Service Agreement Template for
Public Private Partnership (PPP) Projects
For
Andhra Pradesh Technology Services

National Institute for Smart Government

August 2015
This document has been developed for PPP contracts to manage large and complex projects involved in e-Governance Service Delivery.

Since these projects are long duration projects, there are a lot of risks involving Demand (number of transactions), Design, Maintenance, Technology, Inflation etc. It has been observed that in case the Government tries to pass-on these risks to the private partner during the procurement process, it has an adverse effect on the chances of success. This model service agreement focuses on a partnership approach where the risk is shared between the Government and private partner in the e-Governance journey.
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Abstract: Example: <<This document details the Service Agreement Template for PPP projects in e-Governance >>.

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26. ANNEXURE

26.1. Designing Service Performance Specification

1. Illustrative Templates of SLA
Service AGREEMENT for <Name of the Project> 
dated __________

between

<the Nodal Agency> and

<the Implementing Agency>

THIS Service AGREEMENT for <Name of the Project> (hereafter referred to as “Agreement”) is made on <date>

BETWEEN:

<Name of the Nodal Agency> [Insert full legal name of the Nodal Agency], whose office is at <address of Nodal Agency> (“here after referred as “Nodal Agency” in this agreement); and

the Implementing Agency <Name of the Agency>, whose registered office is at <address>, (here after referred as “Implementing Agency” in this agreement).

Each is referred to as a “Party” and together as the “Parties”

INTRODUCTION:

This Agreement provides the terms and conditions under which Implementing Agency will provide, and Nodal Agency will purchase, certain specified type of services. [Insert more detail for particular transaction and services to be provided].

SCHEDULES:

It may be noted that some Schedules would be specific to the project. Hence these Schedules (indicated in this document) would be appended with RFP template for Legal Agreement.

The Schedules have to be drafted for each project specific to it requirement during the course it is being finalized for a project by the Nodal Agency.
1. DEFINITIONS

1.1. Definitions

As used in this Agreement, the terms set out in Schedule 1 <insert schedule> will have the respective meanings set out therein. Other terms used in this Agreement are defined in the context in which they are used and will have the meanings therein indicated.

2. AGREEMENT TERM; RENEWAL

2.1. Agreement Term

This Contract and the rights and obligations of the parties to this Contract shall take effect on the <Agreement Date> [Effective Date]. Unless earlier terminated in accordance with the terms of this Agreement, the Service Period will commence on the Service Commencement Date and terminate on the earlier of:

i. the Expiry Date; and
ii. the Termination Date.

2.2. Renewal

The term of this Agreement will automatically be renewed on the terms and conditions then in effect, including any inflation adjustment, or such other terms and conditions as the Parties otherwise agree, for successive one-year periods, unless either Party gives written notice to the other Party, at least [six] months before the scheduled date of expiration of the initial term or any renewal term, that the term of this Agreement will not be so extended.

The initial term of this Agreement, together with any such renewal terms, is referred to herein as the “Agreement Term.”
2.3. 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, Nodal Agency or its nominated agencies may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the Implementing Agency.

(a) Conditions Precedent of the Implementing Agency
The Implementation Agency shall be required to fulfill the Conditions Precedent, which is as follows:

(i) to provide a Performance Security/Guarantee and other guarantees/payments as and when required to the Nodal Agency or its nominated agencies; and
(ii) to provide the Nodal Agency 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 Implementation Agency.

(b) Conditions Precedent of the Nodal Agency
The Nodal Agency shall be required to fulfill the Conditions Precedent, 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 Nodal Agency or its nominated agencies under this Agreement shall commence from the fulfillment of the Conditions Precedent as set forth above.

(c) 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 Implementation Agency linked to the delay in fulfilling the Conditions Precedent.

(d) Non-fulfillment of the Implementing Agency’s Conditions Precedent
In the event that any of the Conditions Precedent of the Implementing Agency have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by Nodal Agency or its nominated agencies, this Agreement shall cease to exist;

In the event that the Agreement fails to come into effect on account of non-fulfillment of the Implementing Agency’s Conditions Precedent, the Nodal Agency or its nominated agencies
shall not be liable in any manner whatsoever to the Implementing Agency and the Nodal Agency shall forthwith forfeit the Performance Guarantee.

In the event that possession of any of the Nodal Agency’s or its nominated agencies’ facilities has been delivered to the Implementing Agency prior to the fulfillment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to Nodal Agency or its nominated agencies, free and clear from any encumbrances or claims.

3. SOLUTION DEVELOPMENT

3.1. Base Services Commencement Date

As of <Date> or such other date as the Parties may mutually agree following completion of the Solution Development (the “Base Services Commencement Date”), the Implementing Agency will assume operational responsibility for, and commence providing the Base Services. The Nodal Agency will retain responsibility for its operations that will comprise the Base Services until the Base Services Commencement Date.

3.2. Solution Development Services

As to be more fully described in the Solution Development Plan referred to below, the Implementing Agency will perform such tasks ("Solution Development Services") as are necessary to commence the Base Services. Solution Development Services will include, as applicable, pre-solution planning, software application development, identification and employment of personnel (from the Nodal Agency and elsewhere), assignment of appropriately trained personnel from within the Implementing Agency, engagement of sub-contractors as appropriate, preparation of an Implementing Agency’s facility for the Services, migration to such Implementing Agency’s facility, acquisition of Hardware, Network equipment and resources necessary for the Base Services and appropriate coordination with third-party vendors, all as provided for in the Solution Development Plan (collectively, the “Solution Development”)

3.3. Solution Development Plan

(a) The Parties will plan, prepare for and conduct the Solution Development in accordance with a written Solution Development plan (the “Solution Development Plan”). Schedule 3.3(a) <insert schedule> sets out an initial draft of the Solution Development Plan.

(b) The Solution Development Plan will include (i) the overall approach of the Solution Development; (ii) a schedule of Solution Development milestones and other activities, including test plans and acceptance criteria; (iii) a detailed description of the respective Solution Development tasks and responsibilities of the Nodal Agency and the Implementing Agency; (iv) details of certain personnel matters; and (v) other related information.
(c) The Implementing Agency will update and modify the Solution Development Plan from time to time, if appropriate. Each revision of the Solution Development Plan will include such modifications as may be reasonably requested by the Nodal Agency that do not, individually or in the aggregate, materially increase the Implementing Agency’s costs for the Solution Development Services or delay completion of the Solution Development. (The Parties will cooperate to finalize the Solution Development Plan at least <one> month before commencement of the Solution Development). The Solution Development Plan will constitute part of this Agreement.

3.4. Conduct of the Solution Development

(a) The Implementing Agency will plan and prepare the Solution Development with the Nodal Agency’s reasonable assistance. The objectives of the Parties during the Solution Development will be mutually to plan for and implement the Solution Development (i) to minimize disruption to the Nodal Agency’s applicable operations and degradation in documented Service Levels and (ii) so that the Solution Development is completed in all material respects no later than the scheduled completion date specified in the Solution Development Plan.

(b) The Solution Development will not commence, unless otherwise agreed, until both Parties are satisfied with the plans to conduct the Solution Development in such a manner as to minimize disruption to the Nodal Agency’s applicable business processes and operations. Prior to the Solution Development, the Implementing Agency will discuss with the Nodal Agency all known Nodal Agency-specific material risks with regard to such material disruptions or material adverse effects, and will not proceed with the Solution Development until the Nodal Agency is reasonably satisfied with the plans with regard to such risks.

(c) The Implementing Agency will be responsible for overall management of the Solution Development and to the extent within its control, will use reasonable efforts to keep the Solution Development as per schedule. Each of the Parties will perform the tasks required of it by the Solution Development Plan in accordance with the schedule for the completion of such tasks. The Nodal Agency will cooperate with the Implementing Agency and provide to the Implementing Agency such reasonable assistance, resources, information and other input to coordinate the Solution Development activities and to effect the Solution Development in a timely and efficient manner. Upon identification of any issues that would reasonably be expected to delay or otherwise adversely affect the completion of any Solution Development activity, the Implementing Agency will promptly notify the Nodal Agency and the Parties will cooperate to establish a mutually acceptable action plan to minimize the delay or other adverse effect.

(d) During the Solution Development, the Nodal Agency’s Representative and the Implementing Agency’s Representative, together with other appropriate representatives
of the Parties, will periodically review the status of all Solution Development-related activities.

(e) The Nodal Agency may monitor, test and otherwise participate in the Solution Development, as the Nodal Agency may from time to time reasonably request. If the Implementing Agency determines that such activities may delay or otherwise adversely affect the Solution Development, the Implementing Agency will notify the Nodal Agency and the Parties will cooperate to establish a mutually acceptable resolution.
4. SERVICES

4.1. Overview

During the Agreement Term, the Implementing Agency will provide to the Nodal Agency, and the Nodal Agency will obtain from the Implementing Agency (i) the Solution Development Services in accordance with Clause 3; (ii) the Base Services in accordance with Clause 4.2; (iii) the Application Development/Project/Transformational Services in accordance with Clause 4.4; (iv) the Disaster Recovery Services in accordance with Clause 4.5; (v) the New Services in accordance with Clause 4.6; and (vi) the Termination Assistance Services in accordance with Clause 17.7 (collectively, the “Services”).

4.2. Base Services

Commencing on the Base Services Commencement Date and during the remainder of the Agreement Term, the Implementing Agency will provide to the Nodal Agency, and the Nodal Agency will obtain from the Implementing Agency, the base services as defined in the schedule 4.2 <insert schedule>.

4.3. Changing Nature of Services

Over the term of the Agreement, the Parties will evaluate new business processes, technology and improvements for application to the Services. Where commercially viable for the Implementing Agency and after consultations with the Nodal Agency, the Implementing Agency may implement such improvements within the framework of the existing Services description and Charges.

All Changes to the Services will be performed in accordance with the Change Control procedures set out in Clause 8.12.
4.4. Application Development Services

(a) General: Commencing on the Base Services Commencement Date and during the remainder of the Agreement Term, the Implementing Agency will provide to the Nodal Agency, and the Nodal Agency will obtain from the Implementing Agency, the application development services described in schedule 4.4(a) <insert schedule>.

(b) Establishment of Acceptance Criteria; Acceptance Testing: Prior to being placed into production or live running, the Parties will subject each Developed Application to acceptance testing to verify that it satisfies the acceptance criteria established for such Developed Application. The Parties will establish objective acceptance criteria for each Developed Application using standards of the Nodal Agency, the Implementing Agency and the industry. Acceptance criteria may vary from Application to Application; (provided, however, that the Parties anticipate that all Developed Applications will utilize the common acceptance criteria elements specified in schedule 4.4 (b) <insert schedule>. Such objective criteria will be mutually agreed upon in writing by the Nodal Agency and the Implementing Agency as soon as practicable but in any event no later than 30 days after the date on which detailed design specification and detailed scoping is completed for the applicable Developed Application. Prior to being placed into production, each Developed Application will be subject to acceptance testing based upon the agreed-upon acceptance criteria. Such acceptance testing will be conducted in accordance with the RFP <insert section no. of the RFP>. If no acceptance provisions are specified, the Developed Application will be deemed accepted if, within ten (10) days after delivery, the Nodal Agency has not provided written notice to the Implementing Agency, identifying specifically any basis for not approving such Developed Application.

(c) Sign-Offs of Interim Deliverables: From time-to-time, the Parties may develop mutually acceptable objective sign-off criteria and procedures for the interim deliverables comprising part of the Developed Applications. The purpose of these sign-off procedures is to identify and address issues relating to the Application Development Services early and to assist in the timely completion of each Developed Application.

If the Nodal Agency expresses concerns regarding the quality and level of completion of the deliverables, the Parties will cooperate to establish a mutually acceptable resolution of these issues as soon as possible. Compliance with such procedures with respect to any interim deliverable will not constitute Final Acceptance of the Developed Application to which such interim deliverable relates but will constitute an important element of establishing Final Acceptance of the Developed Application.
(d) Premature Implementation: In the event that the Nodal Agency determines that a Developed Application should be placed into a production or live running before satisfactory completion of Acceptance Testing, the Developed Application will be deemed to have been accepted by the Nodal Agency and the Nodal Agency will bear all related risks which may include business disruption, degraded Service Levels and additional fees. The Implementing Agency reserves the right (but is not obligated) to refuse to implement a Developed Application that has not satisfactorily completed Acceptance Testing where-in the Implementing Agency’s professional judgment, implementing the Developed Application at that time would be injurious to the Nodal Agency’s or The Implementing Agency’s business or reputation.

4.5. Disaster Recovery Services

Commencing on the Base Services Commencement Date and during the remainder of the Agreement Term, the Implementing Agency will provide to the Nodal Agency, and the Nodal Agency will obtain from the Implementing Agency, the disaster recovery assistance, cooperation and services described in schedule 4.5 <insert schedule>.

4.6. New Services

(a) The Nodal Agency may request the Implementing Agency to provide services (that are outside the scope of then-current Services) that require resources for which there is no current resource baseline or charging methodology (“New Services”). Any agreement of the Parties with respect to such New Services will be separately specified in an amendment to this Agreement in accordance with Clause 22.11, which will include such matters as project scope, staffing, schedule, deliverables, acceptance, the Nodal Agency’s responsibilities and price.

(b) To request a New Service, the Implementing Agency or the Nodal Agency, as applicable, will deliver a written request (the “New Service Request”) to the Implementing Agency’s Representative or the Nodal Agency’s Representative, as the case may be, specifying in reasonable detail to the extent known (i) the proposed New Service; (ii) the objective or purpose of such New Service; (iii) the requirements and specifications of the services and deliverables to be delivered pursuant to such New Service (including an estimation of anticipated additional volumes of services required); and (iv) the requested prioritization and schedule for such New Service.

(c) The Parties will cooperate with each other in good faith in discussing the scope and nature of the New Service Request, the availability of the Implementing Agency’s personnel, expertise and resources to provide such New Service and the time period in which such New Service will be implemented or delivered. As soon as reasonably practicable thereafter and to the extent applicable, the Implementing Agency will prepare and deliver to the Nodal Agency’s Account Representative, a written statement (the “New Service Response”) describing
any changes in products, services, assignment of personnel and other resources that the Implementing Agency believes would be required. In addition, such New Service Response will include, as appropriate or applicable, (i) an estimation of the net increase or decrease in the pricing that would be required; (ii) the categories of costs to be avoided as a result of such New Services or the substitution of the New Service for the Service then being provided; (iii) a description of how the proposed New Service would be implemented; (iv) a description of the effect, if any, such New Service would have on this Agreement, including, without limitation, on Service Levels; (v) an estimation of all resources required to implement such New Service, including a description of the delivery risks and associated risk mitigation plans; and (vi) such other information as may be relevant to the proposed New Service. The Implementing Agency’s Representative and the Nodal Agency’s Representative will meet to determine whether they desire for the Implementing Agency to proceed with the implementation of the proposed New Service in accordance with the New Service Response.

(d) In the event of any dispute between the Parties (including any dispute as to whether a requested service is a New Service or the pricing at which a New Service will be provided to the Nodal Agency), the Implementing Agency will begin providing the Service if requested by the Nodal Agency. Notwithstanding the foregoing, if a good faith dispute exists between the Parties regarding such New Service, the Implementing Agency will not be required to (i) expend capital to acquire assets or to incur other material costs (except on a pass-through basis), or (ii) expend any amounts that, in the aggregate, exceed INR <specify amount>. In addition, whilst any dispute remains ongoing, all employee time used to provide such New Service will be charged using the Implementing Agency’s standard commercial rates and invoiced in accordance with Clause 10.6.

4.7. No Exclusivity

The Nodal Agency retains the right in its sole discretion (i) in connection with the procurement of services within the scope of this Agreement, to solicit and use providers other than the Implementing Agency and its Affiliates; (ii) to perform any of the Services itself; or (iii) to resource any of the Services for provision by one or more providers other than the Implementing Agency and its Affiliates, subject in each case to the minimum volumes agreed upon by both the parties. Any election by the Nodal Agency to insource or resource any of the Services in accordance with this provision will be subject to the operation of Clause 17.2.

(Exclusivity - The Implementing Agency shall be the sole and exclusive provider of the Services and equivalent services within the scope of this Agreement to the Nodal Agency during the Agreement Term.)
4.8. Primary Supplier

(a) The Nodal Agency will notify the Implementing Agency of all significant future opportunities to provide outsourcing or consulting services to the Nodal Agency or its Affiliates (a “Covered Opportunity”). The Nodal Agency will cooperate in good faith with the Implementing Agency with respect to pursuing such Covered Opportunity. The Nodal Agency will also notify the Implementing Agency in writing no less than ten days in advance of the Nodal Agency’s intended award of each such Covered Opportunity to another provider and address any impact on the Services though the Change Control Procedures.

(b) In addition, (i) the Implementing Agency will be included as part of the Nodal Agency’s overall business process (and information technology) planning and (ii) the Implementing Agency will be permitted to propose on new business process (and information technology) efforts for the Nodal Agency and its Affiliates.

4.9. Fundamental Assumptions

The Parties acknowledge that the Services, Service Levels, schedules, Service Charges and related items in this Agreement are dependent upon the accuracy of the information provided by the Nodal Agency and fundamental assumptions as set out in schedule 4.9 <insert schedule>. As a result, during the period of time beginning on the Effective Date and ending on the one-year anniversary thereof, the Implementing Agency and the Nodal Agency will cooperate with each other, and the Nodal Agency will provide to the Implementing Agency such documents, reports and other information as is reasonably necessary or desirable for the Implementing Agency to verify the information received from the Nodal Agency and items on such schedule. If the Implementing Agency reasonably determines as a result of such review that any of such information or fundamental assumption is inaccurate or incomplete, in any material respect (an “Adjustment Event”), the Implementing Agency will inform the Nodal Agency as to its estimates of the impact of the Adjustment Event on the Implementing Agency’s ability to provide the Services in accordance with the terms of this Agreement (whether positive or negative). In such event, the Parties will seek to establish mutually acceptable alternative arrangements and to make any appropriate adjustments to their respective obligations under this Agreement (including the charges payable to the Implementing Agency) through the execution of an amendment pursuant to Clause 8.12. Any such adjustment will be made only to the extent necessary to reflect the impact of the Adjustment Event. If the Parties are unable to reach agreement on remediation within <thirty (30)> days after the Nodal Agency has been notified of the Adjustment Event, the Implementing Agency shall have the right to invoke the dispute escalation procedures specified in Clause 18.
4.10. Ongoing Cooperation

The Nodal Agency and the Implementing Agency will cooperate in planning and implementing the Services and changes thereto in an efficient, cost-effective and commercially reasonable manner.

4.11. Reliance on Instructions

In performing its obligations under this Agreement, the Implementing Agency will be entitled to reasonably rely upon any routine instructions, authorizations, approvals or other information provided to the Implementing Agency by the Nodal Agency’s Representative or, as to areas of competency specifically identified by the Nodal Agency’s Representative by any other Nodal Agency’s personnel identified by the Nodal Agency’s Representative, from time to time, as having authority to provide the same on behalf of the Nodal Agency in such person’s area of competency.

4.12. Nodal Agency’s Service Responsibilities

(a) In addition to the obligations specified elsewhere in this Agreement, during the Agreement Term and in connection with the Implementing Agency’s performance of its obligations hereunder, the Nodal Agency will, at its own cost and expense, have the obligations, and retain the responsibilities, described in schedule 4.12 (“Nodal Agency Service Responsibilities”) <insert schedule>. The Nodal Agency will perform such the Nodal Agency Service Responsibilities and acknowledges that the Implementing Agency’s performance is dependent on the Nodal Agency’s timely and effective performance of the Nodal Agency’s Service Responsibilities and other timely decisions and approvals. The Nodal Agency will be responsible for its operation and use of the Services and for ensuring that the scope of Services meets the Nodal Agency’s requirements.

(b) If, during and to the extent that the Nodal Agency’s failure to perform any Nodal Agency’s Service Responsibilities causes the Implementing Agency to fail to perform its responsibilities under this Agreement, the Implementing Agency’s failure to perform such responsibilities will be excused. Notwithstanding the foregoing, the Implementing Agency will use reasonable efforts (including emergency fixes and workarounds) to perform its responsibilities under this Agreement. The Implementing Agency will be entitled to be compensated for any additional costs incurred as a result of any delay or failure to perform on the part of Nodal Agency.

[Alternate (b)]
The Nodal Agency’s failure to perform any of its obligations set out in this Agreement (other than as set out in Clause 17.1) will not be deemed to be grounds for termination of this Agreement by the Implementing Agency. The Implementing Agency will be excused in its performance of its obligations for any period and to the extent that it is prevented from performing such obligations by the Nodal Agency’s failure to perform its obligations under this Agreement, provided that the
Implementing Agency uses reasonable efforts to perform its obligations notwithstanding the Nodal Agency’s or its agents’ or subcontractors’ failure to perform. The Implementing Agency will notify the Nodal Agency in writing of any such failure to perform within a reasonable period of time after the Implementing Agency has become aware of such failure. If the Implementing Agency uses reasonable efforts to perform notwithstanding the Nodal Agency’s failure to perform, the Nodal Agency will reimburse the Implementing Agency for its incremental costs and expenses incurred in such effort to perform. Such reimbursement will be on a “pass-through” basis if such failure to perform is a one-time or non-recurring event. However, if such failure to perform occurs on a recurring basis or where the total costs and expenses incurred under this provision exceed INR <Amount>, the Implementing Agency’s performance of such the Nodal Agency’s obligations will be deemed to constitute New Services and subject to the operation of Clause 4.6. Notwithstanding any provision of this Agreement to the contrary, under no circumstances will the Implementing Agency be obligated to perform or deemed to be at fault in any way for any failure or delay in performing any of the Nodal Agency’s responsibilities set out in this Agreement.

[End of Alternative (b)]
4.13. Out of Scope Responsibilities and Acknowledgement

(a) In addition to its responsibilities specified elsewhere in this Agreement, the Nodal Agency is responsible for (i) management oversight, determining accounting policies, transaction initiation, and for authorizing, interpreting and creating specifications for the financial reporting information; (ii) establishing, maintaining and evaluating the effectiveness of its disclosure controls and procedures and internal controls; (iii) determining the quality and other standards for the Services comprising the (Finance and Administration) and with which the Implementation Agency (upon its agreement therewith) will be required to comply; (iv) determining when, whether and how the recommendations made by the Implementation Agency and its affiliates regarding finance policies and procedures are to be implemented by the Nodal Agency; and (v) ensuring that it complies with its legal and regulatory obligations. Each of the Parties acknowledges and agrees that (a) the scope of the Services is limited to mechanical processing and administration; (b) the Implementing Agency is not licensed or certified in any jurisdiction to take over any of the sovereign function of the Government; (c) the Implementation Agency cannot represent or express any opinions or assurances that the services, or any reports generated thereby, will conform to any recognized third-party standards, apart from the GoI standards on http://www.mit.gov.in/content/standards-policies; (d) the services shall be deemed to exclude functions that by law or custom are provided by, or reserved to, certified professionals; and (e) the Implementation Agency will not provide Nodal Agency with legal advice of any kind in connection with the Services. Further, the Nodal Agency will be responsible for providing the Implementation Agency with accurate and complete data and information and for reviewing and verifying all data and reports provided by the Implementation Agency under this Agreement. Except for applicable Service Level Credits, if any, the Implementation Agency shall have no liability for the Nodal Agency’s use of data and reports provided by the Implementation Agency, and the Implementation Agency’s sole liability with respect to errors introduced into data or reports by the Implementation Agency during the course of the services shall be to re-perform the necessary, applicable services (subject at all times to the limitations and exclusions of liability set out in Clause 16).

(b) The Nodal Agency is responsible for (i) management oversight and determining human resources policies and establishing, maintaining and evaluating the effectiveness of such policies; (ii) determining the quality and other standards for the Services with which the Implementation Agency (upon its agreement therewith) will be required to comply; and (iii) determining when, whether and how any recommendations made by the Implementing Agency regarding human resources policies are to be implemented by the Nodal Agency. The Nodal Agency will be responsible for providing the Implementing Agency with accurate and complete source data and information and for reviewing and verifying all data and reports provided by the Implementing Agency under this Agreement in connection with the Nodal Agency’s human resources policies. Except for applicable Service Level Credits, if any,
the Implementing Agency shall have no liability for the Nodal Agency’s use of data and reports provided by the Implementing Agency, and the Implementing Agency’s sole liability with respect to errors introduced into data or reports by the Implementing Agency during the course of the services shall be to re-perform the necessary, applicable services (subject at all times to the limitations and exclusions of liability set out in Clause 16).


Established relationships with many major hardware and software technology providers and other vendors enable the Implementing Agency directly or through an Affiliate to resell these providers’ products in connection with the Implementing Agency’s services. To the extent that the Implementing Agency’s pricing is competitive (established through a tender process or in case of urgency - pricing established by an open tender carried out by any Government or its agency after adjustment of the taxes), the Nodal Agency agrees to consider in good faith acquiring such products required for the provision of the services by utilizing the Implementing Agency’s reseller agreements.

4.15. Excused Obligations

The Implementing Agency’s failure to perform its obligations under this Agreement will be excused, and not included in any calculation of Service Level Default or calculation; to the extent such failure is related to or caused by any of the following:

(a) the Nodal Agency not performing its obligations under Clauses 4.12 and 4.13;
(b) Any breach of this Agreement by the Nodal Agency or other failure of the Nodal Agency or the Nodal Agency’s employees, agents or third parties to perform its obligations under this Agreement, including Clauses 6.2 to 6.5, inclusive;
(c) Infringements of third party Intellectual Property Rights by the Nodal Agency or the Nodal Agency’s employees, agents or other third party service providers;
(d) Violations of law by the Nodal Agency or the Nodal Agency’s employees, agents or third parties;
(e) Service or resource reductions or other special production jobs, testing procedures or other services which are given priority as requested or approved by the Nodal Agency and agreed to by the Parties in accordance with the Change Control procedures set out in Clause 8.12;
(f) Implementation of a disaster recovery plan in response to a disaster;
(g) The applicability of any other provision of this Agreement that provides for relief from Service Level Credits in accordance with such provision;
(h) Any significant increase in processing volumes or business which was not foreseen and communicated by the Nodal Agency, sufficiently prior to the event which could help the Implementing Agency to prepare for the additional volumes
(i) Any significant change in the manner in which the Nodal Agency conducts its business; or
(j) Any matter constituting Force Majeure, as provided in Clause 19.
5. SLA PERFORMANCE METRICS

5.1. Service Levels

(a) General: Schedule 5.1 sets out certain Service Levels (“Service Levels”) <insert schedule> will be used to measure the Implementing Agency’s performance of the Base Services under this Agreement. The Implementing Agency agrees that, from and after the Base Services Commencement Date, its performance of the Services will meet or exceed each of the applicable Service Levels set out in schedule 5.1, subject to the limitations and in accordance with the provisions set out in this Agreement. If the Services provided pursuant to this Agreement are changed, modified or enhanced (whether by Change Request or through the provision of New Services), the Parties will review the Service Levels then in effect and will in good faith determine whether such Service Levels should be adjusted and whether additional Service Levels should be implemented.

(b) Service Credits:

i. If the Implementing Agency fails to meet any Service Level, then the Implementing Agency will (i) promptly perform a root-cause analysis to identify the cause of such failure; (ii) use reasonable efforts to correct such failure and to begin meeting the Service Levels as promptly as practicable; (iii) provide the Nodal Agency with a report detailing the cause of, and procedure for correcting, such failure; and (iv) if appropriate under the circumstances, take action to avoid such failure in the future. [The determination of whether action may be appropriate under (iii) above will take into account, among other factors, the causes of such failure, the cost/benefit analysis associated with such action and whether the failure reflects a declining performance trend in such Service Level. Performance trends with respect to Service Levels will be determined based upon a review of applicable performance data over the prior, rolling 12-month period.]

ii. In addition, upon the occurrence of a Service Level Default with respect to which a Service Level Credit applies that is not excused in accordance with this Agreement, the Implementing Agency will provide the corresponding Service Level Credit to the Nodal Agency against the immediately succeeding payments that become due to the Implementing Agency under this Agreement, in accordance with schedule 5.1. If any Service Level Credit remains outstanding upon the expiration or termination of this Agreement and no Service Charges remain payable, the Implementing Agency will pay the Nodal Agency such remaining amount within <Specify number of days> days after such expiration or termination.

iii. The Implementing Agency shall have the right to earn back Service Level Credits if the Implementation Agency meets or exceeds the relevant minimum service level for the six (6) consecutive months following the relevant service level failure.
iv. In the event that the Implementing Agency exceeds the Service Levels by 10% over the minimum, the Nodal Agency will pay the Service Level Bonus set out in schedule 5.1.

(c) **Periodic Review; Annual Improvement**: On an annual basis during the Agreement Term, the Parties will jointly review (i) then-current Service Levels; (ii) the percentage difference between the Implementing Agency’s actual performance and then-current Service Levels; (iii) generally available information indicating industry-wide improvements of delivery of substantially similar services; (iv) improved performance capabilities, including those associated with advances in technology and methods used to provide the Services; and (v) reduced performance capabilities, including those associated with resource reductions requested or approved by the Nodal Agency. The Service Levels may be adjusted on an optional basis, as will be mutually agreed based on the preceding review with the objective of obtaining annual performance improvements. As part of such review process, the Parties may jointly establish additional Service Levels and Service Level Credits to be added in accordance with the schedule 5.1.

(d) **Measurement and Monitoring Tools**: The Implementing Agency will implement its measurement and monitoring tools and procedures to measure and monitor the Implementing Agency’s performance against the applicable Service Levels. Such measurement and monitoring may be subject to audit by the Nodal Agency upon reasonable request. Upon the Nodal Agency’s request from time to time, the Implementing Agency will provide the Nodal Agency with information and access to such tools and procedures for purposes of verification.

(e) **Quality Assurance**: The Implementing Agency will provide and implement the quality assurance procedures that is reasonably necessary for the Services to be provided in accordance with the Service Levels. Such procedures will include checkpoint reviews, testing, acceptance and other procedures for the Nodal Agency to monitor the quality of the Implementing Agency’s performance and will be included in the Account Documentation.

*Note: “An illustrative example of SLA is provided in the Annexure in Section 26”*

5.2. **Customer Satisfaction**

No later than the <specify period> anniversary of the Base Services Commencement Date and on an annual basis thereafter during the Agreement Term, the Implementing Agency will conduct a satisfaction survey designed to capture the Nodal Agency perceptions in respect of the delivery of the Services. The survey will cover a representative sample of end users of the Services and the senior officers of the concerned Department. Results of the survey will be reviewed with the Nodal Agency by the Implementing Agency Account Representative.
5.3. Benchmarking

(a) **Establishment of Process**: After the `<specify period>`-year anniversary of the Base Services Commencement Date, the Nodal Agency, at its option, may institute an objective measurement and comparison process (utilizing mutually identified baselines and industry standards) to measure the quality and cost-effectiveness of the services under the terms of this Agreement, taken as a whole, as compared to the quality and cost-effectiveness of comparable services customarily being provided to other organizations in the e-Governance industry by PPP Service providers/IT Turnkey service providers (the “Benchmarking Process”)

(b) **Third Party Bench marker**: Within 60 days after the Nodal Agency’s request to institute the Benchmarking process, the Parties shall mutually agree as to the identity of and mutually engage an independent third-party (the “Third-Party Bench marker”) to perform the Benchmarking process. The cost of the Benchmarking process, including the fees and expenses of the Third-Party Bench marker, will be equally shared by the Nodal Agency and the Implementing Agency. As a condition to its engagement, the Third-Party Bench marker will execute a confidentiality agreement reasonably satisfactory to the Parties.

(c) **Determination of Applicable Information**: Throughout the Benchmarking process, all instructions to such Third-Party Bench marker will be given jointly by the Nodal Agency and the Implementing Agency. The Nodal Agency and the Implementing Agency shall agree upon and instruct the Bench marker on (i) the items or metrics to be benchmarked; (ii) the factors necessary to ensure “like-for-like” comparison of services, including service levels, volumes, term, pricing structure including investments made, global/regional scope, risk allocation, ownership of intellectual property rights and other material terms and conditions; and (iii) the information that the Third-party Bench marker will use based on their proposals, which shall be compared at least to a `<six (variable number but no less than 3)>` IT outsourcing contracts of similar service levels, volumes, term, investments made, global/regional scope, risk allocation, ownership of intellectual property rights and other material terms and conditions. The Nodal Agency and the Implementing Agency will cooperate to facilitate the Benchmarking process, including by providing such reasonable information as is necessary to conduct the Benchmarking process.

(d) **Lack of Adequate Data to Perform Benchmarking**: The Parties acknowledge that given the uniqueness of the Nodal Agency’s requirements and of this Agreement, it is very possible that the Third-Party Bench marker will not have or will not be able to obtain comparative information on material terms or conditions as set out in Clause 5.3(c) above. The Third-Party Bench marker shall inform the Parties of that result as soon as possible and shall not proceed without the mutual written consent of the Parties. The Parties, working with the Third-Party Bench marker, will agree on an appropriate process to accommodate the incomplete data. Furthermore, if the Benchmarking Process does continue, the lack of comparable data shall be noted in the Benchmarking Report, along with the accommodation agreed to by the Parties, and in any summary thereof provided to the Nodal Agency and the Implementing Agency management.
(e) **Review of Benchmarking Report:** The Third-Party Benchmark marker will deliver a draft report to the Nodal Agency and the Implementing Agency who will have no less than <Specify days> and no more than <Specify days> days to review and provide comments to the Third-Party Benchmark marker. The Third-Party Benchmark marker will make appropriate amendments or otherwise respond to comments received. Promptly after delivery of a final report by the Third-Party Benchmark marker summarizing the results of the Benchmarking Process (the “Benchmarking Report”), the Nodal Agency and the Implementing Agency shall meet to review the results of the Benchmarking Process. A “Benchmarking Condition” will be deemed to exist if (i) the final report results reflect that the Services, the Service Levels or the pricing for the Services are not competitive (after taking into account the Agreement as a whole and a comparison of “like-for-like” services, including like service levels, volumes, term, pricing structure including investments made, global/regional scope, risk allocation, ownership of intellectual property rights and other material terms and conditions), with similar services then being provided to other organizations in the e-Governance industry by the Implementing Agency/Turnkey Solution providers; (ii) such non-competitiveness is due to factors other than the Nodal Agency’s particular requirements; and (iii) the Benchmark marker does not lack sufficient comparable information regarding any material terms or conditions as noted in Clause 5.3(d) above. A Benchmarking condition will also be deemed to exist if the Benchmarking Report shows that the Implementing Agency’s performance or price are more favorable to the Nodal Agency than the nearest comparable provider by 5% or more.

(f) **Frequency of Benchmarking:** Benchmarking shall be conducted no earlier than <specify months> after the date of the conclusion of the prior benchmarking process, up to and including the resolution of any issues arising from the prior Benchmarking Report.

(g) **Consequences of Benchmarking Condition:** If a Benchmarking Condition exists, the Parties promptly will meet and cooperate to determine whether agreement may be reached to effect an adjustment to the services, the service levels, right or risk allocations or the pricing for the services to make the same competitive (after taking into account a comparison of “like-for-like” services, including like service levels, volumes, term, pricing structure including investments made, global/regional scope, risk allocation, ownership of intellectual property and other material terms and conditions) with similar services then being provided to other organizations in the e-Governance industry by The Implementing Agency/Turnkey Solution providers (“Benchmarking Adjustment”) and a plan to implement such Benchmarking Adjustment. If a Benchmarking Condition exists and the Parties are unable to reach agreement with respect to any Benchmarking Adjustment after following the Informal Dispute Resolution process set out in Clause 18.1, then the Nodal Agency will have the right to terminate this Agreement pursuant to Clause 17.3.

(h) **Disputes:** Either the Nodal Agency or the Implementing Agency may in good faith dispute the results of the Benchmarking Process or whether a Benchmarking Condition exists in accordance with Clause 18; provided, however, that the sole and exclusive consequence of
the Parties’ failure to reach agreement with respect to a Benchmarking Adjustment will be that the Nodal Agency will have the right to terminate this Agreement pursuant to Clause 17.3.

5.4. Liquidated Damages

(a) In the event of delay or any gross negligence, for causes attributable to the Implementing Agency, in meeting the deliverables or milestone, the Nodal Agency shall be entitled at its option to recover from the Implementing Agency as agreed, liquidated damages, a sum of 0.5% of the value of the deliverable or milestone which suffered delay or gross negligence for each completed week or part thereof subject to a limit of 10% of the value of delayed deliverables or milestone.

(b) This right to claim any liquidated damages shall be without prejudice to other rights and remedies available to Nodal Agency under the contract and law.
6. RESOURCES

6.1. Transferred Assets

Schedule 6.1 <insert schedule> sets out the terms and conditions under which the Nodal Agency will sell, transfer, convey, assign and deliver to the Implementing Agency, and the Implementing Agency will (purchase for the amount set out in Clause 10.1 and) assume, certain third-party software licenses, equipment leases and service agreements and certain equipment and other assets owned by the Nodal Agency and used or held for use in connection with the Nodal Agency’s operations.

In case of BOOT/BOT types of projects, the foresaid schedule should stipulate that once the training is over, the Implementing Agency must properly handover all the assets along with the required documentation to the <Nodal Agency> at the end of the project period. If <Nodal Agency> wishes to continue the services of RFP, further negotiations shall be held and a contract shall be signed for further support period identified at the end of project period.

6.2. Implementing Agency-Managed Agreements

(a) Commencing on the Base Services Commencement Date, the Implementing Agency will manage, administer and maintain, on a Pass-Through Expense basis, the lease, license, maintenance, service and other third party agreements to be retained by the Nodal Agency. The Nodal Agency will provide a copy of such agreements and all modifications of such (collectively, the “Implementing Agency-Managed Agreements”) to the Implementing Agency. This Agreement does not affect any assignment of the Implementing Agency-Managed Agreements to the Implementing Agency and the Nodal Agency will continue to be liable for any and all obligations under the Implementing Agency-Managed Agreement except as provided in this Clause 6.2.

(b) If the Implementing Agency determines that it is able to negotiate arrangements with any third-party vendor that will enable the Implementing Agency to use alternative software, equipment or services to provide the services in accordance with service levels at a lower cost than maintaining a separate the Implementing Agency-Managed Agreement solely for the Nodal Agency’s use, the Implementing Agency will notify the Nodal Agency of the potential for budget or performance improvements. At its option, the Nodal Agency may request the Implementing Agency to pursue such alternative arrangements for the applicability of the Implementing Agency-Managed Agreement. The Parties will cooperate and use reasonable efforts to reduce the Nodal Agency’s financial responsibility under any the Implementing Agency-Managed Agreements.
(c) Each of the Parties will abide by, and will not breach, the terms of any the Implementing Agency Agreement and will cooperate with each other to prevent or stay any such breach. To the extent permitted pursuant to the Implementing Agency’s Agreements, the Nodal Agency hereby appoints the Implementing Agency (or its applicable subcontractors) as the Nodal Agency’s sole, limited purpose agent for the matters pertaining to the Implementing Agency Agreements referred to in this Clause 6.2.

(d) Each Party will promptly inform the other of any breach of, misuse or fraud in connection with any the Implementing Agency Agreements and any the Nodal Agency retained assets to which they pertain and will cooperate with each other to prevent or stay any such breach, misuse or fraud.

(e) The Nodal Agency will be financially and administratively responsible for obtaining any Consent required to enable the Implementing Agency and its applicable subcontractors to administer the Implementing Agency’s Agreements and access, use, copy, modify and enhance the relevant assets to the extent necessary for the Implementing Agency’s performance under this Agreement.

6.3. The Nodal Agency-Owned and Leased Hardware

(a) Schedule 6.3(a) <Insert Schedule> sets out certain Hardware owned by <Nodal Agency> (the “<Nodal Agency>-Owned Hardware”) and certain Hardware leased by <Nodal Agency> (the “<Nodal Agency>-Leased Hardware”) (i) with respect to which <Nodal Agency> will retain financial, administrative and maintenance responsibility and (ii) use of which will be required by <Implementing Agency> for purposes of this Agreement. The Nodal Agency will be the sole and exclusive owner of the Nodal Agency-Owned Hardware. The Nodal Agency may change, upgrade or otherwise modify the Nodal Agency-Owned Hardware and the Nodal Agency-Leased Hardware without the Implementing Agency’s prior approval, provided that such changes, upgrades or modifications do not, in the aggregate, materially increase the Implementing Agency’s cost and expenses or affect other aspects of delivery of the Services. Any such change, upgrade or modification of the Nodal Agency-Owned Hardware or the Nodal Agency-Leased Hardware that, in the aggregate, materially increases the Implementing Agency’s cost and expenses will be subject to the operation of Clause 8.12. The Nodal Agency will be financially and administratively responsible for maintenance of the Nodal Agency-Owned Hardware and the Nodal Agency-Leased Hardware.

(b) The Nodal Agency will be financially and administratively responsible for obtaining any Consents required for the Implementing Agency (and applicable the Implementing Agency subcontractors) to use the Nodal Agency-Owned Hardware and the Nodal Agency-Leased Hardware, all to the extent necessary for the Implementing Agency’s performance under this Agreement.
(c) The Implementing Agency and its applicable subcontractors will use such the Nodal Agency-Owned Hardware and the Nodal Agency-Leased Hardware, at no cost to the Implementing Agency, (i) solely for purposes of this Agreement; (ii) solely during the Agreement Term; and (iii) in compliance with any applicable use restrictions that are identified in writing to, and acknowledged by, the Implementing Agency. The Implementing Agency will establish an access control procedure to limit the Implementing Agency’s use accordingly.

6.4. The Nodal Agency-Licensed Software

(a) Schedule 6.4(a) <insert schedule> sets out certain third-party software, tools, data, databases and methodologies, together with related documentation, licensed by the Nodal Agency, (i) with respect to which the Nodal Agency will retain financial, administrative and maintenance responsibility and (ii) access to which will be required for the Implementing Agency for purposes of this Agreement. Such items together with any other subsequently identified third-party software, tools, data, databases and methodologies licensed by the Nodal Agency access to which will be provided to the Implementing Agency (or its subcontractors) under this Agreement are collectively referred to herein as “the Nodal Agency-Licensed Software.”

(b) The Nodal Agency will be financially and administratively responsible for (i) obtaining any Consents required for the Implementing Agency (and applicable the Implementing Agency subcontractors) to access, use, copy, modify and enhance such the Nodal Agency-Licensed Software in such form and on such media as the Implementing Agency may reasonably request, together with appropriate documentation, all to the extent necessary for the Implementing Agency’s performance under this Agreement and (ii) maintenance of the Nodal Agency-Licensed Software, including upgrades necessary to correct defects.

(c) The Implementing Agency and its applicable subcontractors will access, use, copy, modify and enhance such the Nodal Agency-Licensed Software (i) solely for purposes of this Agreement; (ii) solely during the Agreement Term; and (iii) in compliance with any applicable use restrictions that are identified in writing to, and acknowledged by, the Implementing Agency. The Implementing Agency will establish an access control procedure to limit the Implementing Agency’s access and use accordingly.

6.5. The Nodal Agency-Owned Software

(a) Any software, tools, databases, data and methodologies owned by the Nodal Agency (together with related documentation) to which the Implementing Agency needs access for purposes of this Agreement, including the Nodal Agency-owned software identified in Schedule 6.5(a) <insert schedule> are collectively referred to herein as the “the Nodal Agency-Owned Software.”

(b) As between the Parties, the Nodal Agency will be the sole and exclusive owner of the Nodal Agency-Owned Software. The Nodal Agency hereby grants to the Implementing Agency (and
applicable Implementing Agency’s subcontractors) a non-exclusive, non-transferable, royalty-free license to access, use, copy, modify and enhance such the Nodal Agency-Owned Software, all to the extent necessary for the Implementing Agency’s performance under this Agreement. Such license will terminate upon the expiration or termination of this Agreement.

(c) The Nodal Agency will be financially and administratively responsible for (i) obtaining any Consents required for the Nodal Agency’s grant of such license and (ii) maintenance of the Nodal Agency-Owned Software, including upgrades necessary to correct defects.

(d) The Implementing Agency and its applicable subcontractors will access, use, copy, modify and enhance such the Nodal Agency-Owned Software (i) solely for purposes of this Agreement; (ii) solely during the Agreement Term; and (iii) in compliance with any applicable use restrictions that are identified in writing to, and acknowledged by, the Implementing Agency. The Implementing Agency will establish an access control procedure to limit the Implementing Agency’s access and use accordingly.

6.6. The Implementing Agency Software

(a) Any software, tools, databases, data or methodologies that are (i) owned by the Implementing Agency or the Implementing Agency Affiliates before the Effective Date or acquired by the Implementing Agency after the Effective Date, (ii) developed by the Implementing Agency or the Implementing Agency Affiliates other than pursuant to this Agreement or any other agreement with the Nodal Agency, or (iii) licensed by the Implementing Agency or the Implementing Agency Affiliates from a third party (other than third-party software that is the subject of licenses included in the Transferred Assets), including any such items used by the Implementing Agency or the Implementing Agency Affiliates to provide the Services to the Nodal Agency, are collectively referred to herein as the “the Implementing Agency Software.” As between the Parties, the Implementing Agency will be the sole and exclusive owner of the Implementing Agency Software.

(b) The Implementing Agency will be financially and administratively responsible for (i) obtaining any consent required to provide the Services using the Implementing Agency Software, and (ii) maintenance of the Implementing Agency Software, including upgrades necessary to correct defects.

(c) With respect to the Nodal Agency’s access and use of any the Implementing Agency Software, the Nodal Agency will comply with any applicable use restrictions that are identified in writing to, and acknowledged by, the Nodal Agency. The Nodal Agency will establish an access control procedure to limit the Nodal Agency’s access and use accordingly.
6.7. Critical the Implementing Agency-Licensed Software

(a) Any of the Implementing Agency Software licensed from a third party that is being used to provide the Services upon any expiration or termination of this Agreement and that would be required by the Nodal Agency or an alternative service provider for the continuity of the Services after the expiration or termination of this Agreement, other than generally available commercial software, is referred to herein as the “Critical the Implementing Agency-Licensed Software.” the Implementing Agency will (i) inform the Nodal Agency of the existence and ownership of, and the extent of the Implementing Agency’s rights to, all such Critical the Implementing Agency-Licensed Software and (ii) use reasonable efforts to obtain for the Nodal Agency a perpetual (or to the extent customarily available, automatically renewing), nonexclusive license to use such Critical the Implementing Agency-Licensed Software effective upon the expiration or termination of this Agreement and upon the third-party vendor’s standard terms and conditions but at no additional charge.

(b) If the Implementing Agency is unable to obtain the license (or the agreement to grant a license) described in Clause 6.7(a) above, the Implementing Agency will not introduce such Critical the Implementing Agency-Licensed Software to provide the Services except as follows:

i. Prior to introducing such Critical the Implementing Agency-Licensed Software, the Implementing Agency will notify the Nodal Agency of its inability to obtain for the Nodal Agency such a license or agreement and the cost and viability of any other software that can perform the requisite functions and with respect to which the Implementing Agency has the ability to grant or transfer such a license or agreement (or to procure the same). Such notice will contain the proposed Critical the Implementing Agency-Licensed Software vendor’s then-current terms and conditions, if any, for making the software available to the Nodal Agency upon expiration or termination of this Agreement.

ii. With the Nodal Agency’s prior approval, the Implementing Agency may then introduce such Critical the Implementing Agency-Licensed Software for use in providing the Services.

6.8. Additional Resources

If any additional resources, whether in the form of equipment, software or otherwise, are required by the Implementing Agency to meet its obligations during the Agreement Term, whether in addition to or in replacement of any of the existing hardware or software, the Implementing Agency will inform the Nodal Agency and the Nodal Agency, at the Nodal Agency’s expense and on such other terms and conditions as the Parties mutually agree, will provide the Implementing Agency with such resources. If the Nodal Agency does not approve an acquisition proposed by the Implementing Agency, the Implementing Agency will be excused from any responsibility for any resulting adverse impact on the Nodal Agency, the Services or the Service Levels, but will use reasonable efforts to mitigate such impact.
6.9. Consents

The following provisions apply when this Agreement imposes upon a Party the responsibility to obtain any Consent:

(a) The Party administratively responsible for obtaining the Consent will use reasonable efforts to obtain such Consent. The other Party will provide reasonable assistance to the responsible Party in obtaining such Consent. The Parties will cooperate to obtain such Consents in a cost effective and efficient manner.

(b) When this Agreement provides that a Party will be financially responsible for obtaining any Consents, such responsibility will include (subject to Clause 6.9(c) below) the payment of any required transfer, upgrade, access, license or similar fees or charges related thereto. If one Party is administratively responsible and the other Party is financially responsible, the financially responsible Party will promptly (but in no event later than 30 days after notification) reimburse the other Party for any of the foregoing fees or charges.

(c) If any Consent cannot be obtained on a commercially reasonable basis, the Parties will (i) make any appropriate adjustments to their respective obligations under this Agreement, including, where necessary relieving the Implementing Agency of any Service or Service Level obligations or adjusting the charges set out in this Agreement, all to the extent necessary due to a failure to obtain such Consents, and (ii) seek to establish mutually acceptable alternative arrangements so that the Parties may perform their respective obligations under this Agreement by alternative means.

(d) The Implementing Agency will identify for the Nodal Agency any applicable the Implementing Agency subcontractors that should be included within the scope of consent to be obtained by the Nodal Agency.

6.10. Efficiency

The Implementing Agency will use reasonable efforts to efficiently administer, manage, operate and use the resources employed by the Implementing Agency to provide and perform the Services that are chargeable to the Nodal Agency under this Agreement.

6.11. Technological Refresh

On at least an [annual] basis, the Parties will meet to review any new technology the Implementing Agency is developing or general technology or industry trends and directions. In addition, the Implementing Agency will keep the Nodal Agency reasonably appraised of any new developments, including new software and hardware developments, that the Implementing Agency generally makes available to other similarly situated Nodal Agencies of the Implementing Agency and that the Implementing Agency believes could have a significant impact on the quality and cost-effectiveness of the services. Consistent with the Nodal Agency’s then existing budget
parameters, the Implementing Agency will use reasonable efforts to maintain the technology and processes utilized in providing the services at a level that is comparable with the level of advancement generally attained in providing similar services in the <insert applicable Nodal Agency sector> industry. Any the Nodal Agency request for additional assistance or services regarding new technology will constitute a New Service Request pursuant to Clause 4.6.

6.12. Refresh; Maintenance

(a) The Implementing Agency shall ensure on a continuing basis that at all times its maintenance and operating procedures are sufficient to ensure that:

i. The service is continuously available;

ii. It can maintain the design intention of the assets to achieve their full working life; and

iii. The Assets are handed back to the Nodal Agency on the Expiry Date in a condition complying with the requirements of this Clause.

(b) Each Party will establish and maintain appropriate third-party maintenance arrangements for the maintenance of hardware and software for which it has operational responsibility under this Agreement.

(c) With respect to hardware and third-party software for which a Party has financial and administrative responsibility under this Agreement:

i. The Party will be responsible for the upgrading and refreshing of such hardware and third-party software. In consultation with the other Party, each Party may defer upgrading or refreshing any such hardware or software to the extent it has reasonable concerns regarding the stability of such hardware or software or whether the use of such equipment hardware or software will impair the ability of the Implementing Agency to meet the Service Levels. The Implementing Agency will not be responsible for any upgrade, modification or enhancement of any out-of-scope equipment or software required by any refresh of in-scope hardware or software performed by the Implementing Agency.

ii. The objective of the Parties over time is to maintain in-scope software at releases that are no older than “N-x.” However, the Parties recognize that the Nodal Agency’s historical practices have not always maintained such software at “N-1” release levels in the past. The Parties will cooperate to assess the impact, including the economic impact, of maintaining such “N-x” upgrades on each in-scope software product. Among the factors that the Parties will take into account will be licensing concerns, the impact of regression testing and actual Service requirements.

iii. If the Nodal Agency elects to maintain software under this Agreement at release levels that are not then generally supported by the applicable third-party vendor,
then the Implementing Agency will not be responsible for any failure to meet a Service Level if and to the extent that such failure arises because such software is not supported by the third-party vendor. Subject to the operation of Clause 8.11, the Implementing Agency will use reasonable efforts to maintain such software at multiple release levels.

iv. If a vendor is unable or unwilling to bring its hardware or software into substantial conformance with its specifications, the Parties will cooperate to modify any impacted business process and this Agreement to the extent necessary to minimize the impact of the problem caused by such non-conformance.

(d) With respect to any hardware and third-party software for which the Nodal Agency has financial and administrative responsibility under this Agreement, or which the Nodal Agency has requested that the Implementing Agency not replace, the Nodal Agency will be responsible for such maintenance as performed by third parties [on a Pass-Through Expenses basis] and will bear the cost of replacing such equipment or software.

6.13. Asset Obligations

Unless other responsibilities are set out in the schedule identifying the applicable asset, the Parties’ respective administrative, operational and financial responsibilities with respect to assets are summarized in this Clause 6.13. For purposes of this Clause 6 and Clauses 15.1 and 15.2, except as otherwise provided in this Clause 6, a Party having administrative, operational or financial responsibility for any particular asset will mean the following:

(a) A Party who has administrative responsibility for an asset means that such Party will be responsible for managing such asset, including the tracking of renewal dates and license compliance provisions;

(b) A Party who has operational responsibility for an asset means that such Party will be responsible for operational support of the asset including the maintenance of such asset; and

(c) A Party who has financial responsibility for an asset means that such Party will be responsible for all financial obligations with respect to such asset, including acquisition costs, maintenance costs, refresh and upgrade costs and, with respect to leased assets and except as provided for in Clause 6.3, any financial obligations set out in such lease.

6.13. Non-Transferred <Nodal Agency> Property

Except for property to which title is transferred to the Implementing Agency as evidenced by a bill of sale or comparable written instrument of conveyance or pursuant to Clause 6.1, no interest or obligation is conferred upon the Implementing Agency under this Agreement regarding the Nodal Agency’s property beyond the limited right to use such property for
purposes of this Agreement. All such property remains in the care, custody and control of the Nodal Agency.

6.14. Preferred <Nodal Agency> Vendor

Upon the request of the Nodal Agency, the Implementing Agency will give due consideration to the use of a Nodal Agency preferred equipment or software vendor in connection with the acquisition (whether effected in one transaction or a series of related transactions) of any equipment or software assets in excess of <amount in INR> annually. However, except as expressly provided in this Clause 6, the selection of any such preferred vendor will be subject to the prior written consent of the Implementing Agency. If the Implementing Agency consents to use any such the Nodal Agency preferred equipment or software vendor, the Nodal Agency will pay to the Implementing Agency the incremental costs (including acquisition and support costs) of using such preferred vendor. Prior to using such preferred vendor, the Implementing Agency will notify the Nodal Agency of the Implementing Agency’s estimates of such incremental costs. In addition, if prior to using such preferred vendor, the Implementing Agency notifies the Nodal Agency of its good faith belief that the Nodal Agency requested equipment or software may impair the Implementing Agency’s ability to meet the Service Levels, the Implementing Agency will not be responsible for any failure to meet a Service Level if and to the extent that such failure arises out of a failure of such equipment or software.

6.15. Further Assurances

The Implementing Agency and the Nodal Agency agree to execute and deliver such other instruments and documents as either Party reasonably requests to evidence or effect the transactions contemplated by this Clause 6.

6.16. Escrow Agreement

(a) The Implementing Agency 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 the Implementing Agency’s Proprietary Material), except to the extent the Implementing Agency demonstrates to the satisfaction of the Nodal Agency that compliance is not permitted by the nature of the Implementing Agency’s limited rights in such material.

(b) Within ninety (90) days after the Nodal Agency’s acceptance of the Developed 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 the Implementing Agency’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”).

(c) The Implementing Agency will make its initial deposit of Source Code within fifteen (15) days after the effective date of the Escrow Agreement.

(d) The Implementing Agency 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 Nodal Agency shall be entitled to obtain the deposited materials from escrow upon the Nodal Agency’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 Nodal Agency bankruptcy, insolvency, reorganization, or liquidation statute; (d) the Implementing Agency files articles of dissolution (but not if the Implementing Agency is consolidated or merged into another entity); (e) the Agreement expires or terminates for Material Breach of the Implementing Agency.

(e) The release of deposited materials from escrow shall not confer upon the Nodal Agency 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 Nodal Agency from escrow, the Nodal Agency shall use the deposited materials solely for the benefit of the Nodal Agency and its constituents, consistently with the grants of license set forth in Section 13 of this Agreement.

(f) The release of materials from escrow, without more, shall not cause any further amounts to accrue as payable to the Implementing Agency by the Nodal Agency, and the term of the Nodal Agency’s possessory and usage rights with respect to the released materials shall be perpetual.

(g) The Escrow Agreement shall provide for its automatic termination upon the earlier of five (5) years after the expiration or termination of this Agreement, or, release of all Source Code to the Nodal Agency and the Nodal Agency’s subsequent confirmation of compliance with the terms of the Escrow Agreement. The Implementing Agency 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.
7. SERVICE LOCATIONS; HEALTH, SAFETY AND SECURITY

7.1. Service Locations

The services will initially be provided at the Nodal Agency’s Service Locations and the Implementing Agency’s Service Locations identified in Schedule 7.1 <insert schedule>. Notwithstanding Schedule 7.1, the Implementing Agency may change the Implementing Agency’s Service Locations without the Nodal Agency approval provided such change does not detrimentally impact the obligations of the Implementing Agency or Service Charges under this Agreement.

7.2. Access to the Nodal Agency Service Locations and Items

During the Agreement Term, at no cost to the Implementing Agency and to the extent necessary for the Implementing Agency to provide the Services, the Nodal Agency will provide the Implementing Agency with (i) access to the Nodal Agency’s Service Locations 24 hours a day, seven days a week; (ii) suitable office space in the Nodal Agency’s principal facility and at other mutually designated the Nodal Agency’s facilities; and (iii) the following services and other items at each Nodal Agency’s facility, all on a mutually agreed basis: (i) desks, storage, furniture and other normal office equipment support; (ii) adequate computer resources; (iii) photocopying facilities; (iv) telephone and facsimile equipment and services (including voice mail services); (v) stationery (excluding the Implementing Agency’s specific items); (vi) postal and courier services; (vii) archiving facilities; (viii) secretarial support and word processing; (ix) general office supplies; (x) security and janitorial support; (xi) parking; and (xii) such other items, services and resources as the Parties may agree are reasonably necessary for the Implementing Agency to perform its obligations under this Agreement (collectively, “the Nodal Agency’s Service Location Items”). The Implementing Agency may terminate its receipt of any the Nodal Agency Service Location Items by giving the Nodal Agency at least 30 days’ prior written notice.

7.3. Use of the Nodal Agency Service Locations

Unless otherwise approved by the Nodal Agency, the Implementing Agency may use the Nodal Agency’s Service Locations and the Nodal Agency’s Service Location Items only in connection with the provision of services to the Nodal Agency and not for the provision of services to other the Nodal Agency’s or customers of the Implementing Agency.
7.4. Nodal Agency Service Location Policies

When working at any the Nodal Agency Service Locations or other the Nodal Agency facilities, the Implementing Agency personnel will comply with the Nodal Agency’s standard workplace security, administrative, safety and other policies and procedures applicable to the Nodal Agency’s own employees. The Nodal Agency will provide the Implementing Agency with a copy of each such policy and procedure and will notify the Implementing Agency of any subsequent modifications or amendments thereto. To the extent that any of such policies or procedures prevents the Implementing Agency’s personnel from performing the Implementing Agency’s obligations under this Agreement, the Implementing Agency will not be in breach of this Agreement. If any such policies or procedures impose materially increased costs or obligations on the Implementing Agency, the Parties will seek to establish mutually acceptable alternative arrangements and to make appropriate adjustments to their respective obligations under this Agreement (including the charges payable to the Implementing Agency).

7.5. Relocation from the Nodal Agency Service Locations

[The Parties currently anticipate that the Implementing Agency will provide a significant portion of the Services on-site at the Nodal Agency Service Locations.] Prior to moving any material portion of the Services from a the Nodal Agency Service Location, the Implementing Agency will seek the Nodal Agency’s written approval, which will not be unreasonably withheld. If the Implementing Agency elects to relocate from a the Nodal Agency Service Location without the Nodal Agency’s consent, the Implementing Agency will be financially & legally responsible for the related relocation expenses and new facility expenses except as provided in Clause 7.6.

7.6. Relocation resulting from Changes in Laws and Regulations

The Parties acknowledge and agree that the Services are being provided offshore to leverage the use of lower cost offshore resources and the Service Charges are based on the use of such lower cost resources. In the event any laws or regulations are promulgated, changed, amended or otherwise come into effect at any time during the Agreement Term that impose taxes, tariffs, restrictions or limitations on, or prohibit, the offshore portion of the Services and the Nodal Agency has benefited through savings attributed to the offshoring for whole or in part, the Nodal Agency will either pay for the added expenses of performing the work offshore or pay the Solution Development expenses associated with relocating to an onshore the Implementing Agency Service Location and increased Service Charges resulting from providing the Services from such the Implementing Agency Service Location.
7.7. Control of Service Locations

(a) No interest or obligation of the Nodal Agency Service Locations or the Nodal Agency Service Location Items is conferred upon the Implementing Agency beyond the limited right to use such the Nodal Agency Service Locations and the Nodal Agency Service Location Items for purposes of this Agreement. All such facilities and items will remain in the care, custody and control of the Nodal Agency.

(b) No interest or obligation of the Implementing Agency Service Locations is conferred upon the Nodal Agency. All such facilities will remain in the care, custody and control of the Implementing Agency. The Implementing Agency may use such facilities to provide services to other customers’ and the Nodal Agency’s.

7.8. Additional Facilities

Unless the Implementing Agency’s need for additional facilities increases as a result of New Services, the Implementing Agency will be financially responsible for any additional facilities the Implementing Agency requires for the performance of its obligations under this Agreement.


(a) The respective responsibilities of the Nodal Agency and the Implementing Agency under this Agreement for the purposes of ensuring compliance with the relevant Laws.

(b) The Nodal Agency warrants that, in respect of each of the Nodal Agency Service Locations set out in clause 7.1 to this Agreement:

   i. as at the date of this Agreement, the Nodal Agency Service Locations comply in all respects with the standards set out in the Health & Safety Laws in relation to the workplace;

   ii. the Nodal Agency will during the Implementing Agency’s use and occupation of the Nodal Agency Service Locations rectify any defect or want of repair which constitutes a breach of or non-compliance with the Health & Safety Laws as soon as the Nodal Agency is aware or ought to be aware of such defect or want of repair; and

   iii. in the event of any defect or want of repair to any part of the Nodal Agency Service Locations which is under the ownership, management and control of a third party, the Nodal Agency shall serve a formal notice on that third party requiring the repair or remedy to be carried out forthwith, and shall furnish the Implementing Agency with a copy of such notice given to the third party.

(c) The Nodal Agency warrants that, in respect of the workstations which are provided by the Nodal Agency for use by the Implementing Agency at the Nodal Agency Service Locations:
i. each workstation, at the date of this Agreement and throughout its duration, comprises the furniture and equipment specified in the Implementing Agency’s minimum workstation requirement;

ii. the Nodal Agency will without delay, replace, modify or renew any workstation furniture or equipment which ceases to meet the requirements; and

iii. the Nodal Agency will allocate sufficient space in each of the Nodal Agency Service Locations to accommodate the minimum number of workstations agreed by the parties for each respective the Nodal Agency Service Location.

(d) In the event that the Nodal Agency fails to discharge its obligations under any of Clauses 7.9(b)(ii), 7.9(c)(ii) or 7.9(c)(iii) above within what, in the Implementing Agency’s sole discretion, is a reasonable period of time, the Implementing Agency shall be entitled to remedy any defect or want of repair, or substandard specification, or if in the Implementing Agency’s reasonable opinion, such remedy is impossible or uneconomic, to renew or replace the affected part of the Nodal Agency Service Locations or workstation furniture and equipment and to recover any cost incurred in so doing from the Nodal Agency forthwith.

7.10. Security Guidelines

(a) The Implementing Agency shall comply with the relevant security, safety and other requirements specified in the Information Technology Act or Telegraph Act including the regulations issued by dept. of telecom (wherever applicable), IT Security Manual of the Nodal Agency and any other directions issued from time to time by the Nodal Agency and follow the industry standards related to safety and security, insofar as it applies to the provision of the Services. In case of any change to the technical requirements, it will be handled in accordance with change control procedure as set out in the Change Control Schedule.

(b) Each Party to the Agreement shall also comply with Nodal Agency or the Government of India, and the respective State’s security standards and policies in force from time to time at each location of which Nodal Agency make the Implementing Agency aware in writing insofar as the same apply to the provision of the Services.

(c) The Parties to the 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 Nodal Agency as the case may be or any of their nominees data, facilities or Confidential Information.
(d) The Implementing Agency shall upon reasonable request by the Nodal Agency as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.

(e) As per the provisions of the Agreement, the Implementing Agency shall promptly report in writing to the Nodal Agency, 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 Nodal Agency as the case may be.
8. RELATIONSHIP GOVERNANCE

8.1. The Implementing Agency Representative

During the Agreement Term, the Implementing Agency will designate an individual who will be primarily dedicated to the Nodal Agency’s account who (i) will be the primary contact for the Nodal Agency in dealing with the Implementing Agency under this Agreement; (ii) will have overall responsibility for managing and coordinating the delivery of the Services; (iii) will meet regularly with the Nodal Agency Representative; and (iv) will have the authority to make decisions with respect to actions to be taken by the Implementing Agency in the ordinary course of day-to-day management of the Implementing Agency’s account in accordance with this Agreement (the “the Implementing Agency Representative”).

8.2. The Nodal Agency Representative

During the Agreement Term, the Nodal Agency will designate a senior level individual who (i) will be the primary contact for the Implementing Agency in dealing with the Nodal Agency under this Agreement; (ii) will have overall responsibility for managing and coordinating the receipt of the Services; (iii) will meet regularly with the Implementing Agency Representative; and (iv) will have the authority to make decisions with respect to actions to be taken by the Nodal Agency in the ordinary course of day-to-day management of this Agreement (the “the Nodal Agency Representative”).

8.3. Establishment of Service Management Steering Committee

The Implementing Agency and the Nodal Agency will appoint a Service Management Steering Committee (the “Service Management Steering Committee”), made up of a number of key executives from each Party (inclusive of the Implementing Agency Representative and the Nodal Agency Representative), which will meet, from time to time, and at such time as its members or the Parties deem appropriate to (i) review and analyze the monthly performance reports for the preceding period and the Parties’ overall performance under this Agreement; (ii) review progress on the resolution of issues; (iii) provide a strategic outlook for the Nodal Agency’s requirements; and (iv) attempt to resolve, or designate individuals to attempt to resolve, any disputes or disagreements under this Agreement.

Although the Nodal Agency Representative and the Implementing Agency Representative will remain as members of the Service Management Steering Committee, either Party may change its other representatives from time to time upon written notice to the other. In addition, the Parties may mutually agree to increase or decrease the size, purpose or composition of the Service Management Steering Committee in an effort for the Implementing Agency to better provide, and for the Nodal Agency to better utilize, the Services. The members of the Service Management Steering Committee will not have separate voting rights; all actions of the Service
Management Steering Committee required under this Agreement will require the mutual consent of the Parties.

8.4. Key Management Positions

(a) In an effort to develop an environment in which the Services may be provided in an effective manner, the Parties may jointly designate from time to time certain key the Implementing Agency management positions, including the Implementing Agency Representative ("Key Management Positions"). The Implementing Agency will cause each of the personnel serving in a Key Management Position to devote a substantial part of his or her business time and effort to the provision of Services under this Agreement. With respect to the appointment of the initial and any replacement the Implementing Agency personnel to Key Management Positions, the Parties will cooperate with each other to fill the Key Management Positions with individuals who are reasonably acceptable to the Nodal Agency. Before assigning an individual to a Key Management Position, whether as an initial assignment or a replacement, the Implementing Agency will (i) notify the Nodal Agency of the proposed assignment; (ii) introduce the individual to appropriate the Nodal Agency representatives; and (iii) subject to applicable law (including, without limitation, data protection legislation), obligations of confidentiality and the Implementing Agency’s standard personnel practices, provide the Nodal Agency with a curriculum vitae, and any other information about the individual reasonably requested by the Nodal Agency. If the Nodal Agency has a good faith objection to any such assignment within ten days, the Implementing Agency will not assign the proposed individual, and will propose to the Nodal Agency the assignment of another individual of suitable ability and qualifications, within a mutually agreed upon timeframe.

(b) Except in the event of resignation, death, disability or termination of employment, the Implementing Agency will notify the Nodal Agency in writing at least 30 days prior to replacing any the Implementing Agency personnel serving in a Key Management Position. In the event of any replacement of the Implementing Agency personnel serving in Key Management Positions, the Implementing Agency will provide for an appropriate transition (overlap) period for the new individual and use reasonable efforts to minimize any disruption such replacement may cause in the performance of the Implementing Agency’s obligations under this Agreement.

(c) If the Nodal Agency determines, in good faith and consistent with applicable law, that the continued assignment of any the Implementing Agency personnel serving in a Key Management Position is not in the best interests of the Nodal Agency, the Nodal Agency will notify the Implementing Agency requesting the replacement of the individual and providing a confidential summary of the reasons why the replacement is needed. Promptly after receiving such request, the Parties will consult the matters stated in the request and either institute mutually agreeable corrective action or replace the individual within a mutually agreed upon timeframe. The replacement individual will have suitable ability and qualifications reasonably acceptable to the Nodal Agency. This Clause 8.4(c) will not be construed to give
(d) The Implementing Agency will establish and maintain an up-to-date succession plan for all individuals serving in Key Management Positions.

8.5. Continuity of the Implementing Agency Personnel

Consistent with the necessity for people to have the opportunity for promotion, the Parties agree that it is in their best interests to keep the attrition rate of the Implementing Agency personnel (primarily dedicated to the Nodal Agency account to a level) that would not reasonably be likely to have an adverse effect on the Implementing Agency’s performance under this Agreement. Accordingly, if the Nodal Agency reasonably and in good faith believes that the attrition rate of such the Implementing Agency personnel does not meet such standard, the Nodal Agency may request a report stating the attrition rate for the previous 24 months. If requested by the Nodal Agency, the Parties will meet and discuss the reasons for the attrition rate. If appropriate, the Implementing Agency will submit to the Nodal Agency its proposals for reducing the attrition rate, and the Parties will use reasonable efforts to bring the attrition rate to a mutually acceptable level.

8.6. Account Documentation

(a) On or before the <insert period>-month anniversary of the Base Services Commencement Date, the Implementing Agency will prepare appropriate “Account Documentation” which will summarize the Implementing Agency’s enterprise-wide practices regarding how the Implementing Agency will provide the Services under this Agreement, refer to any applicable documentation (e.g., operations manuals, user guides, specifications, etc.) that provides further details of such activities, describe the activities the Implementing Agency proposes to undertake to provide the Services, including, where appropriate, those reporting, planning and oversight activities normally undertaken at facilities that provide services of the type the Implementing Agency will provide under this Agreement, and summarize the management reporting procedures for the Nodal Agency/the Implementing Agency interaction and communication under this Agreement.

(b) The Implementing Agency will incorporate the Nodal Agency’s reasonable comments or suggestions to the Account Documentation that do not, individually or in the aggregate, impose materially increased costs or obligations on the Implementing Agency. The Implementing Agency will periodically update the Account Documentation to reflect changes in the operations or procedures described therein within a reasonable time after such changes were made. All such Account Documentation is the Implementing Agency’s Confidential Information.
(c) Subject to the terms of this Agreement, both Parties will perform in accordance with the Account Documentation. In the event of a conflict between the provisions of this Agreement and the Account Documentation, the provisions of this Agreement will prevail.

8.7. Reports

On or before the <specify month> anniversary of the Base Services Commencement Date, the Parties will establish an appropriate set of periodic reports regarding the provision of the services by the Implementing Agency to be delivered by the Implementing Agency to the Nodal Agency from time to time under this Agreement. Such reports will be no less comprehensive than the Nodal Agency’s internal reporting as of the Effective Date and will be delivered at a frequency consistent with the Nodal Agency’s historical practices as specified herein. On a monthly basis, the Implementing Agency will provide, at a minimum, the following reports in a form mutually established by the Parties:

(a) <specify minimum reporting requirements during ramp-up>; and

(b) A monthly changes report that describes (i) all Changes that have been made by the Implementing Agency since the date of the last report and (ii) any ongoing or planned changes during the upcoming month.

8.8. Meetings and Conference Calls

On or before the <specify month> anniversary of the Base Services Commencement Date, the Parties will determine an appropriate set of periodic meetings or Video/telephone conference calls to be held between representatives of the Nodal Agency and the Implementing Agency. The Parties contemplate that such meetings will include the following:

(a) A monthly meeting among the Nodal Agency’s Account Representative, the Implementing Agency’s Account Representative and any other appropriate operational personnel to discuss daily performance and planned or anticipated activities that may adversely affect performance or any Changes;

(b) A quarterly management meeting of the Service Management Steering Committee; and

(c) An annual senior management meeting to review relevant performance and other issues.

At either Party’s request, the other Party will publish its proposed agenda for any meeting sufficiently in advance of the meeting to allow meeting participants a reasonable opportunity to prepare. All meetings will be held in a location mutually agreed by the Parties.

8.9. Relationships with the Nodal Agency Contractors

(a) [Subject to the operation of Clause 4.6], the Implementing Agency will cooperate with the Nodal Agency and any other third-party contractor employed by the Nodal Agency (“the Nodal Agency Contractors”) in the integration, where required, of the Implementing
Agency’s work under this Agreement with any other services, work, materials and equipment supplied by the Nodal Agency or any of the Nodal Agency Contractors. Such cooperation will include providing (i) written requirements, standards and policies for systems operation so that the enhancements or developments of the Nodal Agency Contractors may be operated by the Implementing Agency, as applicable; (ii) assistance and support services to the Nodal Agency Contractors at the charges specified in clause 10.1 if such charges are so specified, and at <the Implementing Agency’s standard commercial rates>, if none are specified; and (iii) access to the systems and the architecture configurations to the extent reasonably required for the activities of such the Nodal Agency Contractors. Notwithstanding anything in this Agreement, the Implementing Agency is not required to disclose its Confidential Information to competitors of the Implementing Agency. The Implementing Agency will promptly notify the Nodal Agency if the Implementing Agency determines that an act or omission of a Nodal Agency Contractor will delay or otherwise impair the provision of Services. The Nodal Agency will be responsible for managing and supervising the Nodal Agency Contractors and for any failure of the Nodal Agency Contractors to comply with the Nodal Agency’s applicable obligations under this Agreement.

(b) If the work performed by any the Nodal Agency Contractor affects the Services being performed by the Implementing Agency under this Agreement or such the Nodal Agency Contractor otherwise uses resources furnished by the Implementing Agency, the Nodal Agency will use reasonable efforts to ensure that such the Nodal Agency Contractor (i) cooperates with the Implementing Agency; (ii) follows reasonable the Implementing Agency standards, methodologies and procedures (including confidentiality and security procedures); (iii) complies with the license and confidentiality requirements of vendors of the software on which such the Nodal Agency Contractor is performing work; and (iv) executes, delivers and complies with any customary confidentiality and nondisclosure agreements reasonably required by the Implementing Agency or such vendors. If a the Nodal Agency Contractor notifies the Nodal Agency that it does not in good faith believe that the Implementing Agency standards, methodologies or procedures are reasonable in the industry or appropriate in the particular situation, then the Nodal Agency will so notify the Implementing Agency and the Parties will seek to establish mutually acceptable alternative arrangements.

8.10. Implementing Agency Subcontractors

(a) Except as provided in Clause 8.10(b) below, the Implementing Agency will not subcontract all or any part of the Services without the Nodal Agency’s consent, which will not be unreasonably withheld.

(b) The Nodal Agency’s consent under Clause 8.10(a) above is not required with respect to (i) the Implementing Agency Affiliates; (ii) subcontractors that provide services customarily purchased from third-party vendors such as facilities maintenance, hardware and software
maintenance, security, storage and other ancillary services; (iii) sub-contractors proposed in the tender submitted by the Implementing Agency or (iii) any subcontractor not dedicated to the Nodal Agency or any subcontractor who is providing services in a shared environment.

(c) The Implementing Agency will remain responsible for obligations under this Agreement performed by any the Implementing Agency subcontractors to the same extent as if such obligations were performed by the Implementing Agency’s employees. The Implementing Agency will remain the Nodal Agency’s sole point of contact regarding the Services. Any reference in this Agreement to the Nodal Agency granting a right to, or conferring a benefit upon, the Implementing Agency in order to facilitate the provision of the Services will be deemed to include the Implementing Agency’s subcontractors unless the context indicates otherwise.

(d) If the Nodal Agency expresses any concerns to the Implementing Agency regarding bonafide performance issues with any the Implementing Agency subcontractors, the Implementing Agency will cooperate with the Nodal Agency to resolve such concerns on a mutually acceptable basis.

8.11. System Change Control
The Implementing Agency will comply with the following System Change control procedures:

(a) The Implementing Agency will schedule its implementation of System Changes so as not to unreasonably interrupt the Nodal Agency’s business operations.

(b) The Implementing Agency will make no System Changes that would materially alter the functionality of the systems used to provide the Services or materially degrade the performance of the Services, without first obtaining the Nodal Agency’s approval. The Implementing Agency may make temporary System Changes at any time and without the Nodal Agency approval, to the extent such System Changes are necessary, in the Implementing Agency’s good faith judgment, (i) to maintain the continuity of the Services, or (ii) to correct an event or occurrence that would substantially prevent, hinder or delay the operation of the Nodal Agency’s critical business functions. The Implementing Agency will promptly notify the Nodal Agency of all such temporary System Changes.

(c) The Implementing Agency will review, and perform a root-cause analysis of, any deviation from scheduled System Changes and failed System Changes.

(d) Prior to using any software or equipment to provide the Services, the Implementing Agency will utilize customary testing efforts to verify that the item has been properly installed, is operating substantially in conformance with its specifications, and is performing its intended functions in a reliable manner.
(e) The Implementing Agency will follow a formalized methodology in migrating programs from development and testing environments into production environments.

8.12. Contract Change Control

The Parties will comply with the following Contract Change control procedures to revise, amend, alter or otherwise change the Services being provided under this Agreement. These procedures do not apply to changes that result in New Services, which are initiated in accordance with Clause 4.6.

(a) To request a Contract Change, the Implementing Agency or the Nodal Agency, as applicable, will deliver a written request (the “Change Request”) to the Implementing Agency’s Account Representative or the Nodal Agency’s Account Representative, as the case may be, specifying in reasonable detail to the extent known (i) the proposed Contract Change; (ii) the objective or purpose of such Contract Change; (iii) the particular Agreement and/or Schedule provisions that are affected by the Contract Change; and (iv) the requested prioritization and schedule for such Contract Change.

(b) The Parties will cooperate with each other in good faith in discussing the scope and nature of the Change Request. As soon as practicable and to the extent applicable, the Implementing Agency will prepare and deliver to the Nodal Agency’s Account Representative a written statement (the “Change Response”) describing any changes in methodology, procedures, prioritization, products, services, assignment of personnel and other resources that the Implementing Agency believes would be required to effect the Change. In addition, such Change Response will include, as appropriate or applicable (i) an estimation of the net increase or decrease in the pricing that would be required; (ii) the categories of costs to be avoided as a result of such Contract Change; (iii) a description of how the proposed Contract Change would be implemented; (iv) a description of the effect, if any, such Contract Change would have on this Agreement, including, without limitation, on Service Levels; (v) an estimation of all resources required to implement such Contract Change, including a description of the delivery risks and associated risk mitigation plans; and (vi) such other information as may be relevant to the proposed Contract Change. The Implementing Agency Account Representative and the Nodal Agency Account Representative will meet to determine whether they desire for the Implementing Agency to proceed with the implementation of the proposed Contract Change in accordance with the Change Response.

(c) Upon agreement of the Parties, the Change Response will amend this Agreement in accordance with Clause 22.11.
9. HUMAN RESOURCE

9.1. Transition of the Nodal Agency Personnel

Schedule 9.1 <insert schedule> sets out the terms and conditions under which the Implementing Agency (or its subcontractors) will employ certain employees of the Nodal Agency and certain human resource and related obligations of the Parties.

9.2. General Principles Regarding the Implementing Agency Personnel

Except as provided in Clause 8.4, the Implementing Agency reserves the right to determine which personnel will be assigned to perform Services, and to replace or reassign such personnel during the Agreement Term. The personnel assigned to the Nodal Agency account by the Implementing Agency (or its subcontractors) will be and remain employees of the Implementing Agency (or such subcontractors), and the Implementing Agency (or such subcontractors) will provide for and pay the compensation and other benefits of such personnel, including salary, health, accident and workers’ compensation benefits and all taxes and contributions that an employer is required to pay with respect to the employment of employees.

9.3. Limitations on Recruiting

Except as provided in clause 17.7 and unless otherwise agreed by the Parties in writing, during the Agreement Term and twelve months thereafter, neither Party will, directly or indirectly, knowingly solicit for employment, offer employment to or employ or retain (whether as an employee, officer, agent, consultant, advisor or in any other capacity) any employee of the other Party who is or was actively involved in the performance or evaluation of the Services. If a Party breaches this Clause 9.3, the breaching Party shall pay compensation to the non-breaching Party in the form of liquidated damages equal to the greater of six (6) month compensation either (a) offered to the Personnel by the breaching Party or (b) paid or offered to the Personnel by the non-breaching Party. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement will not prohibit (i) solicitations through general public advertising or other publications of general public circulation or (ii) the hiring of any employee of a Party who contacts the other Party without such other Party having solicited such employee.
10. PRICE & PAYMENT

10.1. Service Charges

In consideration for the performance of the Services, the Nodal Agency will pay to the Implementing Agency the charges specified in Schedule 10.1 <insert a schedule furnishing the details of Service Charges> (“Service Charges plus taxes and other amounts described in this Clause 10”). The Nodal Agency acknowledges that any Application Development / Project / Transformational Services described in clause 4.4(a) are independent of and non-contingent to the Base Services described in clause 4.2. Accordingly, the Nodal Agency agrees to pay for the Application Development / Project / Transformational Services regardless of the Base Services obligations.

10.2. Reimbursement of Expenses

Except as expressly provided in this Agreement, expenses that the Implementing Agency expects to incur in performing the Services (including expenses for travel) are included in the Implementing Agency’s charges and rates set out in this Agreement. Accordingly, such the Implementing Agency expenses are not separately reimbursable by the Nodal Agency.

10.3. Pass-Through Expenses

(a) Schedule 10.3(a) <insert schedule> sets out certain expenses relating to the Services that will be incurred by the Implementing Agency and will be passed through to the Nodal Agency at the Implementing Agency’s actual, direct cost (i.e., with no handling fees, overhead or other markup by the Implementing Agency) for payment by the Nodal Agency directly to the applicable vendor (“Pass-Through Expenses”). Except as otherwise provided in this Agreement, the Nodal Agency will not be responsible for any additional Pass-Through Expenses without its prior consent.

(b) Promptly after the Implementing Agency’s receipt of the third-party invoice for such expenses, the Implementing Agency will use reasonable efforts to correct any errors therein and provide the invoice to the Nodal Agency together with a statement that the Implementing Agency has reviewed the invoiced charges and determined that such charges appear to be valid and should be paid by the Nodal Agency/invalid and should be questioned by the Nodal Agency. The Implementing Agency will submit such invoice to the Nodal Agency for payment within a reasonable period of time prior to the due date or, if a discount for early payment is applicable, the date on which the Nodal Agency may pay such invoice with a discount. [To the extent that the Implementing Agency’s failure to submit an invoice to the Nodal Agency in a timely manner results in a loss of a discount or a late fee with respect to such invoice, the Implementing Agency will be responsible for the amount of such discount or late fee.]

(c) Promptly after the Nodal Agency’s payment of Pass-Through Expenses, the Nodal Agency will confirm such payment to the Implementing Agency in writing. If the Nodal Agency fails to pay
the Pass-Through Expenses in a timely manner, the Implementing Agency may advance such expenses on behalf of the Nodal Agency, and the Nodal Agency promptly will reimburse the Implementing Agency for such payments.

10.4. Retained Expenses

Schedule 10.4 <insert schedule> sets out certain categories of expenses relating to the Services that will be retained by the Nodal Agency (“Retained Expenses”). The Nodal Agency will be responsible for administration and payment of all Retained Expenses. Furthermore, in addition to any other financial responsibilities of the Nodal Agency contemplated by this Agreement, the Nodal Agency will pay all costs and expenses with respect to which financial responsibility has not been expressly assigned to the Implementing Agency, and which are not reasonably related to the Implementing Agency’s express obligations under this Agreement.

10.5. Invoices; Method of Payment; Finance Charges

(a) The Implementing Agency will submit a single consolidated invoice in [advance/arrears] for charges as per the payment cycle. Each invoice will include such detail as reasonably requested by the Nodal Agency to satisfy the Nodal Agency’s internal accounting and chargeback requirements, consistent with the Nodal Agency’s historical practices provided in writing to the Implementing Agency prior to the Effective Date. Upon the request of the Nodal Agency, such invoices will allocate charges among Service components, locations and departments, consistent with the Nodal Agency’s historical practices provided in writing to the Implementing Agency prior to the Effective Date.

(b) Any amount due to the Implementing Agency under this Agreement, for which a time for payment is not otherwise specified herein, will be due and payable <number of days> after the Nodal Agency’s receipt of the Implementing Agency’s invoice.

(c) All amounts to be paid to the Implementing Agency under this Agreement will be paid in [Indian National Rupee] by EFT to the account or accounts designated by the Implementing Agency from time to time or by such other method as is mutually determined by the Parties.

10.6. Proration

Periodic charges under this Agreement are to be computed on a calendar month basis and will be prorated on a per diem basis for any partial month.
10.7. Unused Credits

Any unused credits against future payments owed to either Party by the other pursuant to this Agreement will be paid to the applicable Party within 30 days after the expiration or termination of this Agreement.

10.8. Refundable Items

(a) If it is determined that the Nodal Agency has prepaid for a service or function for which the Implementing Agency is assuming financial responsibility under this Agreement, the Implementing Agency will credit the Nodal Agency that portion of such prepaid expense that is attributable to periods after the <Effective Date> [Base Services Commencement Date] against the Implementing Agency’s invoice for such applicable period. The Nodal Agency will reimburse the Implementing Agency, upon expiration or termination of this Agreement, for that portion of any amounts prepaid by or on behalf of the Implementing Agency that are attributable to periods on and after the effective date of expiration or termination of this Agreement.

(b) If the Nodal Agency receives a refund, credit or other rebate for goods or services paid for by the Implementing Agency pursuant to this Agreement, the Nodal Agency will promptly notify the Implementing Agency of such refund, credit or rebate and pay the full amount thereof to the Implementing Agency.

10.9. Disputed Charges

The Nodal Agency may withhold payment of particular charges that the Nodal Agency reasonably and in good faith disputes. Any amounts (or portions thereof) not so disputed otherwise will be paid by the applicable payment due date, as determined pursuant to Clause 10.5. The Nodal Agency will notify the Implementing Agency in writing on or before the payment due date of any disputed charges for which the Nodal Agency is withholding payment and describe, in reasonable detail, the reason for such withholding. The Nodal Agency and the Implementing Agency will diligently pursue an expedited resolution of such dispute. If the Parties are unable to resolve such dispute within 30 days after the Nodal Agency’s receipt of the invoice and the aggregate amount of all charges then under dispute pursuant to the Clause 10.9 exceeds <INR________>, the Nodal Agency will deposit into an escrow account the total amount so withheld (including the first <INR> thereof) within five days after the receipt of the Implementing Agency’s written request. The Nodal Agency will promptly furnish evidence of any escrow deposit to the Implementing Agency. The Parties will mutually establish such escrow account at a major national bank mutually acceptable to the Parties, and the costs thereof will be borne by the Parties in inverse proportion to the distribution to which each Party is entitled from such account. The escrow account will be established pursuant to an escrow agreement that provides that the funds therein, including accrued interest, will be disbursed to the Implementing Agency or the Nodal Agency, as applicable, in accordance with the result of the dispute resolution process referred to in Clause 17 or by mutual agreement of the Parties. For as long as the Nodal Agency makes
such escrow deposits while the dispute remains ongoing, and pays all undisputed amounts, the Implementing Agency will continue to provide the Services to the Nodal Agency, subject to the termination rights set out in Clause 17.

If the Nodal Agency fails to escrow payments as required by this Agreement, the Implementing Agency may apply to any court of competent jurisdiction to seek injunctive relief for such failure and will have the right to terminate this Agreement pursuant to Clause 17.1. Upon resolution of the dispute, any amounts owed to the Implementing Agency shall be paid with interest at the rate set forth in clause 10.5.c above accruing from the date such amounts were originally due.

10.10. Taxes

[Note: Need to consider VAT on payments from the Nodal Agency to the Implementing Agency with respect to redundancy]

(a) Each party shall remain liable to pay such taxes that are imposed by any Central, State, or Local governmental entity on any property or income or gains from their own respective trading and/or investment activities. Each Party shall also remain liable to pay taxes due on wages or other emoluments of their employee(s), sub-contractor(s), or any person engaged by the Party that is legally imposed by the appropriate legislation.

(b) All charges payable under this Agreement shall be exclusive of sales, value added, goods and services, and all other similar taxes (hereinafter referred to as “Transaction Tax”) imposed by any Central, State, or local governmental entity for any supply provided under this Agreement. The Nodal Agency shall pay in addition to the consideration payable under this Agreement, such Transaction Tax at the appropriate prevailing rate provided that the Implementing Agency shall not only itemizes such Transaction Taxes separately but also, issues a proper local Transaction Tax compliant or such other approved invoice(s) to the Nodal Agency

(c) Where any supply provided by the Implementing Agency under this Agreement is exempt from Transaction Tax imposed by any Central, state, or local governmental entity, the Implementing Agency shall be entitled to pass on to the Nodal Agency, as additional part of the consideration for such a supply, any amount of such Transaction Tax that the Implementing Agency is not permitted to obtain credit for or recover from the relevant authority (hereinafter referred to as “non-recoverable Input Transaction Tax”). The Input Transaction Tax is any tax charged or incurred on any purchase of any supply of goods or services by the Implementing Agency in order to be able to provide supplies under this Agreement. In recognition of the complexities involved in establishing and computing the amount of non-recoverable input Transaction Tax, both parties hereby agree that the non-recoverable input Transaction Tax shall be computed as \(<\text{insert percentage}\) of the output Transaction Tax that the Implementing Agency would normally charge on the consideration if the said supply were, indeed, subject to VAT (or such other similar taxes) at the standard rate.
(d) Where any supply under this Agreement is deemed to take place in a jurisdiction outside the jurisdiction where the Implementing Agency’s normal place of business is located, and the Implementing Agency is required to register for local Transaction Tax, for avoidance of any doubt, the Parties hereby agree that the Implementing Agency is permitted to charge the Transaction Tax of that jurisdiction at the appropriate prevailing rate.

(e) [With the Nodal Agency’s prior approval] if the Implementing Agency’s personnel are required to perform services outside the city or state in which such the Implementing Agency’s personnel are based, the Nodal Agency will reimburse the Implementing Agency for increased taxes (and assignment related costs) incurred by the Implementing Agency.

(f) The Parties will cooperate to segregate the Service Charges into the following separate payment streams: (i) those for taxable Services; (ii) those for non-taxable Services; (iii) those for Pass-Through Expenses where the Implementing Agency functions merely as a paying agent for the Nodal Agency in receiving goods, supplies or services (including leasing and licensing arrangements); and (iv) reimbursable expenses. The Implementing Agency will not collect or include in its invoices any sales or use taxes for which the Nodal Agency has furnished a properly executed and valid exemption certificate.

(g) If the Implementing Agency is assessed a deficiency (including penalties and interest thereon) for taxes payable by the Nodal Agency pursuant to this Agreement, the Implementing Agency will use reasonable efforts to promptly notify the Nodal Agency of such assessment and will administratively contest such assessment to the extent it is requested in a timely manner or authorized to do so by the Nodal Agency. The Nodal Agency shall indemnify and hold harmless the Implementing Agency from any such tax deficiency (including penalties and interest).

(h) The Parties will reasonably cooperate with each other to more accurately determine each Party’s tax liability and to minimize such liability to the extent legally permissible. The Nodal Agency and the Implementing Agency will provide and make available to the other any resale certificates, withholding tax certificates, information regarding out-of-state sales or use of equipment, materials or services, and other exemption certificates or information reasonably requested by either Party.

(i) For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among the Implementing Agency, its Affiliates and third party subcontractors.
11. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

11.1. Implementing Agency Representations and Warranties

The Implementing Agency hereby represents and warrants to the Nodal Agency as follows:

(a) **Organization; Power:** The Implementing Agency has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) **Authority; Enforceability:** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the Implementing Agency. This Agreement constitutes the legal, valid and binding agreement of the Implementing Agency, enforceable against the Implementing Agency in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally, or by principles governing the availability of equitable remedies).

(c) **Non-contravention:** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not materially conflict with, or result in any material violation or breach of, any contract to which the Implementing Agency is a party.

11.2. Nodal Agency Representations and Warranties

The Nodal Agency hereby represents and warrants to the Implementing Agency as follows:

(a) **Organization; Power:** The Nodal Agency is a `<public limited company/Society/Government Department>` and validly existing under the relevant laws of India. The Nodal Agency has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) **Authority; Enforceability:** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Nodal Agency. This Agreement constitutes the legal, valid and binding agreement of the Nodal Agency, enforceable against the Nodal Agency in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally, or by principles governing the availability of equitable remedies).

(c) **Non-contravention.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with, or result in any violation or breach of, any contract to which the Nodal Agency is a party.
(d) **Assets, Employees and Facilities Necessary to Business:** The hardware, software and other assets owned, licensed or leased by the Nodal Agency which are to be transferred to, or assumed by the Implementing Agency, or to which the Implementing Agency is granted rights to use under this Agreement, along with the Employees Offered Employment, contractors and the office space, other facilities and Service Location Items to be provided or made available to the Implementing Agency under this Agreement [*together with the persons who would otherwise occupy vacant in-scope positions*] are, in the aggregate, sufficient in all material respects to carry on that portion of the operations presently conducted by the Nodal Agency that comprise the Base Services. Furthermore, the information furnished by the Nodal Agency on which the Implementing Agency based the Services and Service Charges as set out in this Agreement is accurate and complete in all material respects.

11.3. **Additional Undertakings**

(a) **Performance:** The Implementing Agency will perform the Services in a good and workmanlike manner.

(b) **Viruses:** Each Party will use reasonable efforts through the use of industry standard virus protection software and other customary procedures to screen any software provided or made available by it to the other Party hereunder to avoid introducing any “virus” or other computer software routine or hardware components that materially disrupts the proper operation of or provides improper access to the systems. If such a virus is found to have been introduced by the Implementing Agency into such systems, the Implementing Agency will use reasonable efforts to assist the Nodal Agency in mitigating the effects of the virus, if any, on that portion of the Nodal Agency’s information technology environment relating to the Base Services.

(c) **Adequacy of Employees:** The Implementing Agency will use adequate numbers of qualified personnel to perform the Services (where the pricing for such Services is not measured by a number of people, full-time equivalents, a time-based billing mechanism or similar metric). The Implementing Agency undertakes that the Implementing Agency employees utilized in the provision of Services to the Nodal Agency will possess suitable training, education, experience and skill to perform the Services.

(d) **Disabling Codes:** the Implementing Agency will not, without notifying the Nodal Agency, knowingly insert, or knowingly allow to be inserted, into the software used to provide the Services any code or other device that is designed to disable, damage, erase, delay or otherwise shut down all or any portion of the Services or the hardware, software or data used in providing the Services.
11.4. Warranty Regarding the Implementing Agency Work Product

(a) The Implementing Agency warrants that any software comprising Work Product developed by the Implementing Agency pursuant to this Agreement (the “the Implementing Agency Warranty Item”) will substantially conform during the Warranty Period to the applicable written design specifications agreed upon by the Parties with respect to such item. In addition, (i) the documentation for such the Implementing Agency Warranty Item will be sufficient to allow a reasonably knowledgeable and experienced systems programmer to maintain and support such the Implementing Agency Warranty Item and (ii) any user documentation for such the Implementing Agency Warranty Item will accurately describe in terms understandable by a typical end user the functions and features of such the Implementing Agency Warranty Item and the procedures for exercising such functions and features.

(b) The Nodal Agency will notify the Implementing Agency in writing of any defects in such the Implementing Agency Warranty Item that cause it not to substantially conform to the applicable design specifications during the Warranty Period and will provide the Implementing Agency with adequate information to identify the circumstances in which such defects were discovered.

(c) The Nodal Agency’s sole and exclusive remedy for any breach of such warranty will be the correction by the Implementing Agency of any defects in such the Implementing Agency Warranty Item that cause it not to substantially conform to the applicable design specifications.

The Implementing Agency will provide such corrections at no charge to the Nodal Agency in addition to the service charges. The Nodal Agency will provide to the Implementing Agency access, in a timely manner, to any technical support, facilities, hardware, software or information in the Nodal Agency’s possession necessary for the Implementing Agency to complete such work. The Implementing Agency will correct such defects as soon as reasonably practicable and furnish the Nodal Agency with a revised or updated the Implementing Agency Warranty item reflecting any corrections made pursuant to this Clause 11.4.

(d) Notwithstanding the foregoing, this warranty will not apply to the extent the Implementing Agency Warranty Item does not substantially conform to the applicable written design specifications as a result of a defect arising from (i) any act or omission of the Nodal Agency; (ii) any Person (other than the Implementing Agency or any Person under the express direction of the Implementing Agency) making any revisions or modifications to the Implementing Agency Warranty Item after its provision to the Nodal Agency; (iii) the malfunction of any the Nodal Agency-supplied software or equipment; (iv) the Nodal Agency operation of the Implementing Agency Warranty Item other than in accordance with applicable documentation or design, or on hardware not recommended, supplied or approved by the Implementing Agency; or (v) the occurrence of any Force Majeure Event. In
any such event, the warranty described herein with respect to the portion of the Implementing Agency Warranty Item so affected will not apply to such defect, and the Parties will seek to establish mutually agreed alternative arrangements thereto through the execution of a New Service Request pursuant to Clause 4.6.

(e) This Clause 11.4 will not apply to third-party software.

11.5. Pass-Through Warranties; Third-Party Software

With respect to all third-party products and services purchased by the Implementing Agency for the Nodal Agency in connection with the provision of the Services, the Implementing Agency will pass through or assign to the Nodal Agency the rights the Implementing Agency obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable. [If pass-through warranties and indemnities reasonably acceptable to the Nodal Agency are not available from a subcontractor or supplier whose services or products are dedicated to the Nodal Agency, or that are not provided in a shared environment, then the Implementing Agency will discuss the matter with the Nodal Agency prior to engaging the particular subcontractor or supplier, and the Parties will mutually determine to either accept the terms available from such subcontractor or supplier, in which case the Implementing Agency will enforce the applicable warranty or indemnity on behalf of the Nodal Agency as provided below, or deal with another vendor of comparable products or services that will provide warranties and indemnities reasonably acceptable to the Nodal Agency. In the event of a third-party software or hardware nonconformance, the Implementing Agency will coordinate with, and be the point of contact for resolution of the problem through, the applicable vendor and, upon becoming aware of a problem, will notify such vendor and will use reasonable efforts to cause such vendor to promptly repair or replace the nonconforming item in accordance with such vendor’s warranty. If any warranties or indemnities may not be passed through, the Implementing Agency will, upon the request of the Nodal Agency, take reasonable action to enforce any applicable warranty or indemnity that is enforceable by the Implementing Agency in its own name. However, the Implementing Agency will have no obligation to resort to litigation or other formal dispute resolution procedures to enforce any such warranty or indemnity.]

11.6. Disclaimer of Warranties

Except as otherwise expressly provided in this Clause 11, the Parties make no representations or warranties, and hereby exclude all conditions, express or implied, regarding any matter, including fitness for a particular purpose, merchantability, informational content, systems integration, non-infringement, interference with enjoyment, or results to be derived from the use of any Service, software, hardware, deliverables, work product or other materials provided under this Agreement. The Implementing Agency expressly disclaims any warranty or condition as to the accuracy or completeness of data, operational criteria or parameters provided by the Nodal Agency. The Implementing Agency does not represent or warrant, nor is it a condition of this Agreement, that the operation of any software will be uninterrupted or error free.
12. CONFIDENTIALITY; SAFEGUARDING OF DATA

12.1. Confidentiality

(a) In connection with this Agreement, each of the Parties has disclosed and may continue to disclose to the other Party information that relates to the disclosing Party’s business operations, financial condition, customers, products, services or technical knowledge. Except as otherwise specifically agreed in writing by the Parties, the Implementing Agency and the Nodal Agency each agree that (i) all information communicated to it by the other and identified as confidential, whether before or after the Effective Date; (ii) all information identified as confidential to which it has access in connection with the Services, whether before or after the Effective Date; (iii) all information communicated to it that reasonably should have been understood by the receiving Party, because of confidentiality or similar descriptions, the circumstances of disclosure or the nature of the information itself, to be confidential to the disclosing Party; and (iv) the terms and conditions of this Agreement (collectively, the “Confidential Information”), will be and will be deemed to have been received in confidence and will be used only for purposes of this Agreement. The Parties acknowledge that third-party software may be subject to additional confidentiality restrictions imposed by the applicable vendor’s license or other agreement.

(b) Each Party’s Confidential Information will remain the property of that Party except as otherwise expressly provided in this Agreement. Each of the Parties will use at least the same degree of care to safeguard and to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure or publication of its own information (or information of its customers) of a similar nature, and in any event, no less than reasonable care. Each Party may disclose relevant aspects of the other Party’s Confidential Information to its employees, Affiliates, subcontractors and agents to the extent such disclosure is reasonably necessary for the performance of its obligations, or the enforcement of its rights, under this Agreement; provided, however, that such Party will use reasonable efforts to ensure that such employees, Affiliates, subcontractors or agents comply with these confidentiality provisions. Each Party will be responsible for any improper disclosure of Confidential Information by such Party’s employees, Affiliates, subcontractors or agents. A Party may reuse for its own purposes with third parties the terms and conditions of this Agreement, provided that (i) such use in no way may be attributed to the other Party, this Agreement or the relationship between the Implementing Agency and the Nodal Agency and (ii) such use is not used in negotiations with the other Party or any of the other Party’s Affiliates for any other contractual arrangement.

(c) Neither Party will (i) make any use or copies of the confidential information of the other except as contemplated by this Agreement; (ii) acquire any right in or assert any lien against the confidential information of the other; or (iii) sell, assign, lease or otherwise commercially exploit the confidential information (or any derivative works thereof) of the
other Party. Neither Party may withhold the confidential information of the other Party or refuse for any reason (including due to the other Party’s actual or alleged breach of this Agreement) to promptly return to the other Party its confidential information (including copies thereof) if requested to do so. Upon expiration or termination of this Agreement and completion of a Party’s obligations under this Agreement, each Party will (except as otherwise provided in this Agreement) return or destroy, as the other Party may direct, all documentation in any medium that contains or refers to the other Party’s confidential information, and retain no copies. Subject to the foregoing confidentiality obligations, either Party may retain copies of the confidential information of the other Party to the extent required for (i) in the case of the Implementing Agency, compliance with applicable professional standards or quality assurance purposes and (ii) in the case of the Nodal Agency, its continuing operations or internal business purposes.

(d) This Clause 12.1 will not apply to any particular information that either Party can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving Party; (iii) was in the possession of the receiving Party at the time of disclosure to it and was not the subject of a pre-existing confidentiality obligation; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information (without corresponding confidentiality obligations) to it; or (v) was independently developed by the receiving Party without use of the Confidential Information of the disclosing Party.

(e) In addition, a Party will not be considered to have breached its obligations under this Clause 12.1 for disclosing Confidential Information of the other Party to the extent required to provide information under Right to Information’ 2005 (as and when it is applicable for PPP projects), satisfy any legal requirement of a competent governmental or regulatory authority, provided that promptly upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party prior to making such disclosure in order that the other Party may object to such disclosure, take action to ensure confidential treatment of the Confidential Information, or (subject to applicable law) take such other action as it considers appropriate to protect the Confidential Information.

(f) Nothing contained in this Clause 12.1 will be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party.

12.2. Nodal Agency Data

(a) As between the Parties, the Nodal Agency will be the sole and exclusive owner of all the Nodal Agency Data. The Implementing Agency will utilize the Nodal Agency Data solely for purposes of this Agreement and will not sell, assign, lease or otherwise commercially exploit the Nodal Agency Data. The Nodal Agency Data will be deemed the Nodal Agency
Confidential Information for purposes of Clause 12.1. The Implementing Agency is hereby authorized to have access to and to make use of the Nodal Agency Data during the Agreement Term to the extent reasonably necessary or appropriate for the performance by the Implementing Agency of its obligations hereunder.

(b) The Implementing Agency will observe the Nodal Agency’s pre-existing written procedures and safeguards against the destruction, loss or alteration of the Nodal Agency Data in the Implementing Agency’s possession where they are provided to the Implementing Agency in advance. To the extent such procedures have not been established by the Nodal Agency, the Implementing Agency will maintain safeguards no less rigorous than those maintained by the Implementing Agency for its own similar data. The Nodal Agency will be responsible for the sufficiency of such policies and safeguards. With respect to the Nodal Agency Data in the possession of the Implementing Agency, the Implementing Agency will be responsible for compliance with such procedures and safeguards. The Nodal Agency may establish backup security for the Nodal Agency Data and keep backup data and data files in its possession if it so chooses. Any change in the Services required by law or regulation that increases the Implementing Agency’s costs and expenses with respect to compliance with this Clause 5.1(b) will be subject to the operation of Clause 8.12.

(c) The Implementing Agency may retain archival copies of the Nodal Agency Data as reasonably necessary to verify the Implementing Agency’s compliance with this Agreement. The Implementing Agency will identify such data to the Nodal Agency at the time such archival copies are withheld.

12.3. Unauthorized Acts

Each Party will:

(a) Notify the other Party promptly of any material unauthorized possession, use or knowledge, or attempt thereof, of the other Party’s Confidential Information by any Person that may become known to such Party;

(b) Promptly furnish to the other Party details of the unauthorized possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) Use reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights; and

(d) Promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of confidential information.
The Party whose confidential information is the subject of such activity will reimburse any out-of-pocket expenses incurred by the other Party as a result of compliance with this Clause 12.3.

The Nodal Agency can further contractually strengthen the safety of information by signing a separate Non-Disclosure Agreement. The template of Non-Disclosure Agreement in the contract template for SI Selection]
13. PROPRIETARY RIGHTS

13.1. Ownership of the Nodal Agency-Owned Software

As between the Parties, the Nodal Agency will be the sole and exclusive owner of the Nodal Agency-Owned Software. Any derivative works, modifications, enhancements or improvements to the Nodal Agency-Owned Software (or its related documentation) developed by the Implementing Agency will be considered Work Product and subject to Clause 13.3.

13.2. Ownership of the Implementing Agency-Owned Software

As between the Parties, the Implementing Agency will be the sole and exclusive owner of the Implementing Agency-Owned Software. Any derivative works, modifications, enhancements or improvements to the Implementing Agency-Owned Software (or its related documentation) developed by the Implementing Agency will not be considered Work Product and will be owned exclusively by the Implementing Agency.

13.3. Ownership of Work Product

(a) Upon final payment, the Nodal Agency will have a perpetual, non-transferrable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of the Work Product, subject to any restrictions of any third-party materials embodied in the Work Product and disclosed to the Nodal Agency. The Nodal Agency’s rights in the Work Product will be for purposes of the Nodal Agency’s internal business only and, to the extent any Work Product contains the Implementing Agency confidential information, will be subject to Clause 12. All other rights (including all other intellectual property rights) in the Work Product will remain with or are hereby assigned to the Implementing Agency.

(b) Each Party agrees to execute any appropriate documents and take any other appropriate actions reasonably requested by the other Party to give effect to the provisions of this Clause 13.3.

13.4. Embedded the Implementing Agency Software

The Implementing Agency will use reasonable efforts to avoid incorporating or embedding any the Implementing Agency Software into any Work Product without the prior written consent of the Nodal Agency; provided, however, that if the Implementing Agency does incorporate or embed the Implementing Agency Software into any Work Product, then the following provisions will apply:
(a) If the Implementing Agency incorporates or embeds any the Implementing Agency Software into any Work Product (“Embedded the Implementing Agency Software”), the Implementing Agency will not be deemed to have transferred or assigned any rights therein to the Nodal Agency. The Implementing Agency will grant to the Nodal Agency a nonexclusive, non-transferrable, worldwide, royalty-free, perpetual license to use, maintain, modify, enhance and create derivative works of such Embedded the Implementing Agency Software (i) to the extent necessary to use or maintain such Work Product for the Nodal Agency’s normal business purposes and (ii) solely as used in such Work Product and not as a “stand-alone” product or separately from such Work Product in which it is embedded.

(b) Notwithstanding such license, the Implementing Agency will be the sole and exclusive owner of any modifications, enhancements and improvements to, or derivative works of, any Embedded the Implementing Agency Software made by the Nodal Agency or its contractors pursuant to the above license (the “the Implementing Agency Software Enhancements”). All the Implementing Agency Software Enhancements will be owned by the Implementing Agency (subject to the above license to the Nodal Agency). The Nodal Agency hereby assigns to the Implementing Agency without further consideration the Nodal Agency’s copyright and ownership rights in and to such the Implementing Agency Software Enhancements. All the Implementing Agency Software Enhancements will be deemed part of the license granted to the Nodal Agency pursuant to Clause 5.1(a).

(c) The Nodal Agency agrees to execute any appropriate documents and take any other appropriate actions reasonably requested by the Implementing Agency to give effect to the provisions of this Clause 13.4.

(d) The Nodal Agency will not have any interest in or claim to any the Implementing Agency Software, other than the above license to the Embedded the Implementing Agency Software.

13.5. Proprietary Items

In the course of performing its obligations under this Agreement, the Implementing Agency may use products, materials, tools and methodologies that are proprietary to the Implementing Agency or to third parties (collectively, “Proprietary Items”). As between the Nodal Agency and the Implementing Agency, Proprietary Items will be deemed Confidential Information of the Implementing Agency for purposes of Clause 12.1. The Nodal Agency will neither have nor obtain any rights in such Proprietary Items (or in any modifications or enhancements thereto) other than (i) to use them as authorized by the Implementing Agency in writing from time to time solely for purposes of performing its responsibilities under this Agreement; (ii) to the extent the Proprietary Items constitute Embedded the Implementing Agency Software under Clause 13.4 to use them as part thereof as provided in Clause 13.4; or (iii) pursuant to the Implementing Agency’s standard license for such Proprietary Items or, in the case of Proprietary Items owned by third parties, pursuant to terms acceptable to the applicable third party. If Proprietary Items are made available to the Nodal Agency under (i) or (ii) above, they will be made available on an
“as is” basis and, to the extent permitted by applicable law, without express or implied warranties of any kind. Proprietary Items made available under (iii) above will be subject to the terms of the applicable license.

13.6. Knowledge Capital

Nothing in this Agreement will preclude the Implementing Agency from acquiring, marketing, developing, distributing, licensing or using for itself or others, services, products or technology that are the same as or similar to those provided to the Nodal Agency by the Implementing Agency pursuant to this Agreement. Furthermore, the Implementing Agency will continue to be free to use the 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. This Clause 13.6 will not diminish the Implementing Agency’s obligations regarding confidential information under Clause 12.1.
14. AUDIT RIGHTS

14.1. Operational Audits

Subject to the provisions of Clause 14.3, the Implementing Agency will provide to such auditors (including third-party auditors and the Nodal Agency’s internal audit staff) as the Nodal Agency may designate in writing, access to any facility at which the Services are being performed, to appropriate the Implementing Agency management personnel and material subcontractors, and to the data and records maintained by the Implementing Agency with respect to the Services: (i) for the purpose of performing audits and inspections of the Nodal Agency and its businesses (including any audits necessary to enable the Nodal Agency to meet its applicable regulatory requirements); (ii) to verify the integrity of the Nodal Agency Data; [(iii) to examine the systems that process, store, support and transmit such the Nodal Agency Data;] and (iv) to confirm that the Services are being provided in accordance with this Agreement, including the Service Levels. To the extent applicable to the Services performed by the Implementing Agency, the scope of such audits may include, without limitation, (a) the Implementing Agency’s practices and procedures; (b) the adequacy of general controls (e.g., organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and security practices and procedures; and (c) the adequacy of disaster recovery and back-up procedures. Any such audits will be conducted at the Nodal Agency’s expense.

14.2. Financial Audits

(a) In order to document the Services and the Service Charges paid or payable by the Nodal Agency under this Agreement, the Implementing Agency will retain its standard records and supporting documentation for at least <specify number of years>.

(b) Subject to the provisions of Clause 14.3, the Implementing Agency will provide to such auditors as the Nodal Agency may designate in writing, access to such records and supporting documentation as may be reasonably requested by the Nodal Agency. The Nodal Agency may audit the Service Charges charged to the Nodal Agency to determine that such Service Charges are accurate and were calculated in accordance with this Agreement.

(c) Any such audits will be conducted at the Nodal Agency’s expense; provided, however, that if, as a result of such audit, the Nodal Agency determines that the Implementing Agency has overcharged the Nodal Agency, the Nodal Agency will notify the Implementing Agency of the amount of such overcharge and the Implementing Agency will promptly pay to the Nodal Agency the amount of the overcharge. If the audit reveals an undercharge, the Nodal Agency will promptly pay to the Implementing Agency the amount of the undercharge, minus the out-of-pocket costs and expenses incurred for such audit.
14.3. General Principles Regarding Audits

(a) The Nodal Agency and its auditors will use reasonable efforts to conduct such audits in a manner that will result in a minimum of inconvenience and disruption to the Implementing Agency’s business operations. Audits may be conducted only during normal business hours and no more frequently than annually unless material issues are discovered. The Nodal Agency and its auditors will not be entitled to audit (i) data or information of other customers or the Nodal Agencies of the Implementing Agency; (ii) any the Implementing Agency proprietary data including cost information unless such is the basis of a reimbursable or Pass-Through Expense; or (iii) any other Confidential Information of the Implementing Agency that is not relevant for the purposes of the audit. The Nodal Agency will provide the Implementing Agency with reasonable prior written notice of an audit. The Implementing Agency will use reasonable efforts to cooperate in the audit, will make available on a timely basis the information reasonably required to conduct the audit and will assist the designated employees of the Nodal Agency or its auditors as reasonably necessary. Any request for additional assistance will constitute a New Service Request pursuant to Clause 4.6. To the maximum extent possible, audits will be designed and conducted (in such manner and with such frequency) so as not to interfere with the provision of the Services. All information learned or exchanged in connection with the conduct of an audit, as well as the results of any audit, constitutes Confidential Information of the Nodal Agency and the Implementing Agency and will be subject to Clause 12.1.

(b) The Nodal Agency will not use any competitors of the Implementing Agency (or any significant the Implementing Agency subcontractor under this Agreement) in the IT outsourcing industry to conduct such audits. Upon the request of the Nodal Agency, the Implementing Agency will promptly identify any such competitors.

(c) The auditors and other representatives of the Nodal Agency will execute and deliver such confidentiality and non-disclosure agreements and comply with such security and confidentiality requirements as the Implementing Agency may reasonably request in connection with such audits.

14.4. Audit Conferences

(a) Following any audit or examination, the Nodal Agency will conduct (in the case of an internal audit), or request its external auditors or examiners to conduct, an exit conference with the Implementing Agency to obtain factual concurrence with issues identified in the review and provide the Implementing Agency a copy of the audit report.

(b) The Parties will meet to review each audit report promptly after the issuance thereof and mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested by the audit report. The Implementing Agency will respond promptly to audit reports in writing, but in no event more than 30 days from receipt of each report.
15. INDEMNIFICATION

15.1. Infringement Indemnity

(a) The Implementing Agency will indemnify, defend and hold harmless the Nodal Agency, any the Nodal Agency Affiliates and their respective employees, principals (partners, shareholders or other holders of an ownership interest, as the case may be) and agents from and against any and all Losses to any third party from claims that any Work Product or the Implementing Agency Software (or the access or other rights thereto) provided by the Implementing Agency to the Nodal Agency pursuant to this Agreement (i) infringes a patent incorporated in India or a copyright held by that third party [, or (ii) constitutes misappropriation or unlawful disclosure or use of that third-party's trade secrets+ (collectively, “Infringement Claims”).

(b) The Nodal Agency will indemnify, defend and hold harmless the Implementing Agency, any the Implementing Agency Affiliates and their respective employees, principals (partners, shareholders or other holders of an ownership interest, as the case may be) and agents from and against any and all Losses arising from claims by third parties that any equipment, software (including the Nodal Agency-Owned Software), information or other resources or items (or the access or other rights thereto) provided by the Nodal Agency to the Implementing Agency pursuant to this Agreement (i) infringes a patent incorporated in India or a copyright held by that third party or (ii) constitutes misappropriation or unlawful disclosure or use of a third party’s trade secrets.

(c) Notwithstanding anything to the contrary herein, neither Party will have any liability or obligation to the other Party, such other Party’s Affiliates or any other Person under Clause 15.1(a) or 15.1(b) above to the extent that the Infringement Claim is based upon (i) modifications to any item made by or on behalf of the indemnitee in a manner that causes the infringement; (ii) use of any item in combination with any hardware, software or other products or services in a manner that causes the infringement and where such combination was not within the reasonable contemplation of the Parties given the intended use of the item; (iii) the failure of a Party to use corrections or enhancements to such deliverables that are made available by the other Party; (iv) detailed, non-discretionary designs or specifications provided by the indemnitee that necessarily caused such Infringement Claim; or (v) the indemnitee’s distribution, marketing or use for the benefit of third parties (other than to provide Services to the Nodal Agency hereunder) of the deliverable or item. In addition, the Implementing Agency will not be liable for claims of infringement arising from or related to the provision of help desk services, call center services or automated attendant services using computer telephony integration.
(d) If any deliverable or item provided by a Party hereunder is, or in such Party’s reasonable judgment is likely to become, the subject of an Infringement Claim, the providing Party, at its expense and in addition to defending the claim and paying amounts as required by (a) or (b) above, will use reasonable efforts to procure for the other Party the right to use and continue using such deliverable or replace it with a non-infringing equivalent or modify it to make its use hereunder non-infringing, provided that such replacement or modification does not result in a degradation of the performance or quality of the deliverable. If such option is not available on commercially reasonable terms in the providing Party’s good faith judgment, the providing Party will so notify the other Party, whereupon (i) the other Party will cease use of such deliverable or Service and return it to the providing Party and (ii) the Parties will equitably adjust the Service Charges to reflect the added expenses or discontinuation of Services. In such event, the Parties will seek to establish mutually acceptable alternative arrangements and to make any appropriate adjustments to their respective obligations under this Agreement though the execution of a Change Request pursuant to Clause 8.12.

(e) The foregoing provisions of this Clause 15.1 constitute the Parties’ sole and exclusive remedies and each Party’s entire liability with respect to infringement claims.

15.2. Indemnification Procedures

The following procedures will apply with respect to indemnification for third-party claims arising in connection with this Agreement:

(a) Promptly after receipt by a Person entitled to indemnification hereunder (an “Indemnitee”) of written notice of the assertion or the commencement of any claim, demand, action, cause of action or other proceeding by a third party, whether by legal process or otherwise (a “Claim”), with respect to any matter within the scope of Clause 15.1 the Indemnitee will give written notice thereof to the Party from whom indemnification is sought pursuant hereto (the “Indemnitor”) and will thereafter keep the Indemnitor reasonably informed with respect thereto; provided, however, that the failure of the Indemnitee to give the Indemnitor such prompt written notice will not relieve the Indemnitor of its obligations hereunder except to the extent such failure results in prejudice to Indemnitor’s defence of such Claim. Within 15 days following receipt of written notice from the Indemnitee relating to any claim, but no later than 10 days before the date on which any response to a complaint or summons is due, the Indemnitor will notify the Indemnitee in writing that the Indemnitor will assume control of the defence and settlement of such claim (the “Notice”).

(b) If the Indemnitor delivers the Notice relating to any claim within the required notice period, the Indemnitor will be entitled to have sole control over the defence and settlement of such claim; provided, however, that the Indemnitee will be entitled to participate in the defence
of such claim and to employ legal advisers at its own expense to assist in the handling of such claim. After the Indemnitor has delivered a Notice relating to any claim in accordance with the preceding Clause 15.2(a), the Indemnitor will not be liable to the Indemnitee for any legal expenses subsequently incurred by such Indemnitee in connection with the defence of such claim.

(c) If the Indemnitor fails to assume the defence of any such Claim within the prescribed period of time, then the Indemnitee may assume the defence of any such Claim at the cost and expense of the Indemnitor. The Indemnitor will not be responsible for any settlement or compromise made without its consent, unless the Indemnitee has tendered notice and the Indemnitor has then failed to assume and defend the claim and it is later determined that the Indemnitor was liable to assume and defend the claim. The Indemnitor will reimburse the Indemnitee for its costs and expenses incurred as a result of Indemnitor’s failure to assume the defence of such Claim.

(d) The Indemnitee will provide reasonable assistance to the Indemnitor (at the Indemnitor’s expense), including reasonable assistance from the Indemnitor’s employees, agents, independent contractors and Affiliates, as applicable. Notwithstanding any provision of this Clause 15.2 to the contrary, the Indemnitor will not consent to the entry of any judgment or enter into any settlement that provides for injunctive or other non-monetary relief affecting the Indemnitee without the prior written consent of the Indemnitee, which consent will not be unreasonably withheld or delayed.
16. LIMITATION OF LIABILITY AND RISK ALLOCATION

16.1. Limitation of Liability

(a) Subject to Clause 16.1(b), the aggregate liability of each Party (and its Affiliates) to the other Party (and its Affiliates) for any Losses arising in connection with this Agreement, whether based upon an action or claim in contract, tort (including negligence), misrepresentation, equity or otherwise (including any action or claim arising from the acts or omissions of the liable Party (or, as the case may be, its Affiliate)) shall not exceed in aggregate an amount equal to the Charges for Services paid to the Implementing Agency under this Agreement during the <six>-month period immediately preceding the most recent event (of if such event occurs in the first <six> months of the Agreement Term, the amount estimated to be paid in the first <six> months of the Agreement Term).

(b) The limitation described in Clause 16.1(a) above will not apply to (i) the Implementing Agency’s obligations under Clauses 12.1 [Confidentiality] or 15.1(a) [Infringement Indemnity], (ii) the Nodal Agency’s obligations under Clauses 12.1 or 15.1(b) or (iii) the Nodal Agency’s non-performance of its payment obligations for Services provided or for termination or related charges pursuant to this Agreement.

(c) 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.

(d) The provision of Service Level Credits will constitute the Nodal Agency’s key remedy for the corresponding Service Level Default.

16.2. Limitation on Category of Liability

(a) [Subject to Clause 16.2(b),] in no event will the measure of damages payable by either Party (or any of its Affiliates) include, nor will either Party (or any of its Affiliates) be liable for (i) any indirect or consequential loss or damage, or (ii) business interruption, loss of profits, loss of production, loss of savings, loss of competitive advantage or loss of goodwill (in each case, whether such loss or damage is direct or indirect), arising from or related to this Agreement, regardless of the type of claim, whether in contract, tort (including negligence), misrepresentation, strict liability or other legal or equitable theory, whether or not foreseeable, and regardless of the cause of such damages even if the Party has been advised of (or is otherwise aware of) the possibility of such damages in advance.

(b) The limitation set out in Clause 16.2(a) above will not apply to the liability of the applicable Party to the extent such liability results from (i) the Implementing Agency’s breach of its obligations under Clause 12.1 relating to Confidential Information, (ii) the Nodal
16.3. Contractual Limitation of Action

Neither Party may assert against the other Party any claim through mediation, arbitration or litigation for breach or nonperformance in connection with this Agreement unless the asserting Party has given the other Party written notice of the claim within three years after the asserting Party first knew or reasonably should have known of the underlying facts giving rise to such claim.

16.4. Recourse

The Parties agree that they will look only to the corporate or firm assets of the other Party in connection with any liabilities hereunder and in no event will they have any claim against any shareholder, partner or holder of an ownership interest in the other Party in connection with this Agreement.

16.5. Insurance

16.5.1 In connection with the provision of the Services, the Implementing Agency 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 <one> years following the expiry or termination of the Agreement, valid and enforceable insurance policies, in the amount not less than the Insurance Cover specified in Schedule <Insert the reference of Schedule>.

16.5.2 Providing and maintaining adequate insurance coverage described herein shall be a material obligation of the Implementing Agency and is of the essence of this Agreement. All such insurance shall meet the applicable laws of India. The Implementing Agency shall at all times comply with the terms of such insurance policies and all requirements of the insurer under any such insurance policies. The limits of coverage under each insurance policy maintained by the Implementing Agency shall not be interpreted as limiting or expanding the Implementing Agency’s liability and obligations under the Agreement.
16.5.3 The Implementing Agency agrees to name the Nodal Agency as an additional insured on the Implementing Agency’s Professional Liability Insurance policy for claims resulting from the Implementing Agency’s negligence. The Implementing Agency’s policy shall be primary and the Nodal Agency’s policy shall be non-contributing for claims for which the Implementing Agency owes the Nodal Agency an indemnity.

16.5.4 Within <specify number of days> days of the execution of this Agreement, the Implementing Agency must, on request by the Nodal Agency, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 16.5. The Implementing Agency agrees to replace any coverage prior to the date of expiry/cancellation. The Implementing Agency must notify the Nodal Agency immediately of any material adverse change in insurance coverage, including, but not limited to, changes in limits, coverage, or status of the policy. Each party shall cause its insurer to provide 30 days' prior written notice of cancellation to the other party.

16.5.5 The Nodal Agency may, at its election, terminate this Agreement upon the failure of the Implementing Agency, or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve the Implementing Agency of its obligations under this Agreement.

16.6. Allocation of Risks; Acknowledgements and Applicability of Limitations

Each Party acknowledges to the other that it understands the legal and economic ramifications of this Clause 16. Each Party acknowledges that (i) the Parties are sophisticated commercial enterprises with relatively equal bargaining power; (ii) the provisions of this Clause 16 constitute an essential element of this Agreement; (iii) such provisions, together with the indemnities, representations and warranties set out the bargained-for allocation of risk under this Agreement; (iv) such Party actively considered such provisions in determining the specific risks that it assumed in agreeing to its obligations under this Agreement and the price to be paid to the Implementing Agency in consideration for its services under this Agreement; and (v) the Parties had meaningful choices with respect to such provisions, and such provisions are not unreasonably favorable to either Party. Each Party irrevocably accepts the limitations and exclusions contained in this Clause 16.

16.7. Particular Liabilities

The Implementing Agency undertakes to indemnify the Nodal Agency (the "Indemnified Party") from and against all Losses on account of bodily injury, death or damage to tangible personal property arising in favor of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or willful default in performance or non-performance under this Agreement.
17. TERMINATION

17.1. Termination for Cause

(a) The Nodal Agency may after (i) complying with Clause 18, and (ii) giving at least <30> days' prior written notice identifying specifically the basis for such notice and referring to this Clause 17.1(a), terminate this Agreement, in whole but not in part, for the Implementing Agency’s material breach of its material service obligations under this Agreement unless the Implementing Agency has within such 30-day period either (a) cured such breach (if such breach is curable) or (b) made substantial progress to cure such breach (if such breach is curable) and implemented a plan that results in a cure of such breach within 60 days. Such notice will specify the effective date of such termination.

(b) The Implementing Agency may after (i) complying with Clause 18, and (ii) giving at least <30> days' prior written notice identifying specifically the basis for such notice and referring to this Clause 17.1(b), terminate this Agreement, in whole but not in part, for (a) the failure by the Nodal Agency to pay undisputed charges owed to the Implementing Agency when due under this Agreement totaling at least <one> month’s charges; (b) or the failure by the Nodal Agency to comply with its obligation to place disputed amounts in escrow pursuant to Clause 10.10, unless the Nodal Agency has within such <30>-day period cured such breach; or (c) the Nodal Agency’s material breach of its obligations under Clause 12 or Clause 13, subject to complying with Clause 18. Such notice will specify the effective date of such termination.

(c) Notwithstanding any provision of this Agreement to the contrary, although the Implementing Agency has undertaken the contractual obligation to meet the Service Levels set out in clause 5.1, neither the Implementing Agency’s failure to comply with any particular Service Level nor any Service Level Default may be deemed to constitute a material breach of this Agreement.

17.2. Termination for Convenience

(a) On or after the <specify period>-year anniversary of the [Base Services Commencement/Effective Date], the Nodal Agency may terminate this Agreement, in whole but not in part, for convenience (i.e., for any reason or for no reason) upon at least <number of months> months’ prior written notice to the Implementing Agency and payment of the Termination Amount set out in clause 17.6(a).

(b) On and after the <specify period> anniversary of the <Base Services Commencement/Effective Date>, the Nodal Agency may terminate this Agreement in part for convenience (a “Service Discontinuance”) as follows.
   i. to effect a Service Discontinuance, the Nodal Agency will deliver a written request (a “Discontinuance Notice”) to the Implementing Agency Account Representative,
specifying in reasonable detail (i) the proposed Service Discontinuance and (ii) the requested date of such discontinuance. In no event will the requested date for a Service Discontinuance be less than six months from the date of the Discontinuance Request. The Parties will cooperate with each other in good faith in discussing the scope and nature of the Discontinuance Request, including the time period in which such Service Discontinuance will be implemented. Upon a Service Discontinuance, the Nodal Agency will pay to the Implementing Agency the amount of any proportional Termination Fee including Demobilization Costs and Stranded Costs, as set out in Schedule 17.6(a), resulting from such Service Discontinuance.

ii. As soon as reasonably practicable thereafter (but in no event more than 30 days after receipt of the Discontinuance Notice) and to the extent applicable, the Implementing Agency will prepare and deliver to the Nodal Agency Account Representative a written statement (the “Discontinuance Response”) describing any changes in products, services, assignment of personnel and other resources that the Implementing Agency believes would be required to implement the Service Discontinuance. In addition, such Discontinuance Response will include, as applicable (i) an estimation of the increase or decrease in the Implementing Agency Service Charges that would be required, including appropriate back-up documentation to justify such estimates; (ii) an estimation of the Demobilization Costs and Stranded Costs that would result from such Service Discontinuance; (iii) a description of how the proposed Service Discontinuance would be implemented; (iv) a description of the effect, if any, such Service Discontinuance would have on this Agreement, including without limitation, the Service Levels; (v) a description of any transition or termination services that will be provided in respect of such Service Discontinuance; and (vi) such other information as may be relevant to the proposed Service Discontinuance. Each Party will take reasonable measures to mitigate expenses incurred in order to affect such Service Discontinuance. The Implementing Agency Account Representative and the Nodal Agency Account Representative will meet to discuss the Discontinuance Response and to determine the appropriate schedule for such Service Discontinuance.

17.3. Termination for Existence of Benchmarking Condition

If a Benchmarking Condition exists and the Parties do not effect any Benchmarking Adjustment pursuant to Clause 5.3(g), then the Nodal Agency may terminate this Agreement, in whole but not in part, upon at least 90 days' prior written notice to the Implementing Agency and payment of Termination Amount set out in Schedule 17.6(a).
17.4. **Termination for Insolvency**

In addition to all other rights or remedies provided for in this Agreement or by law, either Party may terminate this Agreement in whole, but not in part, in the event that: (a) the other Party makes a composition with or assignment for the benefit of creditors; (b) the other Party becomes or is unable to pay debts as they fall due; (c) a trustee, liquidator, administrator or receiver (including an administrative receiver) or similar official is appointed with respect to the other Party or any substantial part of such Party’s assets; (d) any action is taken by or against the other Party under any bankruptcy or insolvency laws or laws relating to the relief of debtors; or (e) the other Party is the subject of a winding-up petition which is not dismissed within five business days, or a resolution is passed for its winding-up.

17.5. **Extension of Termination Effective Date**

Upon at least 60 days' prior written notice to the Implementing Agency, the Nodal Agency may extend, from time to time, the effective date of expiration or termination of this Agreement (except in the case of a termination by the Implementing Agency pursuant to Clause 17.1) until the *<specify number of months>* anniversary of the original effective date of the expiration or termination of this Agreement. Charges for such periods of extension will be as provided in clause 10.1.

17.6. **Termination Amounts**

(a) Upon any termination or expiration of this Agreement, the provisions of Schedule 17.6(a) *<insert schedule>* will apply.

(b) If the Nodal Agency purportedly terminates this Agreement pursuant to Clause 17.1 but the Implementing Agency disputes the Nodal Agency’s right to so terminate this Agreement and it is ultimately determined that the Nodal Agency did not have the right to terminate this Agreement pursuant to Clause 17.1, then for purposes of determining the amounts payable to the Implementing Agency pursuant to clause 17.6(a), such termination will be deemed to have been a termination for convenience effected pursuant to Clause 17.2.

17.7. **Termination Assistance Services**

Commencing at the later of (i) six months prior to the scheduled expiration date of this Agreement, or (ii) the delivery of any notice of termination or non-renewal of this Agreement (or such other date as mutually agreed by the Parties), and continuing until the effective date of the expiration or termination (the “Termination Assistance Period”), the Implementing Agency will provide to the Nodal Agency, or at the Nodal Agency’s request to the Nodal Agency’s designee, such reasonable cooperation, assistance and services as specified in Schedule 17.7 (the “Termination Assistance Services”) *<insert schedule>*. Upon at least 30 days' prior written notice
to the Implementing Agency, the Nodal Agency may extend, from time to time, the Termination Assistance Period until the <specify number of months> anniversary of the effective date of the expiration or termination of this Agreement.


Upon the expiration or termination of this Agreement for any reason, the provisions of Clauses 12, 13, 15, 16, 18, and 22 will survive indefinitely.

18. DISPUTES

18.1. Informal Dispute Resolution

(a) Prior to the initiation of formal dispute resolution procedures, the Parties will first attempt to resolve any dispute, controversy or claim arising under or in connection with this Agreement (a "Dispute") informally, as follows:

i. First, the Nodal Agency Representative and the Implementing Agency Representative will meet as often, for a duration and as promptly as the Parties deem necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute.

ii. If the Nodal Agency Representative and the Implementing Agency Representative are unable to resolve the Dispute within 30 days after the referral of the Dispute to them, the Dispute will be referred to the Service Management Steering Committee. The Service Management Steering Committee will use reasonable efforts to resolve such Dispute or, if appropriate, to negotiate a modification or amendment to this Agreement. The Service Management Steering Committee will meet as often, for a duration and as promptly as the Parties reasonably deem necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute.

iii. If the Service Management Steering Committee is unable to resolve the Dispute within 30 days after such referral, then each of the Implementing Agency and the Nodal Agency will appoint one senior executive who is not involved on a day-to-day basis with the subject matter of this Agreement. Such senior executives will meet as often, for a duration and as promptly as the Parties reasonably deem necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute.

iv. During the course of such discussions, all reasonable requests made by one Party to another for non-privileged information, reasonably related to the Dispute, will be honoured in order that each of the Parties may be fully apprised of the other’s position. The specific format for such discussions will be left to the discretion of the Parties, but may include the preparation of agreed-upon statements of fact or written statements of position.
(b) Formal proceedings for the resolution of a Dispute may not be commenced until the earlier of:

i. the good faith determination by the appointed senior executives that amicable resolution through continued negotiation of the matter does not appear likely; or

ii. 30 days following the date that the Dispute was first referred to the appointed senior executives.

18.2. Alternative Dispute Resolution

If a dispute cannot be resolved as provided in Clause 18.1, the Parties will cooperate in good faith to utilize mutually agreed upon alternative dispute resolution techniques prior to resorting to litigation (Adjudicator or Arbitrator).

(a) The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts appointed in accordance with the following:

i. there shall be two panels of experts, one in respect of solution development matters (the “Solution development Panel”) and one in respect of operational and maintenance matters (the “Operational Panel”). All the experts on each panel shall be wholly independent of the Implementing Agency, the Nodal Agency, the relevant Sub-Contractor and any of the major competitors of the Implementing Agency or relevant Sub-Contractor;

ii. the solution development panel shall be comprised of <specify number> experts who shall be appointed jointly by the Implementing Agency and the Nodal Agency. Such appointments shall take place within <specify days> days of the date of this Contract.

iii. the Operational Panel shall be comprised of <specify number> experts who shall be appointed jointly by the Implementing Agency and the Nodal Agency. Such appointments shall take place on or before the Service Commencement Date;

iii. if any member of a panel resigns during the term of the Contract, a replacement expert shall be appointed by the Implementing Agency and the Nodal Agency as soon as practicable;

iv. if the Nodal Agency and the Implementing Agency are unable to agree on the identity of the experts to be appointed to the panel(s), [ ] shall appoint such expert(s) within <specify days> days of any application for such appointment by either party.
(b) Within 7 days of appointment in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

(c) In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within <specify days> days of appointment (or such other period as the parties may agree after the reference, or <specify days> days from the date of reference if the party which referred the dispute agrees). Unless the parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the Arbitrator, the Adjudicator’s decision shall be binding on both parties who shall forthwith give effect to the decision.

(d) The Adjudicator’s costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

(e) The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Indian Arbitration and Conciliation Act, 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

(f) The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

(g) All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clause 12 (Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator’s work.

(h) The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

(i) either party is dissatisfied with or otherwise wishes to challenge the Adjudicator’s decision made in accordance, then either party may (within <specify days> days of receipt of the Adjudicator’s decision, where appropriate), notify the other party of its intention to refer the dispute to arbitration. Such notification shall invite the other party to concur in the
Exceptions to Dispute Resolution Procedure

(k) The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary.

(l) The Arbitrator shall deliver his decision on any matter referred to him within <specify days> days of concluding any hearings which may have been held in connection with the matter and in any event within <specify months> months (or such other period as the parties may agree) of his appointment. The Arbitrator’s decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both parties. The costs of the arbitration will be in the discretion of the Arbitrator.

(m) The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause and shall give effect forthwith to every decision of the Adjudicator and the Arbitrator delivered under this Clause.

18.3. Exceptions to Dispute Resolution Procedure

The provisions of Clauses 18.1 and 18.2 will not be construed to prevent a Party from:

(a) Seeking a temporary order or injunctive or other equitable relief with respect to a breach (or attempted breach) of this Agreement by the other Party; or

(b) Instituting litigation or other formal proceedings to the extent necessary (i) to avoid the expiration of any applicable limitations period or (ii) to preserve a superior position with respect to other creditors (iii) (iii) to recover any undisputed charges owed to the Implementing Agency when due under this Agreement.”
18.4. Jurisdiction

Subject to Clauses 18.1 and 18.2, the Court of <City, India> have [exclusive] jurisdiction to settle any Dispute, including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity. The parties agree that the Court of <City, India> are the most appropriate and convenient courts to settle any Dispute and, accordingly, that they will not argue to the contrary.

19. FORCE MAJEURE

19.1. Force Majeure Events

(a) Each Party will be excused from performance under this Agreement (other than obligations to make payments that have become due and payable pursuant to this Agreement) for any period and to the extent that it is prevented from performing any obligations pursuant to this Agreement, in whole or in part, as a result of a Force Majeure Event. If either Party is prevented from, or delayed in performing any of its obligations under this Agreement by a Force Majeure Event, it will promptly notify the other Party by telephone (to be confirmed in writing within five days of the inception of the delay) of the occurrence of a Force Majeure Event and describe, in reasonable detail, the circumstances constituting the Force Majeure Event and of the obligations, the performance of which are thereby delayed or prevented. Such Party will continue to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

i. A “Force Majeure Event” will mean the occurrence of an event or circumstance beyond the reasonable control of a Party, provided that (i) the non-performing Party is without fault in causing or failing to prevent such occurrence and (ii) such occurrence cannot be circumvented by reasonable precautions and could not have been circumvented through the use of commercially reasonable alternative sources, workaround plans or other means (including, with respect to the Implementing Agency, by the Implementing Agency meeting its disaster recovery obligations described in this Agreement). “Force Majeure Events” will include, without limitation,

i. explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God;
ii. acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage;
iii. acts of national, local or foreign governmental authorities or courts;
iv. labour disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful;
v. nuclear, chemical or biological contamination;
vi. failures or fluctuations in electrical power or telecommunications service or equipment; or
vii. Delays or failures caused by the other Party or the other Party’s performance or third-party non-performance (except that a Party will not be excused for delays or failures caused by such Party’s subcontractors or agents unless the event or circumstance is a Force Majeure Event as to such subcontractor or agent); or

viii. Could not have been prevented by the non-performing Party’s reasonable precautions or commercially accepted processes, or could not reasonably be circumvented by the non-performing Party through the use of substitute services, alternate sources, work-around plans, the implementation of appropriate security measures or the disaster recovery procedures required of Vendor.

(b) [If a Force Majeure Event relates to the Implementing Agency or one of its subcontractors substantially prevents, hinders or delays performance of the Services necessary for the performance of one or more critical Nodal Agency business functions for more than [three] consecutive days, then at the Nodal Agency’s option: (i) the Nodal Agency may procure replacement services from an alternate source [and the Parties will share equally] the amount paid by the Nodal Agency for such replacement services to the extent that such charges exceed the Implementing Agency’s charges hereunder for the Services so replaced; or (ii) the Nodal Agency may terminate the Service so affected (or if the Force Majeure Event only affects one or more geographic areas, the Service in the areas so affected). The Nodal Agency will use reasonable efforts to minimize the charges to be incurred for such replacement services. In the event of any Service termination (or Service termination in a limited geographic area), the Nodal Agency will pay all Costs resulting from such termination. Other than as provided in this Clause 19.1(c), the Implementing Agency will not have the right to any additional payments from the Nodal Agency as a result of any Force Majeure Event, other than the Nodal Agency’s payment of amounts otherwise due for Services provided prior to such termination. At such time that the Implementing Agency resumes, or is reasonably prepared to resume, providing the Services that were so prevented, hindered or delayed, (i) the Implementing Agency will no longer be obligated to share any of the incremental charges for such replacement services, and (ii) the termination right described in this Clause 19.1(c) will terminate with respect to such Force Majeure Event.]

(c) Nothing in this clause 19.1 will relieve the Implementing Agency’s obligations to provide Disaster Recovery Services in accordance with this Agreement.

(d) For the avoidance of doubt, it is expressly clarified that the failure on the part of the Implementing Agency under this Agreement to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure Events. 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 Events”.
20. Exit Management

The Implementing Agency shall provide the <Nodal Agency>, a recommended exit management plan ("Exit Management Plan") which shall deal with important aspects of exit management. The exit management plan will comply with Exit Management Schedule detailed in Schedule 2.

21. Transition Management

The Implementing Agency shall provide the <Nodal Agency>, a recommended Transition Plan which shall deal with important aspects of Transition management. The Transition management plan will comply with Schedule 3. The transition plan will identify the objectives, scope, and all of the transition tasks to be performed, the completion date for each transition task, the acceptance criteria to be applied by <Nodal Agency> in evaluating transition deliverables, the allocation of responsibilities between the Parties, the specific requirements from the current Implementing Agency and <Nodal Agency> and all other pertinent details.

22. Miscellaneous

22.1. Nodal Agency Affiliates

With respect to any the Nodal Agency Affiliates that receive Services from the Implementing Agency for their internal use under this Agreement, the Nodal Agency will (i) retain responsibility for payment of such Services; (ii) cause such Affiliates to comply with the applicable terms and conditions of this Agreement; and (iii) upon the request of the Implementing Agency from time to time, obtain written assurances from such Affiliates that such Affiliates will abide by the applicable terms and conditions set out in this Agreement.

22.2. Injunctive Relief

Each Party will have the right to seek injunctive or other equitable relief to address breaches (or attempted breaches) of the obligations of the other Party under this Agreement only after taking all measures as mentioned in clause 18.

22.3. Assignment

This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party will assign this Agreement or any part hereof or any benefit or interest therein without the prior written consent of the other Party; provided, however, that either Party may assign this Agreement (i) to any of its Affiliates and (ii) to any entity that acquires all or substantially all of the assets of such Party or to successor in a merger or acquisition of such Party. In the event of an assignment of this Agreement pursuant to the previous sentence, the assigning Party will not be released from any of its liabilities or obligations hereunder. In the event of any permitted assignment of this Agreement by either
Party, the designated assignee will assume, in writing (in form and substance reasonably satisfactory to the other Party), the rights and obligations of the assigning Party under this Agreement. This Clause 22.3 will not apply to the subcontracting by the Implementing Agency of any portion of the Services in accordance with Clause 8.10.

22.4. Cooperation; Consents

Each Party will cooperate with the other Party in good faith in the performance of its respective activities contemplated by this Agreement through, among other things, making available, as reasonably requested by the other Party, such management decisions, information, approvals and acceptances in order that the provision of the Services under this Agreement may be accomplished in a proper, timely and efficient manner. Where agreement, approval, acceptance or consent of either Party is required by any provision of this Agreement, such action will not be unreasonably withheld or delayed.

22.5. Compliance with Laws and Regulations

(a) Notwithstanding any other provision of this Agreement to the contrary other than Clause 7.6 and 17.1(g), each Party will retain responsibility for its compliance with all applicable laws and regulations relating to its respective business and facilities and the provision of services to third parties, including applicable export laws, regulations and orders. In performing their respective obligations under this Agreement, neither Party will be required to undertake any activity that would violate any applicable laws or regulations. Nodal Agency will notify vendor of requirements under applicable laws which pertain to the business of the Nodal Agency and which affect the services to be provided prior to the execution of the contract.

(b) [The Implementing Agency shall maintain processes and procedures relating to the services in accordance with the written requirements delineated in advance by the Nodal Agency to meet the Nodal Agency’s internal control requirements. The Nodal Agency retains responsibility for compliance with regulatory requirements that pertain to its business. In the event that the Nodal Agency wishes to make changes to the internal control requirements, they shall be submitted in accordance with the System or Contract Change Control processes (as applicable) set out in Clauses 8.11 and 8.12. The Implementing Agency will periodically certify to the Nodal Agency the Implementing Agency’s compliance with the agreed-upon processes and procedures.]

22.6. Relationship of Parties

In connection with this Agreement, each Party is an independent contractor. Except as expressly provided in this Agreement, the Implementing Agency does not undertake to perform any obligation of the Nodal Agency, whether regulatory or contractual, or to assume any responsibility for the Nodal Agency’s business or operations. This Agreement establishes and will
only be construed as establishing a contract between unrelated business entities for the provision and purchase of certain services and does not and will not be deemed to create a joint venture, partnership, fiduciary or agency relationship between the Parties for any purpose (except as expressly provided). In no event will the Implementing Agency be deemed to be acting in a fiduciary capacity for the Nodal Agency. With respect to its own personnel, each Party is independently responsible for all obligations incumbent upon an employer.

22.7. Notice

Wherever under this Agreement one Party is required or permitted to give notice to the other Party, such notice will be in writing and will be delivered personally, sent by facsimile transmission, sent by express courier or sent by certified mail (return receipt requested). Any such notice will be deemed given when actually received and will be addressed as follows:

In the case of the Nodal Agency:

__________________________
__________________________
__________________________

Attention: Facsimile Number:

with a copy (which will not constitute effective notice) to:

__________________________
__________________________
__________________________

Attention: Facsimile Number:

In the case of the Implementing Agency:

The Implementing Agency
__________________________
__________________________
__________________________

Attention: Facsimile Number:

with a copy (which will not constitute effective notice) to:

The Implementing Agency Attn: [ ]
Either Party may change its address for notices upon giving ten days’ written notice of the change to the other Party in the manner provided above.

22.8. Severability

If any provision of this Agreement or the application of any such provision to any Person or circumstance, will be declared judicially to be invalid, unenforceable or void, such decision will not have the effect of invalidating or voiding the remainder of this Agreement, and it is the intent and agreement of the Parties that this Agreement will be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is legal and enforceable and that achieves the same objective.

22.9. No Third-Party Beneficiaries

Nothing contained in this Agreement is intended or will be construed to confer upon any person (other than the Parties hereto and the Indemnitees specifically identified in Clause 15) any rights, benefits or remedies of any kind or character whatsoever. Except as expressly stated in this Agreement, the Parties do not intend that any term of this Agreement shall be enforceable by any third party.

22.10. Publicity

All advertising, press releases, public announcements and public disclosures by either Party relating to this Agreement which includes (i) the other Party’s name, trade names, trademarks, logos, service marks or trade dress (collectively, “Name”) or (ii) language from which the connection of such Name may be inferred or implied, will be coordinated with and subject to approval by both Parties prior to release; provided, however, that (i) either Party may indicate to third parties that the Implementing Agency is providing services to the Nodal Agency and (ii) the Implementing Agency may use the Nodal Agency as a reference.

22.11. Amendment

This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the Parties to this Agreement.

22.12. Entire Agreement/Priority

This Agreement (including Schedules hereto, each of which is incorporated herein by reference) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof. [The letter of intent,
dated <____>, between the Implementing Agency and the Nodal Agency is superseded by this Agreement and will be of no further force or effect.

There are no representations, understandings or agreements relating to this Agreement that are not fully expressed in this Agreement. Each of the Parties acknowledges that it has not relied on any representation, promise, understanding or warranty (other than as fully expressed in this Agreement) in entering into this Agreement. In the event of a conflict or ambiguity between the Agreement and a Schedule, the terms of this Agreement will prevail. In the event of any conflict or ambiguity between Schedules, the terms of the Schedule will prevail with respect to that Schedule only.

22.13. Governing Law

This Agreement will be governed by and construed in accordance with the laws, other than choice of law rules, of [India].


The clause headings and the table of contents contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. As used in this Agreement, unless otherwise provided to the contrary, (a) all references to days, months or quarters will be deemed references to calendar days, months or quarters and (b) any reference to a “Clause” or “Schedule” will be deemed to refer to a clause of this Agreement or a schedule to this Agreement. Unless the context otherwise requires, as used in this Agreement, all terms used in the singular will be deemed to refer to the plural as well, and vice versa. The words “hereof,” “herein” and “hereunder” and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” References in this Agreement to ["INR"] will be deemed a reference to [Indian National Rupee] unless otherwise specified. References to “this Agreement” include each New Service Request executed and delivered pursuant to this Agreement.

22.15. Inconsistencies

To the extent that the provisions of this Agreement and of any other schedule hereto are in any respect inconsistent, the provisions of this Agreement will govern and control, provided that with respect to the description of the Services, the schedules hereto will govern and control.
22.16. Counterparts

This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one agreement binding on the Parties, notwithstanding that both Parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, this Agreement has been duly executed by and on behalf of the Parties hereto on the Effective Date.

Nodal Agency

By:
Name:
Title:

Implementing Agency

By:
Name:
Title:
23. SCHEDULE 1 - Definitions

“Implementing Agency” will have the meaning specified in the preamble of this Agreement and include all the Implementing Agency Affiliates and subcontractors of the Implementing Agency or the Implementing Agency Affiliates, unless specifically stated or the context indicates otherwise. However, the use of the term “Implementing Agency” to refer to Affiliates in separate countries shall not be construed as a requirement for, or evidence of, the presence or establishment of the Implementing Agency or the Affiliate doing business in a jurisdiction other than where it is domiciled.

“Implementing Agency’s Representative” will have the meaning specified in Clause 8.1.

“Affiliate” means any other Person that, directly or indirectly, through one or more intermediaries, is controlled by or under common control with a Party. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of shares, the holding of voting power, by contract or otherwise.

“Implementing Agency-Managed Agreements” will have the meaning specified in Clause 6.2(a)

“Implementing Agency Software” will have the meaning specified in Clause 6.6(a).

“Implementing Agency Software Enhancements” will have the meaning specified in Clause 13.3(b).

“Implementing Agency Warranty Item” will have the meaning specified in Clause 11.4(e)

“Account Documentation” will have the meaning specified in Clause 8.6(a).

“Adjustable Amounts” will have the meaning specified in Clause 10.5.

“Adjustment Event” will have the meaning specified in Clause 4.9.

“Agreement” will have the meaning specified in the preamble of this Agreement.

“Agreement Term” will have the meaning specified in Clause 2.2.
“Application Development Services” will have the meaning specified in Clause 4.4(a).
“Base Index” will have the meaning specified in Clause 10.5.

“Base Services” will have the meaning specified in Clause 4.2.

“Base Services Commencement Date” will have the meaning specified in Clause 3.1.

“Benchmarking Adjustment” will have the meaning specified in Clause 5.3(g).

“Benchmarking Condition” will have the meaning specified in Clause 5.3(e).

“Benchmarking Process” will have the meaning specified in Clause 5.3(a).

“Benchmarking Report” will have the meaning specified in Clause 5.3(e).

“Contract Changes” means any changes to this Agreement that are within the scope of the Services.

“Claim” will have the meaning specified in Clause 15.4(a).

“Nodal Agency” will have the meaning specified in the introduction to this Agreement and include all the Nodal Agency Affiliates and third parties of the Nodal Agency or the Nodal Agency Affiliates, unless specifically stated or the context indicates otherwise.

“Nodal Agency’s Representative” will have the meaning specified in Clause 8.2.

“Nodal Agency Contractors” will have the meaning specified in Clause 8.9(a).

“Nodal Agency Data” means information regarding the Nodal Agency that is provided by the Nodal Agency to the Implementing Agency pursuant to this Agreement or created by the Implementing Agency under or arising out of data and records of the Nodal Agency pursuant to this Agreement.

“Nodal Agency-Leased Hardware” will have the meaning specified in Clause 6.3.

“Nodal Agency Licensed Software” will have the meaning specified in Clause 6.4.

“Nodal Agency-Owned Hardware” will have the meaning specified in Clause 6.3.

“Nodal Agency- Owned Software” will have the meaning specified in Clause 6.5.

“Nodal Agency Service Location Items” will have the meaning specified in Clause 7.2.
“Nodal Agency Service Responsibilities” will have the meaning specified in Clause 4.12(a).

“Confidential Information” will have the meaning specified in Clause 12.1(a).

“Consents” means consents, waivers, permits, clearances, approvals, rights and other authorizations.

“Covered Opportunity” will have the meaning specified in Clause 4.8(a).

“Critical the Implementing Agency-Licensed Software” will have the meaning specified in Clause 6.7(a).

“Current Index” will have the meaning specified in Clause 10.5.

“Demobilization Costs” means the costs reasonably incurred by the Implementing Agency in connection with either (i) the redeployment, demobilization and relocation of the applicable the Implementing Agency (or subcontractor) personnel who are then primarily dedicated to providing Services to the Nodal Agency [and who the Implementing Agency is unable, using reasonable efforts over a [one]-month period, to redeploy to another the Implementing Agency account in the same metropolitan area] or (ii) the termination of the applicable the Implementing Agency (or subcontractor) personnel (including severance, out-placement or related costs).

“Disaster Recovery Services” will have the meaning specified in Clause 4.5.

“Discontinuance Notice” will have the meaning specified in Clause 17.2(b).

“Discontinuance Response” will have the meaning specified in Clause 17.2(b).

“Dispute” will have the meaning specified in Clause 18.1(c).

“Effective Date” means the date of this Agreement.

“Expiry Date” will mean the Expiry Date of the Agreement or any later date in case the parties mutually agree that the Agreement should extend.

“Force Majeure Event” will have the meaning specified in Clause 19.1(b).

“Hardware” will mean computers and related equipment, including, as applicable, central processing units, personal computers and other processors, controllers, modems, storage devices, printers, terminals, other peripherals and input and output devices, and other
tangible mechanical and electronic equipment intended for the processing, input, output, storage, manipulation and retrieval of information and data.

“Hired Employees” will have the meaning specified in Schedule 9.1.

“Identified Resource” will have the meaning specified in Clause 4.9(d).] 

“Indemnitee” will have the meaning specified in Clause 15.4(a).

“Indemnitor” will have the meaning specified in Clause 15.4(a).

“Infringement Claims” will have the meaning specified in Clause 15.3(a).

“Liens” means, with respect to any properties or assets, any mortgage, pledge, claim, charge, hypothecation, assignment, security interest, lien or encumbrance or any preference, priority or other right or interest granted pursuant to a security agreement or preferential arrangement of any kind or character in respect of such properties or assets.

“Losses” means losses, liabilities, damages, actions, claims, costs and expenses (including reasonable legal fees and disbursements).

“Migration” will have the meaning specified in Clause 3.2.

“Name” will have the meaning specified in Clause 22.10.

“New Services” will have the meaning specified in Clause 4.6(a).

“New Service Request” will have the meaning specified in Clause 4.6(b).

“New Service Response” will have the meaning specified in Clause 4.6(c).

“Notice” will have the meaning specified in Clause 15.4(a).

“Parties” means the Nodal Agency and the Implementing Agency, as signatories to this Agreement.

“Pass-Through Expenses” will have the meaning specified in Clause 10.3(a).
“Person” means anybody corporate, association, partnership, joint venture, organization, individual, business or other trust or any other entity or organization of any kind or character, including a court or other governmental authority.

“Privileged Work Product” will have the meaning specified in Clause 12.3.

“Proprietary Items” will have the meaning specified in Clause 13.4.

“Retained Expenses” will have the meaning specified in Clause 10.4.

“Service Charges” will have the meaning specified in Clause 10.1.

“Service Discontinuance” will have the meaning specified in Clause 17.2.

“Service Levels” will have the meaning specified in Clause 5.1(a).

“Service Locations” means the Implementing Agency Service Locations and the Nodal Agency Service Locations. “Service Management Steering Committee” will have the meaning specified in Clause 8.3.

“Services” will have the meaning specified in Clause 4.1.

“Stranded Costs” means (i) any un-recouped investments, costs or obligations, or the unrecovered portion of any amortized charges for such investments, costs or obligations, for any hardware, software or third-party service agreements primarily dedicated to providing Services to the Nodal Agency which have been made, incurred or assumed by the Implementing Agency in good faith in reasonable expectation of providing Services requested by the Nodal Agency pursuant to this Agreement (including obligations under unexpired lease, license or other agreements for hardware, software, third-party services or subcontracts) and (ii) any amount of accrued and unbilled revenue for Services provided under this Agreement.

[Notwithstanding the foregoing, for an item to constitute a “Stranded Cost” for purposes of this Agreement, (i) the Implementing Agency must have exercised due regard for the Nodal Agency’s interests, prior to entering any commitment that exposes the Nodal Agency to such investment, cost or obligation, and (ii) the Implementing Agency will have used reasonable efforts to redeploy such hardware, software or third-party service for a period of [one] month from the date the obligation to pay the Stranded Cost arose. To the extent such hardware, software or third-party service is not dedicated entirely to providing Services for the Nodal Agency, only that portion of the investment, cost or obligation that was used to provide Services to the Nodal Agency will be considered Stranded Cost. To the extent commercially reasonable, the Implementing Agency will minimize the financial impact on the
Nodal Agency of such investment, cost or obligation. Upon payment of any Stranded Costs, the Nodal Agency will thereupon be entitled to all rights, setoffs, subrogation and benefits held by the Implementing Agency under or in connection with such investments and contractual obligations; provided, however, that if [75%] or more of the Stranded Cost is attributable to Services provided to the Nodal Agency, at the Nodal Agency’s option, the Implementing Agency will transfer or assign to the Nodal Agency that portion of the obligation used to provide Services to the Nodal Agency and the Nodal Agency will assume and resolve the obligation itself. The Parties will execute and deliver such documentation and take such other reasonable actions as may be necessary to transfer to the Nodal Agency such rights, setoffs, subrogation, benefits and obligations.]

“System Changes” means any changes to the Nodal Agency computer environment, equipment, software, personnel or Services that would reasonably be expected to have a material adverse effect on the functionality, performance standards or technical environment of the Nodal Agency’s systems or increase the Nodal Agency’s costs for the Services.

“Termination Assistance Period” will have the meaning specified in Clause 17.7.

“Termination Date” means the date on which the parties mutually agree to terminate before the expiry period.

“Third-Party Bench marker” will have the meaning specified in Clause 5.3(b).

“Solution Development” will have the meaning specified in Clause 3.2.

“Solution Development Plan” will have the meaning specified in Clause 3.3(a).

“Solution Development Services” will have the meaning specified in Clause 3.2.
24. **SCHEDULE 2: Exit Management**

1. **Purpose**
   
a) This Schedule sets out the provisions, which will apply prior to the expiry of the Agreement or termination of the Agreement is initiated, or when <Nodal Agency> intends to facilitate an understanding of the operations and the systems for <Nodal Agency> or any nominee/s of <Nodal Agency> and during the Project implementation, operation and management.

b) It sets out the provisions which will ensure that <Nodal Agency> will be able to offer the services to its Stakeholders without any interruptions on expiry or termination of the Agreement.

c) Continuity and performance of the Services at all times including the duration of the Agreement and post expiry of the Agreement is a critical requirement of the <Nodal Agency>. It is the prime responsibility of Implementing Agency to ensure continuity of service at all times of the Agreement including exit management period and in no way any facility/service shall be affected/degraded. Further, Implementing Agency is also responsible for all activities required to train and transfer the knowledge to the Replacement Implementing Agency to ensure similar continuity and performance of the Services post expiry of the Agreement. Implementing Agency will be required to carry out a gap analysis of the facilities and arrangements made by the Replacement Implementing Agency and specifically inform <Nodal Agency>. It sets out the mechanisms for Exit Management Services the Implementing Agency is to provide on termination or prior to expiration of the Agreement to allow the orderly and efficient transition of the Services to <Nodal Agency> or its nominee.

d) It sets out the mechanisms for managing the knowledge enablement services the Implementing Agency has to provide to allow the <Nodal Agency> to create an understanding of the operations and technology of the systems for itself or its nominees or any designated agencies.

2. **Initiation**
   
a) The provisions for Exit Management Services are invoked at least <specify months> months prior to the expiry of the Agreement or on the day of notice of termination in case of termination till the time exit management services are executed to the satisfaction of the <Nodal Agency>.

b) The <Nodal Agency> has the right to alter in consultation with the Implementing Agency, the timelines mentioned here based on the circumstances prevailing at the time of availing the Exit Management Services.

c) However if the <Nodal Agency> in the intervening period invokes the provisions of the Agreement and extends the term of the Agreement for the particular service, the
provisions of the schedule will not come into effect at that time but at the expiry of such extended period, provisions of this Schedule of the Agreement shall apply.

d) Both the Parties of this Agreement shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Schedule.

3. **Duration of the Exit Management Services**

a) The exit management services will be available to <Nodal Agency> or its nominees or the Replacement Implementing Agency till all tasks set out in the Exit Management Plan (which has been duly approved in writing by the <Nodal Agency>) have been completed.

b) The exit management services will be available to <Nodal Agency> or its nominees of the Replacement Implementing Agency till the acceptance criteria set out in the Exit Management Plan have been met, as determined by the <Nodal Agency>.

c) The objective is to ensure that the <Nodal Agency> will be able to offer the services to its stakeholders without any interruptions on expiry or termination of the Agreement will be the key determinant to assess the completion of Exit Management Services.

4. **Obligation during Exit Management Period**

a) Within **<specify days>** days of initiation of Exit Management Services, the Implementing Agency shall provide an updated list of Assets being transferred to <Nodal Agency> and notify the core team.

b) During Exit Management Period, the Parties shall, subject where applicable to the provisions of this Article, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the project facilities and Services to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

c) In performing the Exit Management Services, Implementing Agency will ensure the Services and day-to-day operations are not detrimentally affected subject to any agreed disruptions or outages as specified in the Exit Management Plan.

d) Before removing any document, equipment, software or other property or asset from any of the <Nodal Agency’s> facility used by Implementing Agency to perform the Exit Management Services, Implementing Agency will give notice to <Nodal Agency> identifying the property/asset (in sufficient detail to inform <Nodal Agency> of the nature and ownership of the asset).

e) Implementing Agency will not remove any asset without <Nodal Agency’s> prior consent, which will not be unreasonably withheld, and will comply with the reasonable procedures established by <Nodal Agency> for the removal of asset from <Nodal Agency’s> facilities.
f) <Nodal Agency> will assign personnel with relevant background knowledge (or will ensure that its nominee provides such personnel if the Exit Management Services are meant for transitioning the <Nodal Agency> systems and its operations to a replacement Implementing Agency).

g) The Implementing Agency will deploy the right personnel with relevant background knowledge for Exit Management to ensure efficient and timely completion of the Exit Management activities.

h) The Exit Management Services, as per the accepted plan, will come into effect when each party will appoint, and notify the other party of, a suitably qualified representative to act as its single point of contact for the Exit Management Services.

i) For the purposes of this Schedule, anything in the possession or control of the Implementing Agency, the employees of Implementing Agency, associated entity, or sub-contractor is deemed to be in the possession or control of the Implementing Agency.

j) Implementing Agency will involve the services of the subcontractors if required but with the prior permission of the <Nodal Agency>, for the purpose of executing the exit management plans, without any costs for the <Nodal Agency>.

k) The task of Implementing Agency with reference to the Exit Management is deemed to be complete only when the Project manager of the <Nodal Agency> issues a satisfactory completion certificate for the Exit Management Plan.

5. Exit Management Plan

a) The Implementing Agency shall provide the <Nodal Agency> or its nominated agency with a recommended exit management plan ("Exit Management Plan") within <specify months> months of signing the Agreement.

b) The Implementing Agency is required to revise the plan if required based on the suggestions of <Nodal Agency> or its nominees.

c) This Exit Management Plan shall be furnished in writing to the <Nodal Agency> or its nominated agencies.

d) The Implementing Agency shall update the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date and make it available to <Nodal Agency> or its nominees.

e) The key focus of the Exit Management Plan will be to ensure that using the plan, <Nodal Agency> will be able to ensure that the services to its stake holders are continued to be provided without any disruptions.

f) The Exit Management Plan shall deal with the following aspects of the exit management in relation to the Agreement as a whole or the particular service of the Agreement and in relation to the Project Implementation, and the Operation and Management.

g) The Exit Management Plan will include a thorough description of the following
i. The Implementing Agency’s overall methodology and approach to complete Transition, including the Transition phases and dates of the phases relative to the Effective Date.

ii. The activities and the major deliverables

iii. The acceptance criteria relating to each of the Transition Deliverables.

iv. The milestone dates related to each of the Transition Deliverables.

v. How the Implementing Agency’s will work with the existing vendor(s) and other Third-Party Vendors in a manner that will facilitate a seamless transfer of service (and clearly identify the risks it envisages and how its solution and approach mitigates the impact of these risks)

vi. For all tasks for which Implementing Agency identifies <Nodal Agency’s> responsibilities, Implementing Agency is to describe the level of <Nodal Agency> effort anticipated, including an estimate of resources needed (number of hours, by role or title, by activity, and by month).

vii. A detailed program with structure, resource loading, responsibilities, etc. of the transition process that could be used in conjunction with a Replacement Implementing Agency or the <Nodal Agency’s> Project team or any agency/organization nominated by <Nodal Agency>.

viii. The 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.

h) The Implementing Agency will develop a project plan as part of the Exit Management Plan, which will detail the specific tasks and activities to be performed as part of the Exit Management, including the name of each task or activity, the start and stop dates, the required resources, the dependencies between tasks, and the completion percentage.

i) The Implementing Agency will consult with <Nodal Agency> to add any <Nodal Agency> tasks into the Exit Management Plan that are deemed necessary by the Parties to ensure a complete and integrated approach to Transition planning and Project Management.

j) The Exit Management Plan would also elaborate the following

i. Plans for the communication with such of Implementing Agency’s sub-contractors, staff, suppliers, and any related third party as are necessary to avoid any material detrimental impact on Project’s operations as a result of undertaking the transfer due to termination or expiry.

ii. A comprehensive list of assets to be transferred.

iii. The proposed arrangements for the segregation of communication means (including but not limited to transfer of data in electronic forms, emails etc.) from the networks employed by the <Nodal Agency> and identification of specific security tasks necessary for ensuring this.

iv. Plans for provision of contingent support to the <Nodal Agency> and Replacement Implementing Agency for a reasonable period as per the <Nodal Agency>’s requirement after transfer.
v. The acceptance mechanisms for the different deliverables and the successful completion of exit management.

k) Each Exit Management Plan shall be presented by the Implementing Agency to and approved by the <Nodal Agency> or its nominated agencies.

l) The Exit Management Plan is considered as a valid plan and used to implement the transition work only when it is approved by <Nodal Agency> or its nominee.

m) In developing or changing the Exit Management Plan, Implementing Agency will not impose any additional obligations on <Nodal Agency>, or change the <Nodal Agency>’s Exit Management obligations specified in the draft Exit Management Plan (including their timing), without <Nodal Agency>’s approval.

n) Implementing Agency will have responsibility for all costs associated with its Personnel (including staff of any Subcontractors), equipment, Software, or other resources required to execute and will manage the Exit Management Plan. <Nodal Agency> shall only be responsible for the costs associated with <Nodal Agency> personnel participating in the Transition and only to the limit agreed by the Parties in the Exit Management Plan.

6. Exit Management Services

The following are some of the key services which will be provided by the Implementing Agency as part of the Exit Management Services –

a) Provide <Nodal Agency> or its nominee with the storage media listing of inventory.

b) Provide <Nodal Agency> or its nominee with any incident logs reporting back at least <Specify period> years before the Termination Date or Expiration End Date.

c) Identify, record, and provide to <Nodal Agency> or its nominee control release levels for system Software.

d) If requested by <Nodal Agency>, freeze all or any discretionary Software changes, other than modifications necessary to address processing problems.

e) Provide and coordinate assistance in notifying Implementing Agency’s outside vendors of the procedures to be followed.

f) Review all test, data and production Software libraries with <Nodal Agency> or its nominee’s operations staff.

g) Provide reasonable assistance to <Nodal Agency> or its nominee in establishing or transferring naming conventions.

h) Subject to the intellectual property provisions of this Agreement, document and deliver all tools and databases used to provide the Exit Management Services, including those for tracking projects and service information requests, and those used for knowledge transfer.

i) Deliver technical specifications and materials, and user documentation for the Software to <Nodal Agency> or its nominee.
j) Assist <Nodal Agency> or its nominee in making arrangements for the physical de-installation, transportation, and relocation of equipment and physical assets.

k) Provide documentation and diagrams, including IP addressing schema, architecture data network diagram, managed device thresholds, and configurations.

l) Provide copies of <Nodal Agency> data and offsite storage of production data, as reasonably requested.

7. Cooperation and Provision of Information

a) The Implementing Agency will allow the <Nodal Agency> 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 <Nodal Agency> to assess the existing services being delivered.

b) The Implementing Agency 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 Implementing Agency or sub-contractors appointed by the Implementing Agency).

c) The <Nodal Agency> shall be entitled to copy of all such information including details pertaining to the services rendered and other performance data. The Implementing Agency shall permit the <Nodal Agency> or its nominated agencies to have reasonable access to its employees and facilities as reasonably required by the <Nodal Agency> or its nominated agencies to understand the methods of delivery of the services employed by the Implementing Agency and to assist appropriate knowledge transfer.

8. Right to access to the premises

a) At any time during the Exit Management Period, where Assets are located at the Implementing Agency's premises, the Implementing Agency shall 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) <Nodal Agency>, and/or any Replacement Implementing Agency in order to make inventory of the assets or Assets.

b) The Implementing Agency shall also give <Nodal Agency>, or Replacement Implementing Agency or nominees of <Nodal Agency> right of reasonable access to the Implementing Agency’s premises and shall procure <Nodal Agency> and any Replacement Implementing Agency’s rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the Agreement as is reasonably necessary to migrate the services to <Nodal Agency>, or a Replacement Implementing Agency.
9. Confidential Information, Security and Data

a) Implementing Agency will promptly on the commencement of the exit management period, hand over to the <Nodal Agency> the following:-
   i. Information relating to the current services rendered and customer satisfaction surveys and performance data relating to the performance of sub-Contractors in relation to the services.
   ii. Documentation relating to Project’s Intellectual Property Rights.
   iii. The Data belonging to the <Nodal Agency> and Confidential Information.
   iv. Documentation relating to sub-contractors (if any).
   v. All current and updated data of the Project as is reasonably required for purposes of the <Nodal Agency> or its nominated agencies transitioning the services to its Replacement Implementing Agency in a readily available format nominated by the <Nodal Agency>

b) All other information (including but not limited to documents, records and contracts) relating to the services reasonably necessary to enable the <Nodal Agency> or its nominated agencies, or its Replacement Implementing Agency to carry out due diligence in order to transition the provision of the services to the <Nodal Agency> or its nominated agencies, or its Replacement Implementing Agency (as the case may be).

c) Before the expiry of the exit management period, the Implementing Agency shall deliver to the <Nodal Agency> or its nominated agency all new or up-dated materials from the categories set out under the Project’s Intellectual Property Rights and shall not retain any copies thereof, except that the Implementing Agency shall be permitted to retain one copy of such materials for archival purposes only

10. Employees

a) Since the Project team of Implementing Agency is critical for effective knowledge transfer and exit management, the Implementing Agency will ensure the following during the exit management period: -
   i. At least 75% of the Key Personnel identified are available for joint operations and knowledge transfer.
   ii. At least 75% of the operations team is staffed with people with minimum proficiency as identified in the agreement.

b) Ensure that all the employees who worked on the Project have followed the guidelines specified in this Agreement.
c) Ensure that the exiting employees have followed the security guidelines of the <Nodal Agency>’s premises.

d) Promptly on reasonable request at any time during the exit management period, the Implementing Agency shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the <Nodal Agency> or its nominated agency a list of all employees (with job titles) of the Implementing Agency dedicated to providing the services at the commencement of the exit management period.

e) Where any national law, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the Implementing Agency to the <Nodal Agency> or its nominated agency, or a Replacement Implementing Agency ("Transfer Regulation") applies to any or all of the employees of the Implementing Agency, then the Parties shall comply with their respective obligations under such Transfer Regulations.

f) To the extent that any Transfer Regulation does not apply to any employee of the Implementing Agency, <Nodal Agency>, or its Replacement Implementing Agency may make an offer of employment or contract for services to such employee of the Implementing Agency and the Implementing Agency shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the <Nodal Agency> or its nominated agency or any Replacement Implementing Agency.

11.   Knowledge Transfer

a) Implementing Agency will undertake the following activities to ensure that the knowledge about the entire Information Technology System including but not limited to the applications, the design and operational characteristics of these systems are transferred to the <Nodal Agency> Team or the Replacement Implementing Agency. The activities will be aimed at :-

   i. Knowledge transfer of operations.
   ii. Knowledge transfer of technology.
   iii. Knowledge transfer of processes.
   iv. Knowledge transfer of any other processes, etc. not covered by (i) to (iii) above.

b) Some of the key activities to be carried out by Implementing Agency for knowledge transfer will be :-

   i. Documents to explain design and characteristics.
ii. The code walks through to explain the characteristics of the software applications.

iii. Joint operations of key activities or services.

iv. Briefing sessions on process and process Documentation.

v. Share the logs of the bugs, the changes to the codes etc.

vi. Briefing sessions on applications, the way these are deployed and integrated.

c) Transfer technology and up-to-date know-how relating to operation and maintenance of the software and hardware.

d) Sharing of data and information on the following

i. Consumption and utilization of resources (such as people, software, and equipment)

ii. Use of Software across Applications and Servers

iii. Business process procedures and work flow

iv. Business process volumes and statistics;

v. Business process training modules;

vi. Performance histories

vii. Then current and projected work volumes

e) Any other data reasonably requested by <Nodal Agency> about the Services as necessary for <Nodal Agency> or its nominee to assume responsibility for continued performance of the Exit Management Services.

f) Some of the key activities/obligations for effective knowledge transfer will be

i. Participate in workshops, meetings, and “hands-on” activities where requested by <Nodal Agency>.

ii. Provide <Nodal Agency> or its nominee with information about the Services as necessary for <Nodal Agency> or its nominee to assume responsibility for continued performance of the Services in an orderly manner so as to minimize disruption to the operations of <Nodal Agency>

iii. Permit <Nodal Agency> and/or <Nodal Agency>’s designee to bring laptops and recording devices to, and use other equipment and connectivity at Implementing Agency’s Sites to facilitate knowledge transfer.

iv. Provide training to <Nodal Agency> or its nominee’s personnel in the performance of the Services that are to be transferred.

v. Permit <Nodal Agency> to assign <Nodal Agency> Personnel or <Nodal Agency>’s nominee’s personnel to work with Implementing Agency’s Personnel to facilitate knowledge transfer from Implementing Agency to <Nodal Agency> or its nominee.
vi. Provide access to Implementing Agency Personnel who have worked or are working on the <Nodal Agency> account (even if they are not dedicated to the <Nodal Agency> account).

vii. Explain any relevant standards and procedures to <Nodal Agency>’s operations staff or <Nodal Agency>’s nominee (including business process procedures and work flow).

viii. If known, provide a contact listing of current potential alternative sources of resources, including skilled labour and spare equipment parts.

ix. Provide a list of all Statements of Work and other “in-flight” work current at the commencement of the Exit Management Period with the list to be updated by Implementing Agency at the end of the Exit Management Period.

12. Organizational transfer

Implementing Agency will transfer the organizational structure developed during the Term to support the delivery of the Exit Management Services. This will include:

a) Document, update, and provide functional organization charts, operating level agreements with Third-Party contractors, phone trees, contact lists, and standard operating procedures.

b) Transfer physical and logical security processes and tools, including cataloguing and tendering all badges and keys, documenting ownership and access levels for all passwords, and instructing <Nodal Agency> or its nominee in the use and operation of security controls.

13. Operational Transition Deliverables

Implementing Agency will perform all activities required to effect a smooth and efficient transition of operational responsibility for the Exit Management Services. This will include providing to <Nodal Agency> or its nominee:

a) Machine-readable object code, master file and field descriptions and record layouts for the Software (including third-party Software if permitted by the applicable licenses), along with run documentation and job control listings, and other similar information necessary for <Nodal Agency> or its nominee to run the Equipment and Software for <Nodal Agency>’s benefit.

b) Schedules, operating details (including contents of system “fact sheets”), up-to-date file layout details and usage information, batch schedules, run books and technical plans, job stream, restart and maintenance activities documentation, system and Software control scripts (including documentation explaining these scripts), database descriptions,
and other information and Application documentation necessary for <Nodal Agency> or its nominee to run Equipment and Software for <Nodal Agency’s> benefit

c) Object libraries and reference files used to provide the Exit Management Services, subject to the intellectual property provisions of this Agreement

d) The Source Code for any Software in relation to which:
   i. <Nodal Agency> owns the copyright.
   ii. <Nodal Agency> has been granted a license to modify or adapt extending beyond the Exit Management Period.
   iii. Together with any other available material which a relevantly qualified programmer would require to modify or adapt that Software

e) Systems’ support profiles, enhancement logs, and incident tracking/resolution documentation (including documents recording how incident resolution was achieved, historical data, and common incidents within the <Nodal Agency> environment)

f) Alarm and performance monitoring system information

g) Work volumes, staffing requirements (including the type of support (for example: physical, remote access or lights out), percentage breakdown of support personnel across the Exit Management Services, location and contact details of staff and functions performed), actual Service Levels, and information on historical performance for each equipment component, system or application over the preceding 12 months

h) Capacity management, information including capacity management planning models, trends, CPU and application processing structures, information about the operation and performance of applications in the <Nodal Agency> environment and usage factors for applications

i) Performance tuning information (including access to potential future opportunity model)

j) Up-to-date information about the Services and a full inventory of assets

k) Documented demarcation points for each portion of the Services, including any service level agreements between Implementing Agency and other <Nodal Agency> Group members, business units and any Third Parties

l) A list of work orders and proposals expected to be in progress as of the Termination Date or Expiration End Date including current status

14. Other Services during Exit Management

Implementing Agency will provide other services during the Exit Management Period as set out in the Exit Management Plan, which may include:

a) Copy and deliver to <Nodal Agency> or its nominee all relevant requested data files.

b) In conjunction with <Nodal Agency> or its nominee, conduct a rehearsal of the migration before cutover as scheduled by <Nodal Agency> on <specify number> Business Days written notice.
c) Deliver the content listings of all relevant requested data files and printouts of control file information to <Nodal Agency> or its nominee.

d) Provide reasonable assistance to <Nodal Agency> or its nominee in loading the data files.

e) Provide reasonable assistance to <Nodal Agency> or its nominee with the movement of data from the then existing databases to the new environment.

f) Provide an image copy of each operating system environment in dump/restore mode.

g) Provide reasonable assistance to <Nodal Agency> or its nominee in the execution of parallel testing of applications migrated back to <Nodal Agency> or its nominee.

h) Ensure continuity of operations through the period to the end of the Exit Management Period.

15. **Transfer of Assets**

As part of the Exit Management Activity the Implementing Agency is required to transfer the assets as listed here.

a) Hand over the possession of the Implementing Agency’s Project Assets, <Nodal Agency> Supplied Equipment, Documentation, and any Assets exclusively purchased for <Nodal Agency> and/or created during the term of this Agreement to the <Nodal Agency> or its nominee. All the ownership rights etc. on the application, infrastructure, and all the Assets will always remain vested with the <Nodal Agency>. <Nodal Agency> shall be entitled to claim the damages in case of damage to any of the above mentioned equipment, facilities and sites etc. by the <Nodal Agency>.

b) Transfer all rights, titles and interests in such Implementing Agency’s Project Assets (as the <Nodal Agency> in its sole discretion may determine) to the <Nodal Agency> or its nominee and transfer information which are required to be transferred to the <Nodal Agency> in accordance with this Agreement and execute such deeds and documents as may be necessary for the aforesaid purposes including completing all legal or other formalities required in this regard.

c) Hand over to the <Nodal Agency> or its nominee all documents including but not limited to, process specifications, testing specifications, test results, manuals and records relating to operation and maintenance of the software and hardware.

d) Transfer/assign or cause to be transferred/assigned to the <Nodal Agency> or its nominee any OEM contracts which are valid and subsisting and those OEM contracts which the <Nodal Agency> has chosen to take over, and cancel or cause to be cancelled such OEM contracts not to be transferred/assigned to the <Nodal Agency> or its nominee. For this purpose, Implementing Agency shall ensure that all OEM contracts are assignable in favor of the <Nodal Agency> or its nominee without any further action on part of the respective counterparties. Implementing Agency shall entirely at its cost, terminate all such OEM contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the <Nodal Agency>.
e) Transfer/assign all the warranties for the hardware and software, in favour of the <Nodal Agency> or its nominee, which are required by the <Nodal Agency> to continue to operate or use either during the design and development Stage or annual maintenance Stage.

f) Until transfer in accordance with the Agreement, during the Project, the Assets shall remain at the sole risk of Implementing Agency except for any loss or damage caused to or suffered by Implementing Agency due to any direct default on the part of the <Nodal Agency> under this Agreement.

g) Equipment
   i. On request by <Nodal Agency>, Implementing Agency shall assign or transfer to <Nodal Agency>, or its nominee, all hardware that is substantially or wholly used in connection with performing the Exit management Services.

h) Third-Party Contracts
   i. If requested by <Nodal Agency>, Implementing Agency must assign, novate, or assist <Nodal Agency> or its nominee in negotiating new Third-Party contracts (other than Software licenses with a Third Party) including any Subcontracts, which it was wholly or substantially using in the provision of the Exit management Services immediately before termination or expiry.
   ii. Implementing Agency must use all reasonable endeavours to ensure that no charge to <Nodal Agency> will be due upon transfer and must notify <Nodal Agency> in writing where such transfer costs apply and detail the costs or the method of determining the costs as part of the Exit Management Plan.

16. Objective and the duration of the Knowledge Enablement Service

a) The Knowledge Enablement Services are meant to create a complete understanding of the systems for <Nodal Agency>, its nominees or any designated and to enable them for either technology refreshment or rebuilding of the system with different tools/technology architecture or plan for Exit Management.

b) The provisions for the Knowledge Enablement Services are invoked anytime during the period of the Agreement.

c) There will not be any limitations on the number of occasions <Nodal Agency> can seek the Knowledge Enablement Services during the Agreement period.

d) The Knowledge Enablement Services are initiated whenever <Nodal Agency> or its designated agency requests for it through a written communication.

e) On request by <Nodal Agency> or its designated agency the Implementing Agency will provide a Knowledge Enablement Plan which would include a minimum of - The activities, structure, responsibilities the deliverables, acceptance mechanisms etc.

f) The Knowledge Enablement Plan comes into effect only when it has been accepted by <Nodal Agency> or its designated agencies.
g) The Implementing Agency will provide the Knowledge Enablement Services for a minimum period of **<specify Number>** months or until the later of:
   i. All tasks set out in the Knowledge Enablement Plan have been completed.
   ii. The Acceptance Criteria set out in the Knowledge enablement Plan have been met, as reasonably determined by <Nodal Agency>
   iii. Either the <Nodal Agency> or its designated nominees has all the necessary information on underlying the operations and technology of the systems built for <Nodal Agency> by the Implementing Agency, or has the information to enable technology refreshment or exit management activities.

17. **The Key activities of the knowledge enablement Services**

a) Implementing Agency will undertake the activities listed in clause 11 of this Schedule to ensure that the knowledge about the entire Information Technology System including but not limited to the applications, the design and operational characteristics of these systems are transferred to the <Nodal Agency> or its designated agencies. The activities will be aimed at :-
   i. Knowledge transfer of operations.
   ii. Knowledge transfer of technology.
   iii. Knowledge transfer of processes.
   iv. Knowledge transfer of any other processes, etc. not covered by (i) to (iii) above.

b) Some of the key activities to be carried out by Implementing Agency for knowledge transfer will be :-
   i. Documents to explain design and characteristics.
   ii. The code walkthrough, application walkthroughs to explain the characteristics of the software applications.
   iii. Briefing sessions on process and process Documentation.
   iv. The logs of the bugs, the changes to the codes etc.
   v. Briefing sessions on applications, the way these are deployed and integrated.

c) Sharing of data and information on the following
   i. Consumption and utilization of resources (such as people, software, and equipment)
   ii. Use of Software across Applications and Servers
   iii. Business process procedures and work flow
   iv. Business process volumes and statistics;
   v. Performance histories
   vi. Then current and projected work volumes

d) Any other data reasonably requested by <Nodal Agency> about the application and technology as necessary for <Nodal Agency> or its nominee to know the details of the system.
e) Some of the key activities/obligations for effective knowledge transfer will be
   i. Permit <Nodal Agency> and/or <Nodal Agency>’s designee(s) to bring laptops and
      recording devices to, and use other equipment and connectivity at Implementing
      Agency’s Sites to facilitate knowledge transfer.
   ii. Provide access to Implementing Agency Personnel who have worked or are
      working on the <Nodal Agency> account (even if they are not dedicated to the
      <Nodal Agency> account).
   iii. Explain any relevant standards and procedures to <Nodal Agency>’s operations
      staff or <Nodal Agency>’s nominee (including business process procedures and
      work flow).

f) Information on operating details, file layout details and usage information, batch
   schedules, run books and technical plans, job stream, restart and maintenance activities
   documentation, database descriptions, and other information and Application
   documentation

g) Systems’ support profiles, enhancement logs, and incident tracking/resolution
   documentation (including documents recording how incident resolution was achieved,
   historical data, and common incidents within the <Nodal Agency> environment)

h) Capacity management, information including capacity management planning models,
   trends, CPU and application processing structures, information about the operation and
   performance of applications in the <Nodal Agency> environment and usage factors for
   applications

i) Performance tuning information (including access to potential future opportunity
   model)

j) Up-to-date information about the Services and a full inventory of assets

25. SCHEDULE 3: Transition Plan

1. Transition Plan

   a. The transition plan will identify the objectives, scope, and all of the transition tasks
      to be performed, the completion date for each transition task, the acceptance
      criteria to be applied by <Nodal Agency> in evaluating transition deliverables, the
      allocation of responsibilities between the Parties, the specific requirements from the
      current Implementing Agency and <Nodal Agency> and all other pertinent details.

   b. The Transition Plan will show the required information for the Transition project as a
      whole and separately and detailed for every service, site, and so forth. Any revisions
      to the Transition Plan should be communicated in advance to <Nodal Agency> and
      get the same approved by <Nodal Agency>.
Until completion of Transition, Implementing Agency will, acting reasonably, update and develop the Transition Plan, including addressing the items specified in the Transition Responsibilities and the impact of issues identified by either Party. Implementing Agency will also make changes to the Transition Plan as reasonably requested by <Nodal Agency> from time to time.

d. In developing or changing the Transition Plan, Implementing Agency will not impose any obligations on <Nodal Agency> or the Current Implementing Agency, or change <Nodal Agency>’s or Current Implementing Agency’s Transition obligations specified in the Transition Plan (including their timing), without <Nodal Agency>’s approval.

e. As part of the RFP Response, the Implementing Agency will submit a broad Transition Plan Description. Implementing Agency will submit, for <Nodal Agency> acceptance, an updated and comprehensive Transition Plan to <Nodal Agency> before the start of the transition.

1.1 Transition Plan Details

The transition plan shall contain:

a. Overall methodology and approach to complete the Transition including the various Transition phases / milestones and dates of the phases / milestones relative to the Project Commencement Date.

b. For each of the milestones, the Implementing Agency should define a list of entry criteria, exit criteria (which may or may not be a deliverable) and quality gates. <Nodal Agency> or a dedicated team of experts on its behalf will review the list as well as suggested formats for transition deliverables during the transition planning stage that will have to be incorporated by the Implementing Agency.

c. Transition Project Plan

   i. Implementing Agency will develop a detailed project plan as part of the Transition Plan, which will detail the specific tasks and activities to be performed as part of the Transition, including the name of each task or activity, the start and stop dates, the required resources, the dependencies between tasks, and the completion percentage (“Transition Project Plan”).

   ii. Implementing Agency will consult with <Nodal Agency> to add any <Nodal Agency> tasks into the Transition Plan that are deemed necessary by the Parties to ensure a complete and integrated approach to Transition planning and Project Management.

d. A Gantt chart or similar representation reflecting a high-level overview of the Transition Project Plan should also be provided to <Nodal Agency>. 
e. Major Deliverables within each milestone, necessary for the effective transfer of each function, that the Implementing Agency will present to <Nodal Agency> for acceptance, including

i. Major deliverables ("Transition Deliverables")

ii. Formats for each of the deliverables

iii. The acceptance criteria relating to each of the Transition Deliverables ("Transition Deliverable Acceptance Criteria")

f. A process and set of standards acceptable to <Nodal Agency> to which the Implementing Agency will adhere in the performance of the Transition Services and that will enable <Nodal Agency> to determine whether Implementing Agency has successfully completed the Transition Services and provided the Deliverables associated with the Transition Services in accordance with the Acceptance criteria specified in the Transition Plan

g. For each major milestone, a description of the manner in which the Implementing Agency will work with <Nodal Agency> and Current Implementing Agency to facilitate seamless transfer of the Service (and clearly identify the risks it envisages and how its solution and approach mitigates the impact of these risks)

h. A list of key assumptions made by Implementing Agency in building the plan

i. The methodology for knowledge transfer between current Implementing Agency personnel and Implementing Agency personnel that will subsequently be responsible for the function, including:

i. The detailed timing of knowledge transfer activities, including identifying the knowledge assets, defining the transfer approach, interview schedules, shadowing requirements, and so forth

ii. The methodology and timing for capturing knowledge assets, documenting these assets, and making them available to the Implementing Agency’s Personnel and <Nodal Agency>

iii. Details on the timing and method for the Implementing Agency to report to <Nodal Agency> the progress of knowledge transfer

iv. The processes and methods the Implementing Agency will use to help <Nodal Agency> validate that a successful knowledge transfer has occurred such as specific exit criteria
v. A detailed description of the effort required from the Current Implementing Agency and <Nodal Agency> to support the knowledge transfer process by phase / week / month of the Transition

j. The roles and responsibilities of the Parties (<Nodal Agency> and Current Implementing Agency) during the Transition Period such that for all tasks for which Implementing Agency identifies as Current Implementing Agency’s and <Nodal Agency>’s responsibilities, Implementing Agency will describe the level of effort anticipated.

k. Description of Software and “tools” to be deployed by Implementing Agency to provide the Service, including any data loading or data migration activities required

l. Implementing Agency’s description of how to handle insufficiently documented systems, including operational documentation

m. The Security, IT Service Continuity Management (ITSCM), recovery and contingency plan considerations, activities, and Implementing Agency’s commitments thereto during the Transition, including the Implementing Agency’s description of how access to critical infrastructure will be restricted to authorized Implementing Agency Personnel

n. Provisions concerning the oversight of the Transition processes to follow or supplement and enhance those provided in Governance Schedule of the Draft Contract.

o. The definition of skill profiles to which Implementing Agency Personnel will comply and the proposed recruitment cycle, on-boarding, and training plan (if any)

2. Transition Risk Management Plan
   a. The Implementing Agency shall identify potential risks, set out possible mitigation approaches, and identify specific tasks the Implementing Agency will undertake to help avoid identified risks connected with the Transition in order to provide for rapid recovery in case of any Incidents. In addition, Implementing Agency will clearly identify and promptly report to <Nodal Agency> any risks identified and those mitigations that <Nodal Agency> is responsible for implementing.

   b. Implementing Agency shall use a Risk Management Framework to help identify and categorize the potential impact and probability of its occurrence (low or remote / medium or possible / high or likely) to allow <Nodal Agency> to provide objective and subjective assessments of the transition risk.

   c. Implementing Agency will maintain a Transition Risk Management Plan until all risk mitigation actions have been completed.
d. Implementing Agency will develop, for <Nodal Agency> approval, contingency plans for each identified risk that appears to be manifesting an actual or potential problem and that is not yet sufficiently covered by the agreed Transition Risk Management Plan.

e. Indicative details in the Risk Management Plan to be submitted to <Nodal Agency> before the start of transition and kept up to date:

   i. Risk Description
   
   ii. Existing Controls
   
   iii. Probability
   
   iv. Impact
   
   v. Impact Description
   
   vi. Responsible Party
   
   vii. Risk Response
   
   viii. Action Plan
   
   ix. Contingency Plan

3. Transition Management

3.1 Transition Team

   a. Implementing Agency will appoint a senior project manager who will have overall responsibility for the management, performance, and delivery of Transition and who will be a dedicated escalation point of contact for <Nodal Agency> in respect of Transition (“Transition Manager”). The Transition Manager will be qualified in an industry-standard project management methodology, qualified in the Implementing Agency’s quality management system(s) and have detailed knowledge of the Agreement.

   b. Implementing Agency should deploy a transition team sufficiently staffed and experienced to manage the Transition Services. The transition team shall be staffed with experienced project managers to handle the individual services.

3.2 Managing and Monitoring Transition

Implementing Agency will be responsible for managing, monitoring and implementing Transition, including:
a. Proactively identify, monitor and manage any significant risks or issues in relation to Transition, including:
   i. Further develop and update the Transition Risk Management Plan for risks identified through Transition.
   ii. Institute formal risk mitigation strategies.
   iii. Take appropriate preventive measures.
   iv. Develop contingency plans for rapid recovery from actual or potential Incidents.

b. Manage (including project managing), coordinating and planning all aspects of Transition (whether performed by Implementing Agency, <Nodal Agency>, or current Implementing Agency or any Third Party).

c. Monitor progress of all Transition tasks and responsibilities (whether performed by new Implementing Agency, <Nodal Agency>, or current Implementing Agency or any Third Party) against the Transition Plan and promptly escalate to <Nodal Agency> any failures (or potential failures) to perform any tasks or responsibilities, including failures by <Nodal Agency> or Third Parties.

d. Resolve any Incidents or Problems that arise with respect to Transition.

e. Define an escalation process to be used if there is a failure in any part or component of Transition.

f. Establish, as soon as practicable, the necessary communications and interfaces new Implementing Agency, <Nodal Agency>, current Implementing Agency, the Authorized Users, and Third Parties performing services that will be replaced by the Services on the relevant Effective Date of Project Commencement.

g. Where workshops are needed as a tool to deliver Transition, and to initiate, administer, and lead the workshops (including providing <Nodal Agency> with advance notice of the timing, location, and proposed agenda for such workshops as appropriate).

3.3 Reports

a. Implementing Agency will provide <Nodal Agency> with a detailed progress report weekly during Transition. This report will describe the following:
   i. An executive level summary of the Transition progress to date, including an updated summary project plan and project highlights
ii. An updated Gantt chart detailing the status of key Transition activities

iii. A listing of all Transition Deliverables and Transition Milestones, including acceptance status, the estimated time to completion, days overdue, contract completion date, and actual completion date and comments, as well as a report identifying the status of all Transition Milestones (for example: red, amber, green)

iv. A listing of all unresolved issues related to the execution of the Transition Plan, including those for which <Nodal Agency> has primary responsibility, along with due dates, priority, responsible party, and an assessment of the potential and actual business impact and impact to the Transition Plan

v. Status of the any risks, including those identified in the Transition Risk Management Plan, as well as the steps being taken to mitigate such risks

b. During Transition, Implementing Agency will keep the <Nodal Agency> informed of the current status of the Transition Plan activities through reports, proactive discussions, and the proactive sharing of information.

3.4 Meetings and Governance

a. In addition to any governance meetings described in the Governance Schedule of Draft Contract, the Project Directors (and their designees) will meet at least twice every month until completion of the Transition in order to review the status of the Transition and take appropriate action.

b. The Implementing Agency and <Nodal Agency> Transition Managers will meet on twice a week basis (or more frequently as required by <Nodal Agency>) during Transition to review the status of Transition and to ensure that the objectives of Transition are being met.

3.5 Financial Considerations

a. Implementing Agency will have responsibility for all costs associated with Implementing Agency’s Personnel (including staff of any Subcontractors), Equipment, Software, or other resources required to execute and will manage the Transition Plan.

b. Implementing Agency will bear the costs of all adverse impacts to <Nodal Agency> and/or Implementing Agency caused by a delay in the Transition.

c. Implementing Agency will be liable for liquidated damages in the event Implementing Agency fails to achieve Transition Milestones as per the timelines defined in the RFP.
3.6 Required Consents

a. Implementing Agency will obtain all required consents (and pay any fees) necessary to complete the Transition, to perform the Services and for the transfer or right to use of any contracts, Equipment and Software, which are acquired by Implementing Agency from <Nodal Agency> (or Current Operator) or which <Nodal Agency> makes available for Implementing Agency to use in performing the Services.

b. If a required consent cannot be obtained, Implementing Agency will determine and adopt, subject to <Nodal Agency>‘s prior written approval, alternative approaches that allow the Services to be performed without the required consents.

26. ANNEXURE

26.1. Designing Service Performance Specification

SLAs define the quality, efficiency and timeliness of service being delivered as part of a PPP project. Some of the SLA based guidelines to be followed are:

- SLAs should be performance and service outcome driven
- SLAs should be realistic, solution specific/compatible and evolving in nature
- SLAs should be consistent with and match the functional and technical specifications of application software, hardware, network and other installations’—it should not be developed in isolation
- SLA penalty must not be applied cumulatively by counting each equipment that has/had failed due to a single problem
- SLA penalties must be applied on services only, and not on CapEx items already supplied and (most likely) owned by the customer

<< An Illustrative example of SLA is provided below>>
1. **Illustrative Templates of SLA**

A template of SLAs for a PPP RFP is provided. The same may be used as templates and customized. It may be noted that the SLAs are “output” focused and not concerned about the “inputs” into the system.

<table>
<thead>
<tr>
<th>No.</th>
<th>Service Level Parameter</th>
<th>Target Service Level</th>
<th>SLA Specific Severity Weight</th>
<th>Performance Level</th>
<th>Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<tr>
<td></td>
<td>A. Helpdesk (Severity Weight = 15) For the following Helpdesk SLAs, calls made between vendor’s own operators / personnel shall not be considered for calculation of SLAs</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Average Operator Availability  (Sum of minutes for which all Helpdesk operators are available / Sum of minutes scheduled for availability of all Helpdesk operators)*100</td>
<td>100%</td>
<td>2</td>
<td>Slippage a. .01-15.00% b. 15.01-30.00% c. &gt;30.00%</td>
<td>MIS reports generated from the Helpdesk System deployed, operated and maintained by the Selected Vendor. Further there can be random checks for verifying the availability of all the Help Desk operators by a team of Department representatives.</td>
</tr>
<tr>
<td>2.</td>
<td>Average Handle Time  Handle Time = Talk Time + Hold Time + After Call Wrap up time  Average Handle Time = Sum of Handle time for all calls/Total No. of Calls</td>
<td>180 secs</td>
<td>4</td>
<td>Slippage a. .01 to 45 secs b. 45.01 to 90 secs c. &gt;90 secs</td>
<td>MIS reports generated from the Helpdesk System deployed, operated and maintained by the Selected Vendor. Audit of Voice recording of calls by Department officials / Third Party.</td>
</tr>
<tr>
<td>3.</td>
<td>Average Speed of Answer  Speed of answer = Time taken</td>
<td>10 secs</td>
<td>2</td>
<td>Average Speed of</td>
<td>MIS reports generated from the Helpdesk System deployed, operated and maintained by</td>
</tr>
</tbody>
</table>
## Service Agreement Template for Public Private Partnership Projects

### to receive a call

**Average Speed of Answer** = (Sum of Speed of answer of all calls)/Total No. of calls

<p>| | | | |</p>
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<tr>
<td></td>
<td></td>
<td>Answer</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>a. 10.01 to 20 secs</td>
<td>b. 2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. 20.01 secs to 30 secs</td>
<td>c. 4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c. &gt;30 secs</td>
<td>the Selected Vendor.</td>
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</tbody>
</table>

### Average Call Lost Rate

(Total No. of calls lost because they were not attended by an operator / Total incoming calls)*100

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<tr>
<td></td>
<td></td>
<td>Call Lost Rate</td>
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<tr>
<td></td>
<td></td>
<td>a. 1.01-2.00%</td>
<td>a. 1.5</td>
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<td></td>
<td></td>
<td>b. 2.01-4.00%</td>
<td>b. 3</td>
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<td></td>
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<td>c. &gt;4.00%</td>
<td>c. 6</td>
</tr>
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<td></td>
<td>MIS reports generated from the Helpdesk System deployed, operated and maintained by the Selected Vendor.</td>
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### Call Handling Accuracy

5a. Call Handling Accuracy

(No. of calls correctly handled at first level/ Total no. of calls answered)*100

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<tbody>
<tr>
<td></td>
<td></td>
<td>Slippage</td>
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<tr>
<td></td>
<td></td>
<td>a. 99% to 95.01%</td>
<td>a. 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. 95% to 90.01</td>
<td>b. 2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c. 90% to 85.01%</td>
<td>c. 4</td>
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<tr>
<td></td>
<td></td>
<td>Audit of Voice recording of calls by Department officials / Third Party.</td>
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5b. No. of re-escalations of a particular issue already escalated once

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<tr>
<td></td>
<td></td>
<td>MIS Reports from the Help Desk Software as well as Audit of Voice recording of calls by Department officials / Third Party.</td>
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</table>

### B. Front Window (Severity Weight = 10)

1. Average Operator Availability

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<tr>
<td></td>
<td></td>
<td>MIS reports generated from the system</td>
<td></td>
</tr>
</tbody>
</table>
### Service Agreement Template for Public Private Partnership Projects

<table>
<thead>
<tr>
<th>Description</th>
<th>Availability</th>
<th>Token Call Time</th>
<th>Token Processing Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Total minutes for which all Front window operators are available / Total minutes scheduled for availability of all Front window operators)*100</td>
<td>98.00%</td>
<td>a. 30.01 to 45 secs</td>
<td>Time between generation of a token to generation of the acknowledgement for the</td>
</tr>
<tr>
<td></td>
<td>b. 97.990 to 95.00%</td>
<td>b. 45.01 to 60 secs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. &lt;95%</td>
<td>c. &gt;60 secs</td>
<td></td>
</tr>
<tr>
<td>2. Average Token Call Time (to be measured only at Front Window)</td>
<td>b. 2</td>
<td>a. 0.5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. 4</td>
<td>b. 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>c. 2</td>
<td></td>
</tr>
<tr>
<td>System will automatically log-off when idle for 10 minutes.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Token Processing Time (to be measured only at Front Window) = Time between generation of a token to generation of the acknowledgement for the</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>deployed, maintained and operated by the vendor at the Front Window</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operator Availability = Sum of (Re Log-in time of Operator after system auto log off – System auto log-off time + 10) over the period. + Sum of (First Log-in time of Operator – Start time of the Front Window) over the period</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MIS reports generated from the system deployed, maintained and operated by the vendor at the Front Window.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service Type</td>
<td>Description</td>
<td>SL</td>
<td>Slippage</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
<td>----</td>
<td>----------</td>
</tr>
</tbody>
</table>
| 3a. Service Type 1: | 1min 1 | a. 60.01 to 75 secs  
  b. 75.01 to 90.00 secs  
  c. >90 secs | a. 0.5  
  b. 1  
  c. 2 | MIS reports generated from the system deployed, maintained and operated by the vendor at the Front Window. |
| 3b. Service Type 2: | 10 mins 2 | a. 10.1 mins to 11 mins  
  b. 11.01 to 12 mins  
  c. >12 mins | a. 1  
  b. 2  
  c. 4 | MIS reports generated from the system deployed, maintained and operated by the vendor at the Front Window. |
| 3c. Service Type 3: | 25 mins 2 | a. 25.01 mins to 26 mins  
  b. 26.01 mins to 27 mins  
  c. >27 mins | a. 1  
  b. 2  
  c. 4 | MIS reports generated from the system deployed, maintained and operated by the vendor at the Front Window. |
| 4. Average Delay in Document Submission Time | Delay in Document Submission = Day of submission of documents by Vendor to Dept  
  - Day /Time of submission of documents by Citizen/Applicant at Front Window  
  Average Delay in Document Slippage = s  
  a. s<=1 day  
  b. 1 day <s<= 2 days  
  c. s >2 days | a. 0.5  
  b. 1  
  c. 2 | (For Front Window the bidder is required to submit the documents on daily basis.  
  MIS reports acknowledging the receipt of such documents by the authorized officer in the District.  
  For the purpose of calculation of delay, time between 12 noon on a day to 12 noon the next day will be considered “1 day”.
  Eg, Citizen/Applicant submits document at Front Window on <Date> at <time> |
<table>
<thead>
<tr>
<th>Service Agreement Template for Public Private Partnership Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission Time = Sum of delay in document submission for all documents / Total no. of documents submitted. This includes all application and their supporting documents etc collected from Citizens at the Front Window. Note: Time of submission of document: 12 noon the next working day.</td>
</tr>
<tr>
<td>To fully meet the SLA vendor is required to submit the documents to the Department by &lt;Date and time&gt;, If he submits the documents to Department on &lt;Date and time&gt;, the delay is counted as: &lt;Date and time&gt; to &lt;Date and time&gt; = 1 Day &lt;Date and time&gt; to &lt;Date and time&gt; = 2 Day &lt;Date and time&gt; to &lt;Date and time&gt; = 3 hrs. Total Delay = &lt;Days &amp; hours&gt;. Service Credits deducted: &lt;&gt;</td>
</tr>
<tr>
<td>5. Quality of Service at Front Window</td>
</tr>
<tr>
<td></td>
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</tr>
</tbody>
</table>
### C. Dispatch (Severity Weight = 5)

|   | Average Delay in Dispatch | 0 | 3 | Slippage | a. 1 day  
|   |                           |   |   |          | b. 2 days  
|   |                           |   |   |          | c. > 2 days  
|   |                           |   |   | a. 1.5   | b. 3  
|   |                           |   |   |          | c. 6  
|   | Delay in Dispatch = No. of days of delay from the scheduled day of dispatch  
|   | Average Delay in Dispatch = Sum of Delay in Dispatch for all documents/Total no. of Documents scheduled for Dispatch  
|   | Note: Schedule day of dispatch for a document: Same day of receipt of document e.g. if a document is submitted for dispatch on day 1 (9am to 4 pm) The scheduled day of dispatch is day 1  
|   | Say, the actual time of dispatch is day 3 then the delay in dispatch = day 3 - day 1 = 2 days  
|   | MIS reports regarding the date, time and consignment no. of dispatch of documents submitted by the Department officials to the vendor.  

2. Delivery Timeliness  
\[ \text{Delivery Timeliness} = \frac{A+B}{2} \]

A. For Documents within <State>:  
(No. of documents for which the first delivery attempt has been made within 1 day of  
|   | 100% | 2 | Slippage  
|   | (as % of Base metric)  
|   | a. 0.01-5.00%  
|   | b. 5.01-20.00%  
|   | c. > 20%  
|   | a. 1  
|   | b. 2  
|   | c. 4  
|   | MIS reports regarding the status of delivery of the documents dispatched by the vendor.  

### Note:
- Average Delay in Dispatch = Sum of Delay in Dispatch for all documents/Total no. of Documents scheduled for Dispatch.
- Schedule day of dispatch for a document: Same day of receipt of document.
- For example, if a document is submitted for dispatch on day 1 (9am to 4 pm), the scheduled day of dispatch is day 1.
- If the actual time of dispatch is day 3, then the delay in dispatch = day 3 - day 1 = 2 days.
- MIS reports regarding the date, time, and consignment no. of dispatch of documents submitted by the Department officials to the vendor.
<table>
<thead>
<tr>
<th>B. For Documents Outside &lt;State&gt;:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(No. of documents for which the first delivery attempt has been made within 3 days of dispatch of document/No. of documents dispatched)*100</td>
</tr>
</tbody>
</table>

### D. Record Room (Severity Weight = 5)

<table>
<thead>
<tr>
<th>1. Average delay in File Retrieval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Note: The vendor is allowed 30 mins to deliver the file to the requestor</td>
</tr>
<tr>
<td>Delay in file retrieval = Time of Request for file (in minutes) + 30 – Time of delivery of file</td>
</tr>
<tr>
<td>Average delay in file retrieval = Sum of Delay in File Retrieval for all file retrieval requests/Total no. of file retrieval requests in the period.</td>
</tr>
<tr>
<td>0</td>
</tr>
<tr>
<td>a. 30.01 - 45 mins</td>
</tr>
<tr>
<td>a. 1.5</td>
</tr>
<tr>
<td>Reports regarding the File request time, time of delivery etc maintained in the system deployed by the Vendor.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Quality of Service – Record Room</th>
</tr>
</thead>
<tbody>
<tr>
<td>Score of atleast 80%</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>a. 75-80%</td>
</tr>
<tr>
<td>a. 1</td>
</tr>
<tr>
<td>Surprise checks by authorized officers in the Department to check</td>
</tr>
<tr>
<td>Up-to-date inventorization of files</td>
</tr>
</tbody>
</table>
### E. Application (Severity Weight = 30)

<table>
<thead>
<tr>
<th></th>
<th><strong>Average Home Page opening time</strong></th>
<th><strong>&lt; 2 seconds</strong></th>
<th><strong>5</strong></th>
<th><strong>&lt;65%</strong></th>
<th><strong>MIS reports generated from the system deployed, maintained and operated by the vendor</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>a. 2.01 - 3.0 secs</td>
<td>a. 2.5 b. 5 c. 10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>b. 3.01 - 5.0 secs</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>c. &gt;5 secs</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Average time for User Login</strong></td>
<td><strong>&lt; 2 seconds</strong></td>
<td><strong>5</strong></td>
<td><strong>a. 2.01 - 3.0 secs</strong></td>
<td><strong>a. 2.5 b. 5 c. 10</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>b. 3.01 - 5.0 secs</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>c. &gt;5 secs</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Average time for submission of forms/data by Citizen/Applicants (Time between pressing the ‘submit’)</strong></td>
<td><strong>&lt; 1 min</strong></td>
<td><strong>5</strong></td>
<td><strong>a. 1.01 – 1.5 mins</strong></td>
<td><strong>a. 2.5 b. 5 c. 10</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>b. 1.51 - 2.5 mins</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Accessibility of files</strong></td>
<td><strong>&lt;65%</strong></td>
<td><strong>Feedback collected from Departmental Staff through feedback forms designed by the vendor, approved and administered by the Department. Parameters for feedback:</strong></td>
<td><strong>Upkeep and Cleanliness of Record Room</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Maintenance of files</strong> (File numbering, labelling, indexing, overall condition of file etc.).**</td>
<td><strong>Sample Size for the same will be decided by &lt;Nodal Agency&gt; at time of implementation</strong></td>
<td></td>
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</tr>
<tr>
<td><strong>button and generation of acknowledgement of successful or unsuccessful submission from the system)</strong></td>
<td></td>
<td><strong>c. &gt; 2.5 mins</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>4. Average time to throw by results of queries by a Citizen/Applicant</strong></td>
<td><strong>&lt; 5 seconds</strong></td>
<td><strong>5</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>a. 5.01 - 7.0 secs</td>
<td>a. 2.5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. 7.01-10.0 secs</td>
<td>b. 5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. &gt;10 secs</td>
<td>c. 10</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>MIS reports generated from the system deployed, maintained and operated by the vendor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>5. Average report generation time by internal users on historical data</strong></td>
<td><strong>Centre / Statewide Data Upto 1 quarter</strong></td>
<td><strong>Instances of not meeting the Baseline Figure</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Leased line, Peak Hours: <strong>&lt; 2 mins</strong></td>
<td>a. &lt;2%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Leased line, Non-Peak Hours: <strong>&lt; 1 mins</strong></td>
<td>b. 2.01 – 5%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other connectivity, Peak Hours: <strong>&lt; 4 mins</strong></td>
<td>c. &gt;5%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other connectivity,</td>
<td>a. 3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MIS reports generated from the system deployed, maintained and operated by the vendor</td>
<td>b. 6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Returns Mismatch Report is the Citizen/Applicant-wise report of mismatches obtained after sales purchase reconciliation of the transaction data submitted by a Citizen/Applicant in his return</td>
<td>c. 12</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service</td>
<td>Non-Peak Hours:</td>
<td>Peak Hours:</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>-------------------------------</td>
<td>-----------------</td>
<td>-------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statewide Data</td>
<td>&lt; 2 mins</td>
<td>&lt; 4 mins</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Upto 1 Year Leased line</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Peak</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statewide Data</td>
<td>&lt; 2 mins</td>
<td>&lt; 4 mins</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leased line</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Peak</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other connectivity</td>
<td>&lt; 2 mins</td>
<td>&lt; 8 mins</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Peak</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Other connectivity</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statewide Data</td>
<td>more than 1 year</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leased line</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Service Agreement Template for Public Private Partnership Projects</td>
<td>Peak Hours:</td>
<td>6 mins</td>
<td>Non-Peak Hours:</td>
<td>3 mins</td>
<td>Other connectivity, Peak Hours:</td>
</tr>
<tr>
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</tr>
</tbody>
</table>
### Service Agreement Template for Public Private Partnership Projects

#### 6. Average time for submission of forms/data by internal Staff

<table>
<thead>
<tr>
<th>Time</th>
<th>SLA</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 1 hour</td>
<td>&lt; 30 mins</td>
<td>Other connectivity, Non-Peak Hours: &lt; 30 mins</td>
</tr>
<tr>
<td>&lt; 5 secs</td>
<td>4</td>
<td>a. 5.01 - 7.0 secs&lt;br&gt;b. 7.01-10.0 secs&lt;br&gt;c. &gt;10 secs</td>
</tr>
<tr>
<td>MIS reports</td>
<td>8</td>
<td>MIS reports generated from the system deployed, maintained and operated by the vendor</td>
</tr>
</tbody>
</table>

#### F. System Uptime (Severity Weight = 35)

<table>
<thead>
<tr>
<th>Rank</th>
<th>Average System Uptime</th>
<th>Uptime</th>
<th>Slippage</th>
<th>&quot;System Uptime&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>99.9%</td>
<td>15</td>
<td>a. 0.1-5.00%&lt;br&gt;b. 5.01-15.00%&lt;br&gt;c. 15.01-30.00%&lt;br&gt;d. &gt;30%</td>
<td>&quot;System Uptime&quot; shall mean the time period for which the specified application, portal and other IT Components are available to the internal and external users of the system. Uptime, in percentage, of any component (Non IT &amp; IT) can be calculated as: System Uptime = (1- {(System Downtime)/(Total Time – Planned Maintenance Time)}) * 100 For purpose of calculation of SLAs, following hours will be used:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>a. 5&lt;br&gt;b. 10&lt;br&gt;c. 15&lt;br&gt;d. 30</td>
<td></td>
</tr>
</tbody>
</table>
DC, DR,: 24 X 7
Front office: 6 working days of week, excluding Government Holidays
All other locations: 8 AM to 8PM excluding Saturdays, Sundays and Government holidays

"System Downtime" shall mean the time period for which the specified services / components with specified technical and service standards are not available to the departmental users and excludes the scheduled downtime for preventive maintenance
This includes Servers, storage, Backup, LAN, OS, Application, any other IT and non-IT infrastructure, their sub-components etc. at all Project locations etc.).
The selected vendor will be required to schedule ‘planned maintenance time’ with prior approval of the Department. This will be planned outside working time. In exceptional circumstances, Department may allow the vendor to plan scheduled downtime in the working hours. In any case this should not exceed 0.5% of the total time.
MIS reports generated from the monitoring system deployed and maintained by the
### Service Agreement Template for Public Private Partnership Projects

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td><strong>System Uptime at each location</strong></td>
<td>99.5% at each location</td>
<td>5</td>
<td>Slippage</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>a. Less than 99.5% uptime at zero locations</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>b. Less than 99.5% uptime at upto 5 locations</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>c. Less than 99.5% uptime at 6 to 10 locations</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>a. 2.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>b. 5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>c. 10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Location System Uptime = (1 - (((\text{System Downtime at that Location}) / (\text{Total Time} - \text{Planned Maintenance Time})) \times 100))</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>System Downtime at a location = Time for which system’s users are not able to access the application, portal or any other IT components of the system at that location to perform day to day operations/transactions. This includes Servers, storage, Backup, LAN, OS, Application, any other IT and non-IT infrastructure, their sub-components etc at / for that Project location etc).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>MIS reports generated from the monitoring system deployed and maintained by the Vendor.</td>
</tr>
</tbody>
</table>

| 3. | **WAN availability** |
|    | This includes: |
|    | a) Availability of Connectivity of Data Centre with <Department offices> and upcoming locations. |
|    | b) Internet Bandwidth Availability |
|    | 99.5% | 10 | Slippage |
|    | a. 0.1-5.00% |
|    | b. 5.01-15.00% |
|    | c. 15.01-30.00% |
|    | d. >30% |
|    | a. 2.5 |
|    | b. 5 |
|    | c. 10 |
|    | d. 20 |
|    | MIS reports generated from the monitoring system deployed and maintained by the Vendor. |
4. **Instances of not meeting Issue resolution time (No. of equivalent instances of not meeting issue resolution time / Total equivalent instances of reported issues)*100**

<table>
<thead>
<tr>
<th>Slippage</th>
<th>0%</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. 0.01-10.00%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. 10.01-20.00%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. &gt;20.00%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Resolution time is defined as time from generation of Call No. to time of closure of call as reported in the Helpdesk Application deployed and maintained by vendor.

Resolution time for various types of problems:

- Slippage a. 0.01-10.00% b. 10.01-20.00% c. >20.00%

Equivalent instances are calculated as:

<table>
<thead>
<tr>
<th>Severity</th>
<th>Weight age</th>
</tr>
</thead>
<tbody>
<tr>
<td>S1</td>
<td>1</td>
</tr>
<tr>
<td>S2</td>
<td>¼</td>
</tr>
<tr>
<td>S3</td>
<td>1/8</td>
</tr>
</tbody>
</table>
For example, 3 instances of overshooting Issue resolution time for S2 type complaints would result in \( \frac{3}{4} \) “Equivalent Instances of not Meeting Issue Resolution Time”.

### Training (Severity Weight = 15)

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Participant Pass Rate</td>
<td>90%</td>
<td>5</td>
<td>a. 89.99 % to 80%</td>
</tr>
<tr>
<td></td>
<td>(No. of Participants who score at least 80% marks in the first</td>
<td></td>
<td></td>
<td>b. 79.99&amp; to 70%</td>
</tr>
<tr>
<td></td>
<td>Assessment Test / No. of Participants who took the test)*100</td>
<td></td>
<td></td>
<td>c. &lt;70%</td>
</tr>
<tr>
<td></td>
<td>(This SLA is valid only for the first training and not for</td>
<td></td>
<td></td>
<td>a. 1</td>
</tr>
<tr>
<td></td>
<td>retraining)</td>
<td></td>
<td></td>
<td>b. 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>c. 5</td>
</tr>
<tr>
<td></td>
<td>Score on Assessments done after completion of training. Tests</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>designed by the vendor, approved by the department and</td>
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<tr>
<td></td>
<td>administered and assessed by the Department directly or</td>
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<tr>
<td></td>
<td>through any third party appointed by the department.</td>
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</tr>
<tr>
<td></td>
<td>Participants who do not pass have to be retrained once by the</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Vendor at no additional cost.</td>
<td></td>
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</tr>
<tr>
<td>2.</td>
<td>Training Timeliness</td>
<td>100%</td>
<td>5</td>
<td>a. 99.99 % to 90%</td>
</tr>
<tr>
<td></td>
<td>(No. of participants trained within timelines prescribed in</td>
<td></td>
<td></td>
<td>b. 89.99&amp; to 75%</td>
</tr>
<tr>
<td></td>
<td>this RFP / No. of Participants who are to be trained in a time</td>
<td></td>
<td></td>
<td>c. &lt;75%</td>
</tr>
<tr>
<td></td>
<td>period)*100</td>
<td></td>
<td></td>
<td>a. 1</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>b. 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>c. 5</td>
</tr>
<tr>
<td></td>
<td>MIS reports generated from the System deployed, operated and</td>
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</tr>
<tr>
<td></td>
<td>maintained by the Selected Vendor.</td>
<td></td>
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</tr>
<tr>
<td>3.</td>
<td>Quality of Training</td>
<td>80%</td>
<td>5</td>
<td>a. 79.99% to 70%</td>
</tr>
<tr>
<td></td>
<td>Average score of at least 80%</td>
<td></td>
<td></td>
<td>b. 69.99 % to 60%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>a. 1</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>b. 3</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>c. 5</td>
</tr>
<tr>
<td></td>
<td>Feedback collected from trained participants through feedback</td>
<td></td>
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<tr>
<td></td>
<td>forms designed by the vendor, approved and administered by the</td>
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</tr>
<tr>
<td></td>
<td>Department.</td>
<td></td>
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</tr>
<tr>
<td>Parameters for feedback: Relevance of course content / coverage, quality of presentation, quality of training material provided, relevant examples / practice sessions, quality of faculty, administrative arrangements done for the training. Sample Size for the same will be decided by &lt;Nodal Agency&gt; at time of implementation</td>
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</tbody>
</table>
### SLAs for Business Continuity

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Service Metric Parameters</th>
<th>Penalty</th>
<th>Measurement</th>
</tr>
</thead>
</table>
| 1      | Maximum Data Lost         | • No data lost: No penalty  
• Upto 30 mins: 2 Lakhs  
• 30 mins to 2 hours: 5 Lakhs per half hour till 2nd hour  
• > 2 hours: 10 Lakhs per hour | MIS reports generated from the System deployed, operated and maintained by the Selected Vendor. E.g. 5 hours data is lost, penalty imposed will be: 11 Lakhs  
(2) + (3 X 5) + (3 X 10) = 47 Lacs |
| 2      | Latency of data replication at Disaster Recovery Site | • < 1 hour: No penalty  
• 1 to 2 hours: 2 Lakhs per hour of delay till 2nd hour  
• 2 to 4 hours: 5 Lakhs per hour of delay till 4th hour  
• > 4 hours: 10 Lakhs per hour of delay | MIS reports generated from the System deployed, operated and maintained by the Selected Vendor. E.g. Data was last replicated on the DR site 11 hours ago, penalty imposed will be:  
(1 X 2) + (2 X 5) + (7 X 10) = 82 Lacs |
| 3      | Time for recovery of Primary Data Centre (RTO) | • < 1 hour: No penalty  
• 1 to 2 hours: 2 Lakhs per hour of delay till 2nd hour  
• 2 to 4 hours: 5 Lakhs per hour of delay till 4th hour  
• > 4 hours: 10 Lakhs per hour of delay | MIS reports generated from the System deployed, operated and maintained by the Selected Vendor. E.g. DC site was recovered in 11 hours, penalty imposed will be:  
(1 X 2) + (2 X 5) + (7 X 10) = 82 Lacs |