

**SECTION III.****GENERAL CONDITIONS OF CONTRACT****TABLE OF CLAUSES**

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### SECTION III

#### GENERAL CONDITIONS OF CONTRACT

##### 1. Definitions

1.1 In this Contract, the following terms shall be interpreted as indicated:

- (a) "The Client" or "The Purchaser" means the President of India acting through the Chief Commissioner of Income tax .
- (b) "Purchase Officer" means the officer signing the acceptance of tender and includes any officer who has authority to execute the relevant contract on behalf of the Client.
- (c) The "Contract" means the agreement entered into between the Client and the Service Provider as recorded in the Contract Form signed by the Client and the Service Provider, including all attachments and annexes thereto and all documents incorporated by reference therein.
- (d) The "Service Provider " or "Vendor" means the firm or the company or consortium with whom the order for Services viz. Scanning, Digitization of Challans/Scrolls along with software facility for Search and Retrieval of data and Scanned Images is placed and shall be deemed to include the Service Provider's successors, representatives (approved by the Client), heirs, executors, administrators and permitted assigns, as the case may be, unless excluded by the terms of the contract.
- (f) "The Contract Price" means the price payable to the Service Provider under the Contract for the full and proper performance of its contractual obligations;
- (g) "Service" means services to be provided by the Service Provider as per the requirements specified in Schedule V of this document and any other incidental services, such as setting up of necessary infrastructure, implementation, provision of technical assistance, training and other such obligations of the Service Provider covered under the Contract;
- (h) "Acceptance of Tender" means the letter/telex/telegram/ fax or any memorandum communicating to the Tenderer the acceptance of his tender and includes an advance acceptance of his tender.
- (i) "ITD" means the Income-Tax Department.
- (j) "Nodal or Summary Scroll" means a tabular chart prepared by Nodal branch of the bank containing major head wise collection of taxes from all the branches of the bank operating in the jurisdiction of the Zonal Account Office(ZAO) of the area.
- (k) "Main Scroll" means a tabular chart prepared by Nodal branch of the bank containing branch wise and major head wise collection of taxes from all the branches of the bank operating in the jurisdiction of the Zonal Account Office(ZAO) of the area.
- (l) "Branch Scroll" means a tabular chart prepared by tax collecting branch and sent to Nodal branch of the bank along with the hard copy of challan containing major head wise and taxpayer wise collection of taxes of the branch of the bank.
- (m) "Bundle" means aggregation of following documents sent by each nodal branch of the bank to the respective ZAO for a particular nodal scroll date which are tagged together :

- a. Nodal/Summary Scroll
  - b. Main Scroll
  - c. Branch Scroll
  - d. Hard copy of challans corresponding to the branch scroll..
- (n) "Nodal or Summary Scroll Date" means date of preparation of nodal scroll by the nodal bank branch appearing on the summary scroll.
- (o) "BSR" means a 7 digit unique number allotted by RBI to each bank branch
- (p) "Challan Deposit Date) means date on which taxpayer submits challan along with the payment to the bank branch.
- (q) "Challan Sequence Number" means a serial number allotted by the bank branch on a particular challan for the purpose of digitization of challan data.

## 1.2 Acronyms and Abbreviations

The following table gives a description of all the abbreviations and acronyms used in this document.

| Abbreviation/Acronym | Description                                    |
|----------------------|------------------------------------------------|
| AO                   | Assessing Officer                              |
| BSR                  | Basic Statistical Return                       |
| CCIT                 | Chief Commissioner of Income Tax               |
| CIN                  | Challan Identification Number                  |
| CIT(CO)              | Commissioner of Income Tax(Computer Operation) |
| DIT(S)               | Directorate of Income Tax (Systems)            |
| DMS                  | Document Management System                     |
| DO                   | Designated Officer                             |
| ICR                  | Intelligent Character Recognition              |
| ITD                  | Income Tax Department                          |
| LOV                  | List of Values                                 |
| NCC                  | National Computer Center                       |
| NSDL                 | National Securities Depository Limited         |
| OCR                  | Optical Character Recognition                  |
| OLTAS                | On-Line Tax Accounting Systems                 |
| PAN                  | Permanent Account Number                       |
| RCC                  | Regional Computer Centre                       |
| RT                   | Record Type                                    |
| TAN                  | Tax Deduction Account Number                   |
| TIN                  | Tax Information Network                        |
| ZAO                  | Zonal Accounts Office                          |

## 2. Application

- 2.1 These General Conditions shall apply to the extent that provisions in other parts of the Contract do not supersede them.

## 3. Standards of Performance

- 3.1 The Service Provider shall perform the Services and carry out its obligations under the Contract with due diligence, efficiency and economy, in accordance with generally accepted techniques and practices used in the industry and with professional engineering and consulting standards recognized by international professional bodies and shall observe sound management, engineering practices. It shall employ technical and engineering practices. It shall employ appropriate advanced technology and safe and effective equipment, machinery, material and methods. The Service Provider shall always act, in respect of any matter relating to this Contract, as faithful advisors to the Client and shall, at all times, support and safeguard the Client's legitimate interests in any dealings with Third Parties.

## 4. Use of Contract Documents and Information

- 4.1 The Service Provider shall not, without the Client's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Client in connection therewith, to any person other than a person employed by the Service Provider in the Performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far, as may be necessary for purposes of such performance.

- 4.2 The Service Provider shall not, without the Client's prior written consent, make use of any document or information enumerated in **Clause 3 of Section II** except for purposes of performing the Contract.
- 4.3 Any document, other than the Contract itself, enumerated in **Clause 3 of Section II** shall remain the property of the Client and shall be returned (in all copies) to the Client on completion of the Service Provider's performance under the Contract, if so required by the Client.

## **5. Intellectual Property Rights**

- 5.1 The Service Provider shall indemnify the Client against all third-party claims of infringement of patent, trademark/copyright or industrial design rights arising from the use of the supplied Software and related services or any part thereof.
- 5.2 Software Utility to be used for Retrieval of data and scanned image and other software for generating reports shall become intellectual property of the Client and Service Provider shall not have any claim on software on expiry of Contract.
- 5.3 The Service Provider will not use Client's information for any activity outside of providing agreed services on behalf of the Client.
- 5.4. All information provided by the Client or data collected by the Service Provider executing the work will be considered confidential and will be handled by the Service Provider as Client's Confidential Information. The Client will be the owner of such confidential information.
- 5.5 All the information transacted between the Client and the Service Provider, belonging to each other, should be duly handed over to each other in the event of separation.
- 5.6.1 The Service Provider shall maintain full confidentiality of the data obtained while answering queries/complaints of Client's customers. Under no circumstances the Service Provider shall divulge/reveal/share such data. Service provider shall execute appropriate confidentiality agreements with their employees to maintain confidentiality of such data. Such data collected, if any shall be the property of the client and shall be handed over to the client on expiry of the contract or when asked for during the currency of the contract. The facility should have appropriate electronic access control systems to ensure only authorized personnel has access.

## **6. Performance Security**

- 6.1 Within 7 days after the receipt of notification of award of the Contract from the Client, the successful Tenderer shall furnish Performance Security to the Client, which shall be equal to 10% of the value of the Contract and shall be in the form of a Guarantee Bond from a Nationalised / Scheduled Bank in the Proforma given at **Appendix B**.

## **7. Training**

- 7.1 The Service Provider shall provide necessary training to the persons authorized by the client for using the software utility delivered by the service provider.

## **8. Loss of Revenue to the Client**

- 8.1 The Service Provider shall be vicariously liable to indemnify the Client in case of any misuse of data / information by the Service Provider, deliberate or otherwise, which comes into the knowledge of the Client during the performance or currency of the contract.

**9. Currency of Payment**

9.1 Payment shall be made in Indian Rupees only.

**10. Change Orders**

10.1 The Client may at any time, by a written order given to the Service Provider pursuant to **Clause 32 of Section II**, make changes within the general scope of the Contract.

10.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Vendor's performance of any part of the work under the Contract, whether changed or not changed by the order, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended. Any claims by the Service Provider for adjustment under this Clause must be asserted within thirty (30) days from the date of the Vendor's receipt of the Purchaser's changed order.

**11. Contract Amendments**

11.1 No variation in or modification of the terms of the Contract shall be made except by written amendment signed by both the parties i.e. the Service Provider and the Client.

**12. Assignment**

12.1 The Service Provider shall not assign, in whole or in part, its obligations to perform under the Contract.

**13. Terms of Payment**

13.1 The payment to the vendor shall be made as under :

| S No | % of Payments | Conditions/Events                                                                                                    |
|------|---------------|----------------------------------------------------------------------------------------------------------------------|
| 1.   | 70%           | <b>On delivery of Acceptable/validated images ,data and successful installation and User Acceptance Testing DMS.</b> |
| 2.   | 15%           | <b>Successful import and testing of 70% of all challans data in ITD application.</b>                                 |
| 3.   | 15%           | <b>After success completion of all the challans scanning and data import in ITD application.</b>                     |

13.2 No Advance payment will be made.

13.3 Payment will be made only after proof of delivery, installation and acceptance is obtained from the purchaser.

13.4 No amount would accrue to the service provider in case of failure to furnish Performance Security as per clause 6 above.

**14. Delays in the Service Provider's Performance**

14.1 An unexcused delay by the Service Provider in the performance of its Contract obligations shall render the Service Provider liable to any or all of the following sanctions :

- (i) forfeiture of its performance security;
- (ii) Imposition of Liquidated Damages
- (iii) termination of the Contract for default.

14.2 If at any time during performance of the Contract, the Service Provider should encounter conditions impeding timely completion of the services under the contract and performance of

the services, the Service Provider shall promptly notify the Client in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable, after receipt of the Vendor's notice, the Client shall evaluate the situation and may at its discretion extend the Vendor's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

#### **14.3 Liquidated Damages**

Subject to clause 16. if the service provider fails to perform the services within the time period specified in the contract, the purchaser shall without prejudice to its other remedies under the contract, deduct from the contract price, as liquidated damages, a sum equivalent to the 0.5% per week ( seven days) or part there of the contract price of unperformed services for each week(seven days) or part thereof of delay until actual performance, upto maximum deduction of 10% of the contract price. Once the maximum is reached, the purchaser may consider termination of the contract pursuant to clause 15.

#### **15. Termination for Default**

15.1 The Client may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Service Provider, terminate the Contract in whole or in part if:

- (a) the Service Provider fails to deliver any or all of the obligations within the time period(s) specified in the Contract, or any extension thereof granted by the Client pursuant to **Clause 14**; or
- (b) the Service Provider fails to perform any other obligation(s) under the contract.

#### **16. Force Majeure**

16.1 Notwithstanding the provisions of **Clauses 14 and 15**, the Service Provider shall not be liable for forfeiture of its performance security, or termination for default, if and to the extent that, its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

16.2 For Purposes of this Clause, "Force Majeure" means an event beyond the control of the Service Provider and not involving the Service Provider and not involving the Vendor's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Client either in its sovereign or contractual capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

16.3 If a force Majeure situation arises, the Service Provider shall promptly notify the Client in writing of such conditions and the cause thereof. Unless otherwise directed by the Client in writing, the Service Provider shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all prevented by the Force Majeure event.

16.4 The Client may terminate this contract, by giving a written notice of minimum 30 days to the Service Provider, if written notice of minimum 30 days to the Service Provider being unable to perform a material portion of the services for a period of more than 60 days.

#### **17. Termination for Insolvency**

17.1 The Client may at any time terminate the Contract by giving written notice to the Service Provider, without compensation to the Service Provider, if the Service Provider becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Client.

**18. Termination for Convenience**

18.1 The Client, may, by written notice sent to the Service Provider, terminate the Contract, in whole or in part at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

**19. Arbitration**

19.1 The Client and the Service Provider shall make every effort to resolve amicably by direct informal negotiations, any disagreement or disputes, arising between them under or in connection with the Contract.

19.2 If, after Thirty (30) days from the commencement of such direct informal negotiations, the Client and the Service Provider have been unable to resolve amicably a Contract dispute, either party may require that the dispute be referred for resolution to the formal mechanism specified in **Clauses 19.3 and 19.4.**

19.3 In the case of a dispute or difference arising between the Client and the Service Provider relating to any matter arising out of or connected with this Contract, such dispute or difference shall be referred to the award of two Arbitrators, one Arbitrator to be nominated by the Client and the other to be nominated by the Service Provider or in case of the said Arbitrators not agreeing, then to the award of an Umpire to be appointed by the Arbitrators in writing before proceeding with the reference, and in case the Arbitrators cannot agree to the Umpire, he may be nominated by the **Secretary, Indian Council of Arbitration, New Delhi.** The award of the Arbitrators, and in the event of their not agreeing, of the Umpire appointed by them or by the **Secretary, Indian Council of Arbitration, New Delhi** shall be final and binding on the parties.

19.4 **The Arbitration & Conciliation Act 1996,** the rules thereunder and any statutory modification or re-enactments thereof, shall apply to the arbitration proceedings.

19.5 The venue of arbitration shall be the city from where the Contract is issued.

19.6 The Client may terminate this contract, by giving a written notice of termination of minimum 30 days, to the Service Provider, if the Service Provider fails to comply with any decision reached consequent upon arbitration proceedings pursuant to **Clause 19.**

**20. Governing Language.**

20.1 The Agreement shall be written in English and Hindi language. Subject to **Clause 21,** such language versions of the Agreement shall govern its interpretation. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in either English or Hindi language. In the event of a conflict between the two versions, the English version shall prevail.

**21. Applicable Law**

21.1 The contract shall be interpreted in accordance with the Indian laws.

**22. Notices**

22.1 Any notice by one party to the other pursuant to the Contract shall be sent in writing or by telegram or by telex and confirmed in writing to the address specified for that purpose in the contract.

22.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

**23. Deductions**

- 23.1 Payments, as envisaged in **Clause 13**, shall be subject to deductions of any amount, for which the Service Provider is liable under the agreement against this tender.

**24. "No Claim" Certificate**

- 24.1 The Service Provider shall not be entitled to make any claim, whatsoever against the Client, under or by virtue of or arising out of, this contract, nor shall the Client entertain or consider any such claim, if made by the Service Provider after he shall have signed a "No claim" certificate in favour of the Client in such forms as shall be required by the Client after the works are finally accepted.

**25. Satisfactory complimentary Performance**

- 25.1 The Service Provider shall, notwithstanding any thing stated in other Clauses of this Document, guarantee satisfactory performance of the Services enumerated in the contract and in future undertake to reimburse the Client or any agency nominated by the Client, all payments made in pursuance of this contract and such other costs as may be decided by mutual consent or by an arbitrator as envisaged in **Clause 19**.

**26. Suspension**

- 26.1 The Client may, by a written notice of suspension to the Service Provider, suspend all payments to the Service Provider under the Contract, if the Service Provider fails to perform any of its obligations under this Contract, (including the carrying out of the Services) provided that such notice of suspension:

- (i) shall specify the nature of the failure; and
- (ii) shall request the Service Provider to remedy such failure within a specified period from the date of receipt of such notice of suspension by the Service Provider.

**27. Cessation of Rights and Obligations**

- 27.1 Upon termination of the Contract pursuant to any of the **Clauses 14.3, 15, 16.4, 17, 18 and 19.6** above or upon expiration of this Contract pursuant to **Clause 34**, all rights and obligations of the Parties hereunder shall cease, except;

- (i) such rights and obligations as may have accrued on the date of termination or expiration.
- (ii) the obligation of confidentiality set forth in Clause 30 below:
- (iii) any right which a Party may have under the Applicable Law.

**28. Cessation of Services Upon Termination**

- 28.1 Upon termination of this Contract pursuant to any of the **Clauses 14.3, 15, 16.4, 17, 18 and 19.6**, above, the Service Provider shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep the expenditure thereof to a minimum. As regards the documents prepared by the Service Provider the same shall be in accordance with **Clause 31**.

**29. Payment Upon Termination**

29.1 Upon termination of this Contract pursuant to any of the **Clauses 14.3, 15, 16.4, 17, 18 and 19.6**, the Client shall decide the quantum of payment to be made to the Service Provider consequent upon termination of Contract. The decision of Client under this Clause shall not be challenge able in any court of law.

**30. Confidentiality**

30.1 The Service Provider and their personnel shall not, either during the term or after expiration of this Contract, disclose any proprietary or confidential information relating to the Services, Contract, Clients's business or operations without the prior written consent of the Client.

30.2 The Service Provider and their personnel shall not, either during the term or after expiration of this Contract, use the name or the logo of the Client or the Income Tax Department except and to the extent authorized by client.

30.3 The Service Provider and their personnel shall not misuse or disclose any confidential information, which they come to know during the currency of this contract. The Service Provider shall be liable to fully recompense the Client for any loss of revenue arising from breach of confidentiality.

30.4 The Service Provider shall abide with the ITD Information Confidentiality Agreement (ICA), and shall be sign a separate Non Disclosure Agreement (NDA) with the Client. A sample NDA is given in **Appendix-D**.

**31. Documents Prepared by the Service Provider to be the Property of the Client**

31.1 All plans, drawings, specifications, designs, reports and other documents prepared by the Service Provider in the execution of the Contract shall become and remain the property of the Client, and before termination or expiration of this Contract the Service Provider shall deliver all such documents, prepared under this contract along with a detailed inventory thereof, to the Client.

**32. Service Provider's Personnel**

32.1 The Service Provider shall employ and provide such qualified and experienced personnel as are required to perform the Services under the Contract.

**33. Project Manager**

33.1 The Service Provider shall ensure that at all times during the currency of the Contract a Project Manager, acceptable to the Client shall take charge of the Performance of the Contract.

**34. Completion of Contract**

34.1 Unless terminated earlier, pursuant to **Clauses 14.3, 15, 16.4, 17, 18 and 19.6**, the Contract shall terminate on the completion of services as specified in the Contract.

**35. Deliverables and Reports :**

The following items are required to delivered by vendor :

35.1 Stage - I

- Project Plan and schedule

- Installation Report
- Software Configuration and Policy Document
- Commissioning and Integration Report
- Acceptance Testing Report
- Relevant Manual Literature

#### 35.2 Stage - II

- Daily report of number of challans scanned and data digitized in the format given by purchaser.
- Daily report in the format given by purchaser of mismatch between number of challans mentioned on Nodal Scroll of a Bank on a particular date and number of challans physically found in the bundle. This report should be prepared before Untagging of bundle.
- Daily report in the format given by purchaser of number of challans found in the Nodal Scroll of each bank for a particular date where Banks seal with BSR, Challan deposit date and Challan serial number is not appearing.
- Daily report in the format given by purchaser regarding failure of validation and CDs rejection
- Delivery of clear compressed images of challans /scrolls on CDs and data of challans /scroll in the flat file format and in the manner as given in clause 4 of section V.
- A facility to generate report on missing CIN challans (Bank Branch wise) along with scanned challans images which can be printed and sent to banks for OLTAS data entry for a range of Nodal Scroll Date.
- A software utility for fast retrieval of scanned images based on multiple query option based on digitized challan/scroll data.

### 36. Taxes

- 36.1 The Service Provider shall be entirely responsible for all taxes, duties, octroi, license fees, demurrage charges etc., incurred until delivery of the contracted Services to the Purchaser. However, Service tax in respect of the services provided to the Client shall be payable extra by the Client. If there is any increase/decrease in Service tax due to any reason whatsoever, after Notification of Award, the same shall be passed on to the Client. The provisions of Income tax Act regarding deduction of tax at source shall apply.