



Warehousing Development & Regulatory Authority

Request For Proposal (RFP)

For

**Onboarding of Managed Service Provider for Design, Development,
Implementation, Operation & Maintenance of WDRA Portal**

Volume - III

Issued by

**Warehousing Development and Regulatory Authority
4th Floor, NCUI Building,
3, Siri Institutional Area
August Kranti Marg, Hauz Khas
New Delhi-110016**

Document Version History

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Purpose and Structure of this document

Purpose of this RFP

The Purchaser intends to select a Managed Service Provider (MSP) to Design, Develop, Implement, Operate and Maintain the WDRA Portal for the Warehousing Development and Regulatory Authority (herein referred to as the 'Purchaser'). In this RFP, the term 'Bidder' refers to an entity submitting a proposal to the Purchaser as a response to this RFP. The term 'Managed Service Provider' interchangeably read as 'Bidder' who would be contracted to Design, Develop, Implement, Operate and Maintain the WDRA Portal (also referred to as 'the Project'), as per the terms and conditions specified in this RFP.

The content of this RFP has been detailed over a set of three volumes as explained below:

Volume I: Instructions to Bidders of this RFP includes

1. Instruction to Bidders
2. Proposal Timelines (Key Dates and Information)
3. Details on Pre- qualification Evaluation Criteria (with related forms, formats, guidelines, and detailed annexure(s))
4. Technical Evaluation Criteria (with related forms, formats, guidelines, and detailed annexure(s))
5. Commercial Evaluation Criteria (with related forms, formats, guidelines, and detailed annexure(s))

Volume II: Scope of Work Functional, Non-Functional and Technical Requirements includes

1. Scope of work (including functional, and technical requirements of the intended solution)
2. Application Development and Implementation
3. Training & Capacity Building
4. Support and Maintenance
5. Manpower Requirements
6. Deliverables, Timelines and Payment Schedule
7. Functional Requirement Specification (FRS)
8. Service Level Agreements (SLAs)
9. Compliance Matrix

Volume III: Legal Terms and Master Service Agreements includes

The Draft Master Service Agreement and Legal terms as per the Purchaser. The signed copy of the Master Service Agreement shall be submitted by the successful Bidder at the time of onboarding.

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List of Abbreviations

Abbreviations	Details
AMC	Annual Maintenance Contract
ATS	Annual Technical Service
COTS	Commercial Off the Shelf
FRS	Functional Requirement Specification (FRS)
ICADR	International Centre for Alternative Dispute Resolution
IPR	intellectual property rights
MSP	Managed Service Provider
OEM	Original Equipment Manufacturer
PBG	Performance Bank Guarantee
RFP	Request for Proposal
SLA	Service Level Agreement
WDRA	Warehousing Development and Regulatory Authority

[To be executed on a stamp paper of appropriate value]

THIS AGREEMENT (“**Agreement**”) is made on this the <***> day of <***>2023 at New Delhi, India

BY AND BETWEEN

The **Warehousing Development and Regulatory Authority, Government of India**, having its office located at **4th Floor, NCUI Building, 3, Siri Institutional Area, August Kranti Marg, Hauz Khas, New Delhi** (herein after referred to as “**Purchaser**”, which expression shall unless excluded by or repugnant to the context deemed to include its successor/s in office or permitted assign) of the First Part.

AND

<***>, a Company incorporated under the Companies Act, 1956, or Limited Liability Partnership (LLP) registered under LLP Act, 2008 having its registered office at <***> (hereinafter referred to as ‘**Bidder**’ which expression shall, unless the context otherwise requires, include its successors, and permitted assigns) of the Second Part.

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

WHEREAS:

1. The Purchaser had invited bids vide its RFP _____ (hereinafter referred to as ‘**RFP**’, which term shall include all corrigendum, addendums and modifications issued by the Purchaser with reference to the RFP) for Appointment of Managed Service Provider (MSP) for Design, Develop, Implement, Operate and Maintain the WDRA portal.
2. The Bidder had submitted its proposal dated <<Date of Submission>> (hereinafter referred to as the ‘**Proposal**’, which term shall include all clarifications and additional documents submitted by Bidder with reference to the Proposal) for the Design, Development, Implementation, Operation & Maintenance of WDRA Portal.
3. The Purchaser has accepted the Proposal and has agreed to appoint the Bidder for the Design, Development, Implementation, Operation & Maintenance of WDRA Portal and has issued a letter of award notifying the Bidder of its selection as successful bidder dated <<Date for Letter of Award>> (‘**Letter of Award**’).
4. In consideration of the foregoing and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties intend to be bound legally by the terms and conditions agreed in this Agreement, for implementation of the Project.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1 Definitions and Interpretations

1.1 Definitions

Terms and expressions used in this Agreement shall have the meanings set out in Schedule I of this Agreement or as defined in other volumes of the RFP. Other terms used in this Agreement are defined where they are used and have the meanings there indicated. Unless otherwise specifically defined, those terms, acronyms and phrases in this Agreement that are used in the Information Technology services industry shall be interpreted in accordance with their generally understood meaning in such industry.

1.2 Interpretation

In this Agreement, unless a contrary is evident:

1. Unless otherwise specified, a reference to a clause, sub-clause or section is a reference to a clause, sub-clause or section of this Agreement including any amendments or modifications to the same from time to time.
2. Words denoting the singular include the plural and vice versa and use of any gender includes the other genders.
3. References to a 'company' shall be construed to include any company, corporation, or other body corporate, wherever and however incorporated or established.
4. Words denoting a person shall include an individual, corporation, company, body corporate, partnership, or a trust.
5. A reference to legislation includes legislation repealing, replacing, or amending that legislation.
6. The clause headings are for convenience of referencing only and do not form part of this Agreement.
7. Unless otherwise specified a reference to a clause number is a reference to all its sub-clauses.
8. Where a word or phrase is given a particular meaning, it includes the appropriate grammatical forms of that word or phrase having corresponding meanings.
9. A reference to the Agreement shall, unless the context otherwise requires, include a reference to its Annexures, Schedules and every other document forming part of this Agreement. If a term of this Agreement requires things to be done, undertaken, or completed under the Agreement, the same, if relevant, shall, unless the context otherwise require, mean to include such things to be done, undertaken, or completed under the relevant Schedules, Annexures of this Agreement.

1.3 Documents forming part of the Agreement

The following documents shall be deemed to form and be read and constructed as part of the Agreement viz.:

- This Agreement
- The Letter of Award
- The RFP; and
- The Proposal

1.4 Ambiguities within Agreement

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

1. As between two clauses of this Agreement, the provisions of a specific clause relevant to the issue under consideration shall prevail over those in a general clause.

2. As between the provisions of RFP and any Corrigendum issued thereafter, the provisions of the Corrigendum shall, to that extent only, prevail over the corresponding earlier provision of the RFP.
3. As between the provisions of the RFP and the Proposal, unless otherwise decided by the Purchaser, the RFP shall prevail; and
4. As between any value written in numerals and that in words, the value in words shall prevail.

2 Scope of Work

1. In consideration of the award of the work under the RFP to the Bidder and payments to be made by the Purchaser to the Bidder as hereinafter mentioned, the Bidder hereby covenants with the Purchaser to accomplish the entire Scope of Work as provided in Volume II of the RFP and clarifications, annexures, schedules etc. thereof and to perform all obligations mentioned in all volumes of the RFP. Broad deliverables and timelines are as provided in Section 8 of Volume II of this RFP.
2. The Purchaser hereby covenants to pay the Bidder in consideration of the accomplishment of Scope of Work and for performance of all obligations mentioned in the RFP, the Fees or such other sum as may become payable under the provisions of the Agreement at the times and in the manner prescribed under the Agreement.

3 Term and Duration of this Agreement

1. This Agreement shall come into force and effect on the date of signing of this Agreement by all the Parties (hereinafter the 'Effective Date') and, unless terminated earlier in accordance with the provisions of this Agreement, shall remain in force for a period 3 years from the date of Go-Live of the System. Moreover, if the project gets any extension from WDRA, the Agreement, shall remain in force till the period of extension.
2. The Purchaser reserves the sole right to grant any extension to the Term abovementioned and shall notify in writing to the Bidder, at least 3 months before the expiration of the Term hereof, whether it will grant the Bidder an extension of the Term. The extension shall be given for a year at a time on same terms and conditions as contained in this Agreement including all amendments, addendums etc. thereto and the Term may be extended for an overall period of two years only. Any extension beyond two years period shall be on mutually agreeable terms and conditions.

4 Conditions Precedent

4.1 Payment obligations to take effect upon fulfilment of Conditions Precedent

Subject to express terms to the contrary, the rights of Bidder to receive payments, and obligation of the Purchaser to make payments under this Agreement, shall take effect only upon fulfilment of all the Conditions Precedent set out in clause 4.2 below. Notwithstanding the foregoing, the Purchaser may, at any time in its sole discretion, waive fully or partially, in writing, any of the Conditions Precedent for the Bidder provided no such waiver shall affect or impair any right, power or remedy that the Purchaser may otherwise have.

4.2 Conditions Precedent to be fulfilled

The Bidder shall be required to fulfil the Conditions Precedent which are as follows:

1. Furnishing by the Bidder, within 15 days of issuance of Letter of Award by the Purchaser, an unconditional, irrevocable, and continuing Bank Guarantee equivalent to 10% of the Total Contract Value, in a form and manner acceptable to the Purchaser which would remain valid from the date of issuance till 6 months after expiry of the Term of the Agreement.
2. The Bidder provides an undertaking to the effect that it has entered all relevant back-end contracts with OEMs whose products services it has quoted in the Proposal; and
3. Furnishing of duly executed Corporate Non-Disclosure Agreement in a format specified by the Purchaser.

4.3 Key performance measurement

The Bidder shall commence the performance of its obligations under the Agreement from the Effective Date and shall proceed to carry out the Services with diligence and expedition in accordance with any stipulation as to the time, manner, mode, and method of execution contained in this Agreement. The Bidder shall be responsible for and shall ensure that all Services are performed in accordance with the specifications and that the Bidder's Team complies with such specifications and all other standards, terms and other stipulations/conditions set out hereunder.

4.4 Commencement and progress

1. The Bidder shall perform the activities/services and carry out its obligations under the Agreement with due diligence, efficiency, and economy, in accordance with generally accepted techniques and practices used in the information technology and e-commerce industry and with professional engineering and standards recognized by international professional bodies and shall observe sound management, engineering and security practices. It shall employ appropriate advanced technology and engineering practices and safe effective equipment, machinery, material, and methods. The Bidder shall always act, in respect of any matter relating to this Agreement, as faithful advisors to the Purchaser and shall, always, support and safeguard the Purchaser's legitimate interests in any dealings with Bidder's Team and third parties.
2. In providing the Services, it shall use reasonable effort to prevent any disruption to Purchaser's normal business operations.
3. The Bidder shall keep all back-end contracts with all OEMs, subcontractors etc. in force and up to date to ensure provision of Services as per the RFP and to meet all the SLAs.
4. The Bidder shall use all material (including, without limitation, hardware, software, documents etc.) provided by the Purchaser or any of its representative, service provider etc. ('Purchaser's Material')

in accordance with the license terms of such materials. The Bidder will reasonably cooperate with the Purchaser in respect of any third-party audit related to Bidder's use and possession of any Purchaser's Material.

4.5 Final testing and Acceptance

Except as otherwise provided in Section 4.4.1 of Volume II of this RFP, the Project shall be governed by the mechanism of final Testing and Acceptance to be put into place by the Purchaser and the Bidder as under:

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

4.6 Liquidated damages and SLA's

The Bidder shall accomplish the Scope of Work under this Agreement as per the Timelines and as per the Service Levels. If the Bidder fails to achieve the Timelines or the Service Levels due to reasons solely attributable to the Bidder or subcontracts etc., the Bidder shall be liable to pay liquidated damages as per Volume II of this RFP. Payment of liquidated damages shall not be the sole and exclusive remedy available to the Purchaser and the Bidder shall not be relieved from any obligations by virtue of payment of such liquidated damages. Liquidated damages will be capped as mentioned in Volume II of this RFP. If the liquidated damages for any timeline or service level exceed the cap on liquidated damages mentioned in Volume II of this RFP, the Purchaser shall have the right to treat it as an event of default and the consequences for event of default as mentioned in this Agreement shall be applicable. Each of the Parties shall ensure that the range of the Services/Deliverables under the SLA shall not be varied, reduced, or increased except with the prior written agreement between the Purchaser and the Bidder in accordance with the provisions of Change Control set out in this Agreement.

5 Representations

5.1 Representations of the Bidder

The Bidder hereby represents as of the date hereof, (such representations shall remain in force during the Term and extension thereto), the following:

1. It is duly organized and validly existing under the laws of India and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby.
2. It is a competent provider of a variety of Information Technology services. It has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement.
3. It has the power and the authority that would be required to enter into this Agreement and the requisite experience, the technical know-how and the financial wherewithal required to successfully execute the terms of this Agreement and to provide services sought by the Purchaser under this Agreement.
4. It and its team have the professional skills, personnel, infrastructure, and resources/authorizations that are necessary for providing all such services as are necessary to fulfil the scope of work stipulated in the RFP and this Agreement.
5. It shall ensure that all assets/components including but not limited to equipment, software, licenses, processes, documents, etc. installed, developed, procured, deployed, and created during the term of this Agreement are duly maintained and suitably updated, upgraded, replaced about contemporary requirements.
6. It and its team shall use such assets of the Purchaser as the Purchaser may permit for the sole purpose of execution of its obligations under the terms of the RFP, Proposal, or this Agreement. It shall, however, have no claim to any right, title, lien or other interest in such property, and any possession of property for any duration whatsoever shall not create any right in equity or otherwise, merely by fact of such use or possession during or after the term thereof.
7. It has the financial standing and capacity to undertake the Project and obligations in accordance with the terms of this Agreement.
8. This Agreement has been duly executed by it and constitutes a legal, valid, and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding, and enforceable against it in accordance with the terms hereof.
9. The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree, or order to which it is a party or any of its properties or assets are bound or affected.
10. There are, to the best of its knowledge, no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may materially impair its ability to perform any of its material obligations under this Agreement.
11. It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any

adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement.

12. It has, to the best of its knowledge, complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement.
13. To the best of its knowledge, no representation by it contained herein or in any other document furnished by it to the Purchaser or its nominated agencies in relation to the any consents contains any untrue or misleading statement of material fact or omits to state a material fact necessary to make such representation not misleading.
14. No sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the Purchaser in connection therewith.

5.2 Representations of the Purchaser

The Purchaser represents to the Bidder that:

1. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby.
2. It has taken all necessary actions under Applicable Laws to authorize the execution, delivery, and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement.
3. It has the financial standing and capacity to perform its obligations under the Agreement.
4. This Agreement has been duly executed by it and constitutes a legal, valid, and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement shall be legally valid, binding, and enforceable against it in accordance with the terms thereof.
5. The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree, or order to which it is a party or by which it or any of its properties or assets is bound or affected.
6. It has complied with Applicable Laws in all material respects.

6 Purchaser's Obligations

The obligations of the Purchaser described in this clause 6 are in addition to, and not in derogation of, the obligations mentioned in Volume II of the RFP and the two are to be read harmoniously. Without prejudice to any other undertakings or obligations of the Purchaser under this Agreement or the RFP, the Purchaser shall perform the following:

1. The Purchaser shall ensure that timely approval is provided to the Bidder as and when required, which may include approval of project plans, implementation methodology, design documents, specifications, or any other document necessary in fulfillment of this Agreement.
2. The Purchaser's Representative shall interface with the Bidder to provide the required information, clarifications and to resolve any issues as may arise during the execution of the Agreement. The Purchaser shall provide adequate cooperation in providing details, coordinating, and obtaining of approvals from various governmental agencies, in cases, where the intervention of the Purchaser is proper and necessary.
3. The Purchaser may provide on the Bidder's request, particulars information/or documentation that may be required by the Bidder for proper planning and execution of work and for providing Services covered under this Agreement and for which the Bidder may have to coordinate with respective vendors.
4. The Purchaser will be responsible for making all payments due to the Bidder in respect of Deliverables and Services provided by the Bidder and accepted by the Purchaser in accordance with the Terms of this Agreement.
5. The Purchaser agrees that all Purchaser's Material provided to the Bidder by or on behalf of Purchaser for Bidder's use in providing the Services will be owned by or fully licensed to the Purchaser or Purchaser's authorized representative/service provider etc. and Purchaser shall have procured the right to provide such materials to the Bidder. Bidder will be permitted to use such materials in accordance with the license conditions of such materials.

7 Acceptance of Deliverables and Testing

7.1 Acceptance of Deliverables

The successful completion of the Project requires the acceptance by the Purchaser of all the Deliverables prepared and delivered pursuant to the Project. The acceptance procedure described in this clause 7 is in addition to, and not in derogation of, the acceptance procedure provided in Volume II of this RFP and the two are to be read harmoniously. Upon completion of a Deliverable, the Bidder will notify the Purchaser in writing that the Deliverable has been completed and, in the case of Deliverables constituted of Software/hardware (“**Operational Deliverables**”), tested and/or certified as being ready for acceptance (“**Ready for Acceptance**”) by the Purchaser. Promptly after receiving such notice, the Purchaser will evaluate the Deliverable for acceptance in accordance with this clause 7 or specific provisions provided in the RFP. The acceptance process outlined below shall not be deemed to extend the Timelines scheduled completion date for any Deliverable specified in the RFP.

7.2 Acceptance Procedure

Acceptance by the Purchaser (“**Acceptance**”) requires that the Deliverables be confirmed in writing by the Purchaser to meet applicable acceptance criteria (“**Acceptance Criteria**”) provided in the Acceptance Test Plan which, in the case of Operational Deliverables, will include the successful completion of agreed acceptance and performance testing and will also include meeting the specifications, performance standards, functional requirements and any other aspects as set out in the RFP. The Bidder shall prepare and propose the test procedures, which shall be described in the Acceptance Test Plan for each Deliverable and shall be subject to agreement by the Purchaser. While designing the Acceptance Test Plan, the requirements as mentioned in Volume 1 of RFP need to be adhered to. The Acceptance tests and Acceptance Test Plan shall be sufficiently broad in scope and rigorous to verify that all Deliverables meet all applicable specifications, Acceptance Criteria, and performance requirements, including assurance that the Deliverables meet such tests of operational integrity as may be reasonably required by the Purchaser.

Acceptance procedures for Written Deliverables (which are all Deliverables other than Operational Deliverables) and Operational Deliverables are as follows:

1. Written Deliverables:

- i. The Bidder may submit interim drafts of written Deliverables (e.g., designs and documentation) to the Purchaser for review. The Purchaser agrees to review each interim draft within a reasonable period after receiving it from the Bidder. When the Bidder delivers a final written Deliverable to the Purchaser, the Purchaser will have the opportunity to review such written Deliverable for an acceptance period of at least seven (7) days (the “**Acceptance Period**”).
- ii. The Purchaser agrees to notify the Bidder in writing either stating that the applicable written Deliverable is accepted rejected in the form delivered by the Bidder or describing with reasonable particularity any defects deficiencies that shall be corrected prior to acceptance of such written Deliverable.
- iii. If the Purchaser delivers to the Bidder a notice of rejection/defects/deficiencies, the Bidder will correct the described defects/deficiencies as quickly as possible and, in any event, within such reasonable time specified by the Purchaser in its notice of the rejection/deficiencies. Upon receipt of a corrected written deliverable from the Bidder, the Purchaser will have a period of at least seven (7) days to review the corrected written Deliverable.

2. Operational Deliverables:

- i. To the extent not already specified in the RFP or the agreed Acceptance Test Plan, prior to the date on which the Bidder is scheduled to deliver each Operational Deliverable to the Purchaser, the Bidder and the Purchaser will agree upon the testing procedures for the Operational Deliverable, including without limitation detailed test cases and expected results (the "Acceptance Tests"). The Acceptance Tests will be designed to determine whether the Operational Deliverable contains any defects or deficiencies. The Purchaser will have the opportunity during the Acceptance Period to evaluate and test each Operational Deliverable in accordance with the following procedures by executing the Acceptance Tests. The Acceptance Tests may be varied with mutual consent of the Parties if required.
 - ii. Upon completion of an Operational Deliverable, the Bidder shall deliver it to the Purchaser at the designated delivery locations. The Bidder shall provide written notification to the Purchaser when an Operational Deliverable is ready for acceptance. This notification shall initiate a minimum 15-day acceptance period. During the acceptance period, the Purchaser shall review and test the Operational Deliverable to ensure its conformity with the agreed-upon scope, quality standards, and any other contractual requirements.
 - iii. The Purchaser shall notify the Bidder in writing stating that the Operational Deliverable is accepted/rejected in the form delivered by the Bidder or describing the defects deficiencies as provided in Clause 7.2 (2) (iv) below.
 - iv. If the Purchaser determines that the Operational Deliverable as delivered by the Bidder deviates from its approved specifications or otherwise fails to successfully complete applicable Acceptance Tests (or a defect), the Purchaser will inform the Bidder in writing, describing the defect(s) in sufficient detail to allow the Bidder to recreate/rectify them. The Bidder will correct any defects in an Operational Deliverable as quickly as possible after receiving the Purchaser's notice of the defects and, in any event, within ten (10) days after receiving such notice (unless a different period is otherwise specified in the notice of defect sent by the Purchaser) and provide the corrected Operational Deliverable to Purchaser for re-testing within such specified period.
 - v. The Purchaser will have a reasonable additional period after receipt of the corrected Operational Deliverable to re-test it to confirm its proper functioning. The Bidder will correct any further defects identified by the Purchaser during the re-test as quickly as possible, but in no event, unless otherwise directed by the Purchaser, more than five (5) days after the Purchaser notifies the Bidder of the further defects.
3. Correction of Defects Deficiencies in Deliverables:
- i. If the Bidder is unable to correct all the defects, deficiencies preventing Acceptance of a Deliverable for which Bidder is responsible after a reasonable number of repeated efforts (but not more than three (3)), the Purchaser may at its election:
 - Allow the Bidder to continue its efforts to make corrections; or
 - Accept the Deliverable with its defects deficiencies and deduct such proportionate amounts from the Bidder's fees as is mutually agreed between the Purchaser and the Bidder; or
 - Terminate this Agreement for cause in accordance with the procedures set forth in Clause 13 (except that the Purchaser is under no obligation to provide the Bidder any further opportunity to cure) and recover its damages subject to the limitations set forth in this Agreement.

7.3 Acceptance

The Purchaser shall be deemed to have accepted the Deliverables upon the date of delivery to the Bidder by the Purchaser of a notice (the “Acceptance Notice”) to that effect.

8 Use of Assets by the Bidder

8.1 During the term the Bidder shall:

1. Take all reasonable and proper care of the entire hardware and software, network or any other Information Technology infrastructure components used for the Project and other facilities leased /owned/ operated by the Bidder (for itself or for the Purchaser or on behalf of the Purchaser) exclusively in terms of ensuring their usability for the delivery of the Deliverables and Services as per this Agreement (hereinafter the “Assets”).
2. Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Bidder takes control of and/or first uses the Assets and during the entire Term of the Agreement.
3. Ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets, and which are provided to the Bidder will be followed by the Bidder and any person who will be responsible for the use of the Assets.
4. Take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Bidder or as may, in the reasonable opinion of the Bidder, be necessary to use the Assets in a safe manner.
5. Ensure that the Assets that are under the control of the Bidder, are kept suitably housed and in conformity with the Applicable Law and terms agreed with the Purchaser.
6. Procure permission from the Purchaser or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited to inspect the same, subject to any reasonable third-party requirements.
7. Not knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to the Applicable Law.
8. Use best efforts to ensure that no lien, mortgage, hypothecation, or any other charge is created over the Assets. The Bidder agrees that the Bidder will inform the Purchaser immediately if the Bidder feels or comes to know that a charge may have been created over any of the Asset(s). In the event a charge is created over any of the Assets due to reasons solely attributable to the Bidder or any of its subcontractors etc., the Purchaser shall have the right to get the charge removed at the risk, cost, expense of the Bidder and the Bidder shall make good all losses, damages, costs, fees, cess, duties, etc. borne or suffered by the Purchaser due to creation of such charge and/or in removal of such charge and/or in discharging the obligations for removal of such charge.

9 Access to locations or its Nominated Agencies (Facilitate)

9.1 Access to Locations

For so long as the Bidder provides services to the locations of the Purchaser or its nominated agencies, the Purchaser shall, subject to compliance by the Bidder with any safety and security guidelines which may be provided by the Purchaser and notified to the Bidder in writing, provide the Bidder, on a non-permanent basis and to the extent necessary, with:

- Reasonable access to the location from where services are to be performed (except such locations like the Bidder's or its subcontractor's offices etc. over which the Bidder has control)
- Subject to (i) above, reasonable workspace, - as mutually agreed and other related support services in such location and at such other locations of the Purchaser as the case may, if any, as may be reasonably necessary for the Bidder to perform its obligations hereunder

9.2 Limitation on Access to locations

Access to locations, office equipment and services shall be made available to the Bidder on an "as is, where is" basis by the Purchaser or its nominated agencies. The Bidder agrees to ensure that its employees, agents, and contractors/sub-contractors shall not use the location, services and equipment referred to in the RFP for the following purposes:

1. For the transmission of any material which is defamatory, offensive, or abusive or of an obscene or menacing character; or
2. In a manner which constitutes violation of any law or a violation or infringement of the rights of any person, firm, or company (including but not limited to rights of copyright or confidentiality); or
3. For their own purpose or for conducting their own business or for providing services to any third party.

10 Management of Project

10.1 Governance

The bidder shall establish a Governance Structure to manage and oversee the project mutually agreed between bidder and the purchaser. The Governance Structure shall clearly outline the roles, responsibilities, decision-making processes, and communication protocols for the end-to-end project management aspects. The bidder shall get the approval of Governance Structure from purchaser within one month post signing of the MSA. Once approved, the Governance Structure shall become an integral part of this agreement and shall guide the management of the project throughout its duration.

10.2 Changes

Any changes to the scope of work and consequent impact on the SLAs shall be dealt with in accordance with the provisions of Change Management and Control set out in Volume II of the RFP.

10.3 Security and Safety

1. The obligations mentioned herein are in addition to (and not in derogation or substitution of) the obligations related to information security (including SLAs) mentioned in the RFP.
2. The Bidder shall comply with the relevant security, safety and other requirements specified in the Information Technology Act and any other Applicable Law applicable on the date of submission of bid. The Bidder shall also comply with the IT Security policy and practices of the Purchaser. For avoidance of doubt, it is agreed that the Bidder will at least have to comply with the security policies and practices that are to be followed by Bidder as service provider to any organization which is ISO 27001:2013 compliant. In the event of any change in laws (related to security and safety) or IT security policy and practices of the Purchaser, the compliance to such changed laws and policy practices by Bidder shall be subject to such terms as may be agreed by the Purchaser in its sole discretion except where compliance with change in laws is applicable on the Bidder in its own right as an IT service provider or irrespective of services being provided by the Bidder under this Agreement.
3. The Parties 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 Purchaser or any of their nominees' data, facilities, or the Confidential Information.
4. The Bidder shall upon reasonable request by the Purchaser as the case may be or their nominee(s) participate in regular meetings when safety and Information Technology security matters are reviewed.
5. As per the provisions of this Agreement, the Bidder shall use reasonable efforts to promptly report in writing to the Purchaser or its nominated agencies, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and Information Technology security at the facilities of the Purchaser as the case may be.

10.4 Cooperation

Except as otherwise provided elsewhere in this Agreement, each Party ("Providing Party") to this Agreement undertakes promptly to provide the other Party ("Receiving Party") with all such information and co-operation which the Receiving Party reasonably requests, provided that such information and co-operation:

1. Does not require material expenditure by the Providing Party to provide the same.

2. Is reasonably required by the Receiving Party for it to comply with its obligations under this Agreement.
3. Cannot be construed to be Confidential Information; and
4. Is capable of being provided by the Providing Party.

Further, the Bidder agrees to co-operate with the consultants, contractors, stakeholders and subcontractors of the Purchaser, or any other body appointed or nominated by the Purchaser as reasonably requested to accomplish the purposes and objective of this Agreement.

11 Financial Matters

11.1 Terms of Payment

1. Purchaser shall make payments only to the Bidder at the time and in the manner set out in Payment Schedule in Section 8 of Volume II of the RFP subject always to the fulfilment by the Bidder of its obligations herein.
2. The payments which are linked to acceptance of the deliverables will be released to Bidder only on satisfactory acceptance (Refer RFP Volume II, Section 8) of the deliverables for each Service as per the said schedule. Each of the Services, as specified in the Scope of Work, to be rendered by the Bidder under the terms of this Agreement, shall be provided in a phased manner in accordance with the instructions and requirements of the Purchaser, as notified to Bidder in writing ("Phased Services"). The fee payable for Services as specified in the Purchase orders shall be paid in accordance with the payment schedule mentioned herein above; provided that the Purchaser shall have the right to require phased deployment of Services and personnel required for performance of such Services, and Bidder shall ensure commissioning of such Services and deployment of the required personnel in accordance with such instructions of the Purchaser.
3. The Purchaser shall not be responsible for making any payments or any other related obligations under this Agreement to the Bidder's subcontractor, if any. The Bidder shall be fully liable and responsible for meeting all such obligations and all payments to be made to the sub-contractors (if any) and any other third party engaged by the Bidder in any way connected with the discharge of the Bidder's obligation under the Agreement and in any manner whatsoever.
4. All payments agreed to be made by Purchaser to the Bidder in accordance with the Proposal shall be inclusive of all statutory levies, duties, taxes, and other charges whenever levied/applicable including costs of maintenance, if any and Purchaser shall not be liable to pay any such levies/other charges under or in relation to this Agreement and/or the goods and Services.
5. In case of change in taxes under change in law, appropriate parties shall pass the benefit of the same to the other Party. In case of such change, Bidder shall submit a formal request with necessary supporting documents to the Purchaser. The Purchaser shall verify these documents and if applicable and approved in writing by the Purchaser, the Bidder shall incorporate such changes into subsequent regular invoice for payment.
6. Unless otherwise provided in this Agreement or as mutually agreed between the Parties, prices/ fees as mentioned in the Commercial Proposal shall remain firm and shall not be subject to any upward revision on any account whatsoever throughout the Term.
7. It is expressly agreed that the price/fees mentioned in the Proposal by the Bidder shall be deemed to include all ancillary and incidental costs and charges that are necessary for accomplishment of the scope of work and obligations mentioned in the RFP and this Agreement. No invoice for extra work/charge order on account of change order will be submitted by the Bidder unless the said extra work/change order has been authorized/approved by the Purchaser in writing in accordance with the clause on Change Order.
8. In the event of the Purchaser noticing at any time that any amount has been disbursed wrongly to the Bidder or any other amount is due from the Bidder to the Purchaser, the Purchaser may without prejudice to its rights to recover such amounts by other means, after notifying the Bidder deduct such amount from any payment falling due to the Bidder. The details of such recovery, if any, will be intimated to the Bidder. The Bidder shall receive the payment of undisputed amount under

subsequent invoice for any amount that has been omitted in the previous invoice by mistake on the part of the Purchaser or the Bidder.

9. All payments are subject to deductions of applicable liquidated damages as provided for in the SLA section of the RFP. For the avoidance of doubt, it is expressly clarified that the Purchaser will calculate a financial sum and debit the same against the terms of payment as set out in clause 11.1 of this Agreement because of the failure of the Bidder to meet the Timelines and/or Service Level.

11.2 Invoicing and Settlement

1. The Bidder shall submit its invoices in accordance with the following principles:
 - Generally, and unless otherwise agreed in writing between the Parties, the Bidder shall raise tax invoice as per Payment Schedule mentioned in Section 8 of Volume II of this RFP as reproduced in Schedule III of this Agreement; and
 - Any tax invoice presented in accordance with this Clause shall be in a form agreed with the Purchaser
2. The Bidder alone shall raise invoices for all the payments after receiving due approval/acceptance of the Deliverables the Services from the Purchaser or any nominated agency. Such invoices shall be correct and accurate and shall be raised in a timely manner within 15 days of accomplishment of obligations of the Bidder and delivery of the Goods, the solutions, the Deliverables, and the Services to the satisfaction of the Purchaser.
3. Subject to accomplishment of obligations of the Bidder and delivery of the Goods, the solutions, the Deliverables, and the Services to the satisfaction of the Purchaser, payment shall be made by the Purchaser within 45 days from receipt of due, valid, correct, and undisputed invoice along with supporting documents provided the invoice is submitted in timely manner. Payments will be subject to deduction as agreed herein.
4. Notwithstanding anything contained in clause 11.2 (3) above, the Purchaser shall be entitled to delay or withhold payment of any invoice or part of it where the Purchaser disputes such invoice or part of it provided that such dispute is bona fide. Purchaser shall inform the Bidder about the dispute within 15 days of receipt of invoice. The withheld amount shall be limited to that which is in dispute. A notice of such withholding shall be provided within reasonable time of receipt of the applicable invoice. The disputed withheld amount shall be settled in accordance with the escalation procedure as set out in Governance Schedule within reasonable time after notice of reference. However, the Purchaser shall release the disputed amounts as soon as reasonably possible, upon resolution of dispute. Any exercise by the Purchaser under this clause shall not entitle the Bidder to delay or withhold performance of its obligations or delivery of Deliverables/Services under this Agreement.

11.3 Tax and Deductions

1. Where applicable, payments to the Bidder shall be subject to the deductions of tax at source under Income Tax Act, and other applicable taxes, and deductions as provided for under any law, rule, or regulation. The Purchaser shall provide the Bidder with the original tax receipt of any withholding taxes paid by the Purchaser or its nominated agencies on payments under this Agreement within reasonable time after payment. All costs, damages, or expenses which the Purchaser may have paid or incurred, for which under the provisions of the Agreement, the Bidder is liable, the same shall be deducted by the Purchaser from any dues to the Bidder. All payments to the Bidder shall be made after making necessary deductions as per terms of the Agreement, including recovery of mobilization

advance, if any, and recoveries towards facilities, if any, provided by the Purchaser to the Bidder on chargeable basis.

2. The Bidder shall bear all personnel taxes levied or imposed on its personnel, sub-contractor's personnel, Bidder's consultants etc. on account of payment received under this Agreement. The Bidder shall bear all corporate taxes, levied, or imposed on the Bidder on account of payments received by it from the Purchaser for the work done under this Agreement. The Bidder shall bear all taxes and duties etc. levied or imposed on the Bidder under the Agreement including but not limited to Customs duty, Excise duty and all Income Tax levied under Indian Income Tax Act – 1961 or any amendment thereof up to the date for submission of final price bid, i.e., on account of payments received by him from the Purchaser for work done under the Agreement. The Bidder shall also be responsible for having his sub-contractors under its subcontract(s) to pay all applicable taxes on account of payment received by the sub-contractors from the Bidder for works done under the sub-contracts in relation to this Agreement and the Purchaser will in no case bear any responsibility for such payment of taxes. It shall be the responsibility of the Bidder to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. The Bidder shall also provide the Purchaser such information, as it may be required regarding the Bidder's details of payment made by the Purchaser under the Agreement for proper assessment of taxes and duties. The Bidder and his sub-subcontractors or their personnel shall bear all the taxes if any, levied on the Bidder's, sub-contractors' and the Bidder's personnel. The amount of tax withheld by the Purchaser shall always be in accordance with Indian Tax Law and the Purchaser shall promptly furnish to the Bidder original certificates (Challans) for tax deduction at source and paid to the Tax Authorities. The Bidder agrees that it and its sub-contractors shall comply with the Indian Income Tax Act in force from time to time and pay Indian Income Tax, as may be imposed/levied on them by the Indian Income Tax Authorities, for the payments received by them for the works under the Agreement.
3. Should the Bidder fail to submit returns/pay taxes in times as stipulated under the Indian Income Tax Act and consequently any interest or penalty is imposed by the Indian Income Tax authority, the Bidder shall pay the same.

12 Events of Default, Termination and Suspension

12.1 Events of Default by Bidder

1. The failure on the part of the Bidder to perform any of its obligations or comply with any of the terms of this Agreement shall constitute an Event of Default on the part of the Bidder. The events of default as mentioned above may include, inter-alia, the following:
 - i. the Bidder has failed to perform the obligations under this Agreement.
 - ii. Bidder has exceeded cap on any liquidated damages.
 - iii. the Bidder or its team has failed to conform with any of the service specifications as set out in the RFP or this Agreement.
 - iv. the Bidder has failed to demonstrate or sustain any representation or warranty made by it in this Agreement, with respect to any of the terms of its Proposal, the RFP, and this Agreement.
 - v. There is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to the Bidder.
 - vi. The Bidder or its team has failed to comply with or is in breach or contravention of any Applicable Laws.
 - vii. There is an undue delay in achieving the agreed timelines for delivering the services under this Agreement due to reasons solely attributable to the Bidder.
 - viii. Where it comes to the Purchaser's attention that the Bidder (or its Team) is in a position of actual conflict of interest with the interests of the Purchaser, in relation to any of terms of the Bidder's Proposal, the RFP or this Agreement.
 - ix. If it comes to knowledge of the Purchaser that the Bidder or any of its personnel or subcontractors or such sub-contractor's personnel have been involved in any fraudulent or corrupt practices or any other practice of similar nature.
2. Where there has been an occurrence of such Event of Defaults, inter alia, as stated above, the Purchaser shall issue a notice of default to the Bidder, setting out specific defaults deviances omissions and providing a period of up to thirty (30) days to enable the Bidder to remedy the default/deviances /omissions committed.
3. Where despite the issuance of a default notice to the Bidder by the Purchaser the Bidder fails to remedy the default to the reasonable satisfaction of the Purchaser, the Purchaser may, where it deems fit, issue to the Bidder another default notice or proceed to adopt such remedies as may be available to the Purchaser including but not limited to the remedies provided in clause 13.2 below.

12.2 Consequences for Events of Default

Where an Event of Default subsists or remains uncured even after expiry of 30 days as mentioned in clause 12.1 (2), the Purchaser shall be entitled to:

1. Impose any such reasonable obligations and conditions and issue any clarifications as may be necessary to, inter alia, ensure smooth continuation of the Services and the project which the Bidder shall be obliged to comply with. The Bidder shall in addition take all available steps to minimize loss resulting from such event of default.
2. Suspend all corresponding and relevant payments to the Bidder under the Agreement (except for milestones which have been successfully achieved) by written notice of suspension to the Bidder provided that such notice of suspension shall (a) specify the nature of failure; and (b) request the

Bidder to remedy such failure within a specified period from the date of receipt of such notice of suspension by the Bidder.

3. Terminate this Agreement in full or in part.
4. Invoke the Performance Bank Guarantee and other Guarantees furnished hereunder, enforce indemnity provisions, recover such other costs/losses and other amounts from the Bidder which may have resulted from such default and pursue such other rights and/or remedies that may be available to the Purchaser under law.

12.3 Termination for Breach

The Purchaser may, terminate this Agreement by giving the Bidder a prior and written notice of up to 30 days indicating its intention to terminate where the Purchaser is of the opinion that there has been such Event of Default on the part of the Bidder which has not been cured within the notice period of 30 days provided under clause 12.2 (2) of Volume III of this RFP. The Purchaser may, in its sole discretion, afford a further reasonable opportunity to the Bidder to explain the circumstances leading to such a breach and may increase the time limit for curing such breach before terminating the Agreement.

12.4 Termination for Convenience

The Purchaser may, by written notice of 90 (ninety) days sent to the Bidder, terminate the Agreement, in whole or in part at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective. The Purchaser may, at its discretion, relax or absolve the Bidder from following the timelines and/or service levels related to the part of the Agreement which is being terminated.

12.5 Effects of Termination

1. In the event of expiry of the Term or termination of this Agreement due to any cause whatsoever, the Bidder shall comply with the Exit Management Schedule/Plan set out as Schedule IV of this Agreement (and as revised from time to time).
2. Where the termination of the Agreement is prior to its stipulated term on account of an Event of Default on the part of the Bidder, the Purchaser shall pay the Bidder for that part of the Services which have been authorized by the Purchaser and satisfactorily delivered performed by the Bidder up to the date of termination.
3. Where the termination of the Agreement is prior to its stipulated term on account of termination for convenience by the Purchaser, the Purchaser shall pay the Bidder for all the Goods and the Services which have been authorized by the Purchaser and delivered performed by the Bidder up to the date of termination. Depending on the merits of the case, the Purchaser will suitably compensate the Bidder on mutually agreed terms for directly incurred costs.
4. Nothing herein shall restrict the right of the Purchaser to invoke the Bank Guarantee and other Guarantees furnished hereunder and pursue such other rights and/or remedies that may be available to the Purchaser under this Agreement and/or the Applicable Law.
5. All payments under this clause shall be payable only after the Bidder has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Purchaser. In case of expiry of the Agreement, the last due payment shall be payable to the Bidder after the Bidder has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Purchaser.

12.6 Rights other than Termination

- i. The termination hereof shall not affect any accrued right or liability of either Party nor affect the operation of the provisions of this Agreement that are expressly or by implication intended to come into or continue in force on or after such termination.
- ii. The termination provisions set out in this Clause 12 of Volume III of this RFP are in addition to any termination rights that the Purchaser may have under this Agreement/RFP and are in addition to, and without prejudice to, other rights that the Purchaser may have under law and this Agreement.

13 Indemnification and Limitation of Liability

13.1 General Indemnity

Subject to Clause 13.2 below, the Bidder (the "**Indemnifying Party**") undertakes to indemnify the Purchaser and its nominated agencies (the "**Indemnified Party**") from and against all losses, claims, damages, compensation (including attorney fees) etc. on account of bodily injury, death or damage to tangible personal property arising in favour of any person, company or other entity (including the Indemnified Party) attributable to - the Indemnifying Party's negligence, willful default or lack of due care. The Indemnifying Party shall also indemnify Indemnified Party from and against all direct monetary losses, damages etc. suffered by Indemnifying Party or any third party arising out of any defect, fault, deficiency in the applications/system developed and or maintained by the Indemnifying Party or any of its sub-contractors etc.

13.2 Intellectual Property Rights (IPR) Indemnity

If the Indemnified Party notifies the Indemnifying Party in writing:

1. Of a third-party claim against the Indemnified Party that any Goods/ Deliverables/Services provided by the Indemnifying Party infringes a copyright, trade secret, patent, or other intellectual property rights of any third party, or
2. Of a third-party claim against the Indemnified Party or any of its service provider that any Purchaser's Material provided by the Indemnified Party or any of its service provider has been used by Indemnifying Party in breach of licensing or use terms for such Purchaser's Material
3. The Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the Indemnified Party or its service provider, provided, the Indemnifying Party will not indemnify the Indemnified Party if the claim of infringement is caused by (a) The Indemnified Party's misuse or modification of the Deliverables; (b) The Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party; (c) The Indemnified Party's use of the Deliverables in combination with any product or information not owned or developed or supplied by the Indemnifying Party. If any of the Deliverables is or likely to be held as infringing, the Indemnifying Party shall at its expense and option either (i) procure the right for the Indemnified Party to continue using it, (ii) replace it with a non-infringing equivalent, or (iii) modify it to make it non-infringing.

13.3 Conditions of Indemnity

Without prejudice to the rights of the Purchaser in respect of indemnification for any claim:

1. The Purchaser shall notify the Bidder upon receipt of any notice of claim setting out in reasonable particulars, the details of such notice of claim.
2. Immediately upon receipt of notification of any claim from the Purchaser, the Bidder within a period of 5 days from date of receipt of such notice from the Purchaser, notify the Purchaser whether the Bidder wish to assume the defense in relation to such claim (including settlement or resolution thereof). Thereafter, the Bidder shall be entitled in consultation with the Purchaser, and only to the extent such action does not in any manner compromise, prejudice or adversely affect the interests of the Purchaser, to take such action as mutually agreed upon by Bidder and the Purchaser to avoid, dispute, deny, resist, appeal, compromise or consent such claim, within a period of 30 days from the date of receipt of such claim notification.

3. Notwithstanding anything contained herein, the Bidder and the Purchaser agree and covenant that a notice by the Purchaser to the Bidder in relation to the claim as aforesaid shall amount to express acceptance and consent by the Bidder to indemnify the Purchaser for all losses in relation to such claim. Upon notice by the Bidder, the Purchaser shall reasonably co-operate with the Bidder at the sole costs of the Bidder, only to the extent the same does not in any manner compromise, prejudice or adversely affect the rights of the Purchaser. The Purchaser shall have the right, at its option, to participate in the defense of such claim at its own cost and expense.
4. If the Bidder fails to take any action as per the above clause within the time as specified therein, the Purchaser shall have the right, in its absolute discretion, to take such action as it may deem necessary to avoid, dispute, deny, resist, appeal, compromise or contest or settle any claim (including without limitation, making claims or counterclaims against third parties). If the Bidder does not assume control of the defense of such claims (as mentioned above), the entire defense, negotiation, or settlement of such claim by the Purchaser shall be deemed to have been consented to by, and shall be binding upon, Bidder as fully as though the Bidder alone had assumed the defense thereof and a judgement had been entered into by the Bidder, for such claim in respect of the settlement or judgement.

13.4 Risk Purchase

If the Bidder fails or refuses to perform its obligations (or any part thereof) under this Agreement, or if the Agreement is terminated (in full or in part) by the Purchaser due to breach of any obligations of the Bidder under this Agreement, the Purchaser reserves the right to procure the same or equivalent Goods Services Deliverables from alternative sources. Any incremental cost borne by the Purchaser in procuring such Goods/Services/Deliverables shall be borne by the Bidder provided the liability of the Bidder to pay such incremental cost shall be limited to the higher of (a) 100% of the value of the services/deliverables/obligations which the Bidder has failed to perform/provide OR (b) 30% of the Total Contract Value. In the event the Bidder has not been provided a notice cure period for the relevant breach/default etc. under any other clause of this Agreement, the Purchaser shall give 30 days' notice cure period to Bidder prior to invoking this clause. Any such incremental cost incurred in the procurement of such Goods/Services/Deliverables from alternative source will be recovered from the undisputed pending due and payable Payments Bank Guarantee provided by the Bidder under this Agreement and if such funds are not sufficient to recover the incremental cost, the same may be recovered, if necessary, by due legal process.

13.5 Limitation of Liability

1. The liability of the Bidder (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables, Goods, Services, and risk purchase clause covered by this Agreement, shall be the payment of direct damages only which shall in no event in the aggregate exceed 100% of the Total Contract Value.
2. The liability of the Purchaser (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement shall be limited to the amount of fees remaining to be paid to the Bidder under this Agreement.
3. Subject to clause (4) below, in no event shall either party be liable for any consequential, incidental, indirect, special, or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) even if it has been advised of their possible existence.

4. Notwithstanding anything contained in the foregoing, the liability cap and exclusion for the Bidder given under this Clause 13 shall not be applicable to the indemnification obligations set out in Clause 13.1, 13.2, 11.3 (3), 23 (5).

13.6 Allocation of Liability

The allocations of liability in clause 13 of Volume III represents the agreed and bargained-for understanding of the parties and compensation for the Services/Deliverables reflects such allocations.

14 Force Majeure

14.1 Definition of Force Majeure

The Bidder or the Purchaser shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by an event of force majeure ('Force Majeure').

14.2 Force Majeure Events

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

1. Is beyond the reasonable control of the affected Party.
2. Such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care.
3. Does not result from the negligence of such Party or the failure of such Party to perform its obligations under this Agreement.
4. Is of an incapacitating nature and prevents or causes a delay or impediment in performance; and
5. May be classified as all or any of the following events:
 - i. Act of God like earthquake, flood, inundation, landslide, storm, tempest, hurricane, cyclone, lightning, thunder, or volcanic eruption that directly and adversely affect the performance of services by the Bidder under this Agreement.
 - ii. Radioactive contamination or ionizing radiation or biological contamination (except as may be attributable to the Bidder's use of radiation or radioactivity or biologically contaminating material) that directly and adversely affect the performance of services by the Bidder under this Agreement.
 - iii. Industry wide strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Bidder, and which directly and adversely affect the timely implementation and continued operation of the Project; or
 - iv. An act of war (whether declared or undeclared), hostilities, invasion, armed conflict or act of foreign enemy, blockade, embargo, prolonged riot, insurrection, terrorist or military action, civil commotion, or politically motivated sabotage, for a continuous period exceeding seven (7) days that directly and adversely affect the performance of services by the Bidder under this Agreement.

For the avoidance of doubt, it is expressly clarified that the failure on the part of the Bidder under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage, or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking shall not be considered as arising due to forces of nature and shall not qualify under the definition of "Force Majeure". The Bidder will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes, and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).

14.3 Notification procedure for Force Majeure

1. The affected Party shall notify the other Party of a Force Majeure event within seven (7) days of occurrence of such event. If the other Party disputes the claim for relief under Force Majeure, it shall

give the claiming Party written notice of such dispute within thirty (30) days of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in the Agreement

2. Upon cessation of the situation which led the Party claiming Force Majeure, the claiming Party shall within seven (7) days thereof notify the other Party in writing of the cessation and the Parties shall as soon as practicable thereafter continue performance of all obligations under this Agreement

14.4 Allocation of Costs arising out of Force Majeure

1. Upon the occurrence of any Force Majeure event prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
2. Upon occurrence of a Force Majeure event after the Effective Date, the costs incurred and attributable to such event and directly relating to the Project ('Force Majeure Costs') shall be allocated and paid as follows:
 - i. Upon occurrence of an event mentioned in clause 14.2 (1), (2), (3) and (4), the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
 - ii. Neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands, and proceedings relating to or arising out of occurrence or existence of any Force Majeure event or exercise of any right pursuant hereof.

14.5 Consultation and duty to mitigate

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

15 Confidentiality and Information Security

1. The Purchaser may allow the Bidder to utilize highly Confidential Information including confidential public records and the Bidder shall maintain the highest level of secrecy, confidentiality, and privacy with regard to such Confidential Information. The Bidder shall use its best efforts to protect the confidentiality, integrity and proprietary of the Confidential Information. No member of Bidder's Team shall, without prior written consent from the Purchaser, make any use of any Confidential and Proprietary Information given by the Purchaser, except for purposes of performing this Agreement. Each member of Bidder's Team shall keep all the Confidential and Proprietary Information, provided by the-Purchaser to them or their respective employees as confidential.
2. Additionally, the Bidder shall keep confidential all the details and information about the Project, including systems, facilities, operations, management, and maintenance of the systems/facilities. The Bidder shall use the information only to execute the Project.
3. The Purchaser shall retain all rights to prevent, stop and if required take the necessary punitive action against the Bidder regarding any forbidden disclosure. The Purchaser reserves the right to adopt legal proceedings, civil or criminal, against the Bidder in relation to a dispute arising out of breach of obligation by the Bidder under this clause.
4. The Bidder shall execute a corporate non-disclosure agreement with the Purchaser in the format provided by the Purchaser and shall ensure that all its employees, agents and subcontractors execute individual non-disclosure agreements, which have been duly approved by the Purchaser with respect to this Project.
5. The Bidder may only disclose the Confidential Information in the following circumstances:
 - i. With the prior written consent of the Purchaser.
 - ii. To a member of the Bidder's team ("Authorized Person") provided the Authorized Person needs to know the Confidential Information for accomplishment of the Services and the Authorized Person has executed a confidentiality agreement with the Purchaser prior to receiving such information (Bidder and every other member of Bidder's Team shall ensure that such Authorized Person to whom such information is disclosed are bound by the similar confidentiality obligations as applicable to each member of Bidder's Team. Disclosure to any such Authorized Person shall be made in confidence on need-to-know basis i.e., so far as may be necessary for such Authorized Person for the purposes of performance of the obligations of this Agreement); and
 - iii. If, and to the extent that the Bidder is compelled legally to disclose the Confidential Information.
6. When the Bidder is aware of any steps being taken or considered to compel legally the Bidder or an Authorized Person to disclose the Confidential Information, it shall:
 - i. To the extent legally permitted, defer, and limit the disclosure with a view to preserving the confidentiality of the Confidential Information as much as possible.
 - ii. Promptly notify the Purchaser; and
 - iii. Do anything reasonably required by the Purchaser to oppose or restrict that disclosure
7. The Bidder shall notify the Purchaser promptly if it is aware of any disclosure of the Confidential Information otherwise than as permitted by this Agreement or with the authority of the Purchaser.
8. The Bidder shall not carry any written material, layout, diagrams, floppy diskettes, pen-drive, CDs, hard disk, storage tapes or any other media out of the Purchaser premise without written permission from the Purchaser. The Bidder's personnel shall follow the Purchaser's Information Security policy. The Bidder acknowledges that the Purchaser's business data and other Purchaser proprietary information or materials, whether developed by the Purchaser or being used by the Purchaser

pursuant to a license agreement with a third party (the foregoing collectively referred to herein as “proprietary information”) are confidential and proprietary to the Purchaser; and the Bidder agrees to use reasonable care to safeguard the proprietary information and to prevent the unauthorized use or disclosure thereof, which care shall not be less than that used by the Bidder to protect its own proprietary information. The Bidder recognizes that the goodwill of the Purchaser depends, among other things, upon keeping such proprietary information confidential and that unauthorized disclosure of the same by the Bidder could damage the Purchaser, and that by reason of the Bidder’s duties hereunder, the Bidder may come into possession of such proprietary information, even though the Bidder does not take any direct part in or furnish the services performed for the creation of said proprietary information and shall limit access thereto to employees with a need to such access to perform the services required by this agreement. The Bidder shall use such information only for the purpose of performing the said services. The Bidder shall, upon termination of this Agreement for any reason, or upon demand by the Purchaser, whichever is earliest return all information provided to the Bidder by the Purchaser, including any copies or reproductions, both hardcopy and electronic.

9. The obligations of confidentiality under this Agreement shall remain in force for the Term of the Agreement and shall survive for a period of three (3) years after expiry of the Term or earlier termination.
10. Obligations under this clause 15 shall not apply to any information which is: (a) previously known to the Bidder at the time of disclosure without obligation of confidentiality, (b) independently developed by Bidder and not derived from the Confidential Information supplied by the Bidder or the participation of individuals who have had access to Confidential Information, (c) in or subsequently comes into the public domain (other than as a result of a breach of this Agreement); or (d) required to be disclosed by the Bidder by law, regulation, court order or other legal process, provided, where legally permissible, Bidder provides written notice to the Purchaser prior to such disclosure and provide reasonable assistance to the Purchaser in retaining the confidentiality of such information.

16 Stipulated Time Schedule

The Time Schedule has been mentioned in the Volume II of the RFP. The Bidder shall perform the activities and comply in all respects with the critical dates, which will be communicated by the Purchaser to the Bidder’s team, as the case may be, and the parties hereby agree that failure on part of the Bidder to meet the critical dates without prejudice to any other rights that the Purchaser may have, may lead to the imposition of such obligations as are laid down in levy of liquidated damages as set out in the RFP and/or termination of the Agreement at the discretion of the Purchaser.

17 Audit, Access & Reporting

1. The Purchaser reserves the right to inspect and monitor/assess the progress of the project at any time during the Agreement, after providing due notice to the Bidder. The Purchaser may demand and upon such demand being made, the Purchaser shall be provided with any document, data, material, or any other information which it may require, to enable it to assess the progress of the project.
2. The Purchaser shall also have the right to conduct, either itself or through another agency as it may deem fit, an audit to monitor the performance by the Bidder of its obligations/functions in accordance with the standards committed to or required by the Purchaser and the Bidder undertakes to cooperate with and provide to the Purchaser/any other agency appointed by the Purchaser, all documents and other details as may be required by them for this purpose. To the extent reasonably possible, the Purchaser shall endeavor not to appoint a competitor of Bidder as auditor. Any deviations or contravention identified because of such audit/assessment, would need to be rectified by the Bidder failing which the Purchaser may, without prejudice to any other rights that it may have issue a notice of default. Cost of acquisition of deliverables by the Bidder and other sub-contractors is out of the purview of audit/inspections.
3. Without prejudice to the foregoing, the Bidder shall allow access to the Purchaser or its nominated agencies to all information which is in the possession or control of the Bidder, and which relates to the provision of the Services/Deliverables as set out in the Audit, Access and Reporting Schedule and which is reasonably required by the Purchaser to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule II of this Agreement.
4. The Bidder shall provide all such reports and documents as may be requested by the Purchaser for Purchaser's internal compliance purposes within 15 days (or such other period allowed by the Purchaser) of receipt of request from the Purchaser.

18 Ownership and Intellectual Property Rights

- COTS products and enhancements:** All COTS products and related solutions and fixes provided by the Bidder pursuant to this Agreement shall be licensed to the Purchaser according to the terms of the license agreement packaged with or otherwise applicable to such product. Such licenses shall be brought on behalf of and in the name of the Purchaser or mentioning the Purchaser as the end user of such licenses. Bidder would be responsible for arranging any licenses associated with products. **“Product”** means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to the Purchaser for license which is published by product owner or its affiliates, or a third party. **“Fixes”** means product fixes that are either released generally (such as commercial product service packs) or that are provided when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing. Unless otherwise specifically restricted by the Licensing Terms of the COTS products, all intellectual property rights in any development/enhancement/customization etc. done on the COTS products pursuant to this Agreement shall be owned by the Purchaser. The Bidder undertakes to execute all such agreements/documents and assist the Purchaser in filing all relevant applications, effect transfers and obtain all permits and approvals that may be necessary in this regard to effectively transfer and conserve the Intellectual Property Rights of the Purchaser. The Bidder shall be obliged to ensure that all approvals, registrations, licenses, permits and rights which are, inter-alia, necessary for use of the Deliverables, services, applications, services etc. provided by the Bidder under this Agreement shall be acquired in the name of the Purchaser and Bidder shall have the non-exclusive, limited right to use such licenses till the Term on behalf of the Purchaser solely for the purpose of execution of any of its obligations under the terms of this Agreement. However, after the term of this Agreement, such approvals etc. shall endure to the exclusive benefit of the Purchaser. The Complete IPR for WDRA Portal will be with the Purchaser.
- Bespoke Development:** The Purchaser shall own and have a right in perpetuity to use all newly created Intellectual Property Rights which have arisen out of or have been developed under the Scope of Work during execution of this Agreement, including but not limited to all processes, products, specifications, reports, drawings, applications, codes and other documents which have been newly created and developed by the Bidder during the performance of the Services and for the purposes of, inter-alia, use or sub-license of such Services under this Agreement. Bespoke development shall include any customization or enhancement to COTS/third party products and, unless otherwise provided in the licensing terms of such COTS/third party products, the Purchaser shall own and have a right in perpetuity to all IPRs in such customization/enhancement etc. The Bidder shall provide source code, object code and all other relevant materials, artefacts etc. of all bespoke development to the Purchaser and the Purchaser shall own all IPRs in them. All material related to such bespoke development shall be treated as Confidential Information by the Bidder. The Bidder undertakes to disclose all such Intellectual Property Rights arising in performance of the Services to the Purchaser. The Bidder shall execute all such agreements/documents and assist the Purchaser in filing all relevant applications, effect transfers and obtain all permits and approvals that may be necessary in this regard to effectively transfer and conserve the Intellectual Property Rights of the Purchaser at the cost of the Purchaser.
- Pre-existing work:** All intellectual property rights existing prior to the Effective Date of this Agreement shall belong to the Party that owned such rights immediately prior to the Effective Date. Subject to

the foregoing, the Purchaser will have a non-exclusive, transferable, perpetual, fully paid up, royalty-free, worldwide license to all pre-existing intellectual property rights of the Bidder or subcontractors that are (i) provided or used by the Bidder / subcontractors in providing services and goods under this Agreement; and/or (ii) incorporated in any deliverables, products, goods, or software provided by Bidder to the Purchaser under this Agreement.

4. **Ownership of documents:** The Purchaser shall own all Documents provided by or originating from the Purchaser and all Documents produced by or from or for the Bidder while performing the Services. Forthwith upon expiry or earlier termination of this Agreement and at any other time on demand by the Purchaser, the Bidder shall deliver to the Purchaser all Documents provided by or originating from the Purchaser and all Documents produced by or from or for the Bidder while performing the Services, unless otherwise directed in writing by the Purchaser at no additional cost. The Bidder shall not, without the prior written consent of the Purchaser store, copy, distribute or retain any such Documents.

19 Warranty

1. The warranties and remedies provided in this Clause 19 are in addition to, and not in derogation of, the warranties provided in Volume II of the RFP and the two are to be read harmoniously.
2. Bidder shall provide ATS/AMC for the Software/solutions provided by the respective OEMs for the period specified in the RFP. The ATS should include upgrades, updates, and patches to the respective Software solution for the above stated period.
3. Warranty for Services – The Bidder warrants that all services under this Agreement will be performed with promptness and diligence and will be executed in a workmanlike and professional manner, in accordance with the practices and high professional standards used in well-managed operations performing services like the services under this Agreement. The Bidder represents that it shall use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the services hereunder.
4. If the Bidder, having been notified, fails to remedy the defect(s) within a reasonable period, the Purchaser may proceed, without prejudice to any other rights which the Purchaser may have against the Bidder under the Agreement, to take such remedial action as may be necessary including invoking risk purchase as provided under clause 13.4 of this Agreement.
5. The representations, warranties and covenants provided by the Bidder under this Agreement will not be affected by Purchaser's modification of any portion of the software so long as the Bidder can discharge its obligations despite such modifications or following their removal by the Purchaser.
6. Except as expressly provided herein, no other warranties (implied or otherwise) are provided by the Bidder.

20 Insurance Cover

20.1 Obligation to maintain Insurance

1. The Bidder shall take out and maintain all insurances in relation to this agreement and the scope of work and other obligations of this Agreement as mandated by the Applicable Law.
2. Upon request of the Purchaser, the Bidder shall take out additional insurances on behalf of the Purchaser at mutually agreed additional costs.

21 Miscellaneous

21.1 Bidder's Organization

1. The personnel assigned by the Bidder to perform the Services shall under no circumstances be considered employees of the Purchaser or its nominated agencies. The Bidder shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, provident fund, including salary, withholding of income taxes and social security taxes, worker's compensation, employee, and disability benefits and the like and shall be responsible for all obligations of an employer subject to the Applicable Law.
2. The Bidder shall ensure that the Bidder's team is competent and professional and possesses the requisite qualifications and experience appropriate to the task they are required to perform under this Agreement in addition to the minimum qualification and experience as explained in Volume I of the RFP.
3. The Bidder shall appoint an employee as its authorized representative through a written notice to the Purchaser. The Bidder's Representative shall have the authority to exercise all the powers and functions of the Bidder under this Agreement other than the power to amend this Agreement and ensure the proper administration and performance of the terms hereof and to bind the Bidder in relation to any matter arising out of or in connection with this Agreement. The Bidder along with the Sub-contractors/third parties shall be bound by all undertakings and representations made by the authorized representative of the Bidder and any covenants stipulated hereunder, with respect to this Agreement, for and on their behalf. The Bidder's representative shall have all the power requisite for the performance of the work under this Agreement. The Bidder's Representative shall liaise with the Purchaser's Representative for the proper coordination and timely completion of the works and on any other matters pertaining to the works. The Bidder's Representative will extend full co-operation to the Purchaser's representative for supervision/inspection/observation of the equipment/material procedures, performance, reports, and records pertaining to the works. The Bidder shall comply with any instructions that are given by the Purchaser's representative during this Agreement in relation to the performance of its obligations under the terms of this Agreement and the RFP. Bidder's Representative shall also have complete charge of the Bidder's personnel engaged in the performance of the works and to ensure compliance of rules, regulations, and safety practice. Bidder's Representative shall also cooperate with the other service providers/contractors of the Purchaser. Such Bidder's representative shall be available to the Purchaser's Representative during the execution of Services.
4. The Bidder shall, to the best of its efforts, avoid any change in the organizational structure proposed for execution of this Agreement or replacement of any manpower resource appointed. If the same is however unavoidable, due to circumstances such as death, medical incapacity, resource leaving Bidder organization, the same shall be notified to the Purchaser immediately. The Bidder shall promptly inform the Purchaser in writing if any such revision or change is necessary. In case of replacement of any manpower resources, the Bidder shall ensure efficient knowledge transfer from the outgoing resource to the incoming resource and adequate hand holding period and training for the incoming resource. The change or revision of resources shall be subject to levy of Liquidated damages as provided in the RFP.
5. The Purchaser's Representative may at any time request the Bidder to remove from the Services any employee of the Bidder or its sub-contractor or any person(s) deployed by the Bidder or its sub-contractor for professional incompetence or negligence or for being deployed for work for which he

is not suited or for unethical, corrupt, fraudulent behavior. The Bidder shall consider the Purchaser's Representative request and may accede to or disregard it except that in case of unethical, corrupt, fraudulent behavior the Bidder shall remove the person immediately. The Purchaser's Representative, having made a request, as aforesaid in the case of any person, which the Bidder has disregarded, may in the case of the same person at any time but on a different occasion, and for a different instance of one of the reasons referred to above in this Clause object to and require the Bidder to remove that person from deployment on the work, which the Bidder shall then forthwith do and shall not again deploy any person so objected to on the work or on the sort of work in question (as the case may be) without the written consent of the Purchaser's Representative. The Purchaser's Representative shall state to the Bidder in writing his reasons for any request or requirement pursuant to this clause. The Bidder shall promptly replace every person removed, pursuant to this section, with a competent substitute. The change or revision of resources shall be subject to levy of Liquidated damages as provided in the RFP.

21.2 Independent Contractor

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

1. Incur any expenses on behalf of the other Party.
2. Enter any engagement or make any representation or warranty on behalf of the other Party.
3. Pledge the credit of or otherwise bind or oblige the other Party; or
4. Commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

21.3 Sub-Contractors

Subcontracting under this MSA shall be allowed only for Help Desk Services.

1. The Bidder shall ensure that the subcontractor proposed by Bidder is competent and professional and possess the requisite qualifications and experience appropriate to the tasks they will perform under this Agreement.
2. Any change of the sub-contractor(s), after the arrangement is firmed up, will be made by the Bidder only with the prior written approval of the Purchaser which approval shall not be unreasonably withheld or delayed.
3. The Bidder shall be responsible and shall ensure the proper execution and performance of the services or tasks so sub-contracted and shall be liable for any non-performance or breach by such sub-contractor. The Bidder indemnifies and shall keep indemnified the Purchaser against any losses, damages, claims or such other implications arising from or out of the acts and omissions of such sub-contractor. The Bidder shall be responsible for making all payments to the sub-contractor as may be necessary, in respect of any work performed or task executed, and the Purchaser shall not be responsible for any part or full payment, which is due to such sub-contractor.
4. All rights of use of any process, service or facility developed or any other task performed by the subcontractor for the Bidder or the Purchaser for the purposes of this Agreement, under a subcontract agreement would lie exclusively with the Purchaser in perpetuity free from all liens, encumbrances and other third-party rights and the Bidder shall, wherever required take all steps that may be

necessary to ensure the use of such rights by the Purchaser. Ownership and all rights of use of all deliverables documents/reports etc. supplied by the Bidder and/or by authorized subcontractor for the Bidder for the purposes of this Agreement, under a subcontract agreement would lie exclusively with the Purchaser in perpetuity free from all liens, encumbrances and other third-party rights and the Bidder shall, wherever required take all steps that may be necessary to ensure the ownership and use of such rights by the Purchaser. Purchaser shall own and have a right in perpetuity to use all newly created Intellectual Property Rights which have been developed by the subcontractor solely during execution of this Agreement. The SA will provide the undertakings given by the subcontractor within 30 days from the date of appointment of subcontractor to disclose all such Intellectual Property Rights arising in performance of the Services to the Purchaser and execute all such agreements/documents and file all relevant applications, effect transfers, and obtain all permits and approvals that may be necessary in this regard to effectively transfer and conserve the Intellectual Property Rights of the Purchaser.

5. Nothing in this Agreement or any subcontract agreement hereunder shall relieve the SA from its liabilities or obligations under this Agreement to provide the Goods and Services in accordance with this Agreement.

21.4 Bidder's Obligations

The obligations of the Bidder described in this clause is in addition to, and not in derogation of, the obligations mentioned in Volume II of the RFP and the two are to be read harmoniously:

1. The Bidder shall be the sole point of contact for all matters relating to this Agreement.
2. The Bidder shall ensure that the Bidder team is competent, professional and possesses the requisite qualifications and experience appropriate to the task they are required to perform under this Agreement. The Bidder shall ensure that the Services are performed through the efforts of the Bidder's team, in accordance with the terms hereof and to the satisfaction of the Purchaser. Nothing in this Agreement relieves the Bidder from its liabilities or obligations under this Agreement to provide the Services in accordance with the Purchaser's direction and requirements and as stated in this Contract and the performance, non-compliance, breach or other loss and damage resulting either directly or indirectly by or on account of Bidder's Team.
3. The Bidder's Representative(s) shall have all the power requisite for execution of Scope of Work and performance of services under this Agreement. The Bidder's Representative(s) shall liaise with the Purchaser's Representative for the proper coordination and timely completion of the works and on any other matters pertaining to the works. He will extend full cooperation to the Purchaser's Representative for the proper coordination and timely completion of the works and on any other matter pertaining to the works. He will extend full co-operation to Purchaser's Representative in the manner required by them for supervision/inspection/observation of the equipment/goods/material, procedures, performance, progress, reports and records pertaining to the works. He shall also have complete charge of the Bidder's personnel engaged in the performance of the works and to ensure compliance of rules, regulations, and safety practice. He shall also cooperate with other Service Providers/Vendors of the Purchaser.

21.5 Assignment

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

2. The Bidder shall not be permitted to assign or transfer any or all its rights and obligations under this Agreement to any third party without the prior written permission of the Purchaser.
3. Subject to the foregoing, the Bidder shall have the right to undergo corporate change of ownership through mergers, demergers, slump sale etc., as allowed under Applicable Laws, after seeking prior written consent from the Purchaser, which consent shall be provided without undue delay by the Purchaser subject to the Bidder executing/furnishing such documents, agreements, undertakings (including, without limitation, enhanced performance security from new entity, novation agreements etc.) as may be deemed necessary by the Purchaser.

21.6 Trademarks & Publicity

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

21.7 Notices

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

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

For Purchaser

Addressee:

Address:

Telephone:

Fax:

Email:

For Bidder

Addressee:

Address:

Telephone:

Fax:

Email:

2. In relation to a notice given under this Agreement, a Party shall specify the Party's address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause.
3. Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter).
4. Either Party to this Agreement may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

21.8 No Claim Certificate

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

21.9 Severability and Waiver

1. If any provision of this Agreement, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid, or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this Agreement or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.
2. No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement of any right, remedy or provision of this Agreement shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision.

21.10 Compliance with Applicable Law

1. The Bidder shall comply with the provision of all laws including Warehousing (Development & Regulation) Act 2007, rules, regulations notifications & directions issued there under from time to time. All safety and labour laws enforced by statutory agencies and by the Purchaser shall be applicable in the performance of this Agreement and the Bidder's shall abide by these laws. The Bidder shall take all measures necessary or proper to protect the personnel, work and facilities and shall observe all reasonable safety rules and instructions. The Bidder shall report as soon as possible any

evidence, which may indicate or is likely to lead to an abnormal or dangerous situation and shall take all necessary emergency control steps to avoid such abnormal situations. The Bidder shall also adhere to all security requirement/regulations of the Purchaser during the execution of the work.

2. Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to its business like the Bidder as an Information Technology service provider) at all times comply with all laws, rules and regulations of government and other bodies having jurisdiction over the area in which the Services are undertaken provided that changes in such laws, rules and regulations which result in a change to the Services shall be dealt with in accordance with the Change Management and Control set out in Section 5.2 of Volume II of the RFP.
3. During the tenure of this Agreement, the Bidder shall comply with all Applicable Laws and shall obtain and maintain all statutory and other approvals required for the performance of the Services under this Agreement and nothing shall be done by the Bidder in contravention of any Applicable Law or any amendment thereof.

21.11 Professional Fees

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

21.12 Ethics

The Bidder for itself and on behalf of its subcontractors, agents, representatives, employees etc., represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of the Purchaser or its nominated agencies in connection with this Agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of the Purchaser's standard policies and may result in cancellation of this Agreement.

21.13 Amendment

Any amendment to this Agreement shall be made by mutual written consent of the Parties.

21.14 Conflict of Interest

The Bidder shall disclose to the Purchaser in writing, all actual and potential conflicts of interest that exist, arise, or may arise in the course of performing the Services as soon as practical after it becomes aware of that conflict.

21.15 Survival

Any provision of this Agreement which imposes or intends to impose an obligation on any of the Parties after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Such provisions include, without limitation, obligations related to confidentiality, indemnity, licenses, risk purchase and AMC/ATS, if any, to be provided by the OEMs or the Bidder.

22 Bank Guarantees

Performance Bank Guarantee:

1. The Bidder shall furnish, within 15 days after the receipt of Letter of Award from the Purchaser, furnish unconditional, irrevocable, and continuing Performance Securities/Guarantees to the Purchaser, each for an amount equal to 10% of the Total Value of Contract, from a scheduled bank in India in the format acceptable to the Purchaser. The Performance Security shall be valid for entire Term and six months thereafter.
2. In the event of the Bidder being unable to service the Agreement for reasons attributable to the Bidder or any subcontractors, or any team members, the Purchaser shall have the right to invoke the Performance Guarantee. Notwithstanding and without prejudice to any rights whatsoever of the Purchaser under the Agreement in the matter, the proceeds of the guarantees shall be payable to the Purchaser as compensation for any loss resulting from the failure of Bidder or any subcontractors, or any team members to perform/comply its obligations under the contract. The Purchaser shall notify the bidder in writing of the exercise of its right to receive such compensation within 30 days, indicating the contractual obligation(s) for which the Bidder is in default.
3. The Purchaser shall also be entitled to make recoveries from the Bidder's bills, guarantees, or from any other amount due to him, an equivalent value of any payment made to him due to inadvertence, error, collusion, misconstruction, or misstatement.
4. In case the Project is delayed beyond the Timelines as mentioned in RFP due to reasons attributable to Bidder or any subcontractors, or any team members, the Performance Guarantee shall be accordingly extended by the Bidder till completion of scope of work as mentioned in RFP.

23 Governing Law & Dispute Resolution

1. This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules.
2. Parties shall use all reasonable efforts to amicably resolve and settle any dispute arising out of or in relation to or in connection with this Agreement by firstly referring the dispute to any committee constituted under the Governance Schedule for such dispute settlement.
3. In the case of dispute arising out of or in relation to or in connection with the Agreement between the Purchaser and the Bidder, which has not been settled in accordance with Clause 23 (2) above within 30 days from date of reference of the dispute to such committee, any Party can submit the dispute for arbitration under the ICADR Arbitration Rules, 1996. The International Centre for Alternative Dispute Resolution will provide the administrative services in accordance with the ICADR Arbitration Rules, 1996.
4. The arbitration shall be conducted in India in accordance with the Rules and Procedures of the Arbitration and Conciliation Act of 1996 or any re-enactment or modification thereof.
5. The arbitration shall be presided upon by a panel of three arbitrators wherein each Party shall appoint one arbitrator each and the two appointed arbitrators shall appoint a third arbitrator.
6. Arbitration proceedings shall be held at New Delhi, India, and the language of the arbitration proceedings and that of all documents and communications between the Parties shall be English.
7. The decision of the arbitrator shall be final and binding upon both Parties. All arbitration awards shall be in writing and shall state the reasons for the award.
8. The agreement shall be subject to the jurisdiction of courts at Delhi.

In witness whereof the Parties have by duly authorized Representatives set their respective hands and seal on the date first above Written in the presence of:

WITNESSES:

Signed by:

(Name and designation) For and on behalf of WDRA (FIRST PARTY)

Signed by:

(Name and designation)

Bidder (SECOND PARTY)

(Name and designation) For and on behalf of Bidder Signed by:

24 Schedules

24.1 Schedule I – Definitions

1. 'Acceptance' - a hardware, software, solution, or any other deliverable shall be considered to have been accepted by the Purchaser, subsequent to its Commissioning and Testing, when all the activities as defined in Volume II of the RFP and Clause 8 of Volume III of the RFP have been successfully executed and completed by the Bidder and the Purchaser has indicated his acceptance by signing the Acceptance Certificate.
2. 'Acceptance Certificate' - means that document issued by the Purchaser signifying Acceptance of a hardware, software, solution or any other deliverable pursuant to the successful completion of the Acceptance Test of the System.
3. 'Acceptance Test Plan' shall have the meaning given in section 4.4 in Volume II of this RFP.
4. 'Applicable Law(s)' means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, byelaw, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project.
5. 'Assets' shall have the same meaning ascribed to it in Clause 9.1 (i).
6. 'Bidder' shall have the meaning ascribed to such term in Parties clause of this Agreement and shall be deemed to include the Bidder's successors, representatives (approved by the Purchaser), heirs, executors, administrators and permitted assigns unless excluded by the terms of the contract. The word Bidder when used in the pre-award period shall be synonymous with parties bidding against this RFP.
7. 'Bidder's team' means the Bidder along with all of its subcontractors and their employees who have to provide Goods and Services to the Purchaser under the scope of this Agreement. This definition shall also include any and/or all the employees of the Bidder, authorized partners/agents and representatives or other personnel employed or engaged either directly or indirectly by the Bidder for the purposes of this Contract.
8. 'Goods' means the hardware and other goods to be provided by the Bidder under the Scope of Work.
9. 'Change Order' or 'Alteration' or 'Variation' shall have the meaning given in section 6.4 of Volume II of the RFP hereof.
10. 'Confidential Information' means all data and information whether contained in any tangible medium of expression or in visual form, disclosed to or by any Party pursuant to this Agreement and includes without limitation information which:
 - i. is by its nature confidential or by the circumstances in which it is disclosed confidential; or
 - ii. Is designated by the disclosing Party as confidential or identified in terms connoting its confidentiality; but does not include information which is available lawfully in the public domain.
11. 'Document' means any embodiment of any text or image however recorded and includes any data, text, images, sound, voice, codes or any databases or microfilm or computer-generated micro fiche.
12. 'Effective Date' shall have the same meaning ascribed to it in Clause 3.
13. 'Fees' means the amount payable to Bidder in Indian Rupees.
14. 'Force Majeure' shall have the same meaning ascribed to it in Clause 14.1.
15. 'Go Live' means the successful roll out of the entire solution on production by the Bidder.
16. 'Intellectual Property Rights IPR' means any patent, copyright, trademark, trade name, design, trade secret, permit, service marks, brands, proprietary information, knowledge, technology, licenses, databases, computer programs, software, know-how or other form of intellectual property right, title,

benefits or interest whether arising before or after the execution of this Agreement and the right to ownership and registration of these rights.

17. "Notice" means:
 - i. a notice; or
 - ii. A consent approval or other communication required to be in writing under this Agreement, to be served at the addresses as given under clause 21.7 hereunder.
18. "Purchaser's Material" shall have the meaning ascribed to such term in clause 5.2 (v) of the Agreement.
19. "Purchaser's Representative Project Coordinator" means the person, or the persons appointed by the Purchaser from time to time to act on its behalf for overall coordination, supervision, and project management.
20. "RFP" shall have the meaning ascribed to such term in the WHEREAS clause of this Agreement.
21. "Scope of Work" means all Services, and any other deliverables as required to be provided by Bidder as specified in Volume II of the RFP.
22. "Services" means the services to be provided as per the requirements conditions specified in the Scope of Work and the Agreement. In addition to this, the definition would also include other related ancillary services that may be required to execute the Scope of Work under this Agreement.
23. "Service Level(s)" means the service level parameters and targets and other performance criteria which will apply to the Services and Deliverables as described in Volume II of the RFP; "SLA" or "Service Level Agreement" means the service level agreement specified in Volume II of the RFP.
24. "Service Specifications" means and includes detailed description, statements to technical data, performance characteristics, and standards (Indian as well as International) as applicable and as specified in the Agreement, as well as those specifications relating to industry standards and codes applicable to the performance of work, work performance quality and specifications affecting the work, or any additional specifications required to be produced by the Bidder to meet the design criteria.
25. "System" means integrated system/solution emerging out of the Scope of Work and covered under the scope of each Purchase Order issued by the Purchaser.
26. "Term" shall have the same meaning ascribed to it in Clause 3.
27. "Timelines" means the project milestones for performance of the Scope of Work and delivery of the Services as described in Volume II of the RFP.
28. "Total Contract Value" means [_____] i.e., the amount quoted by the Bidder (inclusive of taxes) in its commercial proposal. If at any point in time, the Total Value of Contract is increased by 10% or more due to one or multiple change request(s) in accordance with the terms of this Agreement, then Purchaser shall have the right to seek additional Performance Guarantee to such increased extent of Total Contract Value and the penalties/liquidated damages, limitation of liability cap etc. getting affected by such increase would be calculated based on such increase from the effective date of such increase in the Total Contract Value.

24.2 Schedule II – Audit, Access, and Reporting

1. Purpose

This Schedule details the audit, access and reporting rights and obligations of the Purchaser or its nominated agency and the Bidder. This Schedule is in addition to, and in derogation of, the audit rights and process provided in the RFP.

2. Audit Notice and Timing

- i. As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavors to agree to a timetable for routine audits (Other than those mentioned as part of the mandatory requirements for successful execution of the Engagement) during the entire duration of the Engagement.
- ii. The Purchaser may conduct non-timetabled audits at his/her own discretion, if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Bidder, a security violation, or breach of confidentiality obligations by the Bidder, provided that the requirement for such an audit is notified in writing to the Bidder a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the Bidder considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Project Governance and Management section of RFP.
- iii. Except as provided in 2 (ii) above, audits shall be conducted with adequate notice of 02 weeks to the Bidder.

3. Access

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

4. Audit Rights

The Purchaser or its nominated agency shall have the right to audit and inspect suppliers, agents, and third-party facilities (as detailed in the RFP), documents, records, procedures, and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:

1. The security, integrity and availability of all data processed, held, or conveyed by the Partner on behalf of the Purchaser and documentation related thereto.
2. That the actual level of performance of the services is the same as specified in the SLA.
3. That the Bidder has complied with the relevant technical standards and has adequate internal controls in place.
4. Bidder's deployment of resources and their attendance records.
5. Bidder's internal testing results; and
6. The compliance of the Bidder with any other obligation under the Agreement.

For the avoidance of doubt the audit rights under this Schedule shall not include access to the Bidder's profit margins or overheads, any confidential information relating to the Bidder's employees, or (iii) minutes of its internal Board or Board committee meetings including internal audit, or (iv) such other information of commercially confidence in nature which are not relevant to the Services associated with any obligation under the AGREEMENT.

5. Audit Rights of Suppliers and Agents

1. The Bidder shall use reasonable endeavors to achieve the same audit and access provisions as defined in this Schedule with suppliers and agents who supply resource, services, software in respect of the services. The Bidder shall inform the Purchaser or its nominated agency prior to concluding supply agreement of any failure to achieve the same rights of audit or access.
2. REPORTING: The Bidder will provide quarterly reports to the Purchaser or its nominated agency regarding any specific aspects of the Project and in context of the audit and access information as required by the Purchaser or its nominated agency.

6. Action and Review

1. Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the Purchaser or its nominated agency and the Bidder's representative shall inform the Purchaser about the actions that would be taken by the Bidder in respect of such discrepancies within a period of thirty (30) calendar days from the submission of the said audit assessment report or such earlier time period as notified by the Purchaser.
2. Any change or amendment to the systems and procedures of the Bidder, where applicable, arising from the audit assessment report shall be agreed within thirty (30) calendar days from the submission of the said audit assessment report or such earlier time period as notified by the Purchaser. The changes agreed by the Purchaser, or any changes suggested by the Purchaser, shall be implemented by the Bidder within a period of not more than 30 days or such other period as may be requested by the Bidder and agreed to by the Purchaser.

7. Terms of Payment

Except for the audits that are required to be conducted by the Bidder as provided in Volume II of the RFP for which the costs will be borne by the Bidder, the Purchaser shall bear the cost of other audits and inspections. The Bidder shall bear all costs for all reasonable assistance and information provided under the AGREEMENT, the Project Implementation, Operation and Maintenance SLA by the Bidder pursuant to this Schedule.

8. Records and Information

For the purposes of audit in accordance with this Schedule, the Bidder shall maintain true and accurate records in connection with the provision of the services and the Bidder shall handover all the relevant records and documents upon the termination or expiry of the AGREEMENT. The Bidder always make and keep sufficient copies of the Agreement documents, manuals, reference material, drawings, specifications, and any other document required by him to fulfil his duties under this Agreement.

24.3 Schedule III – Project Deliverables, Timelines and Payments

As indicated in Section 8 of Volume II of this RFP.

24.4 Schedule IV – Exit Management Schedule As Per RFP.