

**DEPARTMENT OF
INFORMATION TECHNOLOGY**

**GOVERNMENT OF MANIPUR
IMPHAL**



**REQUEST FOR PROPOSAL
FOR
SELECTION OF SYSTEM INTEGRATOR
FOR
IMPLEMENTATION OF e-DISTRICT MMP
VOLUME III**

CONTRACT AGREEMENT FOR SELECTION OF 'SYSTEM INTEGRATORS'

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Terms and Legends used in this document

Symbol/ Terms	Meaning
<<>>	Text to be filled in by the bidder in response to this document. This is not to be filled in by the user.
Nodal Agency	The Manipur State Information Technology Society (MSITS), Government of Manipur
Department	The Department of Information Technology is the ultimate “owner” of the project. The e-Governance is carried out within the domain of the department.
Bidder	Supplier/Vendor of Software application development, Software products

MASTER SERVICES AGREEMENT

THIS MASTER SERVICE AGREEMENT ("**Agreement**") is made on this the <<'Day'>>day of <<'Year'>>20... at<<'Location'>>, India.

BETWEEN

-----having its office at -----
----- India hereinafter referred to as Manipur State IT Society (hereinafter called the '*SDA's Acronym*', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<<'Implementing Agency full name'>>, a Company incorporated under the *Companies Act, 1956*, having its registered office at<<'Regd Location'>> (hereinafter referred to as<<'the System integrator/SI'>>which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

1. *Manipur State IT Society* is desirous to implement the project of e-District for State of Manipur.
2. In furtherance of the same, *Manipur State IT Society* undertook the selection of a suitable System integrator through a competitive bidding process for implementing the Project and in this behalf issued Request for Proposal (RFP) dated <<'Date'>>.
3. The successful bidder has been selected as the System integrator on the basis of the bid response set out as Annexure D of this Agreement, to undertake the Project of the development and implementation of the solution, its roll out and sustained operations.

NOW THEREFORE, in consideration of the mutual covenants, promises, assurances, representations and provisions set forth herein, the Parties hereto agree as follows:

1 Definitions and Interpretation

1.1 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out in Schedule I.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- I. references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- II. use of any gender includes the other genders;
- III. references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- IV. references to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- V. a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- VI. any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- VII. references to a '**business day**' shall be construed as a reference to a day (other than Sunday) on which banks in the state of Manipur are generally open for business;
- VIII. references to times are to Indian Standard Time;
- IX. a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- X. all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- XI. "System integrator (SI)" or "*System integrator (SI)*" has been used for the same entity i.e. bidder selected for the project.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

- I. as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in general Clause;
- II. as between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures; and
- III. as between any value written in numerals and that in words, the value in words shall prevail.

1.5 Priority of documents

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

- I. This Agreement along with the SLA agreement, NDA agreement, Schedules and Annexures;
- II. Request for Proposal and Addendum / Corrigendum to the Request for Proposal (if any).

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

2 Scope of the Project

The Scope of work has been detailed out in Volume II. The same needs to be reproduced in the Contract or reference is provided in the contract.

The roles and responsibilities of the Parties under this Agreement have been set out in detail as Annexure-F of this Agreement.

For the avoidance of doubt, it is expressly clarified that this Agreement shall govern the provision of the contracted professional services under the SLA to the *Manipur State IT Society* and its nominated agencies. It is anticipated that new or renewal agreements may be undertaken by creating a separate SLA, with schedules and annexures as required, under this Agreement for each additional engagement.

2.1 Scope of work

Detailed scope of work for the selected bidder is as follows:

1. -----
2. -----
3. -----

3 Termand Duration of the Agreement

3.1 This Agreement shall come into effect on 'Date' 20--- (hereinafter the 'Effective Date') and shall continue till operation and maintenance completion date which shall be the date of the completion of the operation and maintenance to the Manipur State IT Society or its nominated agencies.

4 Conditions Precedent & Effective Date

4.1 Provisions to take effect upon fulfillment of Conditions Precedent

Subject to express terms to the contrary, the rights and obligations under this Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out below. However, *Manipur State IT Society* or its nominated agencies may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the <<'System integrator'>>.

4.2 a. Conditions Precedent of the <<'System integrator'>>

The <<'System integrator'>> shall be required to fulfill the Conditions Precedent in which is as follows:

- I. to provide a Performance Security/Guarantee and other guarantees/ payments as and when required to the *Manipur State IT Society* or its nominated agencies; and
- II. to provide the *Manipur State IT Society* or its nominated agencies certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the <<'System integrator'>>.

4.2 b. Conditions Precedent of the Manipur State IT Society

The Manipur State IT Society shall be required to fulfill the Conditions Precedent in which is as follows:

- I. Handing over of site
- II. Necessary clearances
- III. Approval of the Project by a Competent Authority, etc.

For the avoidance of doubt, it is expressly clarified that the obligations of the Parties except the

financial obligations of *Manipur State IT Society* or its nominated agencies under this Agreement shall commence from the fulfillment of the Conditions Precedent as set forth above.

4.3 Extension of time for fulfillment of Conditions Precedent

The Parties may, by mutual agreement extend the time for fulfilling the Conditions Precedent and the Term of this Agreement.

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

4.4 Non-fulfillment of the<<'System integrator'>>'s Conditions Precedent

- I. In the event that any of the Conditions Precedent of the <<'System integrator'>> have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by Manipur State IT Society or its nominated agencies, this Agreement shall cease to exist;
- II. In the event that the Agreement fails to come into effect on account of non fulfillment of the <<'System integrator'>>'s Conditions Precedent, the Manipur State IT Society or its nominated agencies shall not be liable in any manner whatsoever to the <<'System integrator'>> and the Manipur State IT Society shall forthwith forfeit the Performance Guarantee.
- III. In the event that possession of any of the Manipur State IT Society or its nominated agencies facilities has been delivered to the <<'System integrator'>> prior to the fulfillment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to Manipur State IT Society or its nominated agencies, free and clear from any encumbrances or claims.

5 Obligations under the SLA

5.1 The SLA shall be a separate contract in respect of this Agreement and shall be entered into concurrently with this Agreement between *Manipur State IT Society* and <<'System integrator'>>;

5.2 In relation to any future SLA entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein.

5.3 Change of Control

- I. In the event of a change of control of the <<'System integrator'>> during the Term, the <<'System integrator'>> shall promptly notify Manipur State IT Society and/or its nominated agencies of the same in the format set out as Annexure A of this Agreement.

- II. In the event that the net worth of the surviving entity is less than that of <<'System integrator'>> prior to the change of control, the Manipur State IT Society or its nominated agencies may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the <<'System integrator'>> from a guarantor acceptable to the Manipur State IT Society or its nominated agencies (which shall not be <<'System integrator'>> or any of its associated entities).
- III. If such a guarantee is not furnished within 30 days of the Manipur State IT Society or its nominated agencies requiring the replacement, the Manipur State IT Society may exercise its right to terminate the SLA and/ or this Agreement within a further 30 days by written notice, to become effective as specified in such notice.
- IV. Pursuant to termination, the effects of termination as set out in Clause 14.2 of this Agreement shall follow.

For the avoidance of doubt, it is expressly clarified that the internal reorganization of the <<'System integrator'>> shall not be deemed an event of a change of control for purposes of this Clause unless the surviving entity is of less net worth than the predecessor entity.

5.4 Finaltesting and certification

The Project shall be governed by the mechanism of final acceptance testing and certification to be put into place by the *Manipur State IT Society* and <<'<<System integrator>>'>> as under:

- I. Final testing and certification criteria will lay down a set of guidelines following internationally accepted norms and standards for testing and certification for all aspects of project development and implementation covering software, hardware and networking including the processes relating to the design of solution architecture, design of systems and sub- systems, coding, testing, business process description, documentation, version control, change management, security, service oriented architecture, performance in relation to compliance with SLA metrics, interoperability, scalability, availability and compliance with all the technical and functional requirements of the RFP and this Agreement;
- II. Final testing and certification criteria will be finalized from the development stage to ensure that the guidelines are being followed and to avoid large scale modifications pursuant to testing done after the application is fully developed;
- III. Final testing and certification criteria will consider conducting specific tests on the software, hardware, networking, security and all other aspects;
- IV. Final testing and certification criteria will establish appropriate processes for notifying the <<'<<System integrator>>'>> of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the <<'<<System integrator>>'>> to take corrective action; etc.

- 5.5 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 *Manipur State IT Society* and '<<System integrator>>' in accordance with the Change Control Schedule set out in Schedule II of this Agreement. Save for the express terms of the Terms of Payment Schedule set out as Schedule VI of this Agreement, *Manipur State IT Society* or its nominated agencies and its users may purchase any particular category of Services that may become necessary as per the Change Control Schedule set out in Schedule II of this Agreement, without the need to go for a separate procurement process.

6 Representations and Warranties

6.1 Representations and warranties of the <<<<System integrator>>>>

The <<<<System integrator>>>> represents and warrants to the Manipur State IT Society or its nominated agencies that:

- I. it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- II. it is a competent provider of a variety of information technology and business process management services;
- III. it has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- IV. from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- V. in providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to *Manipur State IT Society's* normal business operations
- VI. this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- VII. the information furnished in the tender documents and as updated on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement;
- VIII. the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or

- affected;
- IX. there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
 - X. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
 - XI. it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement;
 - XII. no representation or warranty by it contained herein or in any other document furnished by it to *Manipur State IT Society* or its nominated agencies in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
 - XIII. no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of *Manipur State IT Society* or its nominated agencies in connection therewith.

6.2 Representations and warranties of the *Manipur State IT Society* or its nominated agencies

Manipur State IT Society or its nominated agencies represent and warrant to the <<'System integrator'>> that:

- I. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- II. it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

- III. it has the financial standing and capacity to perform its obligations under the Agreement;
- IV. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- V. this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;
- VI. the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- VII. there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;
- VIII. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on the *Manipur State IT Society* or its nominated agencies ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- IX. it has complied with Applicable Laws in all material respects;
- X. all information provided by it in the RFP in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- XI. upon the <<'System integrator'>>performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the <<'System integrator'>>, in accordance with this Agreement.

7 Obligations of *Manipur State IT Society* or its Nominated Agencies

Without prejudice to any other undertakings or obligations of the Manipur State IT Society or its nominated agencies under this Agreement, the Manipur State IT Society or its nominated agencies shall perform the following:

- I. To provide any support through personnel to test the system during the Term;
- II. To provide any support through personnel and/or test data during development, rollout, steady state operation, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- III. *Manipur State IT Society* shall provide the data (including in electronic form wherever available) to be migrated.
- IV. To authorize the <<'System integrator'>> to interact for implementation of the Project with external entities such as the state treasury, authorized banks, trademark database etc.

8 Obligations of the Implantation Partner

- 8.1 It shall provide to the *Manipur State IT Society* or its nominated agencies, the Deliverables as set out in Annexure C of this Agreement.
- 8.2 It shall perform the Services as set out in Section 2 of this Agreement and in a good and workmanlike 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.
- 8.3 It shall ensure that the Services are being provided as per the Project Timelines set out as Annexure C to this Agreement.

9 Approvals and required consents

- 9.1 The Parties shall cooperate to procure, maintain and observe all relevant and regulatory and governmental licenses, clearances and applicable approvals (hereinafter the "**Required Consents**") necessary for the <<'System integrator'>> to provide the Services. The costs of such Approvals shall be borne by the Party normally responsible for such costs according to local custom and practice in the locations where the Services are to be provided. [*This responsibility of taking Governmental licenses, clearances and applicable approvals requires to be explicitly worded in the Scope of work in the RFP, only then this clause in its current shape would hold*]
- 9.2 The *Manipur State IT Society* or its nominated agencies shall use reasonable endeavors to assist <<'System integrator'>> to obtain the Required Consents [*or vice versa, depending on the Scope of work defined in the RFP*]. In the event that any Required Consent is not obtained, the <<'System integrator'>> and the *Manipur State IT Society* or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the *Manipur State IT Society* or its nominated agencies to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Required Consent is obtained, provided that the <<'System integrator'>> shall not be relieved of its

obligations to provide the Services and to achieve the Service Levels until the Required Consents are obtained if and to the extent that the <<'System integrator'>>'s obligations are not dependent upon such Required Consents.

10 Use of assets by the <<'System integrator'>>

10.1 During the Term the <<'System integrator'>> shall:

- I. take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the <<'System integrator'>> exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the "*Assets*") in proportion to their use and control of such Assets; and
- II. keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the <<'System integrator'>> takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- III. ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the <<'System integrator'>> will be followed by the <<'System integrator'>> and any person who will be responsible for the use of the Assets;
- IV. take such steps as may be properly recommended by the manufacturer of the Assets and notified to the <<'System integrator'>> or as may, in the reasonable opinion of the System integrator, be necessary to use the Assets in a safe manner;
- V. ensure that the Assets that are under the control of the <<'System integrator'>>, are kept suitably housed and in conformity with Applicable Law;
- VI. procure permission from the *Manipur State IT Society* or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- VII. not, knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.

11 Access to Manipur State IT Society or its Nominated Agencies Locations

- ### **11.1**
- For so long as the <<'System integrator'>> provides services to the *Manipur State IT Society* or its nominated agencies location, as the case may be, on a non-permanent basis and to the extent necessary, the *Manipur State IT Society* as the case may be or its nominated agencies shall, subject to compliance by the <<'System integrator'>> with any safety and security guidelines which may be provided by the *Manipur State IT Society* as the case may be or its nominated agencies and notified to the <<'System integrator'>> in writing,

provide the <<'System integrator'>> with:

- I. reasonable access, in the same manner granted to the *Manipur State IT Society* or its nominated agencies employees, to the *Manipur State IT Society* as the case may be location twenty-four hours a day, seven days a week;
 - II. reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other the *Manipur State IT Society* as the case may be location, if any, as may be reasonably necessary for the <<'System integrator'>> to perform its obligations hereunder and under the SLA.
- 11.2** Access to locations, office equipments and services shall be made available to the <<'System integrator'>> on an "as is, where is" basis by the *Manipur State IT Society* as the case may be or its nominated agencies. The <<'System integrator'>> agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in RFP for the following purposes:
- 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).

12 Management Phase

12.1 Governance

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

12.2 Use of Services

- I. The *Manipur State IT Society* as the case may be or its nominated agencies, will undertake and use the Services in accordance with any instructions or procedures as per the acceptance criteria as set out in the SLA or this Agreement or any agreement that may be entered into between the Parties from time to time;
- II. The *Manipur State IT Society* as the case may be or its nominated agencies shall be responsible for the operation and use of the Deliverables resulting from the Services.

12.3 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 set out in Schedule II of this Agreement.

12.4 Security And Safety

- I. The <<'System integrator'>> shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act or Telegraph Act including theregulations issued by dept. of telecom (wherever applicable), IT Security Manual of the *Manipur State IT Society* as specifically stated in the RFP and follow the industry standards related to safety and security (including those as stated in the RFP), insofar as it applies to the provision of the Services.
- II. Each Party to the SLA/Agreement shall also comply with *Manipur State IT Society* or the Government of India, and Government of Manipur security standards and policies in force from time to time at each location of which *Manipur State IT Society* or its nominated agencies make the <<'System integrator'>> aware in writing insofar as the same apply to the provision of the Services.
- III. The Parties to the SLA/Agreement shall use reasonable endeavors 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 *Manipur State IT Society* as the case may be or any of their nominees data, facilities or

Confidential Information.

- IV. The <<'System integrator'>> shall upon reasonable request by the *Manipur State IT Society* as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- V. As per the provisions of the SLA or this Agreement, the <<'System integrator'>> shall promptly report in writing to the *Manipur State IT Society* or its nominated agencies, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of *Manipur State IT Society* as the case may be.

12.5 Cooperation

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. does not require material expenditure by the Providing Party to provide the same;
- II. is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement or the SLA;
- III. cannot be construed to be Confidential Information; and
- IV. is capable of being provided by the Providing Party.

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

13 Financial Matters

13.1 Terms of Payment and Service Credits and Debits

- I. In consideration of the Services and subject to the provisions of this Agreement and of the SLA, the Manipur State IT Society shall pay the <<'System integrator'>> for the Services rendered in pursuance of this agreement, in accordance with the Terms of Payment Schedule set out as Schedule VI of this Agreement.
- II. All payments are subject to the application of service credits and debits as may be provided for in the SLA. For the avoidance of doubt, it is expressly clarified that the Manipur State IT Society will pay the service credits as stated in accordance with the Schedule VI of this Agreement and the Manipur State IT Society may also calculate a financial sum and debit the same against the terms of payment as set out in Schedule VI of this Agreement as a result of the failure

of the <<'System integrator'>> to meet the Service Level as defined in SLA. The Manipur State IT Society(on request from successful bidders) can look at having a separate mechanism for settling penalties/service credits rather than the set off against the invoice as this could revenue recognition issues. However, the successful bidder has to ensure that such settlement happens within a stipulated timeframe]

- III. Save and except as otherwise provided for herein or as agreed between the Parties in writing, the Manipur State IT Society shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the <<'System integrator'>> performance of any obligations under this Agreement or the SLA) other than those covered 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 which are addressed in this Clause.

13.2 Invoicing and Settlement

- I. Subject to the specific terms of the SLA, the <<'System integrator'>> shall submit its invoices in accordance with the following principles:
 - A. The *Manipur State IT Society* shall be invoiced by the <<'System integrator'>> for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the <<'System integrator'>> shall raise an invoice as per Schedule VI of this Agreement; and
 - B. Any invoice presented in accordance with this Article shall be in a form agreed with the *Manipur State IT Society*.
- II. The <<'System integrator'>> alone shall invoice all payments after receiving due approval from the competent authority. Such invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in Schedule VI of this Agreement. The <<'System integrator'>> shall waive any charge for a Service that is not invoiced within six months after the end of the month in which the change relating to such Service is(i) authorized or (ii) incurred, whichever is later.
- III. **Payment shall be made within 30 working days** of the receipt of invoice along with supporting documents by the Manipur State IT Society subject to penalties. The penalties are imposed on the vendor as per the SLA criteria specified in the SLA. In the event of delay in payment of undisputed amount **beyond 30 working days**, <<'System integrator'>> shall be entitled to a late payment interest **<@12%>**

p.a. from the date of submission of invoice.

- IV. The Manipur State IT Society shall be entitled to delay or withhold payment of any invoice or part of it delivered by the <<'System integrator'>> under Schedule VI of this Agreement where the Manipur State IT Society disputes/withholds such invoice or part of it provided that such dispute is bona fide. The withheld amount shall be limited to that which is in dispute. The disputed/withheld amount shall be settled in accordance with the escalation procedure as set out in Schedule V of this Agreement. Any exercise by the Manipur State IT Society under this Clause shall not entitle the <<'System integrator'>> to delay or withhold provision of the Services.
- V. The Manipur State IT Society shall be entitled to delay or withhold part of the payment of any invoice which is under a dispute. The withheld amount shall be limited to that which is the disputed amount. The disputed amount shall be referred to the escalation procedure as set out in Schedule V of this Agreement. Any exercise by the Manipur State IT Society under this Clause shall not entitle the <<'System integrator'>> to delay or withhold provision of the Services.
- VI. The <<'System integrator'>> shall be solely responsible to make payment its sub-contractors.

13.3 Tax

- I. The Manipur State IT Society or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the <<'System integrator'>> wherever applicable. The <<'System integrator'>> shall pay for all other taxes in connection with this Agreement, SLA, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.
- II. The Manipur State IT Society or its nominated agencies shall provide <<'System integrator'>> with the original tax receipt of any withholding taxes paid by Manipur State IT Society or its nominated agencies on payments under this Agreement. The <<'System integrator'>> agrees to reimburse and hold the Manipur State IT Society or its nominated agencies harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among the Manipur State IT Society or its nominated agencies, the <<'System integrator'>> and third party subcontractors.
- III. If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by the Manipur State IT Society for providing the services i.e.

service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the SI in performing the Services, then the remuneration and reimbursable expense otherwise payable to the Manipur State IT Society under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule VI. However, in case of any new or fresh tax or levy imposed after submission of the proposal the <<'System integrator'>> shall be entitled to reimbursement on submission of proof of payment of such tax or levy.

- IV. The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with the following:
- A. any resale certificates;
 - B. any relevant information regarding out-of-state or use of materials, equipment or services; and
 - C. any direct pay permits, exemption certificates or information reasonably requested by the other Party.

14 Termination

14.1 Material Breach

- I. In the event that either Party believes that the other Party is in Material Breach of its obligations under this Agreement, such aggrieved Party may terminate this Agreement upon giving a one month's notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, the *Manipur State IT Society* or <<'System integrator'>>, as the case may be will have the option to terminate the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events and the termination will become effective:
- A. If the <<'System integrator'>> is not able to deliver the services as per the SLAs defined in RFP which translates into Material Breach, then the *Manipur State IT Society* may serve a 30 days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the *Manipur State IT Society* will have the option to terminate this Agreement. Further, the *Manipur State IT Society* may after affording a reasonable opportunity to the <<'System integrator'>> to explain the circumstances leading to such a breach.
 - B. If there is a Material Breach by the *Manipur State IT Society* or its nominated agencies which results in not providing support for effecting data migration or not providing the certification of User Acceptance, and / or failing to

make payment of undisputed amount within 30 from date of submission of invoice, then the <<'System integrator'>> will give a one month's notice for curing the Material Breach to the *Manipur State IT Society*. After the expiry of such notice period, the <<'System integrator'>> will have the option to terminate the Agreement.

- II. The Manipur State IT Society may by giving a one month's written notice, terminate this Agreement if a change of control of the <<'System integrator'>> has taken place. For the purposes of this Clause, in the case of <<'System integrator'>>, change of control shall mean the events stated in Clause 5.3, and such notice shall become effective at the end of the notice period as set out in Clause 5.3 (c).
- III. In the event that <<'System integrator'>> undergoes such a change of control, Manipur State IT Society may, as an alternative to termination, require a full Performance Guarantee for the obligations of <<'System integrator'>> by a guarantor acceptable to Manipur State IT Society or its nominated agencies. If such a guarantee is not furnished within 30 days of Manipur State IT Society's demand, the Manipur State IT Society may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the <<'System integrator'>>.
- IV. The termination provisions set out in this Clause shall apply mutatis mutandis to the SLA.

14.2 Effects of termination

- I. In the event that *Manipur State IT Society* terminates this Agreement pursuant to failure on the part of the <<'System integrator'>> to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by <<'System integrator'>> may be forfeited.
- II. Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule III of this Agreement.
- III. In the event that *Manipur State IT Society* or the <<'System integrator'>> terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as Schedule VI of this Agreement.
- IV. *Manipur State IT Society* agrees to pay <<'System integrator'>> for i) all charges for Services <<'System integrator'>> provides and any Deliverables and/or system (or part thereof) <<'System integrator'>> delivers through termination, and ii) reimbursable expenses <<'System integrator'>> incurs through termination. If *Manipur State IT Society* terminates without cause, *Manipur State IT Society* also agrees to pay any applicable adjustment expenses <<'System integrator'>> incurs as a result of such termination (which <<'System integrator'>> will take

reasonable steps to mitigate).

14.3 Termination of this Agreement due to bankruptcy of <<'System integrator'>>

The *Manipur State IT Society* may serve written notice on <<'System integrator'>> at any time to terminate this Agreement with immediate effect in the event that the <<'System integrator'>> reporting an apprehension of bankruptcy to the *Manipur State IT Society* or its nominated agencies.

15 Indemnification& Limitation of Liability

15.1 Subject to Clause 15.2 below, <<'System integrator'>> (the "Indemnifying Party") undertakes to indemnify *Manipur State IT Society* (the "Indemnified Party") from and against all Losses on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or willful default in performance or non-performance under this Agreement. If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Indemnified Party. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by (a) Indemnified Party's misuse or modification of the Service; (b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party; (c) Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party; (d) Indemnified Party's distribution, marketing or use for the benefit of third parties of the Service; or (e) information, direction, specification or materials provided by Indemnified Party or any third party contracted to it. If any Service is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either (i) procure the right for Indemnified Party to continue using it, (ii) replace it with a noninfringing equivalent, (iii) modify it to make it noninfringing. The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.

15.2 The indemnities set out in **Clause 15.1** shall be subject to the following conditions:

- I. the Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
- II. the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may,

- at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense;
- III. if the Indemnifying Party does not assume full control over the Defense of a claim as provided in this Article, the Indemnifying Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified 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 Clause will:
- A. be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and
- B. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
- VI. the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
- VII. the Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;
- VIII. in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this 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; and
- IX. if a Party makes a claim under the indemnity set out under Clause 15.1 above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).

15.3 The liability of <<'System integrator'>> (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of

direct damages only which shall in no event in the aggregate exceed the amount specified in the contract. The liability cap given under this Clause 15.3 shall not be applicable to the indemnification obligations set out in Clause 15.1 and breach of Clause 12.4 and 17.

15.4 In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) nor for any third party claims (other than those set-forth in Clause 15.1) even if it has been advised of their possible existence.

15.5 The allocations of liability in this Section 15 represent the agreed and bargained-for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

16 Force Majeure

16.1 Definition of Force Majeure

The <<'System integrator'>> or the Manipur State IT Society as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by an event of force majeure ('Force Majeure').

16.2 Force Majeure events

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

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

Such events include:

I. Non-Political Events

- (A) act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme

atmospheric conditions;

- (B) radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the <<'System integrator'>>'s use of radiation or radio-activity or biologically contaminating material;
- (C) strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances as the case may be not arising on account of the acts or omissions of the <<'System integrator'>> and which affect the timely implementation and continued operation of the Project; or
- (D) any event or circumstances of a nature analogous to any of the foregoing.

II. Political Events

- (E) Change in Law, other than any Change in Law for which relief is provided under this Agreement;
- (F) expropriation or compulsory acquisition by the *Manipur State IT Society* or any of their nominated agencies of any material assets or rights of the <<'System integrator'>>;
- (G) unlawful or unauthorised revocation of, or refusal by *Manipur State IT Society* or any of their nominated agencies, GoI or any of its agencies to renew or grant any clearance or Required Consents required by the <<'System integrator'>> to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the <<'System integrator'>>'s inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- (H) any judgment or order of any court of competent jurisdiction or statutory authority in India made against the <<'System integrator'>> in any proceedings for reasons other than failure of the <<'System integrator'>> to comply with Applicable Laws or Required Consents or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement;
- (I) expropriation or compulsory acquisition by the *Manipur State IT Society* or any of their nominated agencies of any material assets or rights of the <<'System integrator'>>;
- (J) unlawful or unauthorized revocation of, or refusal by any authority other than the *Manipur State IT Society* or any of their nominated agencies to renew or grant any Required Consents required by the <<'System integrator'>> to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the <<'System integrator'>>'s inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- (K) any requisition of the Project by any other authority; or

- (L) any requisition of the Project by the *Manipur State IT Society* or any of their nominated agencies.
- (M) For the avoidance of doubt, suspension of the Project in accordance with the provisions of this Agreement shall not be considered a requisition for the purposes of Force Majeure event.

III. Other Events

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

For the avoidance of doubt, it is expressly clarified that the failure on the part of the <<'System integrator'>> under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking aren't the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure". *In so far as applicable to the performance of Services, Service Provider will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability there from (wherever applicable).*

16.3 Notification procedure for Force Majeure

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

16.4 Allocation of costs arising out of Force Majeure

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

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

- upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
- upon occurrence of an Other Event of Force Majeure, all Force Majeure Costs attributable to such Other Event, and not exceeding the Insurance Cover for such Other Event, shall be borne by the <<'System integrator'>> and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by *Manipur State IT Society* to the <<'System integrator'>> (optional clause – to be used, if relevant.)
- upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by *Manipur State IT Society* to the <<'System integrator'>>.
- For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, operation and maintenance expenses, any increase in the cost of the Services on account of inflation and all other costs directly attributable to the Force Majeure Event.
- Save and except as expressly provided in this Clause, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof.

16.5 Consultation and duty to mitigate

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

17 Confidentiality

- 17.1 The *Manipur State IT Society* or its nominated agencies shall allow the <<'System integrator'>> to review and utilize highly confidential public records and the <<'System integrator'>> shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.

- 17.2 Additionally, the <<'System integrator'>> shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- 17.3 The *Manipur State IT Society* or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the <<'System integrator'>> regarding any forbidden disclosure.
- 17.4 The <<'System integrator'>> shall ensure that all its employees, agents and sub-contractors execute individual non disclosure agreements, which have been duly approved by the *Manipur State IT Society* with respect to this Project. (Optional)
For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:
- (a) information already available in the public domain;
 - (b) information which has been developed independently by the <<'System integrator'>>;
 - (c) information which has been received from a third party who had the right to disclose the aforesaid information;
 - (d) information which has been disclosed to the public pursuant to a court order.
- 17.5 To the extent the <<'System integrator'>> shares its confidential or proprietary information with the *Manipur State IT Society* foreffective performance of the Services, the provisions of the Clause 17.1 to 17.3 shall apply mutatis mutandis on the *Manipur State IT Society* or its nominated agencies.

18 Audit, Access and Reporting

The <<'System integrator'>> shall allow access to the *Manipur State IT Society* or its nominated agencies to all information which is in the possession or control of the <<'System integrator'>> and which relates to the provision of the Services as set out in the Audit, Access and Reporting Schedule and which is reasonably required by the *Manipur State IT Society* to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule IV of this Agreement.

19 Intellectual Property Rights

19.1 Products and fixes: All products and related solutions and fixes provided pursuant to this work order shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. <<'System integrator'>> would be responsible for arranging any licenses associated with products. “**Product**” means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to *Manipur State IT Society* for license which is published by product owner or its affiliates, or a third party. “**Fixes**” means product fixes that are either released generally (such as commercial product service packs) or that are provided to you when performing services

(such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.

19.2 Bespoke development: Subject to the provisions of Clause 19.3 and 19.4 below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie with *Manipur State IT Society*. <<'System integrator'>> shall be entitled to a broad license back in the bespoke development for its internal usage and other e-governance projects.

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

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

20 Warranty

20.1 Standard: The <<'System integrator'>> warrants that the Project, including all the system(s) and other Services provided, shall be free from any defect or deficiency in the material, design, engineering, and performance/workmanship that prevent the Project and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the Project and/or any of its system(s) as per the performance guarantee / warranty period defined in the Schedule. If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship

of the Project and other Services provided by the <<'System integrator'>>, the <<'System integrator'>> shall promptly, in consultation and agreement with *Manipur State IT Society*, and at the <<'System integrator'>>'s sole cost repair, replace, or otherwise make good (as the <<'System integrator'>> shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the Project caused by such default, defect or deficiency. Any defective system that has been replaced by the <<'System integrator'>> shall remain the property of the <<'System integrator'>>. If the Project or any of its System cannot be used by reason of such default, defect or deficiency and/or making good of such default, defect or deficiency, the warranty period for the Project shall be extended by a period equal to the period during which the Project or any of its system could not be used by the *Manipur State IT Society* because of such defect and/or making good of such default, defect or deficiency.

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

20.3 The <<'System integrator'>> shall have no liability in the case of breach of this warranty due to (i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the <<'System integrator'>>, (ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the <<'System integrator'>>; (iii) the deliverables having been tampered with, altered or modified by *Manipur State IT Society* without the written permission of the <<'System integrator'>>, or (iv) use of the deliverables otherwise than in terms of the relevant documentation.

21 Liquidated Damages

Time is the essence of the Agreement and the delivery dates are binding on the <<'System integrator'>>. In the event of delay or any gross negligence, for causes attributable to the System integrator, in meeting the deliverables, the *Manipur State IT Society* shall be entitled at its option to recover from the <<'System integrator'>> as agreed, liquidated damages, a sum of 0.5% of the value of the deliverable which suffered delay or gross negligence for each completed week or part thereof subject to a limit of 5% of the relevant deliverable value.

22 Escrow Agreement

22.1 <<'System integrator'>> shall comply with the escrow provisions below for all Public Material and Proprietary Vendor Material (including subcontractor-owned materials and other Third Party Material incorporated in <<'System integrator'>>'s Proprietary Material), except to the extent <<'System integrator'>> demonstrates to the satisfaction of the *Manipur*

State IT Society that compliance is not permitted by the nature of <<'System integrator'>>'s limited rights in such material.

22.2 Within ninety (90) days after the *Manipur State IT Society's* acceptance of the Solution, the Parties shall enter into a software escrow agreement ("Escrow Agreement") with a reputable, independent, third party that provides software escrow services among its principal business offerings ("Escrow Agent"). The Escrow Agreement shall provide for the regular deposit into escrow of all source code (including without limitation all make files, configurational files, data tables upon which execution is dependent, and the like, collectively the "Source Code"), object code, and documentation with respect to all Public Material and <<'System integrator'>>'s Proprietary Material (and cumulative updates thereof), together with (a) continually updated instructions as to the compilation, installation, configuration, deployment, and use of the Source Code, and (b) a list of all non-deposited third party software used in conjunction with the Source Code to provide the full functionality of the deposited materials. In the event of the termination or expiration of the initial Escrow Agreement or any successor agreement, with minimal delay the Parties shall enter into a substantially equivalent agreement with a successor provider of software escrow services (who shall then be known as the "Escrow Agent").

22.3 <<'System integrator'>> will make its initial deposit of Source Code within fifteen (15) days after the effective date of the Escrow Agreement.

22.4 <<'System integrator'>> shall periodically update the escrow deposit as the Parties shall agree in the Escrow Agreement. In addition to other usual and customary terms, the Escrow Agreement shall provide that the *Manipur State IT Society* shall be entitled to obtain the deposited materials from escrow upon the *Manipur State IT Society's* making a proper claim for release from escrow in the event that (c) proper written notice is given to the Escrow Agent that release of the copy of the deposited materials is pursuant to applicable Central or *Manipur State IT Society* bankruptcy, insolvency, reorganization, or liquidation statute; (d) <<'System integrator'>> files articles of dissolution (but not if <<'System integrator'>> is consolidated or merged into another entity); (e) the Contract expires or terminates for Material Breach of <<'System integrator'>>.

22.5 The release of deposited materials from escrow shall not confer upon the *Manipur State IT Society* any right of ownership in the deposited materials or the underlying intellectual property embodied therein. In the event of the release of deposited materials to the *Manipur State IT Society* from escrow, the *Manipur State IT Society* shall use the deposited materials solely for the benefit of the *Manipur State IT Society* and its constituents, consistently with the grants of license set forth in Clause 19.2 of this Agreement.

22.6 The release of materials from escrow, without more, shall not cause any further amounts to accrue as payable to <<'System integrator'>> by the *Manipur State IT Society*, and the term of the *Manipur State IT Society's* possessory and usage rights with respect to the released materials shall be perpetual.

22.7 The Escrow Agreement shall provide for its automatic termination upon the earlier of five (5) years after the expiration or termination of this Contract, or, release of all Source Code to the *Manipur State IT Society* and the *Manipur State IT Society's* subsequent confirmation of compliance with the terms of the Escrow Agreement. <<'System integrator'>> shall pay the escrow costs, as well as all costs associated with causing its subcontractors and other third parties to abide by the Escrow Agreement.

23 Insurance Cover

23.1 Obligation to maintain insurance

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

- (a) for the Agreement Period, valid and enforceable insurance coverage for:
 - (i) public liability;
 - (ii) either professional indemnity or errors and omissions;
 - (iii) product liability;
 - (iv) workers' compensation as required by law; and
 - (v) any additional types specified in Schedule I; and
- (b) for <three> years following the expiry or termination of the Agreement, valid and enforceable insurance policies (if relevant),
in the amount not less than the Insurance Cover specified in Schedule I.

23.2 Certificates of currency

The <<'System integrator'>> must, on request by the *Manipur State IT Society*, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 23. The Service Provider agrees to replace any coverage prior to the date of expiry/cancellation.

23.3 Non-compliance

Manipur State IT Society or its nominated agencies may, at its election, terminate this Agreement upon the failure of <<'System integrator'>>, or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve <<'System integrator'>> of its obligations under this Agreement.

24 Miscellaneous

24.1 Personnel

(a) The personnel assigned by <<'System integrator'>> to perform the Services shall be employees of <<'System integrator'>> or its subcontractor(s), and under no circumstances shall such personnel be considered employees of Manipur State IT Society or its nominated agencies. The <<'System integrator'>> shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.

(b) The <<'System integrator'>> shall use its best efforts to ensure that sufficient <<'System integrator'>> personnel are assigned to perform the Services and that such personnel have appropriate qualifications to perform the Services. After discussion with <<'System integrator'>>, Manipur State IT Society or its nominated agencies shall have the right to require the removal or replacement of any <<'System integrator'>> personnel performing work under this Agreement based on bonafide reasons. In the event that Manipur State IT Society or its nominated agencies requests that any <<'System integrator'>> personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.

(d) In the event that the Manipur State IT Society and <<'System integrator'>> identify any personnel of <<'System integrator'>> as "Key Personnel", then the <<'System integrator'>> shall not remove such personnel from the Project without the prior written consent of Manipur State IT Society or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.

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

(f) Each Party shall be responsible for the performance of all its obligations under this Agreement or the SLA as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.

(g) Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.

24.2 Independent Contractor

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

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

24.3 Sub-contractors

<<'System integrator'>> shall not subcontract any work related to <Insert details>without Manipur State IT Society's prior written consent. However the <<'System integrator'>> shall provide the list of all the other services planned to be sub contracted, within 15 days of signing the Agreement. It is clarified that the <<'System integrator'>> shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The <<'System integrator'>> undertakes to indemnify the Manipur State IT Society or its nominated agencies from any claims on the grounds stated hereinabove.

24.4 Assignment

- (a) All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the *Manipur State IT Society* and their respective successors and permitted assigns.
- (b) Subject to Clause 5.3, the <<'System integrator'>> shall not be permitted to assign its rights and obligations under this Agreement to any third party.
- (c) The *Manipur State IT Society* may assign or novate all or any part of this Agreement and Schedules/Annexures, and the <<'System integrator'>> shall be a party to such novation, to any third party contracted to provide outsourced services to *Manipur State IT Society* or any of its nominees.

24.5 Trademarks, Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that <<'System integrator'>> may, upon completion, use the Project as a reference for credential purpose. Except as required by law or the rules and regulations of each stock exchange upon which the securities of one of the Parties is listed, neither Party shall publish or permit to be published either alone or in conjunction with any other person any press release, information, article, photograph, illustration or any other material of whatever kind

relating to this Agreement, the SLA or the business of the Parties without prior reference to and approval in writing from the other Party, such approval not to be unreasonably withheld or delayed provided however that <<'System integrator'>> may include *Manipur State IT Society* or its client lists for reference to third parties subject to the prior written consent of *Manipur State IT Society* not to be unreasonably withheld or delayed. Such approval shall apply to each specific case and relate only to that case.

24.6 Notices

- (a) Any notice or other document which may be given by either Party under this Agreement or under the SLA shall be given in writing in person or by pre-paid recorded delivery post, email or by facsimile transmission.
- (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:

<Insert Address>

Tel:

Fax:

Email:

Contact:

With a copy to:

<<'System integrator'>>

Tel:

Fax:

Email:

Contact:

In relation to a notice given under the MSA/SLA, a Party shall specify the Parties' address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause.

(d) Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter).

(e) Either Party to this Agreement or to the SLA may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

24.7 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 set out in Schedule II of this Agreement. Such amendment shall be made in writing and signed by the duly authorized representatives of the Parties to this Agreement or the SLA.

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

24.8 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.

24.9 Compliance with Applicable Law

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

24.10 Professional Fees

All expenses incurred by or on behalf of each Party to this Agreement and the SLA, including all fees of agents, legal advisors, accountants and actuaries employed by either of the Parties in connection with the negotiation, preparation and execution of this Agreement or the SLA shall be borne solely by the Party which incurred them.

24.11 Ethics

The <<'System integrator'>> represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of Manipur State IT Society or its nominated agencies in connection with this agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of Manipur State IT Society standard policies and may result in cancellation of this Agreement, or the SLA.

24.12 Entire Agreement

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

24.13 Amendment

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

25 Governing Law and Dispute Resolution

25.1 This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement and the performance of the parties contemplated under this Agreement, to the extent that such convention might otherwise be applicable.

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

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

- Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.
- The mediator shall use his best endeavors to conclude the mediation within a certain number of days of his appointment.
- If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to Experts for advising on the issue.

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

- Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the timeframe and requesting for expert advisory. This is to be sent with a copy to the mediator.
- Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute.
- The expert panel shall use his best endeavors to provide a neutral position on the issue.
- If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.

- 25.4 Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the Arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of New Delhi/ -----, India. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at -----, India. Any legal dispute will come under the sole jurisdiction of New Delhi, India / state jurisdiction of -----, India.
- 25.5 Compliance with laws: Each party will comply with all applicable export and import laws and regulations.
- 25.6 Risk of Loss: For each hardware item, <<'System integrator'>> bears the risk of loss or damage up to the time it is delivered to the Implementation/ Manipur State IT Society- designated carrier for shipment to Manipur State IT Society or Manipur State IT Society's designated location.
- 25.7 Third party components: <<'System integrator'>> will provide all third party components solely on a pass-through basis in accordance with the relevant third party terms and conditions.

IN WITNESS WHEREOF the Parties have by duly authorized

Representatives set their respective hands and seal on the date first above

Written in the presence of:

WITNESSES:

Signed by:

(Name and designation) **For and on behalf of Manipur State IT Society**

(FIRST PARTY)

Signed by:

(Name and designation)

<<'System integrator'>>

(SECOND PARTY)

(Name and designation) For and on behalf of <<'System integrator'>>

Signed by:

26 Schedules

SCHEDULE - I - DEFINITIONS

Adverse Effect	means material adverse effect on (a) the ability of the <<'System integrator'>> to exercise any of its rights or perform/ discharge any of its duties/ obligations under and in accordance with the provisions of this Agreement and/ or (b) the legal validity, binding nature or enforceability of this Agreement;
Agreement	means this Master Services Agreement, Service Level Agreement and Non-Disclosure Agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP;
Applicable Law(s)	means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
Assets	shall have the same meaning ascribed to it in Clause 10.1 (a)
Software	means the software designed, developed / customized, tested and deployed by the <<'System integrator'>> for the purposes of the Project and includes the source code (in case of Bespoke development) along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products (including the COTS products used for the product), proprietary software components and tools deployed by the <<'System integrator'>>;
Business Hours	shall mean the working time for <i>Manipur State IT Society</i> users which is 9:30 AM to 6:30 PM. Again for Web Server and other components which enable successful usage of web portals of <i>Manipur State IT Society</i> the working time should be considered as 24 hours for all the days of the week. It is desired that IT maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance;

Certificate(s) of Compliance	shall have the same meaning ascribed to it in Clause 5.4.;
Confidential Information	means all information including <i>Manipur State IT Society Data</i> (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how, plans, budgets and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement);
Control	means, in relation to any business entity, the power of a person to secure (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person's wishes and in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;
Deliverables	means the products, infrastructure and services agreed to be delivered by the <<'System integrator'>> in pursuance of the agreement as defined more elaborately in the RFP, Implementation and the Maintenance phases and includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related), inter alia payment and/or process related etc., source code and all its modifications;
Proprietary Information	shall have the same meaning ascribed to it in Clause 19.1
Effective Date	shall have the same meaning ascribed to it in Clause 3.2;
<i>Manipur State IT Society Data</i>	means all proprietary data of the department or its nominated agencies generated out of operations and transactions, documents all taxpayers data and related information including but not restricted to user data which the <<'System integrator'>> obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement;

Final Acceptance Test	shall be conducted on completion of the following: 1) <i>Manipur State IT Society</i> Data Center operational, 2) Deployment & operational hardware and networking at requisite locations, 3) UAT of the overall integrated solution and portal.
Final Testing and Certification Agency	shall have the same meaning ascribed to it in Clause 5.4;
Force Majeure	shall have the same meaning ascribed to it in Clause 16.1;
Force Majeure Costs	shall have the same meaning ascribed to it in Clause 16.4 (b);
GoI	means the Government of India;
Indemnifying Party	shall have the same meaning ascribed to it in Clause 15.1;
Indemnified Party	shall have the same meaning ascribed to it in Clause 15.1;
Intellectual Property Rights	means all rights in written designs and copyrights, moral rights, rights in databases and Bespoke Software / Pre-existing work including its up-gradation systems and compilation rights (whether or not any of these are registered and including application for registration);
Escrow Agreement	- An agreement that pursuant to Clause 22 provides for the regular deposit into escrow of all source code, object code, and documentation with respect to all public material and Service Provider's proprietary material (and cumulative updates thereof), together with (a) continually updated instructions as to the compilation, installation, configuration, deployment and use of the Source Code, and (b) a list of all non-deposited third party software used in conjunction with the Source Code to provide the full functionality of the deposited materials.
Insurance Cover	- Public liability insurance for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than [INR <i>insert amount</i>] in aggregate. - Either professional indemnity or errors and omissions insurance for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than [INR <i>insert amount</i>] in

	aggregate. - Product liability for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than [INR <i>insert amount</i>] in aggregate. - Workers compensation as required by law.
Additional Insurance	<i>[insert any additional types of insurance the Service Provider is required to maintain. Otherwise insert 'not applicable']</i>
Material Breach	means a breach by either Party (<i>Manipur State IT Society</i> or <<'System integrator'>>) of any of its obligations under this Agreement which has or is likely to have an Adverse Effect on the Project which such Party shall have failed to cure;
Required Deliverables	shall have the same meaning ascribed to it in Annexure C of this Agreement;
Parties	means <i>Manipur State IT Society</i> and <<'System integrator'>> for the purposes of this Agreement and " Party " shall be interpreted accordingly;
Performance Guarantee	Means the guarantee provided by a Nationalized Bank in favour of the <<'System integrator'>>. The amount of Performance Security shall be 10% of the overall cost of the project. This performance security shall be valid till six months after the completion of the project i.e. ---- years from the date of signing of contract or for such time as is required under this Agreement;
Planned Application Downtime	means the unavailability of the application services due to maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure wherein prior intimation (at least two working days in advance) of such planned outage shall be given and approval sought from the <i>Manipur State IT Society</i> as applicable;
Planned network outage	Means the unavailability of the network services due to infrastructure maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure. Prior intimation of such planned outage shall be given and approval sought from the <i>Manipur State IT Society</i> as applicable and shall be notified at least two working days;
Project	means Pilot, Project Implementation (roll out) and Maintenance in terms of the Agreement;
Project Implementation	means Project Implementation as per the testing standards and acceptance criteria prescribed by <i>Manipur State IT Society</i> or its

	nominated agencies;
Project Implementation Phase	shall be from the Effective Date of the Agreement to the date of final acceptance testing & certification as set out in Clause 5.4 of this Agreement;
Project Implementation Unit (PIU)	shall be constituted by <i>Manipur State IT Society</i> to monitor the activities, deliverables and progress of the Project. PIU will comprise of the staff members of the <i>Manipur State IT Society</i> , other officials from concerned department and external experts (as defined in the RFP);
Project Timelines	shall have the same meaning ascribed to in Annexure C;
Providing Party	shall have the same meaning ascribed to it in Clause 12.5;
Receiving Party	shall have the same meaning ascribed to it in Clause 12.5;
Replacement <<'System integrator'>>	means any third party that <i>Manipur State IT Society</i> or its nominated agencies appoint to replace <<'System integrator'>> upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
Required Consents	means the consents, waivers, clearances and licenses to use <i>Manipur State IT Society's</i> Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the software and other items that <i>Manipur State IT Society</i> or their nominated agencies are required to make available to <<'System integrator'>> pursuant to this Agreement;
Services	means the services delivered to the Stakeholders of <i>Manipur State IT Society</i> or its nominated agencies, employees of <i>Manipur State IT Society</i> or its nominated agencies, and to professionals, using the tangible and intangible assets created, procured, installed, managed and operated by the <<'System integrator'>> including the tools of information and communications technology and includes but is not limited to the list of services specified in Annexure B;
Service Level	means the level of service and other performance criteria which will apply to the Services delivered by the <<'System integrator'>>;
SLA	means the Performance and Maintenance SLA executed as part of this Master Service Agreement;
Stakeholders	means the students, Franchisee's, Investors, Citizens, <i>Manipur State IT Society</i> or its nominated agencies, <i>Manipur State IT Society</i> , employees and the Departments of State Government;
Term	shall have the same meaning ascribed to it in Clause 3.1;
Third Party	means systems (or any part thereof) in which the Intellectual

Systems	Property Rights are not owned by the <i>Manipur State IT Society</i> or <<'System integrator'>> and to which <<'System integrator'>> has been granted a license to use and which are used in the provision of Services;
Unplanned Application Downtime	means the total time for all the instances where services in the software requirement specification document prepared by the <<'System integrator'>> are not available for more than 5 consecutive minutes;
Network	in <i>Manipur State IT Society</i> users refers to all the IT assets installed by the <<'System integrator'>> as part of the Project for networking;
Unplanned network outage	means the total time for all the instances where services in the software requirement specification document prepared by the <<'System integrator'>> are not available for more than 5 consecutive minutes;
Application	means the software application developed as a part of scope of work set out in Clause 2.1(a).
Application Downtime	means the time for which user/s is not able to access the application. However, in calculating downtime, scheduled downtime (for example, backup time, batch processing time, routine maintenance time) would not be considered;
Network Uptime	Uptime refers to network availability between <i>Manipur State IT Society's</i> Head Quarters to Data center. "%Uptime" means ratio of 'up time' (in minutes) in a month to Total time in the month (in minutes) multiplied by 100;
Warranty / AMC Period	shall be 3 years from the date of successful completion /Go-live.
Safety and Security	insert any safety and security requirements additional to those specified in clause 12.4, Otherwise insert 'not applicable'

SCHEDULE - II – Change Control Schedule

This Schedule describes the procedure to be followed in the event of any proposed change to the Master Service Agreement (“MSA”), Project Implementation Phase, SLA and Scope of Work and Functional Requirement Specifications. Such change shall include, but shall not be limited to, changes in the scope of services provided by the <<'System integrator'>> and changes to the terms of payment as stated in the Terms of Payment Schedule.

The *Manipur State IT Society* and SI 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 SI will Endeavour, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and *Manipur State IT Society* or its nominated agencies will work with the <<'System integrator'>> to ensure that all changes are discussed and managed in a constructive manner. This Change Control Schedule sets out the provisions which will apply to all the changes to this agreement and other documents except for the changes in SLAs for which a separate process has been laid out in Clause 11 of the SLA.

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

CHANGE MANAGEMENT PROCESS

a. CHANGE CONTROL NOTE ("CCN")

- i. Change requests in respect of the MSA, the Project Implementation, the operation, the SLA or Scope of work and Functional Requirement specifications will emanate from the Parties' respective Project Manager who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached as Annexure A hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- ii. The SI and the *Manipur State IT Society* or its nominated agencies, during the Project Implementation Phase and the *Manipur State IT Society* or its nominated agencies during the Operations and Management Phase and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the RFP and is suggested and applicable only after the testing, commissioning and certification of the Pilot Phase and the Project Implementation Phase as set out in this Agreement.
- iii. It is hereby also clarified here that any change of control suggested beyond 25 % of

the value of this Project will be beyond the scope of the change control process and will be considered as the subject matter for a separate bid process and a separate contract. It is hereby clarified that the 25% of the value of the Project as stated in herein above is calculated on the basis of bid value submitted by the <<'System integrator'>> and accepted by the *Manipur State IT Society* or its nominated agencies or as decided and approved by *Manipur State IT Society* or its Nominated Agencies. For arriving at the cost/rate for change upto 25% of the project value, the payment terms and relevant rates as specified in Annexure D shall apply.

b. Quotation

- i. The SI shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN the SI shall provide as a minimum:
 1. a description of the change
 2. a list of deliverables required for implementing the change;
 3. a time table for implementation;
 4. an estimate of any proposed change
 5. any relevant acceptance criteria
 6. an assessment of the value of the proposed change;
 6. material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work
- ii. Prior to submission of the completed CCN to the *Manipur State IT Society*, or its nominated agencies, the Service Provider will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the SI shall consider the materiality of the proposed change in the context of the MSA and the Project Implementation affected by the change and the total effect that may arise from implementation of the change.

c. Costs

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the SI meets the obligations as set in the CCN. In the event the SI 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 SI.

d. Obligations

The SI 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. SI will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact.

SCHEDULE - III - EXIT MANAGEMENT SCHEDULE

1 PURPOSE

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

2 TRANSFER OF ASSETS

- 2.1 *Manipur State IT Society* shall be entitled to serve notice in writing on the SI at any time during the exit management period as detailed hereinabove requiring the SI and/or its sub contractors to provide the *Manipur State IT Society* with a complete and up to date list of the Assets within 30 days of such notice. *Manipur State IT Society* shall then be entitled to serve notice in writing on the SI at any time prior to the date that is 30 days prior to the end of the exit management period requiring the SI to sell the Assets, if any, to be transferred to *Manipur State IT Society* or its nominated agencies at book value as determined as of the date of such notice in accordance with the provisions of relevant laws.
- 2.2 In case of contract being terminated by *Manipur State IT Society*, *Manipur State IT Society* reserves the right to ask SI to continue running the project operations for a period of 6 months after termination orders are issued.
- 2.3 Upon service of a notice under this Article the following provisions shall apply:
 - (i) in the event, if the Assets to be transferred are mortgaged to any financial institutions by the SI, the SI shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to the *Manipur State IT Society*.
 - (ii) All risk in and title to the Assets to be transferred / to be purchased by the *Manipur State IT Society* pursuant to this Article shall be transferred to *Manipur State IT Society*, on the last day of the exit management period.
 - (iii) *Manipur State IT Society* shall pay to the SI on the last day of the exit management period such sum representing the Net Block (procurement price less depreciation as per provisions of Companies Act) of the Assets to be transferred as stated in the Terms of Payment Schedule.
 - (iv) Payment to the outgoing SI shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements.
 - (v) The outgoing SI will pass on to *Manipur State IT Society* and/or to the

Replacement SI, the subsisting rights in any leased properties/ licensed products on terms not less favorable to *Manipur State IT Society*/ Replacement SI, than that enjoyed by the outgoing SI.

3 COOPERATION AND PROVISION OF INFORMATION

3.1 During the exit management period:

- (i) The <<'System integrator'>> will allow the *Manipur State IT Society* or its nominated agency access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the *Manipur State IT Society* to assess the existing services being delivered;
- (ii) promptly on reasonable request by the *Manipur State IT Society*, the SI shall provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with this agreement relating to any material aspect of the services (whether provided by the <<'System integrator'>> or sub contractors appointed by the <<'System integrator'>>). The *Manipur State IT Society* shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The <<'System integrator'>> shall permit the *Manipur State IT Society* or its nominated agencies to have reasonable access to its employees and facilities as reasonably required by the Chairman, PIU to understand the methods of delivery of the services employed by the <<'System integrator'>> and to assist appropriate knowledge transfer.

4 CONFIDENTIAL INFORMATION, SECURITY AND DATA

4.1 The <<'System integrator'>> will promptly on the commencement of the exit management period supply to the *Manipur State IT Society* or its nominated agency the following:

- (i) information relating to the current services rendered and customer and performance data relating to the performance of sub contractors in relation to the services;
- (ii) documentation relating to Computerization Project's Intellectual Property Rights;
- (iii) documentation relating to sub-contractors;
- (iv) all current and updated data as is reasonably required for purposes of *Manipur State IT Society* or its nominated agencies transitioning the services to its Replacement <<'System integrator'>> in a readily available format nominated by the *Manipur State IT Society*, its nominated agency;
- (v) all other information (including but not limited to documents, records and

agreements) relating to the services reasonably necessary to enable *Manipur State IT Society* or its nominated agencies, or its Replacement <<'System integrator'>> to carry out due diligence in order to transition the provision of the Services to *Manipur State IT Society* or its nominated agencies, or its Replacement <<'System integrator'>> (as the case may be).

- 4.2 Before the expiry of the exit management period, the <<'System integrator'>> shall deliver to the *Manipur State IT Society* or its nominated agency all new or up-dated materials from the categories set out in Schedule above and shall not retain any copies thereof, except that the <<'System integrator'>> shall be permitted to retain one copy of such materials for archival purposes only.
- 4.3 Before the expiry of the exit management period, unless otherwise provided under the MSA, the *Manipur State IT Society* or its nominated agency shall deliver to the <<'System integrator'>> all forms of <<'System integrator'>> confidential information, which is in the possession or control of Chairperson, PIU or its users.

5 EMPLOYEES

- 5.1 Promptly on reasonable request at any time during the exit management period, the <<'System integrator'>> shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the *Manipur State IT Society* or its nominated agency a list of all employees (with job titles) of the <<'System integrator'>> dedicated to providing the services at the commencement of the exit management period.
- 5.2 Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the <<'System integrator'>> to the *Manipur State IT Society* or its nominated agency, or a Replacement <<'System integrator'>> ("**Transfer Regulation**") applies to any or all of the employees of the <<'System integrator'>>, then the Parties shall comply with their respective obligations under such Transfer Regulations.
- 5.3 To the extent that any Transfer Regulation does not apply to any employee of the <<'System integrator'>>, department, or its Replacement <<'System integrator'>> may make an offer of employment or contract for services to such employee of the <<'System integrator'>> and the <<'System integrator'>> shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the Chairperson, PIU or any Replacement <<'System integrator'>>.

6 TRANSFER OF CERTAIN AGREEMENTS

On request by the *Manipur State IT Society* or its nominated agency the <<'System integrator'>> shall effect such assignments, transfers, licenses and sub-licenses as the Chairperson, PIU may require in favour of the Chairperson, PIU, or its Replacement <<'System integrator'>> in relation

to any equipment lease, maintenance or service provision agreement between <<'System integrator'>> and third party lessors, vendors, and which are related to the services and reasonably necessary for the carrying out of replacement services by the *Manipur State IT Society* or its nominated agency or its Replacement <<'System integrator'>>.

7 RIGHTS OF ACCESS TO PREMISES

- 7.1 At any time during the exit management period, where Assets are located at the <<'System integrator'>>'s premises, the <<'System integrator'>> 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 *Manipur State IT Society* or its nominated agency and/or any Replacement <<'System integrator'>> in order to make an inventory of the Assets.
- 7.2 The <<'System integrator'>> shall also give the *Manipur State IT Society* or its nominated agency or its nominated agencies, or any Replacement <<'System integrator'>> right of reasonable access to the Implementation Partner's premises and shall procure the *Manipur State IT Society* or its nominated agency or its nominated agencies and any Replacement <<'System integrator'>> rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to the *Manipur State IT Society* or its nominated agency, or a Replacement <<'System integrator'>>.

8 GENERAL OBLIGATIONS OF THE <<'System integrator'>>

- 8.1 The <<'System integrator'>> shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the *Manipur State IT Society* or its nominated agency or its Replacement <<'System integrator'>> and which the <<'System integrator'>> has in its possession or control at any time during the exit management period.
- 8.2 For the purposes of this Schedule, anything in the possession or control of any <<'System integrator'>>, associated entity, or sub contractor is deemed to be in the possession or control of the <<'System integrator'>>.
- 8.3 The <<'System integrator'>> shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

9 EXIT MANAGEMENT PLAN

- 9.1 The <<'System integrator'>> shall provide the *Manipur State IT Society* or its nominated agency with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the MSA as a whole and in relation to the Project Implementation, and the Operation and Management SLA.

- (i) A detailed program of the transfer process that could be used in conjunction with a Replacement <<'System integrator'>> 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 <<'System integrator'>>'s sub contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the *Manipur State IT Society's* operations as a result of undertaking the transfer;
 - (iii) (if applicable) proposed arrangements for the segregation of the <<'System integrator'>>'s networks from the networks employed by *Manipur State IT Society* and identification of specific security tasks necessary at termination;
 - (iv) Plans for provision of contingent support to *Manipur State IT Society*, and Replacement <<'System integrator'>> for a reasonable period after transfer.
- 9.2 The <<'System integrator'>> shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- 9.3 Each Exit Management Plan shall be presented by the <<'System integrator'>> to and approved by the *Manipur State IT Society* or its nominated agencies.
- 9.4 The terms of payment as stated in the Terms of Payment Schedule include the costs of the <<'System integrator'>> complying with its obligations under this Schedule.
- 9.5 In the event of termination or expiry of MSA₇ and Project Implementation, each Party shall comply with the Exit Management Plan.
- 9.6 During the exit management period, the <<'System integrator'>> shall use its best efforts to deliver the services.
- 9.7 Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.
- 9.8 This Exit Management plan shall be furnished in writing to the *Manipur State IT Society* or its nominated agencies within 90 days from the Effective Date of this Agreement.

SCHEDULE - IV - AUDIT, ACCESS AND REPORTING

1 PURPOSE

This Schedule details the audit, access and reporting rights and obligations of the *Manipur State IT Society* or its nominated agency and the <<'System integrator'>>

.

2 AUDIT NOTICE AND TIMING

- 2.1 As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavors to agree to a timetable for routine audits during the Project Implementation Phase and the Operation and Management Phase. Such timetable during the Implementation Phase, the *Manipur State IT Society* or its nominated agency and thereafter during the operation Phase, the *Manipur State IT Society* or its nominated agency shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the <<'System integrator'>> any further notice of carrying out such audits.
- 2.2 The *Manipur State IT Society* or its nominated agency may conduct non-timetabled audits at his/ her own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the <<'System integrator'>>, a security violation, or breach of confidentiality obligations by the <<'System integrator'>>, provided that the requirement for such an audit is notified in writing to the <<'System integrator'>> 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 <<'System integrator'>> considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Governance Schedule.
- 2.3 The frequency of audits shall be a (maximum) half yearly, provided always that the *Manipur State IT Society* or its nominated agency shall endeavor to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the <<'System integrator'>>. Any such audit shall be conducted by with adequate notice of 2 weeks to the <<'System integrator'>>.
- 2.4 *Manipur State IT Society* will ensure that any 3rd party agencies (except CAG) appointed to conduct the audit will not be the competitor of <<'System integrator'>> and will be bound by confidentiality obligations.

3 ACCESS

The <<'System integrator'>> shall provide to the *Manipur State IT Society* or its nominated agency reasonable access to employees, subcontractors, suppliers, agents and third party facilities as detailed in the RFP, documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The Chairperson, PIU / Steering Committee shall have the right to copy and retain copies of

any relevant records. The <<'System integrator'>> shall make every reasonable effort to co-operate with them.

4 AUDIT RIGHTS

4.1 The *Manipur State IT Society* or its nominated agency shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in the RFP), data centers, 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 data processed, held or conveyed by the Partner on behalf of *Manipur State IT Society* and documentation related thereto;
- (ii) That the actual level of performance of the services is the same as specified in the SLA;
- (iii) That the <<'System integrator'>> has complied with the relevant technical standards, and has adequate internal controls in place; and
- (iv) The compliance of the <<'System integrator'>> with any other obligation under the MSA and SLA.
- (v) Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the <<'System integrator'>>.
- (vi) For the avoidance of doubt the audit rights under this Schedule shall not include access to the <<'System integrator'>>'s profit margins or overheads, any confidential information relating to the <<'System integrator'>>' employees, or (iii) minutes of its internal Board or Board committee meetings including internal audit, or (iv) such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the MSA.

5 AUDIT RIGHTS OF SUB-CONTRACTORS, SUPPLIERS AND AGENTS

5.1 The <<'System integrator'>> shall use reasonable endeavors 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 <<'System integrator'>> shall inform the *Manipur State IT Society* or its nominated agency prior to concluding any sub-contract or supply agreement of any failure to achieve the same rights of audit or access.

5.2 REPORTING: The <<'System integrator'>> will provide quarterly reports to the Chairperson, PIU / Steering committee regarding any specific aspects of the Project and in context of the audit and access information as required by the *Manipur State IT Society* or its nominated agency.

6 ACTION AND REVIEW

- 6.1 Any change or amendment to the systems and procedures of the <<'System integrator'>>, 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.
- 6.2 Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the *Manipur State IT Society* or its nominated agency and the <<'System integrator'>> Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the MSA.

7 TERMS OF PAYMENT

The *Manipur State IT Society* shall bear the cost of any audits and inspections. The terms of payment are exclusive of any costs of the <<'System integrator'>> and the sub-contractor, for all reasonable assistance and information provided under the MSA, the Project Implementation, Operation and Management SLA by the <<'System integrator'>> pursuant to this Schedule.

8 RECORDS AND INFORMATION

For the purposes of audit in accordance with this Schedule, the <<'System integrator'>> shall maintain true and accurate records in connection with the provision of the services and the <<'System integrator'>> shall handover all the relevant records and documents upon the termination or expiry of the MSA.

SCHEDULE -V - GOVERNANCESCHEDULE

1 PURPOSE

The purpose of this Schedule is to:

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

2 GOVERNANCE STRUCTURE

1. Project Managers: The relationship under this Agreement will be managed by the Project Managers appointed by each Party, who will provide the interface between the executive management of the respective Parties.
2. Project Implementation Unit (PIU): Within 7 days following the Effective Date, *Manipur State IT Society* or its nominated agencies and the <<'System integrator'>> shall each appoint a Project Manager. In the event that either Party wishes to substitute its Project Manager it will do so in manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within 7 days of the substitution.
3. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
4. The PIU will meet formally on a fortnightly / monthly/quarterly, as required, basis at a time and location to be agreed between them. These meetings will cover, as a minimum, the following agenda items: (i) consideration of Quarterly Performance Reports; (ii) consideration of matters arising out of the Change Control Schedule; (iii) issues escalated in accordance with the escalation procedure as set out in the Governance Schedule; (iv) matters to be brought before the PIU in accordance with the MSA and the Schedules; (v) any matter brought before the PIU by the <<'System integrator'>> under this Article; and (vi) any other issue which either Party wishes to add to the agenda.
5. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in the Terms of Payment Schedule, the Parties agree to discuss in the PIU any appropriate amendment to the Agreement

or any Service Level Agreements or Statement of Works including any variation to the terms of payment as stated in the Terms of Payment Schedule. Any variation so agreed shall be implemented through the change control procedure as set out in the Change Control Schedule.

3 GOVERNANCE PROCEDURES

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

SCHEDULE - VI-TERMS OF PAYMENT SCHEDULE

The following schedule would be followed for payment during the Project implementation:

S. No	Milestone	% of Total Fee	Basis of approval
1.	<u>Approval of Final SRS& Final To-Be and System Level Study</u>	<u>10%</u>	<u>Minutes of meeting of the Apex Committee approving the reports</u>
2.	<u>UAT of the e-District Application by Apex Committee, deployment of necessary hardware at SDC and</u> completion of following key activities: - Development of connectors for SSDG - Integration with MSDG - Integration with AADHAAR - Integration with Payment Gateway - Localization of eDistrict Application - Asset Management Module - CSC wise Transaction reports & calculation of fee for each SCA	<u>5%</u>	<u>Minutes of meeting of the Apex Committee approving the e-District application for all services identified in the RFP.</u>
3.	<u>Successful District Readiness for all offices, i.e. Completion of all activities/commissioning of all hardware & networking equipments in a district; i.e.</u> - <u>Hardware</u> - <u>Network</u> - <u>Data Digitization</u> - <u>Training</u> - <u>Site preparation</u> - <u>Placement of Technical Manager in the district</u>	<u>15%</u>	<u>Approval of the District Collector</u>
4.	<u>STQC Certification</u>	<u>5%</u>	<u>Copy of the STQC certification</u>
5.	<u>"Go-Live" of all services in at least 25% Districts</u>	<u>5%</u>	<u>Definition of "Go-Live" is appended below</u>
6.	<u>"Go-Live" of all services in at least</u>	<u>5%</u>	

S. No	Milestone	% of Total Fee	Basis of approval
	<u>50% Districts</u>		
7.	<u>“Go-Live” of all services in at least 75% Districts</u>	<u>5%</u>	
8.	<u>“Go-Live” of all services in 100% Districts</u>	<u>5%</u>	
9.	<u>Operations and Maintenance Phase</u>	<u>36%</u>	<u>To be paid quarterly (3% per quarter) for 36 months</u>
10.	<u>Successful Exit Management</u>	<u>9%</u>	<u>Minutes of meeting of the Apex Committee</u>
	<u>Total</u>	<u>100%</u>	

Key note:**Definition of Go-Live**

The definition of Go-Live should be aligned to that defined for SPMU.

27 Annexures

ANNEXURE – A – FORMAT FOR CHANGE COTROL 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.)		
Authorised by <i>Manipur State IT</i>	Date:	
Name:		
Signature:	Date:	
Received by the SI		
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)	
Authorised by the <<'System integrator'>>	Date:
Name:	
Signature:	

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

Rejected Requires Further Information (as follows, or as Attachment 1 etc.)	
For Manipur State IT Society and its nominated agencies	For the <<'System integrator'>>
Signature	Signature
Name	Name
Title	Title
Date	Date

ANNEXURE - B - LIST OF SERVICES PROVIDED BY THE <<'System integrator'>>

Various services to be offered by the <<'System integrator'>> will consist of:

- i. .
- ii. .
- iii. .
- iv. .
- v. .

Note:

- *Manipur State IT Society* will sign the end user license agreement for the software brought from any 3rd party for the purpose of this Project however Implementation Agency shall be solely responsible to make payment for the cost of software to such third party software vendor.

ANNEXURE - C -REQUIRED DELIVERABLE AND ASSOCIATED TIMELINES

S. No.	Project Activity	Deliverables	Timelines (from signing of contract)
1.	Project initiation & Solution Design	i. Suggesting Re-engineered processes (as per the industry's best practices) after studying & validating the existing documents ii. Software Requirement Specifications & Design Documents iii. Mapping report of application lifted from other State with the FRS / To-Be processes as defined in RFP iv. Deployment plan including the testing & acceptance plan v. Final Hardware Requirement Report & procurement plan	<i>2 months</i>
2.	Development / customization and implementation of the application to meet the requirements	Development / customization and implementation of the Wave 1 modules	<i>By 5th month</i>
		Development / customization and implementation of the Wave 2 modules	<i>By 8th month</i>
3.	Procurement, deployment and commissioning of the necessary Hardware at e-District locations	Deployment of the hardware in appropriate quantity and as per the specified technical specifications at the appropriate locations to support functioning of Wave 1	<i>By 4th month</i>
		Deployment of the hardware in appropriate quantity and as per the specified technical specifications at the appropriate locations to support functioning of Wave 2	<i>By 5th month</i>
4.	Procurement, deployment and	Deployment of the necessary networking equipments and connectivity as per the	<i>By 5th month</i>

S. No.	Project Activity	Deliverables	Timelines (from signing of contract)
	commissioning of the necessary Networking equipments and Connectivity	requirements to support functioning of Wave 1	
		Deployment of the necessary networking equipments and connectivity as per the requirements to support functioning of Wave 2	<i>By 5th month</i>
5.	Data Entry and digitization of the records available in the paper files and migration of the data available in the existing databases	Digitized and verified data for Wave 1 modules	<i>By 6th month</i>
		Digitized and verified data for Wave 2 modules	<i>By 9th month</i>
6.	Training to the staff members and stakeholders and necessary Change Management	Satisfactory training sessions to the staff members for the Wave 1 modules	<i>By 5th month</i>
		Satisfactory training sessions to the staff members for the Wave 2 modules	<i>By 8th month</i>
7.	Operations and maintenance	Operations and maintenance support for Wave 1 modules	<i>To be started from successful implementation of Wave 1 modules till end of project</i>
		Operations and maintenance support for Wave 2 modules	<i>For a period of 3 years from successful implementation of Wave 2</i>

ANNEXURE – D - BID**1. TECHNICAL BID RESPONSE – EXTRACTED AS APPENDIX – A****2. FINANCIAL BID RESPONSE:****2a. Summary of Cost Components**

S. No.	Item	Total Quantity	Total Price	Taxes (wherever applicable)	Total cost (total price + taxes)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
		Total Cost			
		Total cost in figures:			

2b. Summary of Man-month rates

S. No.	Category of manpower	Man month rates
1.		
2.		
3.		
4.		

3. Details of Cost Component

S. No.	Category	Component	No of Components / Units of Service (X)	Rate (per unit) (Y)	Total Cost (= X*Y)
1.					
2.					
1.					
					
2.					
1.					
1.					
2.					
3.					
1.					
2.					
3.					

S. No.	Category	Component	No of Components / Units of Service (X)	Rate (per unit) (Y)	Total Cost (= X*Y)
4.					
1.					
1.					

ANNEXURE - E - BILL OF MATERIAL**1. Minimum hardware required at Field Offices (Indicative - Needs to be aligned with the State's actual requirement)**

Sl. No	Description of Item	Quantity
1.	Desktop / PC	
A	With Proprietary Operating System	
B	With Open Source Operation System	
2.	Laptop	
A	With Proprietary Operating System	
B	With Open Source Operation System	
3.	Digital Web camera	
4.	Scanners	
5.	Network Printer cum fax	
6.	Laser Printer	
7.	Other Printer	
8.	UPS (1 KVA)	
9.	9 U Rack	
10.	24 Port Switch	
11.	Leased Line Modem (pair)	
12.	Router	
13.		
...		
...		

2. Minimum hardware required at Data center

S. No.	Cost Heads	Qty
1	Web Server	
2	Application Server	
3	Database Server	
4		
5		
6		
7		
8		
9		

*The bidder will have to suggest an appropriate Server OS and DB as per the solution provided by the bidder.

ANNEXURE - F - ROLES AND RESPONSIBILITIES OF THE PARTIES

Roles and Responsibilities of <<'System integrator'>>

1. Preparation of Detailed Project Plan in line with the overall plan provided in the RFP. The same should be prepared in consultation with *Manipur State IT Society*.
2. Procure, install, commission, operate and maintain:
 - a. Requisite hardware & system software at *Manipur State IT Society's* HQ, Data Center and other locations as per the requirements mentioned in this RFP
 - b. Networking equipments, connectivity and LAN as per the requirements mentioned in this RFP,
 - c. Meet the defined SLAs for the performance of the system.
3. Addressing technology obsolescence by appropriate upgradation, replacement and / or replenishment of systems deployed at various locations (data center, HQ and other locations).
4. Insure the entire hardware against the infrastructure deployed at various locations for the entire duration of the contract against vandalism, theft, fire and lightening.
5. Keep all system software i.e. OS, antivirus, office applications etc., for Servers, PCs etc. at Data Centre and various locations, up to date by installing regular upgrades / patches.
6. Rectification of system software problems due to crashing or malfunctioning of the OS, RDBMS or front end within the time limits to meet the SLAs as defined in RFP.
7. Develop / customize, deploy and maintain the requisite Software Solution as per the requirements of the Corporation at appropriate locations.
8. Provide necessary support for the resolution of bugs, patches & upgrades of the software solution.
9. Provide necessary manpower for managing the Change Requests.
10. Design various manuals like User manual, Trouble Shooting manual etc. for the system.
11. Provide computer basic skills training and advanced training on application modules to the staff members and stakeholders of the Corporation.
12. Maintain the business continuity.
13. Deploy requisite manpower and infrastructure for the digitization of the existing data.
14. Deploy the required manpower to manage the operations.
15. Ensuring the SLAs for downtime of system, software development / customization, procurement and delivery of hardware & networking equipments, errors in data entry as defined in RFP Volume 1 are met.
16. Management and quality control of all services and infrastructure.
17. Any other services which is required for the successful execution of the project.
18. Regular Backup as per the schedule and Disaster Recovery.

19. Generation of MIS reports as per the requirements of *Manipur State IT Society*.
20. Generation of the report for the monitoring of SLAs.
21. Meet the defined Technical Specifications for the IT Infrastructure including Hardware and networking equipments keeping in mind the application and future requirements of the Corporation.

Roles and Responsibilities of *Manipur State IT Society*

1. Provide adequate space at the *Manipur State IT Society's* HQ for setting up of infrastructure, software development and other activities to be carried out by the Bidder.
2. Coordination between all the divisions for providing necessary information for the study and development / customization of the necessary solution.
3. Co-ordination with DIT, PAWAN operator and other state agencies to assist the selected bidder in execution of the project.
4. Coordinate with Bidder for conducting workshops for the Stakeholder departments.
5. Provide the data available in the form of physical files or existing databases to the selected bidder for digitization purposes.
6. Deployment of staff members of the Corporation for verification of the digitized data within the defined timelines.
7. Ensure that Data Backups are being taken regularly by bidder as per the schedule agreed upon.
8. Ensure that the hardware and other infrastructure deployed at HQ, DC etc. meets the specifications as mentioned in RFP and is maintained properly to meet the SLAs as defined in RFP.
9. Monitoring of overall timelines, SLAs and calculation of penalties accordingly.
10. Conducting UAT for the application solution deployed.
11. Issuing the Acceptance Certificate on successful deployment of the software application, hardware deployed, digitized data and for other components of the Scope of Work (wherever required).
12. Any other requirements that could arise during operations for effective governance and to meet any administrative requirement.
13. To create internal capacity now for execution of the project after takeover from the bidder.
14. Ensuring the staff members and other stakeholders attend the training programs as per the schedule defined by the bidder and agreed upon by *Manipur State IT Society*.
15. Provide sign off on the deliverables of the project including SRS, design documents etc.

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on this the <<'Day'>> day of <<'Month'>> 20--- at <<'Location'>>, India.

BETWEEN

----- having its office at -----
----- India hereinafter referred to as '*Manipur State IT Society*' or '*-----*', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<<'Implementing Agency Full Name'>>, a Company incorporated under the *Companies Act, 1956*, having its registered office at <<'Implementing Agency Regd Office'>> (hereinafter referred to as '*the <<'System integrator'>>/SI*' which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

1. *Manipur State IT Society* is desirous to implement the project of -----.
2. The *Manipur State IT Society* and <<'System integrator'>> have entered into a Master Services Agreement dated <<'Date'>> (the "*MSA*") as well as a Service Level Agreement dated <<'Date'>> (the "*SLA*") in furtherance of the Project.
3. Whereas in pursuing the Project (the "*Business Purpose*"), a Party ("Disclosing Party") recognizes that they will disclose certain Confidential Information (*as defined hereinafter*) to the other Party ("Receiving Party").
4. Whereas such Confidential Information (*as defined hereinafter*) belongs to Receiving Party as the case may be and is being transferred to the Disclosing Party to be used only for the Business Purpose and hence there is a need to protect such information from unauthorized use and disclosure.

NOW THEREFORE, in consideration of the mutual covenants, promises, assurances, representations and provisions set forth herein, the Parties hereto agree as follows:

1 Definitions and Interpretation

1.1 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the same meanings set out in Schedule I of MSA.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs and Schedules are to clauses, sub-clauses, paragraphs of and schedules to this Agreement;

use of any gender includes the other genders;

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

references to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);

a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;

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

references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which banks in the state of Manipur are generally open for business;

references to times are to Indian standard time;

a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and

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

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

- (a) as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;

as between the provisions of this Agreement and the Schedules, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules; and as between any value written in numerals and that in words, the value in words shall prevail.

1.5 Priority of agreements

The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the MSA and this Agreement shall be read together and construed harmoniously. In the event of any conflict between the MSA and this Agreement, the provisions contained in the MSA shall prevail over this Agreement.

2 Term

This Agreement will remain in effect for five years from the date of the last disclosure of Confidential Information ("*Term*"), at which time it will terminate, unless extended by the disclosing party in writing.

3 Scope of the Agreement

- (a) This Agreement shall apply to all confidential and proprietary information disclosed by Disclosing Party to the Receiving Party and other information which the disclosing party identifies in writing or otherwise as confidential before or within (30) thirty days after disclosure to the Receiving Party ("Confidential Information"). Such Confidential Information consists of certain specifications, documents, software, prototypes and/or technical information, and all copies and derivatives containing such Information that may be disclosed to the Disclosing Party for and during the Business Purpose, which a party considers proprietary or confidential.
- (b) Such Confidential Information may be in any form or medium, tangible or intangible, and may be communicated/disclosed in writing, orally, or through visual observation or by any other means to the Receiving Party.

4 Obligations of the Receiving Party

The Receiving Party shall:

- (a) use the Confidential Information only for the Business Purpose and shall hold

the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, taking into account the nature of the Confidential Information, and

grant access to Confidential Information only to its employees on a 'need to know basis' and restrict such access as and when not necessary to carry out the Business Purpose.

cause its employees to comply with the provisions of this Agreement;

reproduce Confidential Information only to the extent essential to fulfilling the Business Purpose, and

prevent disclosure of Confidential Information to third parties;

disclose the Confidential Information to its consultants/contractors on a need to know basis; provided that by doing so, the Receiving Party agrees to bind such consultants/ contractors to terms at least as restrictive as those stated herein. The Receiving Party upon making a disclosure under this Clause shall:

- I. advise the consultants/contractors of the confidentiality obligations imposed on them by this Clause.
- II. upon the Disclosing Party's request, the Receiving Party shall either return to the disclosing party all Confidential Information or shall certify to the disclosing party that all media containing Confidential Information have been destroyed.
- III. Provided, however, that an archival copy of the Confidential Information may be retained in the files of the Receiving Party's counsel, solely for the purpose of proving the contents of the Confidential Information.
- IV. not to remove any of the other Party's Confidential Information from the premises of the Disclosing Party without prior written approval.
- V. exercise extreme care in protecting the confidentiality of any Confidential Information which is removed, only with the Disclosing Party's prior written approval, from the Disclosing Party's premises. Each Party agrees to comply with any and all terms and conditions the disclosing party may impose upon any such approved removal, such as conditions that the removed Confidential Information and all copies must be returned by a certain date, and that no copies are to be made off of the premises.
- VI. Upon the Disclosing Party's request, the Receiving Party shall promptly return to the Disclosing Party all tangible items containing or consisting of the disclosing party's Confidential Information all copies thereof.

5 Exceptions to Confidential Information

The foregoing restrictions on each party's use or disclosure of Confidential Information shall not apply to the Confidential Information that the Receiving Party can demonstrate that such Confidential Information:

was independently developed by or for the Receiving Party without reference to the Information, or was received without restrictions; or

has become generally available to the public without breach of confidentiality obligations of the Receiving Party; or

- I. was in the Receiving Party's possession without restriction or was known by the Receiving Party without restriction at the time of disclosure; or
- II. is the subject of a subpoena or other legal or administrative demand for disclosure; provided, however, that the Receiving Party has given the disclosing party prompt notice of such demand for disclosure and the Receiving Party reasonably cooperates with the disclosing party's efforts to secure an appropriate protective order; or
- III. is disclosed with the prior consent of the disclosing party; or
- IV. was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing party and was not previously acquired by the Receiving Party from the disclosing party under an obligation of confidence; or
- V. the Receiving Party obtains or has available from a source other than the disclosing party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the disclosing party.

6 Ownership of the Confidential Information

- I. Each Party recognizes and agrees that all of the disclosing Party's Confidential Information is owned solely by the Disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain.
- II. By disclosing the Confidential Information or executing this Agreement, Disclosing Party does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right. The Disclosing Party disclaims all warranties regarding the information, including all warranties with respect to

infringement of intellectual property rights and all warranties as to the accuracy or utility of such information.

- III. Access to Confidential Information hereunder shall not preclude an individual who has seen such Confidential Information for the purposes of this Agreement from working on future projects for the Disclosing Party which relate to similar subject matters, provided that such individual does not make reference to the Confidential Information and does not copy the substance of the Confidential Information during the Term. Furthermore, nothing contained herein shall be construed as imposing any restriction on the Receiving Party's disclosure or use of any general learning, skills or know-how developed by the Receiving Party's personnel under this Agreement.
- IV. Execution of this Agreement and the disclosure of Confidential Information pursuant to this Agreement do not constitute or imply any commitment, promise, or inducement by either Party to make any purchase or sale, or to enter into any additional agreement of any kind.

7 Dispute Resolution

- I. If a dispute arises in relation to the conduct of this Contract (Dispute), a party must comply with this clause 7 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 7.
- II. A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.
- III. During the 14 days after a notice is given under clause 7(b) (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of the jurisdiction specified in this agreement. The provisions of the

Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at the jurisdiction specified in Item 27. Any legal dispute will come under the sole jurisdiction specified in Item 27.

- IV. The Receiving Party agrees that the Disclosing Party shall have the right to obtain an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

8 Variation

This Agreement may only be varied in writing and signed by both Parties.

9 Waiver

Waiver including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

- I. shall be in writing
- II. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- III. shall be executed by a duly authorized representative of the Party; and
- IV. shall not affect the validity or enforceability of this Agreement in any manner.

10 Exclusion of Implied Warranties

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

11 Entire Agreement

This Agreement and the Annexure together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or

modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

12 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the dispute resolution procedure set forth under this Agreement or otherwise.

13 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as expressly provided under the terms of this Agreement.

14 Third Parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

15 Successors and Assigns

The Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

16 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by hand delivery, recognized courier, registered post, email or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Manipur State IT Society:

Attn: <***>

Tel:

Fax:

Email:

Contact:

With a copy to:

If to the <<'System integrator'>>:

Attn. <***>

Phone: <<'SI Telephone'>>

Fax No. <<'SI Fax'>>

17 Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in the English language.

18 Counterparts

This Agreement may be executed in counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

19 Mitigation

Without prejudice to any express provisions of this Agreement on any mitigation obligations of the Parties, each of the Manipur State IT Society and the <<'System integrator'>> shall at all times take all reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

20 Removal of Difficulties

The Parties acknowledge that it is conceivable that the Parties may encounter difficulties or problems in the course of implementation of the Project and the transactions envisaged under this Agreement. The Parties agree and covenant that they shall mutually discuss such difficulties and problems in good faith and take all reasonable steps necessary for removal or resolution of such difficulties or problems.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS

AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of the <<'System
integrator'>>by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of the *Manipur State IT
Society* by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

1.

2.

SERVICE LEVEL AGREEMENT

THIS AGREEMENT is made on this the <<'Day'>> day of <<'Month'>> 2013---- at Imphal, Manipur, India.

BETWEEN

Manipur State IT Society having its office at 4th Floor, Western Block, New Secretariat, Imphal West – 795001 India hereinafter referred to as '*Manipur State IT Society*' or '*Buyer*', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<<'Implementing Agency Full Name'>>, a Company incorporated under the *Companies Act, 1956*, having its registered office at <<'Location'>> (hereinafter referred to as '*the <<'System integrator'>>/SI*' which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

1. *Manipur State IT Society* is desirous to implement the project of eDistrict in Manipur.
2. The Buyer and <<'System integrator'>> have entered into a Master Services Agreement dated <<'Date'>> (the "*MSA*").

NOW THEREFORE, in consideration of the mutual covenants, promises, assurances, representations and provisions set forth herein, the Parties hereto agree as follows:

1 Definitions and Interpretation

1.1 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out in Annexure A.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- a) references to Clauses, Sub-Clauses, Paragraphs and Schedules are to clauses, sub-

- clauses, paragraphs of and schedules to this Agreement;
- b) use of any gender includes the other genders;
 - c) references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
 - d) references to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
 - e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
 - f) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
 - g) references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which banks in the state of Manipur are generally open for business;
 - h) references to times are to Indian Standard Time;
 - i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
 - j) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

- (a) as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- (b) as between the provisions of this Agreement and the Schedules, the Agreement shall prevail, save and except as expressly provided otherwise in

- the Agreement or the Schedules; and
- (c) as between any value written in numerals and that in words, the value in words shall prevail.

1.5 Priority of agreements

The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the MSA and this Agreement shall be read together and construed harmoniously. In the event of any conflict between the MSA and this Agreement, the provisions contained in the MSA shall prevail over this Agreement.

2 Structure

This SLA shall operate as a legally binding services agreement specifying terms which apply to the Parties in relation to the provision of the Services by the <<'System integrator'>> to the Buyer and its nominated agencies under this Agreement and the MSA.

3 Objectives of this SLA

The <<'System integrator'>> shall be required to ensure that the Service Levels which shall ensure the following:

- a) Improving the efficiency of operations for involved Government departments.
- b) Leveraging the benefits in new system in order to:
 - I. Reduce of manual records and replace with computerized standardized documents.
 - II. Infuse transparency in operations by enabling the stakeholders to have easy access to the records and provision of login ids and biometrics to infuse accountability in operations.
 - III. Enable faster request processing in delivery of services with better turnaround time.
 - IV. Facilitate automated data transfer with state-wide connectivity to prevent unnecessary duplication & simplify preparation of registers and reports.
 - V. Generate meaningful MIS from the system.
 - VI. Provide inbuilt mechanism of security and quality control for crucial dealer data.

To meet the aforementioned objectives the <<'System integrator'>> will provide the Service Levels in accordance with the performance metrics as set out in detail in this Agreement. Further this Agreement shall govern the provision of the contracted professional services of

the <<'System integrator'>> to the *Manipur State IT Society* and its nominated agencies after the Effective Date.

4 Scope of SLA

This Agreement has been executed in relation to the SI (along with its consortium) of the Project between the Parties. The detailed Service Levels have been set out in Annexure B to this Agreement.

This Agreement shall ensure the following:

- a) Establishment of mutual responsibilities and accountability of the Parties;
- b) Definition each Party's expectations in terms of services provided;
- c) Establishment of the relevant performance measurement criteria;
- d) Definition of the availability expectations;
- e) Definition of the escalation process;
- f) Establishment of trouble reporting single point of contact; and
- g) Establishment of the framework for SLA change management.

The following parties are obligated to follow the procedures as specified by this Agreement:

- I. Buyer
- II. <<'System integrator'>>

5 Agreement Owners

The following personnel shall be notified to discuss the Agreement and take into consideration any proposed SLA change requests:

	Title	Telephone	Email
Buyer	ShriNambam Deben Member Secretary, MSITS	Manipur State IT Society, 4 th Floor, Western Block, New Secretariat, Imphal West – 795001 Fax: 0385-2444118 Phone: 0385 - 2446877	msits- mn@nic.in , n.deben@nic.in
<<'System integrator'>>	Authorized Representative, Manipur State IT Society	<<'Telephone SI'>>	<<'email SI'>>

6 Contact List

In the event that there is any change in the listed contacts, the same shall be communicated and updated prior to such change occurring. The Single Point of Contact ("POC") for the <<'System integrator'>> shall be <<'POC Name'>> and will be available 24X7.

Name	Title	Location	Telephone
Buyer	ShriNambam Deben Member Secretary, MSITS	Manipur State IT Society, 4 th Floor, Western Block, New Secretariat, Imphal West – 795001 Fax: 0385-2444118 Phone: 0385 - 2446877	msits- mn@nic.in , n.deben@nic.in
<<'System integrator'>>	Authorized Representative Details	<<'Location SI'>>	<<'Telephone SI'>>

7 Principal Contacts

The Buyer and the <<'System integrator'>> will nominate senior staff members each, to be the principal contacts, representing either party, regarding operation of this Agreement. At the date of signing of this Agreement, the nominated principal contacts are:

Buyer principal contact: ShriNambam Deben, Member Secretary, MSITS

<<'System integrator'>>principal contact: _____

8 Commencement and Duration of this Agreement

Agreement shall commence on the date on which it is executed by the Buyer and the System integrator (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 Agreement expires or terminates, which shall be a period of four years starting from the date of the Final Acceptance Test.

9 Exclusions to the Agreement

This Agreement shall not govern the following services:

- I. Consulting services; and
- II. System integrator's business processes not related to the Project.

10 Terms of Payment and Penalties

- I. In consideration of the Services and subject to the provisions of the MSA and this Agreement, the Buyer shall pay the amounts in accordance with the Terms of Payment Schedule of the MSA.
- II. For the avoidance of doubt, it is expressly clarified that the Buyer and/or its nominated agencies may also calculate a financial sum and debit the same against the terms of payment as defined in the Terms of Payment Schedule of the MSA as a result of the failure of the System integrator to meet the Service Levels set out as Annexure B of this Agreement, such sum being determined in accordance with the terms of the set out as Annexure B of this Agreement.

11 Updating of this Agreement

- I. The Parties anticipate that this Agreement shall need to be re-evaluated and modified to account for changes in work environment and technology from time to time. Hence they hereby agree to revise the terms of the Agreement on an annual basis.
- II. The Parties hereby agree upon the following procedure for revising this Agreement:
 - A. Any and all changes to this Agreement will be initiated in writing between the Buyer and the System integrator, The service levels in this Agreement shall be considered to be standard for the Buyer and shall only be modified if both Parties agree to an appended set of terms and conditions;
 - B. Only the Buyer or the System integrator may initiate a revision to this Agreement;
 - C. A notice of the proposed revision ("*SLA Change Request*") shall be served to the Buyer or the System integrator as the case may be;
 - D. The SLA Change request would be deemed to be denied in case it is not approved within a period of 14 days;
 - E. In the event that Buyer/System integrator approves of the suggested change the change shall be communicated to all the Parties and the SLA Change request would be appended to the Agreement;
 - F. The Buyer shall update and republish the text of Agreement annually to include all the SLA Change Requests that have been appended to the Agreement during the course of the year. Such republished Agreement shall be circulated to all the Parties within <<'Days'>> days of such change taking place.

12 Document History

All revisions made to this Agreement shall be listed in chronological order as per the format set out below and a copy of the same shall be provided to the Parties:

Version	Date	Description of changes
<<'Version'>>	<<'Date'>>	<<'Desc'>>

13 Scope of Services

- I. The <<'System integrator'>> shall ensure that Services are available at various locations as per the requirements of the project;
- II. The <<'System integrator'>> shall provide support services for addressing problems related to the provision of services of the selected bidder through the POC. Such POC shall be available over telephone on <<'Telephone SI'>> number 24 hours a day, 7 days a week;
- III. The <<'System integrator'>> guarantees that he shall achieve the Service Levels for the Project;
- IV. The <<'System integrator'>> shall be liable to penalties in case of failure to comply with the Service Levels. However any delay not attributable to the <<'System integrator'>> shall not be taken into account while computing adherence to the Service Levels.

14 Performance Review

The POC's of both the Buyer and the <<'System integrator'>> shall meet on a quarterly basis to discuss priorities, service levels and system performance. Additional meetings may be held at the request of either the <<'System integrator'>> or the Buyer. The agenda for these meetings shall be as follows:

- I. Service performance;
- II. Review of specific problems/exceptions and priorities; and
- III. Review of the operation of this Agreement and determine corrective action to overcome deficiencies.

15 Representations and Warranties of Buyer

The Buyer hereby represents and warrants to the <<'System integrator'>> as follows:

- I. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- II. it has taken all necessary actions under Applicable Law to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

- III. it has the financial standing and capacity to perform its obligations under the Agreement;
- IV. this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms thereof;
- V. the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- VI. there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;
- VII. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the <<'System integrator'>>'s ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement.

16 Representations and Warranties of the <<'System integrator'>>

The <<'System integrator'>> hereby represents and warrants to the Buyer as follows:

- I. it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- II. it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- III. this Agreement has been duly executed by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof,

- and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- IV. the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- V. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- VI. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any government instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- VII. it has complied with Applicable Law 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;
- VIII. no representation or warranty by it contained herein or in any other document furnished by it to the Buyer or to any government instrumentality in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
- IX. no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the Buyer in connection therewith.

17 Indemnities

The Parties agree to indemnify each other under this Agreement in accordance with the terms and principles set out in the MSA.

18 Dispute Resolution

Any dispute, difference or claim arising out of or in connection with the Agreement which is not resolved amicably shall be decided in accordance with the dispute resolution procedure as set out in the MSA.

19 Miscellaneous

I. Assignment and charges

This Agreement shall be binding on and ensure for the benefit of each Party's successors in title. No Party shall assign, or declare any trust in favour of a third party over, all or any part of the benefit of, or its rights or benefits under, this Agreement.

II. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at the State of Manipur shall have jurisdiction over matters arising out of or relating to this Agreement.

III. Waiver of sovereign immunity

The Parties unconditionally and irrevocably:

- A. agree that the execution, delivery and performance by them of the Agreement constitute commercial acts done and performed for commercial purpose;
- B. agree that, should any proceedings be brought against a Party or its assets, property or revenues in any jurisdiction in relation to the Agreement or any transaction contemplated by the Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of such Party with respect to its assets;
- C. waive any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- D. consent generally to the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or

revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

IV. Variation

This Agreement may only be varied in writing and signed by both Parties.

V. Waiver

A. Waiver including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

1. shall be in writing
2. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
3. shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
4. shall not affect the validity or enforceability of this Agreement in any manner.

VI. Exclusion of implied warranties

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

VII. Survival

A. Termination or expiration of the Term shall:

1. not relieve the <<‘System integrator’>> or the Buyer, as the case may be, of any obligations hereunder which expressly or by implication survive hereof; and
2. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or expiration or arising out of such termination or expiration.

B. All obligations surviving termination or expiration of the Term shall cease on termination or expiration of the Term. [In case the obligations have to survive for some period after closure of the project, the same may be mentioned]

(h) Entire Agreement

This Agreement and the Annexure together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or

modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

(i) Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the dispute resolution procedure set forth under this Agreement or otherwise.

(j) No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as expressly provided under the terms of this Agreement.

(k) Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

(l) Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by hand delivery, recognized courier, registered post, email or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Manipur State IT Society:

Attn: <***>

Tel: 0385 - 2446877

Fax: 0385-2444118

Email: msits-mn@nic.in, n.deben@nic.in

Contact: **Shri Nambam Deben**

With a copy to: satyabati.l@nic.in

If to the <<'System integrator'>>:

Attn. <***>

Phone: <<'Telephone SI'>>

Fax No. <<'Fax SI'>>

(m) Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in the English language.

(n) Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

(o) Mitigation

Without prejudice to any express provisions of this Agreement on any mitigation obligations of the Parties, each of the Buyer and the <<'System integrator'>> shall at all times take all reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

(p) Removal of Difficulties

The Parties acknowledge that it is conceivable that the Parties may encounter difficulties or problems in the course of implementation of the Project and the transactions envisaged under this Agreement. The Parties agree and covenant that they shall mutually discuss such difficulties and problems in good faith and take all reasonable steps necessary for removal or resolution of such difficulties or problems.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of the <<'System
integrator'>>by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of the Buyer by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

- 1.
- 2.

20 ANNEXURE A – Definitions

Agreement	means this Service Level agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP;
Applicable Law(s)	means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of the <i>Manipur State IT Society</i> as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
Business Hours	shall mean the working time for <i>Manipur State IT Society</i> users which is 9:30 AM to 5:30 PM daily. Again for Web Server and other components which enable successful usage of web portals of, <i>Manipur State IT Society</i> , the working time should be considered as 24 hours for all the days of the week. It is desired that IT maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance;
Effective Date	shall have the same meaning ascribed to it in Clause 8;
MSA	shall have the same meaning ascribed to it in Recital 2;
Parties	means the Buyer and System integrator for the purposes of this Agreement; “ Party ” shall be interpreted accordingly;
POC	shall have the same meaning ascribed to it in Clause 6
Project	shall have the same meaning ascribed to it in Recital 1;
SLA Change Request	shall have the same meaning ascribed to it in Clause 11 (b) (iii);
Service Level	means the level of service and other performance criteria which will apply to the Services as set out in the SLA parameters effective during the Term of this Agreement;
Term or Agreement Period	Means the duration of this Agreement as set out in Clause 8 of this Agreement.
Application Response Time	Defined as time the system takes to fetch requested (a form or a report) from the server.

21 ANNEXURE B – Service Levels

1 Purpose:

This document describes the service levels to be established for the Services offered by the SI to the State. The SI shall monitor and maintain the stated service levels to provide quality service.

2 Definitions.

- (a) “Scheduled Maintenance Time” shall mean the time that the System is not in service due to a scheduled activity as defined in this SLA. The scheduled maintenance time would not be during 16X6 timeframe. Further, scheduled maintenance time is planned downtime with the prior permission.
- (b) “Scheduled operation time” means the scheduled operating hours of the System for the month. All scheduled maintenance time on the system would be deducted from the total operation time for the month to give the scheduled operation time. The total operation time for the systems and applications within the Primary DC, DRC and critical client site infrastructure will be 12 hrs X 7 days X 12 months. The total operation time for the client site systems shall be 12 hours.
- (c) “System or Application downtime” means accumulated time during which the System is totally inoperable within the Scheduled Operation Time but outside the scheduled maintenance time and measured from the State Government employees log a call with the SI team of the failure or the failure is known to the SI from the availability measurement tools to the time when the System is returned to proper operation.
- (d) “Availability” means the time for which the services and facilities are available for conducting operations on the State Government system including application and associated infrastructure. Availability is defined as:
$$\{(\text{Scheduled Operation Time} - \text{System Downtime}) / (\text{Scheduled Operation Time})\} * 100\%$$
- (e) “Helpdesk Support” shall mean the 9x6 basis support centre which shall handle Fault reporting, Trouble Ticketing and related enquiries during this contract.
- (f) “Incident” refers to any event / abnormalities in the functioning of the Data Centre Equipment / Services that may lead to disruption in normal operations of the Data Centre, System or Application services.
- (g) “Error” in data digitization or data migration exercise, refers to the mistakes made intentional/ unintentional by SI which may or may not change the actual meaning of the subject.

3 Interpretations.

- (a) The business hours are 8:30AM to 8:30PM on all working days (Mon-Sat) excluding Public Holidays or any other Holidays observed by the State. The SI however recognizes the fact that the State Government offices will require to work beyond the business hours on need basis.
- (b) "Non-Business Hours" shall mean hours excluding "Business Hours".
- (c) 12X7 shall mean hours between 8:30AM -8.30 PM on all days of the week.
- (d) The availability for a cluster will be the average of availability computed across all the servers in a cluster, rather than on individual servers. However, non compliance with performance parameters for infrastructure and system / service degradation will be considered for downtime calculation.
- (e) The SLA parameters shall be monitored on a monthly basis as per the individual SLA parameter requirements. However, if the performance of the system/services is degraded significantly at any given point in time during the contract and if the immediate measures are not implemented and issues are not rectified to the complete satisfaction of the State Government, then the State Government will have the right to take appropriate disciplinary actions including termination of the contract.
- (f) A Service Level violation will occur if the SI fails to meet Minimum Service Levels, as measured on a half yearly basis, for a particular Service Level. Overall Availability and Performance Measurements will be on a monthly basis for the purpose of Service Level reporting. An "Availability and Performance Report" will be provided by the SI on monthly basis in the suggested format and a review shall be conducted based on this report. A monthly Availability and Performance Report shall be provided to at the end of every month containing the summary of all incidents reported and associated SI performance measurement for that period. The monthly Availability and Performance Report will be deemed to be accepted by the State Government upon review and signoff by both SI and the State Government. Where required, some of the Service Levels will be assessed through audits or reports e.g. utilization reports, measurements reports, etc.,as appropriate to be provided by the SI on a monthly basis, in the formats as required by audit will need to be provided by the SI. Audits will normally be done on regular basis or as required by the State Government and will be performed by the State Government or the State Government appointed third party agencies.
- (g) EMS system as specified in this RFP shall play a critical role in monitoring the SLA compliance and hence will have to be customized accordingly. The 3rd party testing and audit of the system shall put sufficient emphasis on ensuring the capability of EMS system to capture SLA compliance correctly and as specified in this RFP. The selected System Integrator (SI) must deploy EMS tool and develop additional scripts (if required) for capturing the required data for SLA report generation in automated way. This tool should generate the SLA Monitoring report in the end of every month which is to be

shared with the State Government on a monthly basis. The tool should also be capable of generating SLA reports for a half-year. The State Government will audit the tool and the scripts on a regular basis. SPMC shall assess the EMS requirements and include the same in the RFP.

- (h) The Post Implementation SLAs will prevail from the start of the Operations and Maintenance Phase. However, SLAs will be subject to being redefined, to the extent necessitated by field experience and the developments of technology practices globally. The SLAs may be reviewed on an annual/bi-annual basis as the State Government decides after taking the advice of the SI and other agencies. All the changes would be made by the State Government in consultation with the SI.
- (i) The SI is expected to provide the following service levels. In case these service levels cannot be achieved at service levels defined in the tables below, it shall result in a breach of contract and invoke the penalty clause. Payments to the SI are linked to the compliance with the SLA metrics laid down in the tables below. The penalties will be computed and calculated as per the computation explained in this Annexure. During the contract period, it is envisaged that there could be changes to the SLA, in terms of addition, alteration or deletion of certain parameters, based on mutual consent of both the parties i.e. the State Government and SI.
- (j) Following tables outlines the key service level requirements for the system, which needs be ensured by the SI during the operations and maintenance period. These requirements shall be strictly imposed and either the State Government or a third party audit/certification agency shall be deployed for certifying the performance of the SI against the target performance metrics as outlined in the tables below.

4 Service Level Agreements (SLAs)

SLAs are important component of any IT tendering process. Template of SLAs is provided below. The same may be used as templates and customized. However it may be noted that the SLAs can be of 2 types – either input based or output based. The below mentioned templates are for input based SLAs which focuses on the availability and quality of inputs. The other way of designing is on measuring the outputs. In this way of measuring the outputs, the end customer service quality parameters are measured. For e.g. what is the end-to-end time taken for processing of an application, time taken to stand in the queue, errors in the certificates and so on. Typically these are used in PPP type of tenders.

4.1 Data Digitization Activities

[Customizable illustrative templates have been provided, to fill in relevant values for developing the SLAs relevant to Data Digitization Activities]

S. No.	SLA Terms	Description
1.	% Accuracy	Manipur State IT Society officials will physically verify the digitized records submitted by the SI vendor against the original records and will identify the erroneous fields in each record. The % accuracy for each batch will be calculated as follows: Total no. of erroneous fields in the batch - X Total no. of records in the batch - Y Field per record - N Accuracy per batch (%) = $(X*100)/(Y*N)$
2.	Digitization Cost	Digitization cost = A*Y, where “A” is the rate per record digitized and Y is the total no. of records in the batch.

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
Data Accuracy	Accuracy of the data digitized by the SI vendor when compared against the original records	The ratio between the total no. error free of records in a batch of data that were successfully digitized to the total	Manipur State IT Society's appointed shall take physical count of data that was migrated successfully into the	Weekly	Fortnightly	56x2	> 90%	> 80%	Completeness and integrity of source data	To be baseline for first 2 weeks using time and motion study on the effort made.	50% of Data Digitization Cost.

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
		no. of records in that batch of data	new system as compared to that which existed in the old legacy source								
Data Digitization Completion Time	Timelines for completion of the data entry, digitization & migration										

Please note:

- Accuracy of less than 90% will be considered as the Breach of the Agreement and Manipur State IT Society reserves the Right to terminate the agreement.
- In all such cases, where the accuracy is below 100%, the SI will be responsible to carry out corrections with no additional cost to Manipur State IT Society.

4.2 Supply, Installation & Commissioning Phase

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
Supply, installation and Commissioning of hardware - SDC	Supply, installation and Commissioning of hardware - SDC	The bidder is required to supply, install & commission the hardware at SDC	Sign-off by the State-level representative.	NA	NA	NA	As per agreed commissioning schedule.	As per agreed commissioning schedule.	- Availability of SDC - Necessary approval from the State Government	NA	INR 100,000 for every week's delay beyond the agreed commissioning schedule.
Supply, installation and Commissioning of hardware - Field Offices	Supply, installation and Commissioning of all identified hardware at each of the Field Offices	The bidder is required to supply, install & commission all the identified hardware	Sign-off by the State-level representative.	NA	NA	NA	As per agreed commissioning schedule.	As per agreed commissioning schedule.	Necessary approval from the State Government	NA	INR 5,000 for every fortnight's delay for every field office location beyond the agreed commissioning schedule.

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
		at each designated field office locations.									ning schedule for that field office location. All the identified hardware for the designated office location should be commissioned. The penalty will be levied even if one of the identified hardware item is not commissio

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
											ned at the designated field office location.
Supply, installation and Commissioning of Network connectivity including LAN - Field Offices	Supply, installation and Commissioning of Network Connectivity including LAN at each of the Field Offices	The bidder is required to supply, install & commission on the network connectivity between the designated office location and the nearest SWAN PoP as well as	Sign-off by the State-level representative.	NA	NA	NA	As per agreed commissioning schedule.	As per agreed commissioning schedule.	- Availability of network PoP to connect to SDC - Necessary approval from the State Government	NA	INR 10,000 for every fortnight's delay for every field office location beyond the agreed commissioning schedule for network connectivity with nearest SWAN PoP. INR 10,000

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
		supply, installation and commissioning of LAN at each designated field office locations.									for every fortnight's delay for every field office location beyond the agreed commissioning schedule for LAN.

4.3 Operation and Maintenance (O&M) Support

S. No.	SLA Terms	Description
1.	System Uptime	- Time for which user is able to access the applications, website and other components of the IT solution during the working hours. The system can be down due to any of the reasons including failure of hardware, network, system software, application etc. - Scheduled downtime for example, backup time, batch processing time, routine maintenance time will not be considered while evaluating the system uptime. However, the selected SI will be required to schedule such downtime with prior approval of Manipur State IT Society. The selected SI will plan scheduled downtime outside working time. In exceptional circumstances, Manipur State IT Society may allow the SI to plan scheduled downtime in the working hours.
2.	Bugs / Issues in the Application Software / Hardware device / Network Equipment	• Critical bugs / issues – Bugs / issues affecting more than one division or more than one user in a division, • Non-critical bugs / issues – Bugs / issues affecting at most one user in a division.

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increase Impact	Severity Weight
System	System	• Time for	No. of	Weekly	Weekly	24x7	99.9%	99%	• Power	To be	INR 300,000

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
Uptime and Performance - SDC	uptime and performance of the system - SDC	which user is able to access the applications, website and other components of the IT solution during the working hours. The system can be down due to any of the reasons including failure of hardware, network,	recorded hours on server logs of uninterrupted usage of the system by users during working hours						Backup • Upgrades • System Restores	baseline for first 6 months	per month for every drop in percentage point of uptime below 99.5 % [The non availability for application service, website measured on monthly basis and excluding the scheduled maintenance shutdown. Performance

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
		system software, application etc. Scheduled downtime for example, backup time, batch processing time, routine maintenance time will not be considered while evaluating the system uptime. However,									of system refers to the proper and timely functioning of the system's functionalities. The applications should be available and performing as per functionalities]

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
		the selected SI will be required to schedule such downtime with prior approval of Manipur State IT Society. The selected SI vendor will plan scheduled downtime outside working time. In exceptiona									

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
		In circumstances, Manipur State IT Society may allow the SI vendor to plan scheduled downtime in the working hours.									
System Uptime and Performance – Field Offices	System uptime and performance of the system – Field Offices	Availability of each hardware & peripheral at each of the designated field office location	No. of recorded hours on manual logs of uninterrupted usage of each hardware	Monthly	Monthly	9 x 6	>96%	>92%	Power Backup	To be baseline for first 6 months	INR 750 per instance of violation for a drop in uptime between <92% and >=90%. Additional

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
			& peripheral by users during working hours								INR 750 per instance of violation for every 5% drop in percentage point of uptime below 90%.
Network Availability	Average Network Availability between each of the designated office location and the nearest SWAN PoP.	The total number of hours the network was available during the working hours.	Recording the no. of hours of network outage during working hours.	Monthly	Monthly	6 x 9	> 99%	> 95%	• Telephone Exchange Line • SWAN	To be baseline for first 6 months	INR 50,000 per month for every drop in percentage point of uptime below 98%
Issue Resolution Efficiency	Resolution time for bugs /										

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
	issues in the applications										

Please note:

- *Following conditions will be considered as the Breach of the Agreement in case of O&M Phase and in any of the following conditions Manipur State IT Society reserves the Right to terminate the agreement:*
 - *System uptime at SDC of less than 97% continuously for a quarter;*
 - *More than 3 incidents of not resolving the bugs / issues within the defined time limits in a quarter;*
 - *Average page loading time for application & reports to be more than 20 seconds evaluated for a quarter;*

4.4 Training and Change Management

Service Category	Service Level Title / Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
Training Satisfaction	Satisfaction level of the training sessions	The feedback shall be received by the	Feedback ratings received from Training	Monthly	Monthly	No. of Training hours delivered	Feedback ratings > 8	Feedback ratings > 7	• Participant attendance/turnout • Availability of Manipur State	> 10 trained participants being able to	20% of the per person cost for that

Service Category	Service Level Title/ Objective	Definition	Data Capture	Measurement Interval	Reporting Period	Hours of Support	Target Service Level	Minimum Service Level	Service Level Dependency	Increased Impact	Severity Weight
	conducted by vendor for staff members & stakeholders	officials of Manipur State IT Society after each training session. Manipur State IT Society may decide to use the SLA in case insufficient training sessions are conducted by the SI vendor.	participants, no. of participants and no. of Trainings delivered						IT Society committed Training facility	trained other members of staff in a period of 1 month	type of training.

Please Note:

- *Feedback rating of less than 6 by 25% of the trainees of a batch will be considered as the Breach of the Agreement and Manipur State IT Society reserves the Right to terminate the agreement.*
- *The bidder will be solely responsible for conducting additional training sessions for the staff members providing the rating less than 6.*

4.5 Calculating Penalties as Service Credits

4.5.1 Service Credits and Amount at Risk

Service Credits are calculated as provided below, but the aggregate amount of such Service Credits paid or credited for any given month will not exceed the following limitations (“Amount at Risk”):

- For Service Level Failures and Service Credits within a Service Category, **twelve percent (12%) of Fees for Services** (excluding pass-through expenses and other expense reimbursements, if any) within that Service Category during the relevant month.
- For Service Level Failures in all Service Categories, ten percent (10%) of Fees for Services (excluding pass-through expenses and other expense reimbursements, if any) within all Service Categories during the relevant month.

Service Credit amounts in excess of the foregoing limitations do not carry forward into subsequent months or measurement periods. Service Credits will be applied to the invoice in the month immediately following the Service Level Failure(s) or paid in cash for the final month when the Agreement expires or terminates.

4.5.1.1 Reporting of Service Levels and Credits

Service Level performance and (if applicable) Service Credits are measured and reported monthly (or at other mutually agreed intervals) in Service Provider’s regular reports. The monthly reports shall also describe all failures to achieve Service Levels for the month, reasons for any excused failures, results of root cause analyses, and corrective action proposed and taken to prevent recurrence of failures to meet Service Levels.

4.5.1.2 Calculation of Service Credits

Service Credits are calculated as follows: the Amount at Risk for the relevant Service Category times the relevant Severity Weight. Service Credits for Increased Impact Failures shall be two hundred percent (200%) of the amount otherwise payable for less severe Failures.

Example

Minimum Service Level Failure

Assume that:

- Service Provider misses the Minimum Service Level Application uptime.
- Failure is unexcused.
- Monthly Fees for the relevant Service Category total INR 100,000 (in case there is a consolidated monthly fee payable to the vendor, then the entire fee has to be broken up into various elements and divided for each SLA, without exceeding 100%)
- Amount at Risk for Service Category is INR 12,000.
- Severity Weight is 30%.

Credit Calculation:

- Service Credit = Amount at Risk times Severity Weight
- INR 3,600 = INR 12,000 x 30%

Increased Impact Failure

Same assumptions as above, except

- Performance below “Increased Impact” level.

Credit Calculation:

- Increased Impact Service Credit = Amount at Risk times Severity Weight times 200%
- INR 7,200 = [INR 12,000 x 30%] x 2

4.5.2 Earn-Backs

Service Credits paid for Service Level Failures related to Minimum Service Levels shall be refunded if Service Provider meets or exceeds the relevant Minimum Service Levels for the six (6) consecutive months (or other reporting periods) following the relevant Service Level Failure. Service Credits for Increased Impact Failures are not refundable in any circumstances.

4.5.3 Unacceptable Service

The following Service Level Failures or combinations of Service Level Failures constitute Unacceptable Service, and grounds for termination of the Agreement, in whole or in part, if Service Provider becomes obligated to pay the following amounts of Service Credits (whether or not such Credits are actually collected):

- One Hundred Percent (100%) of the Amount at Risk for any two Service Categories within any rolling period of twelve (12) months or less; or
- Seventy-five percent (75%) of the Amount at Risk for the Agreement as a whole within any rolling period of twelve (12) months or less

Identification of the foregoing circumstances as Unacceptable Service (and subsequent identification of any other circumstances as Unacceptable Service) is without prejudice to contentions that other or different circumstances, individual Service Level Failures, or combinations of Service Level Failures may also, by themselves or in combination with other facts or circumstances, constitute material breach of the Agreement, and grounds for termination.

4.5.4 Continuous Improvement

Minimum Service Levels and Increased Impact Service Levels will be modified at twelve (12) month intervals for each Service Category promptly following the anniversary of the date related Service Levels were first effective. Upon Government entity/department's request, (i) Minimum Service Levels may be increased to the average figure for the preceding six (6) months; and Increased Impact Service Levels may be increased to the second lowest measurement within the preceding six (6) months, provided that neither increase shall exceed five percent (5%) of the difference between one hundred percent (100%) and the relevant Minimum or Increased Impact Service Level then in effect.

4.5.5 General Provisions

4.5.5.1 Maximum Service Credits

The maximum amount payable as Service Credits for any single month shall not exceed the Amounts at Risk (but this limitation does not limit Government entity/department's right to recover damages for material breach, or other remedies, subject to the notice, cure periods, limitations of liability and other applicable provisions of the Agreement).

4.5.5.2 Waivers

Government entity/department may waive any Service Level Failure or Service Credit, but no such waiver shall be binding or effective unless given in writing, and no such waiver shall constitute a continuing waiver of similar or other such Service Level Failures or other breaches of the Agreement. Government entity/department may at any time direct future compliance with any waived requirement.