Audit, Access and Reporting Schedule.

8. ARTICLE VIII: INTELLECTUAL PROPERTY

- 8.1 The Project Data and NJRS Application Software, developed or acquired by or provided to the Implementation Agency for the provision of the Services in accordance with this Agreement shall remain the exclusive property of the Department.
- 8.2 Implementation Agency shall not use or disclose the Project Data in any manner, for any purpose other than for providing the Services under this Agreement. However, if the Implementation Agency desires to use the Judgment Data for any purpose other than for the NJRS Project, it shall have to take prior requisite permissions from the respective courts/tribunals. Furthermore, such use, if any, shall be through separate servers.
- 8.3 The Implementation Agency shall indemnify, defend and hold harmless Project Director and their respective officers, employees, successors and assigns, from and against any and all losses, claims or liabilities arising from claims by third parties that any Deliverable (or the access, use or other rights thereto) created by Implementation Agency pursuant to the Agreement, and/or the SLA, or Project Assets, information, methods of operation or other intellectual property (or the access, use or other rights thereto) provided by Implementation Agency or sub-contractors to the Implementation Agency pursuant to the Agreement or the SLA (i) infringes a copyright enforceable in India, (ii) infringes any intellectual property rights including without limitation industrial right and/or patent issued in India, or (iii) constitutes misappropriation or unlawful disclosure or use of another Party's trade secret under the laws of India (collectively, "Infringement Claims"); provided, however, that this will not apply to any Deliverable (or the access, use or other rights thereto) created by (A) Project Director ; (B) third parties (i.e., other than Implementation Agency or Implementation Agency's sub-contractors) at the direction of Project Director.
- 8.4 If, as a result of Infringement Claims, Project Director or its nominees or its employees or intended users are enjoined from using such Project Assets or Deliverables or any part thereof or in is likely to be enjoined, IA, at its expense, shall (i) modify such Project Asset and/or Deliverables (provided its functionality is not impaired) so that it is no longer infringing and obtains a certificate to the said effect from the party claiming infringement, (ii) replace such Project Asset and/or Deliverables with a functionally equivalent the same, or (iii) obtain the right for the Project Director to continue using the such Project Assets and/or Deliverables. Such



remedies shall not be deemed to be the exclusive remedies for this Article, but shall be in addition to all other remedies available at law or contract to the Project Director.

8.5 If Implementation Agency uses in the course of the provision of the Services any Third Party System it will use all commercially reasonable endeavours to pass to the Project Director such third party's warranties relating to such Third Party Systems. In the event that such warranties cannot be passed through to or enforced by the Project Director, the Implementation Agency will enforce such warranties on Project Director's behalf and account to Project Director for so doing. For a third party product supplied under this Agreement, the IA shall pass on to the Project Director all the indemnities offered by such third party.

8.6 With respect to ownership of the Deliverables and Intellectual Property Rights in them, the Parties agree that the following shall apply:

- i. All the rights, title, interest and ownership of the Deliverables and their Intellectual Property Rights provided to Project Director by Implementation Agency during the course of its performance under this Agreement, and/or the SLA which includes but is not limited to software shall vest in Project Director immediately on creation. To the extent that the Implementation Agency proprietary information is incorporated within the Deliverables, Implementation Agency and its employees engaged hereby grant to Project Director a worldwide, perpetual, irrevocable, non-exclusive, transferable, paid-up right and license to use, copy, modify (or have modified), transport to Project Director at facilities and locations provided by Project Director, and prepare from them, use and copy derivative works for the benefit of and internal use of project, of such Implementation Agency proprietary information. The Project Director's rights pursuant to the preceding sentence include the right to disclose such Implementation Agency proprietary information to third party contractors solely for use on the Project provided that all such third party contractors execute, deliver and comply with any customary confidentiality and non-disclosure agreements reasonably required by the Project Director.
- ii. If Implementation Agency proceeds to apply for, or assign to any third party, any patent rights relating to the Implementation Agency proprietary information referred to in the above clause, the Implementation Agency will ensure that the Project Director's rights as provided herein are preserved.

- 8.7** Upon the expiry or termination of this Agreement, Implementation Agency shall undertake the actions set forth below in this Article to assist the Project Director to procure replacement services equivalent to Services provided hereunder.
- i. The Implementation Agency undertakes to grant Intellectual Property Rights relating to the Implementation Agency proprietary information and which the Project Director and any relevant Replacement Implementation Agency require to enable them to provide or receive services substantially equivalent to the Services hereunder.
 - ii. In respect of Implementation Agency's usage of third party Intellectual Property Rights, the Implementation Agency undertakes to secure such consents or licenses from such third parties as are necessary to enable the Project Director to receive services substantially equivalent to the Services hereunder. The obligations of the Implementation Agency under this Article shall be considered part of the services performed by the Implementation Agency under the Exit Management Services as set forth in Schedule III of this Agreement.

9. ARTICLE IX: MISCELLANEOUS

9.1 Confidentiality

- a. The Implementation Agency recognizes that during the term of this Agreement and the SLA, sensitive data will be procured and made available to it, its sub-contractors and agents and others working for or under the Implementation Agency. Further IA also recognizes that any improper and unauthorized disclosure or usage of the data by any such recipient may constitute a breach of Applicable Laws causing harm to the concerned affected entities. The Implementation Agency, its subcontractors and agents shall demonstrate utmost care, sensitivity and strict confidentiality in respect of all such information.
- b. Each Party agrees as to any Confidential Information disclosed by a Party to this Agreement or the SLA (the "Discloser") to the other Party to this Agreement or the SLA (the "Recipient"):
 - i. to take such steps necessary to protect the Discloser's Confidential Information from unauthorized use, reproduction and disclosure as the Recipient takes in relation to its own Confidential Information of the same type, but in no event less than reasonable care;

- ii. to use such Confidential Information only for the purposes of this Agreement or the SLA or as otherwise expressly permitted or expressly required by this Agreement or the SLA or as otherwise permitted by the Discloser in writing;
 - iii. not, without the Discloser's prior written consent, to copy the Confidential Information or cause or allow it to be copied, directly or indirectly, in whole or in part, except as otherwise expressly provided in this Agreement or the SLA, or as required in connection with Recipient's use as permitted under this Article, or as needed for the purposes of this Agreement or the SLA, provided that any proprietary legends and notices (whether of the Discloser or of a Third Party) are not removed or obscured;
 - iv. not, without the Discloser's prior written consent, to disclose, transfer, publish or communicate the Confidential Information in any manner to any person except as permitted under this Agreement or the SLA.
 - v. limit access to such Confidential Information and materials to those of its directors, partners, advisers, agents or employees who are directly involved in the consideration/evaluation of the Confidential Information and bind each of its directors, partners, advisers, agents or employees so involved to protect the Confidential Information and materials in the manner prescribed in this Agreement; and
 - vi. upon discovery of any unauthorized disclosure or suspected unauthorized disclosure of Confidential Information, promptly inform the Discloser of such disclosure in writing and immediately return to the Discloser all such Information and materials, in whatsoever form, including any and all copies thereof.
- c. The restrictions of this Article shall not apply to Confidential Information that:
- i. is or becomes generally available to the public through no breach of this Article by the Recipient; or
 - ii. was in the Recipient's possession free of any obligation of confidence prior to the time of receipt of it by the Recipient hereunder; or
 - iii. is obtained by the Recipient independently of any of Discloser's Confidential Information; or
 - iv. is rightfully obtained by the Recipient from third parties authorized at that time to make such disclosure without restriction; or



- v. is identified in writing by the Discloser as no longer proprietary or confidential; or
 - vi. is required to be disclosed by law, regulation or Court Order or under the Right to Information Act, or to be furnished to the Parliament and/or its Committees, provided that the Recipient gives prompt written notice to the Discloser of such legal and regulatory requirement to disclose so as to allow the Discloser reasonable opportunity to contest such disclosure.
- d. To the extent that such disclosure is required for the purposes of this Agreement or the SLA, Recipient may disclose Confidential Information to:
- i. its employees, agents and independent contractors and to any of its affiliates and their respective independent contractors or employees but all of them should in turn be bound to maintain the confidentiality referred to herein on their part ; and
 - ii. its professional advisors and auditors, who require access for the purposes of this Agreement or the SLA, whom the Recipient has informed of its obligations under this Article and in respect of whom the Recipient has used commercially reasonable efforts to ensure that they are contractually obliged to keep such Confidential Information confidential on terms substantially the same as set forth in this Article. The Recipient may also disclose Confidential Information to any entity with the Discloser's prior written consent.
- e. The provisions of this Article shall survive the expiration or any earlier termination of this Agreement.
- f. Confidential Information shall be and remain the property of the Discloser and nothing in this Article or Agreement shall be construed to grant either Party any right or license with respect to the other Party's Confidential Information otherwise than as is expressly set out in this Agreement.
- g. Subject as otherwise expressly provided in this Agreement all Confidential Information in tangible or electronic form under the control of the Recipient shall either be destroyed, erased or returned to the Discloser promptly upon the earlier of: (i) the written request of the Discloser, or, (ii) termination or expiry of this Agreement or, in respect of the SLA, the termination or expiry of the SLA. Notwithstanding the forgoing, both Parties may retain, subject to the terms of this Article, a reasonable number of copies of the other Party's Confidential Information solely for confirmation of compliance with the confidentiality obligations of the Agreement.

- h. Both Parties agree that monetary damages would not be a sufficient remedy for any breach of this Article by the other Party and that the Project Director and Implementation Agency, as appropriate, shall be entitled to equitable relief, including injunction and specific performance as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by a Party of this Article, but shall be in addition to all other remedies available at law or equity to the damaged Party including the right to terminate the Agreement and the SLA.
- i. In connection with the Services, Implementation Agency may from time to time undertake one or more quality assessment reviews for the purpose of improving NJRS Project. In order for such reviews to be frank and candid, for the greatest benefit to Project Director and Implementation Agency, they shall be kept confidential to the greatest extent possible. The Parties agree that any documentation created in connection with such quality assessment reviews shall be Confidential Information of Implementation Agency which is licensed to Project Director for any internal use except that in no event shall such documentation or the results of such reviews be discoverable or admissible (or used for any purpose) in any arbitration or legal proceedings against Implementation Agency related to the Agreement or the Services.

9.2 Independent Contractor

Nothing in this Agreement or the SLA shall be construed as establishing or implying any Agency, partnership or joint venture between the Parties to this Agreement or the SLA and, except as expressly stated in this Agreement or the SLA, nothing in this Agreement or the SLA shall be deemed to constitute any of the Parties as the agent of any other Party or authorizes either Party (i) to incur any expenses on behalf of the other Party, (ii) to enter into any engagement or make any representation or warranty on behalf of the other Party, (iii) to pledge the credit of or otherwise bind or oblige the other Party, or (iv) to commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

9.3 Sub-Contractors

Implementation Agency shall not sub-contract any work related to the following works related to the implementation of Project to be performed under the Agreement without the Project Director's prior written consent.

- a. Design, Development, Implementation, operation & maintenance of NJRS Application.



- b. Installation, management, operation & maintenance of NJRS Project system Infrastructure.

However, any other sub-contractors may be hired by the Implementation Agency without the Project Director's prior written consent in respect of other works. It is clarified that the Implementation Agency shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The Implementation Agency undertakes to indemnify the Project Director or its nominated agencies from any claims on the grounds stated hereinabove.

9.4 Responsibility in case of consortium

- a. The sole responsibility under the Agreement will be that of the prime bidder;
- b. Prime bidder's business relationships with the consortium partners will be his responsibility solely;
- c. Any conflict or disagreement within the consortium, at any point of time during the currency of the Project, shall be resolved by Prime bidder in such a way that the Project work is not affected in any manner with respect to any deliverable, milestone, operations, and SLA as per the provisions of the Agreement. Any such conflict or disagreement shall not be invoked by the prime bidder to justify non-fulfilment of any of the obligations under this Agreement;
- d. Notwithstanding anything contained in this Agreement, all the members of the consortium of companies, entrusted with the responsibilities of the Project, shall be jointly and severally responsible to the Project Director in respect of meeting the financial liabilities of the Implementation Agency arising out of the Project.

9.5 Events of default

- (i) The occurrence of each of the following events shall be considered an "Event of Default" by the Implementation Agency:
 - (b) If there is any change in the consortium during the Term of the Agreement without prior approval of the ITD and which approval may be given by the ITD in its sole discretion in exceptional circumstances solely in the interest of the project and only after the conditions precedent for "go-live" have been met;



- (c) If there is any disruption between the consortium partners or any other disturbance in the provision of the Services by the Implementation Agency arising on account of the any acts or omissions due to the lack of cohesion between the consortium partners.
 - (d) Initiation of any liquidation event or similar proceedings in respect of any of the consortium partners and/or any of their subsidiaries and/or the promoters, whether voluntary or otherwise.
 - (e) if the Implementation Agency and/or any of the consortium partners are/is in breach of or fails to observe or comply with any term, representation, warranty, covenant, undertaking or obligation contained under this Agreement and the RFP.
- (ii) In the case of occurrence of the Event of Default, the Project Director may, at their sole discretion and option, exercise any or all of, or a combination of, the following remedies, in addition to any other rights of the Project Director:
- (a) Invoke the performance Bank Guarantee;
 - (b) Impose penalty under this Agreement or the RFP; and/or
 - (c) Terminate the Agreement.
- (iii) For the avoidance of doubt, it is clarified that no Event of Default shall entitle Implementation Agency to claim Force Majeure under this Agreement.

9.6 Assignment

All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of Project Director and Implementation Agency and any assignment or transfer of this Agreement or the SLA or any rights hereunder by either Party shall be strictly prohibited.

9.7 Trademarks, Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party. Except as required by law or the rules and regulations of each stock exchange upon which the securities of one of the Parties is listed, neither Party shall publish or permit to be published either alone or in conjunction with any other person any press release, information, article, photograph, illustration or any other material of whatever kind relating to the Agreement, the SLA or the business of the Parties without prior reference to and approval in writing from the other Party, such approval not to be unreasonably withheld or delayed.



9.8 Notices

- a. 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 or by facsimile transmission.
- b. In relation to a notice given under this Agreement, any such notice or other document shall be addressed to the other Party's principal or registered office address as set out below:

PROJECT DIRECTOR

Address:

Tel:

Fax:

Email:

Implementation Agency:

Address:

Tel:

Fax:

Email:

- c. Any notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm on a working 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 days from the date of posting (if by post).
- d. Either Party to this Agreement may change its address, telephone number, and facsimile number for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

9.9 Variations and Further Assurance

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



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

9.10 Severability and Waiver

- a. If any provision of this Agreement or the SLA, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this Agreement or the SLA or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.
- b. No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the SLA of any right, remedy or provision of this Agreement or the SLA shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision. Without limiting the foregoing, no waiver by a Party of any breach by the other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

9.11 Compliance with Laws and Regulations

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

9.12 Ethics

The Implementation Agency represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of Project Director, or its nominated agencies in connection with the Agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value



is strictly in violation of Project Director's standard policies and may result in cancellation of this Agreement and the SLA. For this purpose, ITD will sign an integrity pact separately with the IA as attached as Schedule XI.

9.13 Entire Agreement

This Agreement, and the SLA, all schedules appended thereto and the contents and specifications of all the Volumes of the RFP (including the clarifications, explanations, errata, addenda and amendments thereof issued by the Project Director from time to time) 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.

9.14 Survivability

The termination or expiry of this Agreement or the SLA for any reason shall not affect or prejudice any terms of this Agreement, or the rights of the Parties under them which are either expressly or by implication intended to come into effect or continue in effect after such expiry or termination.

10. ARTICLEX: DISPUTES RESOLUTION AND ARBITRATION

10.1 Dispute Resolution

(a) Any dispute arising out of or in connection with the Agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule (Schedule IV of this Agreement).

(b) Any dispute or difference whatsoever arising between the Parties to this Agreement out of or relating to the construction, meaning, scope, operation or effect of the Agreement or the validity of the breach thereof, which cannot be resolved through the application of the provisions of the Governance Schedule, shall be referred for arbitration in accordance with the provisions set forth herein.

(c) The arbitration proceedings shall be carried under the Indian Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof. Such disputes shall be referred to an Arbitral Tribunal consisting of 3 (three) arbitrators, one each to be appointed by Project Director and the Implementation Agency within 7 days of notice of either Party to refer the matter to Arbitration and the third arbitrator shall be chosen by the two arbitrators so appointed by the parties and shall act as Presiding Arbitrator. In case of failure of the two arbitrators, appointed by the Parties to reach



a consensus regarding the appointment of the third arbitrator within a period of 30 days from the date of appointment of the two arbitrators, the Presiding Arbitrator shall be appointed by the Chief Justice of the Delhi High Court.

(d) Arbitration proceedings shall be held in Delhi and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

(e) The decision of the majority of arbitrators shall be final and binding upon both Parties. The expenses of the arbitrators as determined by the arbitrators shall be shared equally by Project Director and the Implementation Agency. However, the expenses incurred by each party in connection with the preparation, presentation shall be borne by each Party itself. All arbitration awards shall be in writing and shall state the reasons for the award.

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

10.2 Amendment

The Parties acknowledge and agree that amendments to this Agreement shall be made through mutual agreement between the Parties in writing in accordance with the procedure this Agreement is executed and signed.

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:

Signed by:

Name and designation)

For and on behalf of Project Director,

(FIRST PARTY)



Signed by:

(Name and designation)

For and on behalf of Implementation Agency

(Second Party)

WITNESSES:

1. (Name, Designation, Organization, and Signature)
2. (Name, Designation, Organization, and Signature)

SCHEDULES

SCHEDULE I: CHANGE CONTROL SCHEDULE

1.1 Purpose

This Schedule applies to and describes the procedure to be followed in the event of any proposed change to this Agreement and/or SLA. Such change shall include, but shall not be limited to, changes in the scope of services provided by the Implementation Agency and changes to the terms of payment as stated in the Terms of Payment Schedule (Schedule VI of this Agreement).

The Project Director and the Implementation Agency 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 Implementation Agency will endeavor, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and the Project Director will work with the Implementation Agency to ensure that all changes are discussed and managed in a constructive manner.

1.2 Change Control Note ("CCN")



- a. Change requests in respect of the Agreement, the Project Implementation, or the Operation and Management SLA will emanate from the Parties' respective project manager, as notified by the Parties, 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 Schedule VII hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature on the CCN.
- b. The Implementation Agency and the Project Director, 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 Volume I of the RFP and is suggested and applicable only after the testing, commissioning and certification of the NJRS project implementation as set out in this Agreement.
- c. It is hereby also clarified that any change as agreed between the Parties to be within the scope of services defined in Volume I of the RFP, to be provided by the IA shall not entitle the IA to ask for any additional amount to be paid by the Project Director.

1.3 Quotation

- a. The Implementation Agency shall assess the CCN and complete Part B of the CCN. In completing Part B of the CCN the Implementation Agency shall provide as a minimum:
 - i. a description of the change;
 - ii. a list of deliverables required for implementing the change;
 - iii. a timetable for implementation;
 - iv. an estimate of the timelines or effort of any proposed change;
 - v. The unit of measure to cost the change (either the resource cost as indicated in the proposal or as an work element as mentioned in the proposal of IA)
 - vi. any relevant acceptance criteria;
 - vii. an assessment of the value of the proposed change;
 - viii. Material evidence to prove that the proposed change is not already covered within the scope of the NJRS Project under the Agreement



- ix. Alternative options possible to address the change if any and the implications of these alternative options.
- b. Prior to submission of the completed CCN to the Project Director, or its nominated agencies, the Implementation Agency will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the Implementation Agency shall consider the materiality of the proposed change in the context of the Agreement, the Project Implementation, SLA affected by the change and the total effect that may arise from implementation of the change.
- c. Materiality criteria will be established by the Project Director and the Implementation Agency's Project Manager. Discussion and agreement as to materiality will be held in accordance with the Governance Schedule as set forth in Schedule IV of this MSA.
- d. Such change request shall have to be implemented by the IA after approval of the department for the additional cost, effort and implementation time. Such change requests, cumulatively, shall not be more than 20% of the total price quoted by the bidder in their Commercial Bid as per the Commercial bid format provided in Volume 2.

1.4 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 Implementation Agency meets the obligations as set in the CCN. In the event the Implementation Agency 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 Implementation Agency.

1.5 Reporting

Change requests and CCNs will be reported on need basis to each Party's Project Managers who will prioritize and review progress.

1.6 Obligations

The Implementation Agency 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.





SCHEDULE II: AUDIT, ACCESS AND REPORTING SCHEDULE

2.1 Purpose

This Schedule details the audit, access and reporting rights and obligations of the Project Director and the Implementation Agency under the Agreement, Project Implementation, Operation and Management SLA.

2.2 Audit Notice and Timing

- a. As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavours to agree to a timetable for routine audits during the Project Implementation Phase and the Operation and Management Phase. During the Project Implementation Phase, the Project Director and thereafter during the Operation Management Phase, the Project Director shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Implementation Agency any further notice of carrying out such audits.
- b. The Project Director may conduct non-timetabled audits at his/ her own discretion if he/ she reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Implementation Agency, a security violation, or breach of confidentiality obligations by the Implementation Agency, provided that the requirement for such an audit is notified in writing to the Implementation Agency a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the Implementation Agency considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Governance Schedule (Schedule IV of this Agreement).
- c. The frequency of audits shall be 6 monthly, provided always that the Project Director shall endeavour to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Implementation Agency.
- d. In addition to the above, there may be audits conducted by statutory bodies (e.g. CAG) as and when they are required to do it. Notwithstanding any condition given in the Agreement, Implementation Agency will have to provide these statutory bodies access to all the facilities,

infrastructure, documents and artefacts of the Project as required by them and approved by the Project Director, in writing.

2.3 Access

The Implementation Agency shall provide to the Project Director access to employees, sub-contractors, suppliers, agents and third party facilities, 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 Project Director shall have the right to copy and retain copies of any relevant records. The Implementation Agency shall make every reasonable effort to co-operate with them.

2.4 Audit Rights

- a. The Project Director 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:
 - i. The security, integrity and availability of all project data processed, held or conveyed by the IA on behalf of project and documentation related thereto;
 - ii. That the actual level of performance of the services is same as specified in SLA;
 - iii. That the Implementation Agency has complied with the relevant technical standards, and has adequate internal controls in place; and
 - iv. The compliance of the IA with any other obligation under the Agreement and SLA.
- b. For the avoidance of doubt the audit rights under this Schedule shall not include access to the Implementation Agency's profit margins or overheads associated with any obligation under the Agreement.

2.5 Audit Rights of Sub-Contractors, Suppliers & Agents

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

Agency shall inform the Project Director prior to concluding any sub-contract or supply agreement of any failure to achieve the same rights of audit or access.

- b. The Implementation Agency will provide quarterly reports to the Project Director regarding any specific aspects of the Project and in context of the audit and access information as required by the Project Director.

2.6 Action and Review

- a. Any change or amendment to the systems and procedures of the Implementation Agency, or sub-contractors, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- b. Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the project managers of the Implementation Agency who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the Agreement.

2.7 Terms of Payment for Costs of Audit

The Project Director and the Implementation Agency and its sub-contractors, if any, shall bear their own costs of any audits and inspections. The terms of payment are inclusive of any costs of the Implementation Agency and the sub-contractor, for all reasonable assistance and information provided under the Agreement, the Project Implementation, Operation and Management SLA by the Implementation Agency pursuant to this Schedule.

2.8 Records and Information

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

SCHEDULE III: EXIT MANAGEMENT SCHEDULE

3.1 Purpose

- a. This Schedule sets out the provisions, which will apply on expiry or termination of the Agreement.
- b. It sets out the provisions which will ensure that Project Director or Department will be able to offer the Services to its Stakeholders without any interruptions on expiry or termination of the Agreement.
- c. Continuity and performance of the Services at all times including the duration of the Agreement and post expiry of the Agreement is a critical requirement of the Department. It is the prime responsibility of Implementation Agency to ensure continuity of Services at all times of the Agreement including exit management period and in no way any facility/service shall be affected/degraded. Further, Implementation Agency is also responsible for all activities required to train and transfer the knowledge to the Replacement IA to ensure similar continuity and performance of the Services post expiry of the Agreement. Implementation Agency will be required to carry out a gap analysis of the facilities and arrangements made by the Replacement IA and specifically inform the Department. The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Schedule.
- d. The exit management period starts, in case of expiry of Agreement, at least six months prior to the expiry of the Agreement or in case of termination of Agreement, on the date when the notice of termination is sent to the Implementation Agency and continues till the time exit management services are executed to the satisfaction of the ITD. The exit management period is for facilitating a seamless transfer of Services to the Replacement IA to the satisfaction of the Project Director. The ITD has the right to alter in consultation with the IA, the timelines mentioned here based on the circumstances prevailing at the time of availing the Exit Management Services

3.2 Transfer of Assets owned by the Implementation Agency.

- a. The Project Director shall be entitled to serve notice in writing to the Implementation Agency at any time during the exit management period as detailed hereinabove requiring the Implementation Agency and/or its sub-contractors to provide the Project Director with a complete and up to date list of the Assets within 30 days of such notice. The Project Director shall then be entitled to serve notice in writing on the Implementation Agency at any time prior to the date that is 30 days prior to the end of the exit management period requiring the Implementation Agency to sell to the Project Director the Project Assets including all infrastructure, equipment, networking, hardware, software Intellectual Property Rights etc. created for the Project, to be transferred to the Project Director under this Agreement at a combined token price of Rupee 1 as of the date of such notice in accordance with the provisions of this Agreement. Any premises provided by the Project Director or the Department to the IA for delivery of the Services shall revert to the Project Director.
- b. **In case of Agreement being terminated by Project Director**, Project Director reserves the right to ask IA to continue running the project operations for a period of six months.
- c. Upon service of a notice under this Article the following provisions shall apply:
 - i. in the event, if the Project Assets to be transferred are mortgaged to any financial institutions by the Implementation Agency, the Implementation Agency 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 Project Director.
 - ii. all rights in and title to the Project Assets to be handed over/transferred / to be purchased by the Project Director pursuant to this Article shall be transferred to Project Director, on the last day of the exit management period.
 - iii. the Project Director shall pay to the Implementation Agency on the last day of the exit management period a sum representing a combined token price of Rupee 1 for all the Assets as of the date of such notice in accordance with the provisions of this Agreement of the Project Assets to be transferred as stated in the Terms of Payment Schedule.
 - iv. Payment to the outgoing IA shall be made to the tune of last set of completed transactions, subject to SLA requirements.

- v. The outgoing IA will pass on to Project Director and/or to the Replacement IA, the subsisting rights in any leased properties/ licensed products on terms not less favourable to Project Director/ Replacement IA, than that enjoyed by the outgoing IA.

3.3 Cooperation and Provision of Information

During the exit management period:

- a. the Implementation Agency will allow the Project Director access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the Project Director to assess the existing services being delivered;
- b. promptly on reasonable request by the Project Director, the Implementation Agency shall provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with the Agreement relating to any material aspect of the services (whether provided by the Implementation Agency or sub-contractors appointed by the Implementation Agency). The Project Director shall be entitled to copy all such information. Such information shall include details pertaining to the services rendered and other performance data. The Implementation Agency shall permit the Project Director and/or any Replacement Implementation Agency to have reasonable access to its employees and facilities as reasonably required by the Project Director to understand the methods of delivery of the services employed by the Implementation Agency and to assist appropriate knowledge transfer.

3.4 Confidential Information, Intellectual Property Rights, Security and Data

- a. The Implementation Agency will promptly on the commencement of the exit management period supply or transfer to the Project Director or Replacement Implementation Agency the following:
 - i. information relating to the current services rendered and customer satisfaction surveys and performance data relating to the performance of sub-contractors in relation to the services;
 - ii. All Intellectual Property Rights related to the Project and /or documentation relating to Project's Intellectual Property Rights;
 - iii. Project Data, NJRS Application Software and Confidential Information;
 - iv. documentation relating to sub-contractors;

- v. all current and updated project data as is reasonably required for purposes of Project or its nominated agencies transitioning the Services to its Replacement Implementation Agency in a readily available format specified by the Project Director;
 - vi. all other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable project or its nominated agencies, or its Replacement Implementation Agency to carry out due diligence in order to transition the provision of the Services to project or its nominated agencies, or its Replacement Implementation Agency (as the case may be). Perpetual license for use of the proprietary information to the Project Director or Replacement Implementation Agency as the case may be.
- b. Before the expiry of the exit management period, the Implementation Agency shall deliver to the Project Director all new or updated materials from the categories set out in Article above and shall not retain any copies thereof.
 - c. Before the expiry of the exit management period, unless otherwise provided under the Agreement, the Project Director shall deliver to the Implementation Agency all forms of Implementation Agency confidential information, which is in the possession or control of Project Director or its nominees or its users.

3.5 Employees

- a. Promptly on reasonable request at any time during the exit management period, the IA shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the Project Director a list of all employees (with job titles) of the IA dedicated to providing the services at the commencement of the exit management period;
- b. Project Director, or the Replacement IA may make an offer of employment or contract for services to any employee of the IA and the IA shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the Project Director or any Replacement IA.
- c. Promptly on reasonable request at any time during the exit management period, the IA shall, facilitate training and knowledge transfer for ITD and/or any Replacement IA as reasonably required understanding the methods of delivery of the services employed by the IA.



3.6 Transfer of Certain Agreements

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

3.7 Rights of Access to Premises

- a. At any time during the exit management period, where Assets are located at the Implementation Agency's premises, the Implementation Agency will be obliged to give reasonable rights of access to (or, in the case of Assets located on a third party's premises, procure reasonable rights of access to) the Project Director, and/or any Replacement Implementation Agency in order to make an inventory of the Assets.
- b. The Implementation Agency shall also give the Project Director or its nominated agencies, or any Replacement Implementation Agency right of reasonable access to the Implementation Agency's premises and shall procure the Project Director or its nominated agencies and any Replacement Implementation Agency rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the Agreement as is reasonably necessary to migrate the services to the Project Director or its nominated agencies, or a Replacement Implementation Agency.

3.8 General Obligations of the Implementation Agency

- a. The Implementation Agency shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the Project Director or its nominated agencies or its Replacement Implementation Agency and which the Implementation Agency has in its possession or control at any time during the exit management period.
- b. For the purposes of this Schedule, anything in the possession or control of any Implementation Agency, associated entity, or sub-contractor is deemed to be in the possession or control of the Implementation Agency.
- c. The Implementation Agency shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

3.9 Exit Management Plan

- a. An Exit Management plan shall be furnished by Implementation Agency in writing to the Project Director or its nominated agencies within 90 days from the Effective Date of this Agreement, which shall deal with at least the following aspects of exit management in relation to the Agreement as a whole and in relation to the Project implementation, and the SLA.
 - i. A detailed program of the transfer process that could be used in conjunction with a Replacement Implementation Agency 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 Implementation Agency's sub-contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on Project's operations as a result of undertaking the transfer;
 - iii. (if applicable) proposed arrangements for the segregation of the Implementation Agency's networks from the networks employed by the Project Director and identification of specific security tasks necessary at termination;
 - iv. Plans for provision of contingent support to Project Director and Replacement Implementation Agency for a reasonable period after transfer.
- b. The Implementation Agency shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- c. Each Exit Management Plan shall be presented by the Implementation Agency and approved by the Project Director or its nominated agencies.
- d. The terms of payment as stated in the Terms of Payment Schedule include the costs of the Implementation Agency complying with its obligations under this Schedule.
- e. In the event of termination or expiry of the Agreement, Project Implementation, or Operation and Management SLA, each Party shall comply with the Exit Management Plan.
- f. During the exit management period, the Implementation Agency shall use its best efforts to deliver the services.

- g. Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.

SCHEDULE IV: GOVERNANCE SCHEDULE

4.1 Purpose

The purpose of this Schedule is to:

- (i) establish and maintain the formal and informal processes for managing the relationship between the ITD and the Implementation Agency (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.

4.2 Governance Structure

4.2.1 The governance structure would comprise of three tiers headed by the Director General of Income Tax (Legal & Research) - DG (L&R) at the Strategic level who would be the overall in-charge of the project.

4.2.2 **Project Steering Committee:** At the second tier, ITD may constitute a Project Steering Committee/Project Monitoring Committee for the overall monitoring, guidance and governance of the project. It shall meet formally at a time, frequency and location to be agreed between them.

4.2.3 **Project Managers:** The third tier will be represented by the Project Managers appointed by each Party for managing the relationship under this Agreement

4.2.4 The Project Managers shall have responsibility for maintaining the interface and communication between the Parties. The Project managers will meet periodically for the following:

- i. Monitoring of project progress on weekly basis till the Go-Live and periodically thereafter.
- ii. Reviewing the hardware and networking setup of the project.
- iii. Reviewing the software and related deliverables.
- iv. Assisting the Department in third party audit.
- v. Monitor proactively, service level compliance based on the SLA.
- vi. Make recommendations to Director of Income Tax (Legal & Research) on penalties based on performance and the terms of Agreement read with the SLA.
- vii. Assist the Department in the exit management process arising due to premature termination and/or completion of term of the Agreement.

4.3 GOVERNANCE PROCEDURES

4.3.1 The Service Provider shall document the agreed structures in a procedures manual.

4.3.2 The Parties shall ensure as far as reasonably practicable that the Project Managers shall resolve the issues and resolve the objectives placed before them and that member representing that Party is empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achieve this.

4.3.3 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.

4.3.4 The other Party ("Respondent") shall have the right to respond to the Dispute Notice within 7 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 7 days, it shall refer the Disputed Matter to next level of the dispute resolution

4.3.5 All negotiations, statements and / or documentation pursuant to these Articles shall be without prejudice and confidential (unless mutually agreed otherwise).

4.3.6 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 endeavours to reduce the elapsed time in reaching a resolution of the Disputed Matter.

SCHEDULE V: INVOICING AND SETTLEMENT SCHEDULE

- a. In respect of its remuneration for the Services the Implementation Agency shall be eligible to receive payments in accordance with the Terms of Payments Schedule (Schedule VI of this Agreement). Subject to the specific terms of each Service Level Agreement, the Implementation Agency submits its invoices in accordance with the following principles:
 - i. The Project Director shall be invoiced by the Implementation Agency for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the Service Level Agreement, the Implementation Agency shall raise an invoice as per the terms of payment as stated in this Schedule.
 - ii. Any invoice presented in accordance with this Schedule shall be in a form agreed with the Project Director.
- b. Invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in the Terms of Payment Schedule shall be applied to the next payment invoice. The Implementation Agency shall waive any charge for a Service that is not invoiced within six months after the end of the month in which the terms of payment as stated in the Terms of Payment Schedule relating to such Service are authorized or incurred, whichever is later.
- c. The Project Director shall be entitled to delay or withhold payment of any invoice or part of it delivered by the Implementation Agency under this Schedule where the Project Director disputes such invoice or part of it provided that such dispute is bona fide. The withheld amount shall be limited to that which is in dispute. The disputed amount shall be settled in accordance with the escalation procedure as set out in the Governance Schedule (Schedule IV of this Agreement). Any exercise by the Project Director under this Article shall not entitle the Implementation Agency to delay or withhold provision of the Services.
- d. The Implementation Agency shall pay all their sub-contractors in a timely fashion in accordance with a mechanism, which will not prejudice the objective of Project.
- e. The Implementation Agency shall pay all their sub-contractors in a timely fashion in accordance with a mechanism, which will not prejudice the objective of Project. However, Implementation Agency shall be solely responsible to make payment its sub-contractors.

SCHEDULE VI: TERMS OF PAYMENT SCHEDULE

- a. NJRS Project is a service-based project and not simply a project involving supply of goods and construction of works. Hence, basically the payment will be made only if services are rendered by the Implementation Agency as agreed upon.
- b. All the payments to the Implementation agency will be made as per the following terms of payment follows:
 - i. The entire cost of design, development, implementation, operation and maintenance of the NJRS project shall be borne by the IA.
 - ii. IA would be paid by the Project Director for the above expenditure strictly as per the rates and amounts quoted by the IA in their commercial proposal and agreed by the Project Director.
 - iii. No payment shall be made before the project is declared Go-Live as prescribed in the RFP.
 - iv. The IA would be paid by the Project Director for NJRS project as per the details given below:
 - o The IA would be reimbursed the quoted EQI, every quarter for a period of 5 years during the operation & maintenance phase of the project. The amount to be reimbursed would also depend on the performance based on the SLAs and deduction thereof if any.
 - o In addition, for scanning and processing of appeals related documents, the IA would be reimbursed for the actual number of appeals and pages based on the amount specified in the in Annexure 3 of the Volume II of the RFP. The quantum of scanning and processing of appeals and related documents for calculating the pay-off to the vendor shall be generated from the system and made available to the Department for cross-verification. The amount to be reimbursed would also depend on the performance based on the SLAs and deduction thereof if any.
 - o Payment shall be subject to penalty adjustment, if any, revealed during the SLA credit/ debit calculation or otherwise.
 - v. Cost of third party audits, shall be borne by the Department.

- c. In the event of premature termination of the Agreement prior to the Go-Live, the Implementation Agency shall not be eligible to receive any further compensation or payment from the date of termination.
- d. In the event of the premature termination of the Agreement post-commencement of the operations i.e. post Go-Live, the Implementation agency would be eligible to be paid pursuant to the provisions of the Agreement.

SCHEDULE VII: CHANGE CONTROL NOTICE

Change Control Note		CCN Number:
Part A: Initiation		
Title:		
Originator:		
Sponsor:		
Date of Initiation:		
Details of Proposed Change		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)		
Authorized by Project Director	Date:	
Name:		
Signature:		
Received by the Implementation Agency	Date:	
Name:		
Signature:		
Change Control Note		CCN Number:
Part B : Evaluation		
(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.		
Brief Description of Solution:		
Impact:		
Deliverables:		
Timetable:		
Charges for Implementation: (including a schedule of payments)		
Other Relevant Information: (including value-added and acceptance criteria)		
Authorized by the Implementation Agency	Date:	
Name:		
Signature:		
Change Control Note		CCN Number:
Part C : Authority to Proceed		
Implementation of this CCN as submitted in Part A, in accordance with Part B is: (tick as appropriate)		

Approved Rejected Requires Further Information (as follows, or as Attachment 1 etc.)	
For Project Director and its nominated agencies	For the Implementation Agency
Signature	Signature
Name	Name
Title	Title
Date	Date



**SCHEDULE VIII: MODEL OPERATION & MODEL OPERATIONS & MAINTENANCE
AGREEMENT**

SERVICE LEVEL AGREEMENT

BETWEEN

Project Director

AND

Implementation Agency of NJRS Project



MODEL SERVICE LEVEL AGREEMENT

THIS AGREEMENT is made this day of _____ 2013.

BETWEEN:

- (i) The **Director, Income Tax Department (Legal & Research), Government of India (GoI)**, having its office at 15th Floor, HT House, KG Marg, New Delhi-110001, hereinafter referred to as "**Project Director**" (which term or expression unless excluded by or repugnant to the subject or context shall mean and include its successors or nominees or assignees or legal representative) of the FIRST PART;

AND

- (ii) ___<name of the company>___, a company registered under the Indian Companies Act, 1956 having its registered office at ___<address>___ and place of business at ___<address>___ (hereinafter referred to as the "**Implementation Agency**" or "**IA**", which expression, unless excluded or the context otherwise required hereof includes its successors, administrators and assigns) represented through its ___ <designation of authorized person>___, who is duly authorized by the governing body of Implementation Agency to execute this Agreement of the SECOND PART.

WHEREAS

- A. Project Director and [_____] have entered into a Master Services Agreement dated [_____] (the "MSA").
- B. In accordance with Article 1.2 (b) of the MSA, Project Director and Implementation Agency wish to enter into this Service-Level Agreement ("Agreement/SLA") on the following terms.

ARTICLE 1 - DEFINITIONS AND GENERAL PURPOSE**1.1 DEFINITIONS**

1.1.1 In this SLA, unless the context requires otherwise:

- a. "Agreement" or "Service Level Agreement "or "SLA" or "Operations and Management SLA" means this Agreement, together with its Appendices;



- b. "Project Data" means all proprietary data of the Project which the Implementation Agency obtains, possesses or processes in the context of providing the Services to the users pursuant to this SLA;
 - c. "Parties" means Project Director and Implementation Agency for the purposes of this SLA, AND "Party" shall be interpreted accordingly;
 - d. "Service Level" means the level of service and other performance criteria which will apply to the Services as set out in Annexure A, in the form of SLA Metrics, effective during the Term of this SLA;
 - e. "Term" means the duration of this SLA as defined in Article 2.2 of this SLA;
 - f. "Terms of Payment" means charges for the Services in accordance with the Terms of Payment Schedule as stated in the MSA.
- 1.1.2** All Appendices and other attachments to this SLA are hereby incorporated as a part of this SLA by this reference.
- 1.1.3** References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it.
- 1.1.4** Words denoting the singular shall include the plural and vice versa and words denoting persons shall include firms and corporations and vice versa.
- 1.1.5** Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this SLA as a whole and not to any particular Article, Annexure or other subdivision. The words "include" and "including" shall not be construed as terms of limitation. The words "day" and "month" mean "calendar day" and "calendar month" unless otherwise stated. Where, because of a difference in time zone, the calendar day or calendar month in one Country differs from another Country, then the calendar day or calendar month shall be deemed to be the calendar day or calendar month applicable to India. The words "writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated.
- 1.1.6** The headings and use of bold type in this SLA are for convenience only and shall not affect the interpretation of any provision of this SLA.
- 1.1.7** The terms not defined in this Agreement shall have the same meaning as assigned to them in the MSA.



1.2. STRUCTURE

1.2.1 This SLA shall operate as a legally binding services agreement specifying terms which apply to the Parties and to the person of the Services by the Implementation Agency to Project Director under this SLA and the MSA.

ARTICLE II - INITIALISATION PHASE

2.1 OBJECTIVES AND SCOPE OF SLA

2.1.1 The Implementation Agency hereby agrees to provide Services to Project Director, conforming to the specified Service Levels, which will ensure:

- a. Delivery of speedy and efficient services to the ITD, in relation to the entire NJRS project.
- b. Train the existing ITD employees to assist them discharge their duties effectively and efficiently
- c. Encourage and help to improve the adoption rate for the usage of the NJRS System, by employing traditional as well as innovative techniques. To that end, implement measures:
 - (i) for making it convenient for Project Director / employees to utilize the services,
 - (ii) Educating the Project Director / employees in the relevant procedures,

To meet the aforesaid objectives the Implementation Agency will provide the Service Levels in accordance with the performance metrics as more particularly described in **Annexure A** of this SLA. on the date on which it is executed by the Project Director and the Implementation Agency (hereinafter the “Effective Date”) and shall, unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties, expire on the date on which this SLA expires or terminates for any reason, which shall be six years from the Effective Date of this SLA. The SLA shall be coterminous with the MSA.

3. APPLICABILITY OF THE MSA

3.1 Apart from the provisions as set out hereinabove, the terms and conditions stated in the MSA shall apply mutatis mutandis to this SLA. In the event of a conflict in interpretation of any Article in the MSA and the SLA, the provisions of the MSA shall prevail.

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:

Signed by:

Name and designation)

For and on behalf of the President of India

The Project Director,

(FIRST PARTY)

Signed by:

(Name and designation)

For and on behalf of Implementation Agency

(SECOND PARTY)

WITNESSES:

1.

2.



Annexure A to Schedule VIII: SLAs

<Annexure X of Volume I to be reproduced here>

The Department reserves the right to negotiate the service level agreement with the IA at the end of every year post Go-Live.

SCHEDULE IX: The “Key Personnel” and the Procedure for Replacement

1. The List of Key Personnel.

Sl. No	Name	Proposed Position	Relevant Experience	Key Project handled
1.	<as in volume II of the RFP>			
2.				
3.				
4.				
5.				

2. The Procedure for Replacing Key Personnel.

- (a) IA will give an advanced notice in writing of not less than four weeks on its intention to replace the core team member.
- (b) After getting the approval of the Project Director, IA will propose an equivalent profile as replacement.
- (c) The Project Director or its authorized representative will evaluate the profile and indicate the acceptance / rejection of the profile. The Project Director may seek a personal interview of the person being proposed.
- (d) After getting the approval of the Project Director, the IA will ensure that there will be sufficient time for the replacement person to work with the person being replaced, for transferring the Project specific knowledge to him/her.
- (e) If the proposed profile is rejected by the Project Director, IA will provide alternate profiles, till there is an acceptable profile.
- (f) The costs associated with replacements like conducting interviews, travel costs of the replacement profile will be completely borne by IA
- (g) The format for submitting the profiles of replacement for core team members should be as below:-

Name of the person	
---------------------------	--



Role in the Project	
Qualification	
Total number of years of experience	
Number of years with the current company (the bidder)	
Functional area / expertise	
Area of certification	
Number of complete life cycle implementations carried out	
The names of customers. (Please provide the relevant names)	
The functional areas /processes implemented	

SCHEDULE X: IMPLEMENTATION SCHEDULE

The IA needs to adhere to the timelines as specified in volume I of the RFP.

SCHEDULE XI – INTEGRITY PACT

Income Tax Department, ITD hereinafter referred to as "The Principal".

And

_____ hereinafter referred to as "IA/The Bidder/Contractor"

Preamble

The Principal intends to award, under laid down organizational procedures, contract/s for _____. The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/transparency in its relations with its Bidder(s) and /or Contractor(s).

In order to achieve these goals, the Principal will appoint an Independent External Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 - Commitments of the Principal.

The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-

- a. No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
- b. The Principal will during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same

information and will not provide to any Bidder(s) confidential/additional information through which the Bidder(s) could obtain an advantage in relation to the process or the contract execution.

c. The Principal will exclude from the process all known prejudiced persons.

d. If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there is a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

Section 2- Commitments of the Bidder(s)/ Contractor(s)

1. The Bidder(s) / Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

1.1 The Bidder(s) / contractor(s) will not, directly or through any other persons or firm, offer promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage or during the execution of the contract.

1.2 The Bidder(s)/Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

1.3 The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s) /Contractors will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

1.4 The Bidder(s)/Contractor(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly, the bidder(s)/contractor(s) of Indian Nationality



shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" as annexed and marked as Annexure "A".

1.5 The Bidder(s)/Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

2. The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

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

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings". Copy of the "Guidelines on Banning of business dealings" is annexed and marked as Annexure-"B".

Section 4: Compensation for Damages

1. If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/Bid Security.

2. If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

Section 5: Previous Transgression



1. The Bidder declares that no previous transgressions occurred in the last three years with any other company in any country conforming to the anti-corruption approach or with any other public sector enterprise in India that could justify his exclusion from the tender process.
2. If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process for action can be taken as per the procedure mentioned in "Guidelines on Banning of business dealings".

Section 6: Equal treatment of all Bidders/Contractors/Subcontractors.

1. The Bidder(s)/Contractor(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
2. The Principal will enter into agreements with identical conditions as this one with all bidders, contractors and subcontractors.
3. The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7: Criminal charges against violation Bidder(s)/ Contractor(s)/Sub contractor(s).

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

Section 8: Independent External Monitor/Monitors

1. The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

2. The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairman, ITD.
3. The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction to all project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality.
4. The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
5. As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
6. The Monitor will submit a written report to the Chairman, ITD within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
7. Monitor shall be entitle to compensation on the same terms as being extended to / provided to Independent Directors on the ITD Board.
8. If the Monitor has reported to the Chairman ITD, a substantiated suspicion of an offence under relevant IPC/PC Act, and the Chairman ITD has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.



9. The word 'Monitor' would include both singular and plural.

Section 9 - Pact Duration

This pact begins when both parties have legally signed it. It expires for the Contractor 10 months after the last payment under the contract, and for all other Bidders 8 months after the contract has been awarded.

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

Section 10 - Other provisions

1. This agreement is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi.

2. Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

3. If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

(For & on behalf of the Principal)

(For & On behalf of Bidder/ Contractor)

(Office Seal) (Office Seal)

Place _____ Date _____

Witness 1: _____

(Name & Address) _____

Witness 2:



End of Document