

# **Request for Proposal**

## **Selection of Implementation Partner for implementing Analytics Solution for MyGov**

**Volume 2  
Master Services Agreement**

**MyGov, Ministry of Electronics & Information Technology,  
Government of India**

**Ref: No. MyGov/01-02/2015 (Vol.II)**

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## **MASTER SERVICES AGREEMENT**

**THIS MASTER SERVICES AGREEMENT (“Agreement”)** is made on this the <\*\*\*> day of <\*\*\*> 2017 at New Delhi, India

### **BY AND BETWEEN**

The President of India, acting through the \_\_\_\_\_, New Delhi 110003 (herein after referred to as “Purchaser”/ “MyGov, Ministry of Electronics & Information Technology ”, which expression shall unless excluded by or repugnant to the context deemed to include its successor/s in office or assign) of the First Part;

### **AND**

<\*\*\*>, a Company incorporated under the Companies Act, 1956, having its registered office at <\*\*\*> (hereinafter referred to as ‘**Implementation Partner**’ 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:**

- i. The Purchaser had invited responses (“Proposals”/ “Bids”) vide its Request for Proposal (RFP) No. \_\_\_\_\_ (hereinafter referred to as ‘RFP’, which term shall include all corrigendum, addendums, modifications issued with reference to the RFP) from qualified Bidders from the EOI stage to be appointed as Implementation Partner for implementing Analytics Solution for the Purchaser;
- ii. The Implementation Partner had submitted its financial quotations dated \_\_\_\_\_ in response to the RFP document.
- iii. The Purchaser has agreed to appoint the Implementation Partner for implementing Analytics Solution for Purchaser and has issued a work order notifying the Implementation Partner of its selection as successful bidder/selected agency dated \_\_\_\_\_ to the Implementation Partner (‘Work Order’);
- iv. 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***

The terms used in this Agreement shall be interpreted as indicated in Schedule I of the Agreement. Other terms used in this Agreement are defined where they are used and have the meanings as indicated.

### ***1.2 Interpretation***

In this Agreement, unless a contrary is evident:

- i. 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;
- ii. Words denoting the singular include the plural and vice versa and use of any gender includes the other genders;
- iii. References to a ‘company’ shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- iv. Words denoting a person shall include an individual, firm, corporation, company, body corporate, partnership, or a trust;
- v. a reference to legislation includes legislation repealing, replacing or amending that legislation;;
- vi. The clause headings are for convenient reference only and do not form part of this Agreement.
- vii. Unless otherwise specified a reference to a clause number is a reference to all its sub-clauses;
- viii. Where a word or phrase is given a particular meaning, it includes the appropriate grammatical forms of that word or phrase having corresponding meanings;
- ix. A reference to the Agreement shall, unless the context otherwise requires, includes a reference to its Annexures, Schedules and every other documents 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 Agreement***

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

- (a) This Agreement;
- (b) The RFP;
- (c) The Technical Proposal, and commercial proposal submitted by the Implementation Partner along with any related documentation as accepted by the Purchaser (collectively “Proposal”);

(d) The Purchaser's work order;

(e) The Non-disclosure agreement, and any other document to be submitted by the Implementation Partner and appended to this Agreement.

#### ***1.4 Ambiguities within Agreement***

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

- i. As between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- ii. 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;
- iii. As between the provisions of this Agreement and the RFP and the Proposal, this Agreement shall prevail; and
- iv. As between any value written in numerals and that in words, the value in words shall prevail.

#### ***2. Scope of Work***

2.1 The scope of the project includes analysis, report generation and real time dashboarding of MyGov content through deployment of an on-premise solution coupled with analysis of relevant other media content. Other media shall cover social media platforms, (Facebook, Twitter, YouTube, LinkedIn, etc.), News websites, online Blogs. The Implementation Partner will have to propose SaaS solution for Other Media Analytics. It is envisaged that the Implementation Partner will deploy a dedicated team for analysis, report generation and real time dash boarding of MyGov content & relevant Other Media content and other scope activities. Detailed scope of work is mentioned in subsequent paras of this section.

2.2 In addition to the scope of work, will do an assessment of number of resources required to undertake the scope of services under this engagement. However, at any time, a minimum of six resources as required in the RFP will have to be deployed by the IP to deliver the services as proposed in this scope. For any services defined beyond the scope of services, MyGov may ask for additional resources from Implementation Partner as per rates submitted in its commercial proposal.

2.3 The Implementation Partner shall be responsible for sizing the hardware required for deployment of the proposed solution. The Implementation Partner will deploy, manage and operate the proposed solution for a period of 2 years (from the date of award of Work Order). The proposed solution should be capable of processing natural languages (NLP) and analysing content in English, Hindi and Marathi to start with. Implementation Partner will be responsible for customizing the proposed analytics solution in a specified time frame for customized reports and multi-lingual capability.

2.4 MyGov will require analysis of content on various attributes such as semantic analysis, textual analytics, contextual analytics, sentiment analytics, hashtag analysis, correlational analytics, web analytics, etc. for structured, semi-structured and unstructured data sets. The proposed analysis will be required by the various stakeholders for informed decision making.

2.5 In consideration of the award of the work under the RFP to Implementation Partner and payments to be made by the Purchaser, to the Implementation Partner as hereinafter mentioned, the

Implementation Partner hereby covenants with the Purchaser to perform its obligations and the entire scope of work defined in the RFP and this Agreement and to remedy defects therein in conformity in all the respects with the provisions of the Agreement.

2.6 The Purchaser hereby covenants to pay the Implementation Partner in consideration of the provision of the Deliverables and Services and the remedying of defects therein and for performance of all its obligations mentioned in the RFP and in this Agreement, the Total Contract Value or such sum as may become payable under the provisions of the Agreement at the time and in the manner prescribed under the Agreement.

2.7 Detailed Scope of Work under the Agreement shall be as defined in the Volume 1 of the RFP and clarifications, annexures, schedules etc. thereof

2.8 Without prejudice to the generality of clause 2.7 above, the Implementation Partner is required to provide such services and support as the Purchaser may deem proper and necessary, during the Term of the Agreement, including all such processes and activities which are consistent with the Proposal, the RFP and this Agreement and are deemed necessary by the Purchaser, in order to meet its business requirements (hereinafter 'Scope of Work' including the detailed scope of work specified in Volume 1 of the RFP and Annexures thereof).

### **3. *Term and Duration of the Agreement***

3.1 This Agreement shall come into effect on <\*\*\*> 20--- (hereinafter the 'Effective Date') and unless terminated earlier in accordance with the provision of this Agreement, this Agreement shall continue till the end of 2 (two) years from the date of award of contract to the Implementation Partner (Term).

3.2 In the event of delay in providing Deliverables and the Services by the Implementation Partner, Purchaser may upon its sole discretion, extend the duration of the Project for fulfilling the agreed scope of work provided that, for any such extension the penalties therefore specified under the Agreement will be applicable.

### **4. *Conditions Precedent***

#### **4.1 *Payment obligations to take effect upon fulfilment of Conditions Precedent***

The rights of the Implementation Partner 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. The Purchaser reserves the right to waive any or all of the conditions specified in clause 4.2 below in writing and no such waiver shall affect or impair any right, power or remedy that the Purchaser may otherwise have.

4.2 The Implementation Partner shall be required to fulfil the Conditions Precedent which are as follows:

- (i) Furnishing by the Implementation Partner, within 7 (seven) days of the issuance of the Work Order by the Purchaser to the Implementation Partner, an unconditional, irrevocable and continuing Performance Bank Guarantee from any Nationalised/Scheduled bank equivalent to 10% of the Total Contract Value, in the format provided in the RFP which would remain valid for 90 (ninety) days after expiry of the Term of the Agreement;



- (ii) Furnishing of certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Implementation Partner;
- (iii) Furnishing of such other documents, including the copy of Non-Disclosure Agreement and any other documents as the Purchaser may specify prior to the signing of this Agreement.
- (iv) Obtaining of all statutory and other approvals required for the performance of the Services under this Agreement

### **5.1 Key performance measurement**

- (i) Unless specified by the Purchaser to the contrary, the Implementation Partner shall perform the Services and carry out the Scope of Work in accordance with the terms of this Agreement and as laid down in Volume I of the RFP. If the Deliverables/ Services includes more than one document, then unless the Purchaser specifies to the contrary, the document submitted later in time shall prevail over a document of an earlier date to the extent of any inconsistency.
- (ii) The Purchaser reserves the right to amend any of the terms and conditions in relation to the Agreement/ Services specifications/ SLAs and may issue any such directions which are not necessarily stipulated therein if it deems necessary for the fulfilment of the Scope of Work. If the suggested amendments or new directions require the Implementation Partner to provide more resources, outside the agreed scope of work, the Purchaser shall bear mutually agreed additional expenses for the same.
- (iii) The Implementation Partner shall commence the performance of it's obligations under the Agreement from 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 Implementation Partner shall be responsible for and shall ensure that all the Deliverables and Services are performed in accordance with the specifications and that the Implementation Partner's personnel complies with such specifications and all other standards, terms and other stipulations/conditions as per this agreement.

### **5.2 Change of Control**

- i. In the event of a change of Control of the Implementation Partner during the currency of the Project, the Implementation Partner shall promptly notify the Purchaser of the same in the format set out as **Annexure A** of this Agreement.
- ii. In the event that the net worth of the surviving entity is less than that of the Implementation Partner prior to the Change of Control, the Purchaser may within 30 days of becoming aware of such change in control, require a replacement of the existing Performance Guarantee (with same or higher value) furnished by the Implementation Partner from a guarantor acceptable to the Purchaser (which may or may not be the Implementation Partner or any of its associated entities).

- iii. If such a guarantee is not furnished within 30 days of the Purchaser requiring the replacement, the Purchaser may exercise its right to terminate this Agreement within a further period of 30 days by written notice, to become effective as specified in such notice.
- iv. Pursuant to termination, the effects of termination as set out in Clause 13 of this Agreement shall follow.
- v. For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Implementation Partner shall not be deemed to be an event of a change of control for purposes of this Clause unless the surviving entity is of less net worth than the predecessor entity.

### ***5.3 Liquidated Damages and SLAs***

The delivery dates, timetables, milestones and other requirements mentioned in the RFP and this Agreement are binding on the Implementation Partner and the Implementation Partner agrees to accomplish the user requirement mentioned and Scope of Work under this Agreement as per the Timelines mentioned in the RFP. If the Implementation Partner fails to achieve the Timelines or the Service Levels due to reasons solely attributable to the Implementation Partner, the Purchaser shall be entitled to recover from the Implementation Partner the liquidated damages as per the SLAs mentioned in Schedule V of this agreement.

In the event Implementation Partner is not solely responsible for such failure in Timelines and Service Levels, the Purchaser shall have the right to determine such extent of fault and liquidated damages in consultation with the Implementation Partner and any other party it deems appropriate. In such cases, the proportionate LD as mutually determined shall be levied. Payment of liquidated damages shall not be the sole and exclusive remedies available to the Purchaser and the Implementation Partner shall not be relieved from any obligations by virtue of payment of such liquidated damages. Liquidated damages will be capped at 10% of the Total Contract Value. If the liquidated damages cross the cap on liquidated damages mentioned herein, the Purchaser shall have the right to terminate the Agreement for default and consequences for such termination as provided in this Agreement shall be applicable. Each of the Parties shall ensure that the range of the Services/Deliverables under this Agreement shall not be varied, reduced or increased except with the prior written agreement between the Purchaser and the Implementation Partner in accordance with the relevant provisions of this Agreement.

## **6. Representations and Warranties**

### **6.1 Representations and warranties of the Implementation Partner**

The Implementation Partner hereby represents and warrants as of the date hereof, which representations and warranties shall survive the term and termination hereof, the following:

- i. it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- ii. it is a competent provider of a variety of information technology and business process management services;
- iii. it has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- iv. it has the financial standing and capacity to undertake the Project and obligations in accordance with the terms of this Agreement;
- v. in providing the Services, it shall use reasonable efforts in providing the desired services under this Agreement and not cause any unnecessary disruption to Purchaser's normal business operations;
- vi. this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- vii. the information furnished in the Technical Proposal in response to the RFP is to the best of its knowledge and belief true and accurate in all respects as on the date of this Agreement;
- viii. the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- ix. there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- x. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- xi. it has complied with Applicable Laws in all material respects and has not been subject to any fines,

penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement;

- xii. no representation or warranty by it contained herein or in any other document furnished by it to the Purchaser or its nominated agencies in relation to the any consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- xiii. no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the Purchaser or its nominated agencies in connection therewith;
- xiv. That the Implementation Partner shall procure all the necessary permissions and adequate approvals and licenses for use of various software and any copyrighted process/product for use of the copyright/process/products that the Implementation Partner has proposed to supply under this Agreement free from all claims, titles, interests and liens thereon;
- xv. That the representations made by the Implementation Partner in its Proposal and in this Agreement are and shall continue to remain true and fulfil all the requirements as are necessary for executing the obligations and responsibilities as laid down in the Agreement and the RFP and unless the Purchaser specifies to the contrary, the Implementation Partner shall be bound by all the terms of the Agreement.
- xvi. That the Implementation Partner confirms that there has not and shall not occur any execution, amendment or modification of this contract without the prior written consent of the Purchaser;
- xvii. That the Implementation Partner owns or has good, legal or beneficial title, or other interest in, to the property, assets and revenues of the Implementation Partner on which it grants or purports to grant or create any interest pursuant to-the Contract, in each case free and clear-of any-encumbrance and further confirms that such Interests created or expressed to be created are valid and enforceable.
- xviii. That the Implementation Partner owns, has license to use or otherwise has the right to use, free of any pending or threatened liens or other security or other interests all Intellectual Property Rights, which are required or desirable for the project and the Implementation Partner does not, in carrying on its business and operations, infringe any Intellectual Property Rights of any person. None of the Intellectual Property or Intellectual Property Rights owned or enjoyed by the Implementation Partner or which the Implementation Partner is licensed to use, which are material in the context of the Implementation Partner's business and operations are being infringed nor, so far, as the Implementation Partner is aware, is there any infringement or threatened infringement of those Intellectual Property or Intellectual Property Rights licensed or provided to the Implementation Partner by any person. All Intellectual Property Rights (owned. by the Implementation Partner or which the Implementation Partner is licensed to use) are valid and subsisting. All actions (including registration, payment of all registration and renewal fees) required to maintain the same in full force and effect have been taken thereon and shall keep the Purchaser indemnified in relation thereto;
- xix. That the Implementation Partner and its team has 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 tender and this Agreement.

## **6.2 Representations and warranties of the Purchaser**

Purchaser represents and warrants to the Implementation Partner that:

- i. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- ii. it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- iii. it has the financial standing and capacity to perform its obligations under the Agreement;
- iv. 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;
- v. 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;
- vi. it has complied with Applicable Laws in all material respects.

## **7. Obligations of Purchaser**

The obligations of the Purchaser described in this clause 7 is in addition to, and not in derogation of, the obligations mentioned in Volume 1 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:

- i. To provide any reasonable support through personnel to generate and validate the reports;
- ii. To provide any reasonable support through personnel and/or test data during configuration & generation of report, rollout, steady state operation, as well as, for any changes/enhancements in the Application/ Solution whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- iii. The Purchaser may provide on the Implementation Partner's request, particulars / information/ or documentation that may be required by the Implementation Partner for proper planning and execution of work and for providing Services and Deliverables covered under this Agreement and for which the Implementation Partner may have to coordinate with respective vendors.
- iv. The Purchaser will be responsible for making all payments due to the Implementation Partner in respect of Deliverables and Services provided through the Implementation Partner and accepted by the Purchaser in accordance with the terms of this Agreement.

## **8. *Acceptance of Deliverables and Testing***

### **8.1 *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 8 is in addition to, and not in derogation of, the acceptance procedure provided in Volume 1 of the RFP and the two are to be read harmoniously. Upon completion of a Deliverable, the Implementation Partner will notify the Purchaser in writing that the Deliverable has been completed. Promptly after receiving such notice, the Purchaser will evaluate the Deliverable for acceptance in accordance with this Clause 8 or specific provisions of this Agreement and as stipulated in the RFP. The acceptance process outlined below shall not be deemed to extend the Timelines / scheduled completion date for any Deliverable required as per the scope of work mentioned in this Agreement.

### **8.2 *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”) which, in case of report generation, will include the successful deployment of the solution and will also include meeting the specifications, attributes configuration and generation of reports as detailed in the RFP and in this Agreement. The Implementation Partner shall prepare and propose the technical manual of each reports, and shall be subject to agreement by the Purchaser. While designing the report procedures the requirements as mentioned in Volume 1 of RFP need to be adhered. Acceptance procedures for Written Deliverables and Reporting Deliverables are as follows:

- a) The Implementation Partner may submit interim drafts of written Deliverables (e.g. reports and documentation) to the Purchaser for review. The Purchaser agrees to review each interim draft within a reasonable period of time after receiving it from the Implementation Partner. When the Implementation Partner 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 7 days (the “Acceptance Period”).
- b) The Purchaser agrees to notify the Implementation Partner in writing either stating that the applicable written Deliverable is accepted / rejected in the form delivered by the Implementation Partner or describing with reasonable particularity any defects / deficiencies that must be corrected prior to acceptance of such written Deliverable.
- c) If the Purchaser delivers to the Implementation Partner a notice of rejection/defects/deficiencies, the Implementation Partner will correct the described defects/ deficiencies as quickly as possible and, in any event, within such reasonable time period specified by the Purchaser in its notice of the rejection/deficiencies. Upon receipt of a corrected written Deliverable from the Implementation Partner, the Purchaser will have a period of at least 7 days to review the corrected written Deliverable.
- d) If the Implementation Partner is unable to correct all the defects / deficiencies preventing acceptance of a Deliverable for which Implementation Partner is responsible after a reasonable number of repeated efforts (but not more than three (3) times), the Purchaser may at its discretion :
  - Allow the Implementation Partner to continue its efforts to make corrections; or
  - Accept the Deliverable with its defects / deficiencies and deduct such proportionate amounts from the Implementation Partner’s fees as deemed appropriate by the Purchaser; 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 Implementation Partner any further opportunity to cure) and recover its damages subject to the limitations set forth in this Agreement.

### **8.3 Acceptance**

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

### **9. Use of Assets by the Implementation Partner**

During the Term the Implementation Partner shall:

- i. Take all reasonable and proper care of the entire hardware and software , network or any other information technology infrastructure components, as the case may be, used for the Project and other facilities leased / owned / operated by the Implementation Partner exclusively in terms of ensuring their usability for the delivery of the Deliverables and Services as per this Agreement (hereinafter the “Assets”);
- ii. Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as on the date the Implementation Partner takes control of and/or first uses the Assets and during the entire Term of the Agreement;
- iii. Ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Implementation Partner will be followed by the Implementation Partner and any person who will be responsible for the use of the Assets;
- iv. Take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Implementation Partner or as may, in the reasonable opinion of the Implementation Partner, be necessary to use the Assets in a safe manner;
- v. Ensure that the Assets that are under the control of the Implementation Partner, are kept suitably housed and in conformity with the Applicable Law and terms agreed with the Purchaser;
- vi. 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 so as to inspect the same, subject to any reasonable third party requirements;
- vii. Not knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to the Applicable Law.
- viii. Use best efforts to ensure that no lien, mortgage, hypothecation or any other charge is created over the Assets. The Implementation Partner agrees that the Implementation Partner will inform the Purchaser immediately if the Implementation Partner feels or comes to know that a charge may be / has been created over any of the Asset(s). In the event a charge is created over any of the assets which are owned by the Purchaser, the Purchaser shall have the right to get the charge removed at the risk, cost, expense of the Implementation Partner and the Implementation Partner 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.

### **10. Access to Purchaser**

#### **10.1 Access to locations**

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

- i. Reasonable access to the location from where services are to be performed (except such locations like the Implementation Partner’s etc. over which the Implementation Partner has control);

- ii. Subject to (i) above, reasonable work space, access to office equipment 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 Implementation Partner to perform its obligations hereunder.

### ***10.2 Limitation on access to locations***

Access to locations, office equipment and services shall be made available to the Implementation Partner on an “as is, where is” basis by the Purchaser as the case may be or its nominated agencies. The Implementation Partner agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in the RFP for the following purposes:

- i. For the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
- ii. In a manner which constitutes 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
- iii. For their own purpose or for conducting their own business or for providing services to any third party.



## **11. Management of Project**

### **11.1 Governance**

The project delivery shall be reviewed by a duly constituted Governance Structure for this project. The governance structure is mentioned in Governance Schedule in Volume 1 of the RFP.

### **11.2 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 Request Format set out in Annexure B of this Agreement.

### **11.3 Security and Safety**

- i. The Implementation Partner shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act or any other Applicable Law, IT Security Manual of the Purchaser as specified by the Purchaser from time to time and follow the industry standards related to safety and security (including those as specified by the Purchaser from time to time), insofar as it applies to the provision of the Services / Deliverables under this Agreement.
- ii. The Implementation Partner shall also comply with the Purchaser or the Government of India security standards and policies in force from time to time at each location of which the Purchaser or its nominated agencies make the Implementation Partner aware in writing insofar as the same apply to the provision of the Deliverables and the Services.
- iii. The Parties shall use reasonable endeavours to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Purchaser as the case may be or any of their nominees data, facilities or the Confidential Information.
- iv. The Implementation Partner 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.
- v. As per the provisions of this Agreement, the Implementation Partner shall 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.

### **11.4 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:

- i. Does not require material expenditure by the Providing Party to provide the same;
- ii. Is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement;
- iii. Cannot be construed to be Confidential Information; and
- iv. Is capable of being provided by the Providing Party.

Further, the Implementation Partner agrees to co-operate with the consultants, contractors, stakeholders and subcontractors of the Purchaser as reasonably requested in order to accomplish the purposes and objective of this Agreement.

## **12. Financial Matters**

### **12.1 Terms of Payment**

- i. Subject to the provisions of this Agreement and subject always to the fulfilment by the Implementation Partner of its obligations herein, in consideration of the obligations undertaken by the Implementation Partner under this Agreement, the Purchaser shall pay the Implementation Partner for successful delivery of the Services in pursuance of this Agreement, in accordance with the Terms of Payment Schedule set out as **Schedule III** of this Agreement.
- ii. No invoice for extra work/charge order on account of change request will be submitted by the Implementation Partner unless the said extra work /change request has been authorized/approved by the Purchaser in writing in accordance with the Annexure B on Change Request.
- iii. In the event of the Purchaser noticing at any time that any amount has been disbursed wrongly to the Implementation Partner or any other amount is due from the Implementation Partner to the Purchaser, the Purchaser may without prejudice to its rights to recover such amounts by other means, after notifying the Implementation Partner deduct such amount from any payment falling due to the Implementation Partner. The details of such recovery, if any, will be intimated to the Implementation Partner. The Implementation Partner 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 Implementation Partner.
- iv. The Purchaser shall not be responsible / obligated for making any payments or any other related obligations under this Agreement to the partners (if any) of Implementation Partner. The Implementation Partner shall be fully liable and responsible for meeting all such obligations and all payments to be made to its partners and any other third party engaged by the Implementation Partner in any way connected with the discharge of the Implementation Partner's obligation under the Agreement and in any manner whatsoever.
- v. All payments are subject to deductions of applicable liquidated damages as provided for in the SLA in Schedule V of this Agreement. 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 Schedule III of this Agreement as a result of the failure of the Implementation Partner to meet the Timelines and/or Service Levels.
- vi. Save and except as otherwise provided for herein or as agreed between the Parties in writing, the Purchaser shall not be required to make any payments in respect of the Services, the Deliverables, obligations and scope of work mentioned in the RFP and this Agreement other than those covered in Schedule III of this Agreement. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of performance of obligations under the RFP and Agreement including miscellaneous costs which is to be borne by the Implementation Partner as per the RFP and this Agreement, project costs, implementation and configuration of Analytics tool charges and all other related costs including taxes.

### **12.2 Invoicing and Settlement**

- i. The Implementation Partner shall submit its invoices in accordance with the following principles:
  - a) Generally and unless otherwise agreed in writing between the Parties, the Implementation Partner shall raise an invoice as per **Schedule III** of this Agreement; and

- b) Any invoice presented in accordance with this Clause shall be in a form agreed with the Purchaser.
- ii. The Implementation Partner alone shall raise invoice 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.
- iii. Subject to accomplishment of obligations of the Implementation Partner and delivery of the Deliverables and the Services to the satisfaction of the Purchaser, payment shall be made by the Purchaser within 30 (thirty) days of receipt of invoice along with supporting documents. Payments will be subject to deduction as agreed herein.
- iv. Notwithstanding anything contained in clause (iii) 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. The withheld amount shall be limited to that which is in dispute. A notice of such withholding shall be provided within 20 (twenty) days of receipt of the applicable invoice. The disputed / withheld amount shall be settled *by the Steering Committee as per the Governance Schedule* as set out in Volume 1 of the RFP which shall be settled within reasonable time after notice of reference. However, the Purchaser shall release the disputed amounts within 30 (thirty) days of resolution of dispute. Any exercise by the Purchaser under this clause shall not entitle the Implementation Partner to delay or withhold performance of its obligations or delivery of Deliverables/Services under this Agreement.

### **12.3 Tax and Deductions**

- i. All payments to the Implementation Partner 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 Implementation Partner 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 Implementation Partner is liable, the same shall be deducted by the Purchaser from any dues to the Implementation Partner. All payments to the Implementation Partner shall be made after making necessary deductions as per terms of the Agreement.
- ii. The Implementation Partner shall bear all personnel taxes levied or imposed on its personnel, sub-contractor's personnel, Implementation Partners, consultants etc. on account of payment received under this Agreement. The Implementation Partner shall bear all corporate taxes, levied or imposed on the Implementation Partner on account of payments received by it from the Purchaser for the work done under this Agreement. The Implementation Partner shall bear all taxes and duties etc. levied or imposed on the Implementation Partner 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 upto 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. It shall be the responsibility of the Implementation Partner to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. The Implementation Partner shall also provide the Purchaser such information, as it may be required in regard to the Implementation Partner's details of payment made by the Purchaser under the Agreement for proper assessment of taxes and duties. The Implementation Partner and or their personnel shall bear all the taxes if any, levied on the Implementation Partner's and the Implementation Partner's personnel. The amount of tax withheld by the Purchaser shall at all times be in accordance with Indian Tax Law and the Purchaser shall promptly furnish to the Implementation Partner original

certificates (Challans) for tax deduction at source and paid to the Tax Authorities. The Implementation Partner agrees that it 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.

- iii. The Implementation Partner agrees to reimburse and hold the Purchaser or its nominated agencies harmless from and against any claims, losses, expenses (including attorney fees, court fees) etc. arising out of deficiency (including penalties and interest) in payment of taxes that are the Implementation Partner's responsibility.
- iv. Payment agreed to be made by the Purchaser to the Implementation Partner in accordance with the Payment Terms, shall be inclusive of all statutory levies, duties, taxes and other charges whenever levied/applicable. The Purchaser shall verify the documents supporting the invoice and if approved the payments shall be released to IP subject to adherence of Service Levels stipulated in Schedule V of this Agreement.

### ***13. Events of Default, Termination and Suspension***

#### ***13.1 Events of Default by Implementation Partner***

- i. The failure on the part of the Implementation Partner 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 Implementation Partner. The events of default as mentioned above may include, inter-alia, the following:
  - a. the Implementation Partner has failed to perform any instructions or directives issued by the Purchaser which it deems proper and necessary to execute the scope of work under the Agreement, or
  - b. the Implementation Partner has failed to remedy a failure to perform its obligations in accordance with the specifications issued by the Purchaser, despite being served with a default notice which laid down the specific deviance on the part of the Implementation Partner to comply with any stipulations or standards as laid down by the Purchaser; or
  - c. the Implementation Partner or its team has failed to conform with any of the service levels as set out in the RFP or this Agreement or has failed to adhere to any amended direction, modification or clarification as issued by the Purchaser during the term of this Agreement and which the Purchaser deems proper and necessary for the execution of the scope of work under this Agreement;
  - d. the Implementation Partner 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;
  - e. 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 Implementation Partner;
  - f. The Implementation Partner or its team has failed to comply with or is in breach or contravention of any Applicable Laws;

- g. The Implementation Partner has failed to comply with any terms and conditions of the this Agreement;
- h. Undue delay in achieving the agreed timelines for delivering the services under this Agreement;
- i. Quality of Deliverables and services consistently not being to the satisfaction of the Purchaser.
- ii. 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 Implementation Partner, setting out specific defaults / deviances / omissions and providing a notice of up to thirty (30) days to enable the Implementation Partner to remedy the default/ deviances / omissions committed.
- iii. Where despite the issuance of a default notice to the Implementation Partner by the Purchaser the Implementation Partner fails to remedy the default to the satisfaction of the Purchaser, the Purchaser shall 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.

### ***13.2 Consequences for Events of Default***

Where an Event of Default subsists or remains uncured, the Purchaser shall be entitled to:

- i. Impose any such 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 Implementation Partner shall be obliged to comply with, which may include unilateral re-determination of the consideration payable to the Implementation Partner under this Agreement. The Implementation Partner shall in addition take all available steps to minimize loss resulting from such event of default.
- ii. Terminate this Agreement in full or in part.
- iii. Retain such amounts from the payment due and payable by the Purchaser to the Implementation Partner as may be required to offset any losses caused to the Purchaser as a result of such event of default and the Implementation Partner shall compensate the Purchaser for any such loss, damages or other costs, incurred by the Purchaser in this regard. Nothing herein shall effect the continued obligation of the other members of its Team to perform all their obligations and responsibilities under this Agreement in an identical manner as were being performed before the occurrence of the default.
- iv. Invoke the Performance Bank Guarantee furnished hereunder, enforce indemnity provisions, recover such other costs/losses and other amounts from the Implementation Partner may have resulted from such default and pursue such other rights and/or remedies that may be available to the Purchaser under law.

### ***13.3 Termination for Breach***

The Purchaser may, terminate this Agreement by giving the Implementation Partner a prior and written notice of up to 30 days indicating its intention to terminate the Agreement under the below given circumstances. The notice shall state the reason for termination and shall also afford an opportunity to the Implementation Partner to cure the breach/rectify the error within such 30 days' notice period or such additional period as MyGov may deem appropriate. If the Implementation Partner cures the breach/rectify the error to the satisfaction of MyGov within such cure period, MyGov may not terminate

the Agreement under these provisions for such breach/error. The cure period does not in any manner impact the application of SLAs and Liquidated damages.

- i. Where the Purchaser is of the opinion that there has been such Event of Default on the part of the Implementation Partner which would make it proper and necessary to terminate this Agreement and may include failure on the part of the Vendor to respect any of its commitments with regard to any part of its obligations under its Proposal, the RFP or under this Agreement.
- ii. Where it comes to the Purchaser's attention that the Implementation Partner (or the Implementation Partner's Team) is in a position of actual conflict of interest with the interests of the Purchaser, in relation to any of terms of the Implementation Partner's Proposal, the RFP or this Agreement.
- iii. Purchaser may terminate this Agreement due to reason specified in clause 5.2;
- iv. Purchaser may terminate the Agreement if it comes to knowledge of the Purchaser that the Implementation Partner or any of the Implementation Partner's personnel have been involved in any fraudulent or corrupt practices or any other practice of similar nature.

### *13.4 Termination for Convenience*

The Purchaser, may, by written notice of 90 (ninety) days sent to the Implementation Partner, 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. Upon this Clause being invoked by the Purchaser, the Purchaser shall pay the Implementation Partner for all invoices raised by the Implementation Partner for Services and Deliverables provided and accepted by the Purchaser till the effective date of termination for convenience.

### *13.5 Effects of Termination*

- i. In the event of termination of this Agreement due to any cause whatsoever, (whether consequent to the stipulated Term of the Agreement or otherwise) the Purchaser shall be entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective business continuity of the project which the Implementation Partner shall be obliged to comply with and take all available steps to minimize loss resulting from that termination/breach, and further allow the successor Implementation Partner to take over the obligations of the erstwhile Implementation Partner in relation to the execution/continued execution of the scope of this Agreement.
- ii. In the event that the termination of this Agreement is due to the expiry of the Term of this Agreement / a decision not to grant any (further) extension by the Purchaser, or where the termination is prior to the expiry of the stipulated term due to the occurrence of any Event of Default on the part of the Implementation Partner, the Implementation Partner herein shall be obliged to provide all such assistance to the successor Implementation Partner or any other person as may be required and as the Purchaser may specify including training, where the successor(s) is a representative/personnel of the Purchaser to enable the successor to adequately provide the Services hereunder, even where such assistance is required to be rendered for a reasonable period that may extend beyond the Term/earlier termination hereof. Without prejudice to the foregoing, upon termination (or upon expiry of the Term) of this Agreement, the Parties will comply with the Transition and Exit Management Plan set out in Schedule IV of this Agreement (and as revised from time to time).

- iii. Where the termination of the Agreement is prior to its stipulated term on account of a Default on the part of the Implementation Partner or due to the fact that the survival of the Implementation Partner as an independent corporate entity is threatened/has ceased, the Purchaser shall pay the Implementation Partner for that part of the Services which have been authorized by the Purchaser and satisfactorily performed by the Implementation Partner up to the date of termination. Without prejudice any other rights, the Purchaser may retain such amounts from the payment due and payable by the Purchaser to the Implementation Partner as may be required to offset any losses caused to the Purchaser as a result of any act/omissions of the Implementation Partner. In case of any loss or damage due to default on the part of the Implementation Partner in performing any of its obligations with regard to executing the scope of work under this Agreement, the Implementation Partner shall compensate the Purchaser for any such loss, damages or other costs, incurred by the Purchaser. Additionally, the other members of its team shall perform all its obligations and responsibilities under this Agreement in an identical manner as were being performed before the collapse of the Implementation Partner as described above in order to execute an effective transition and to maintain business continuity. All third parties shall continue to perform all/any functions as stipulated by the Purchaser and as may be proper and necessary to execute the scope of work under the Agreement in terms of the Implementation Partner's Proposal, the RFP and this Agreement.
- iv. Nothing herein shall restrict the right of the Purchaser to invoke the Bank Guarantee furnished hereunder and pursue such other rights and/or remedies that may be available to the Purchaser under law.
- v. Any and all payments under this clause shall be payable only after the Implementation Partner 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 Implementation Partner after the Implementation Partner has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Purchaser.

### ***13.6 Termination of Agreement due to bankruptcy of the Implementation Partner***

- i. Where the Implementation Partner's ability to survive as an independent corporate entity is threatened or is lost owing to any reason whatsoever, including inter-alia the filing of any bankruptcy proceedings against the Implementation Partner, any failure by the Implementation Partner to pay any of its dues to its creditors, the institution of any winding up proceedings against the Implementation Partner or the happening of any such events that are adverse to the commercial viability of the Implementation Partner, the Purchaser shall reserve the right to take any steps as may be necessary, to ensure the effective transition of the project to a successor Implementation Partner, and to ensure business continuity provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

### ***13.7 Rights other than Termination***

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. The termination provisions set out in this Clause 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.

### ***13.8 SUSPENSION***

- i. The Implementation Partner shall, if ordered in writing by the Purchaser, temporarily suspend the

performance of any services or any part thereof under this Agreement for such specified/ ordered period and time. The Purchaser shall inform the Implementation Partner about such suspension at least 15 days in advance. The Implementation Partner shall not be entitled to claim compensation for any loss or damage incurred by the Implementation Partner by reason of such temporary suspension of the services for a continuous period of 30 days. The Purchaser may consider suitable compensation to the Implementation Partner in event of suspension extending beyond a continuous period of 30 days. An extension of time for completion, corresponding to the delay caused by any such suspension of the services as aforesaid shall be granted to the Implementation Partner, if written request for the same is made. In case the suspension of services lasts for a period of more than 3 months, the Implementation Partner shall have the right to request the Purchaser to pay reasonable immobilization and mobilization charges as may be consented to by the Purchaser.

- ii. In the event the Purchaser suspends the progress of work for a period in excess of 30 days in aggregate, rendering the Implementation Partner to extend the Implementation Partner's Performance Guarantee then the Purchaser shall bear only the cost of extension of such bank guarantee for such extended period restricted to the normal bank rates as applicable in the banking procedures subject to the Implementation Partner producing the requisite evidence from the concerned bank.



## ***14. Indemnification and Limitation of Liability***

### ***14.1 General Indemnity***

Subject to Clause 14.2 below, the Implementation Partner (the "Indemnifying Party") undertakes to indemnify the Purchaser and its nominated agencies (the "Indemnified Party") from and against all losses, claims, damages, compensation etc. on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence, wilful default, lack of due care or breach of terms of this Agreement.

### ***14.2 IPR Indemnity***

If the Indemnified Party promptly notifies the Indemnifying Party in writing of a third party claim against the Indemnified Party that any Deliverables/ Services provided by the Indemnifying Party infringes a copyright, trade secret, patent or other intellectual property rights of any third party, 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. The Indemnifying Party will not indemnify the Indemnified Party, however, 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 to be 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, (iii) modify it to make it non-infringing.

### ***14.3 Conditions for Indemnity***

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

- i. The Purchaser shall notify the Implementation Partner upon receipt of any notice of claim setting out in reasonable particulars, the details of such notice of claim;
- ii. Immediately upon receipt of notification of any claim from the Purchaser, the Implementation Partner within a period of 5 days from date of receipt of such notice from the Purchaser, notify the Purchaser whether the Implementation Partner wish to assume the defence in relation to such claim (including settlement or resolution thereof). Thereafter, the Implementation Partner 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 Implementation Partner 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;
- iii. Notwithstanding anything contained herein, the Implementation Partner and the Purchaser agree and covenant that a notice by the Purchaser to the Implementation Partner in relation to the claim as aforesaid shall amount to express acceptance and consent by the Implementation Partner to indemnify the Purchaser for all losses in relation to such claim. Upon notice by the Implementation Partner, the Purchaser shall reasonably co-operate with the Implementation Partner at the sole costs of the Implementation Partner, 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 defence of such claim;

- iv. If the Implementation Partner fails to take any action as per the above clause within the time period 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 Implementation Partner 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, Implementation Partner as fully as though the Implementation Partner alone had assumed the defense thereof and a judgement had been entered into by the Implementation Partner, for such claim in respect of the settlement or judgement.

#### ***14.4 Risk Purchase***

If the Implementation Partner fails to perform its obligations (or any part thereof) under this Agreement or if the Agreement is terminated by the Purchaser due to breach of any obligations of the Implementation Partner under this Agreement, the Purchaser reserves the right to procure same or equivalent services / Deliverables from alternative sources at the Implementation Partner's risk and responsibility. The alternate procurement shall be done through commercially reasonable price discovery method as generally applicable in central government procurement. Any incremental cost borne by the Purchaser in procuring such services/ Deliverables shall be borne by the Implementation Partner provided the liability of the Implementation Partner to pay such incremental cost shall be limited to the higher of (a) 100% of the value of the services/deliverables/obligations which the Implementation Partner has failed to perform/provide OR (b) 30% of the total contract value. Any such incremental cost incurred in the procurement of the such services/ Deliverables from alternative source will be recovered from the undisputed pending due(s) and payable payments /Security Deposit / Bank Guarantee provided by the Implementation Partner under this Agreement and if the value of the services/Deliverables under risk purchase exceeds the amount of Security Deposit and / or Bank Guarantee, the same may be recovered if necessary by due legal process. It is clarified that this clause is subject to the limitation of liability clause mentioned in 14.5 (ii) and (iii) of the Agreement.

#### ***14.5 Limitation of Liability***

- i. The liability of the Implementation Partner (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, Deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event in the aggregate exceed the Total Contract Value.
- ii. 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 Implementation Partner under this Agreement.
- iii. Except as otherwise provided herein, in no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or damage to data, loss of revenue (including but not limited to business interruption, lost business, lost profits, or lost savings), even if it has been advised of their possible existence.
- iv. Notwithstanding anything contained in the foregoing, the liability cap and exclusion for the Implementation Partner given under this Clause 14 shall not be applicable to the indemnification obligations set out in Clause 14, security and safety obligations under Clause 11.3.

### *14.6 Allocation of liability*

The allocations of liability in clause 14 represent the agreed and bargained-for understanding of the parties and compensation for the Services/ Deliverables reflects such allocations.

## *15. Force Majeure*

### *15.1 Definition of Force Majeure*

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

### *15.2 Force Majeure Events*

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

- i. is beyond the reasonable control of the affected Party;
- ii. such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care;
- iii. does not result from the negligence of such Party or the failure of such Party to perform its obligations under this Agreement;
- iv. is of an incapacitating nature and prevents or causes a delay or impediment in performance; and
- v. may be classified as all or any of the following events:
- vi. Such events include:
  - a) 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 Implementation Partner under this Agreement;
  - b) radioactive contamination or ionizing radiation or biological contamination (except as may be attributable to the Implementation Partner's use of radiation or radioactivity or biologically contaminating material) that directly and adversely affect the performance of services by the Implementation Partner under this Agreement;
  - c) industry wide strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances, as the case may be, not arising on account of the acts or omissions of the Implementation Partner and which directly and adversely affect the timely implementation and continued operation of the Project; or
  - d) 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 Implementation Partner under this Agreement.

For the avoidance of doubt, it is expressly clarified that the failure on the part of the Implementation Partner 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 Implementation Partner 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).

### ***15.3 Notification procedure for Force Majeure***

- i. The affected Party shall notify the other Party of a Force Majeure event within seven (7) days of occurrence of such event. If the other Party disputes the claim for relief under Force Majeure it shall give the claiming Party written notice of such dispute within thirty (30) days of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in accordance with Clause
- ii. 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.

### ***15.4 Allocation of costs arising out of Force Majeure***

- i. 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.
- ii. 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:
  - a) Upon occurrence of an event mentioned in clause 15.2 (i), (ii) (iii) and (iv), the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
  - b) Save and except as expressly provided in this Clause, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure event or exercise of any right pursuant hereof.

### ***15.5 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.

## ***16. Confidentiality***

- i. The Purchaser may allow the Implementation Partner to utilize Confidential Information including

confidential public records and the Implementation Partner shall maintain the highest level of secrecy, confidentiality and privacy with regard to such Confidential Information. The Implementation Partner shall use its best efforts to protect the confidentiality, integrity and proprietary of the Confidential Information.

- ii. Additionally, the Implementation Partner shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities. The Implementation Partner shall use the information only to execute the Project.
- iii. The Purchaser shall retain all rights to prevent, stop and if required take the necessary punitive action against the Implementation Partner regarding any forbidden disclosure. The Purchaser reserves the right to adopt legal proceedings, civil or criminal, against the Implementation Partner in relation to a dispute arising out of breach of obligation by the Implementation Partner under this clause.
- iv. The Implementation Partner shall execute a non-disclosure agreement with Purchaser in the format provided(Schedule VI) by the Purchaser and shall ensure that all its employees, agents execute individual non-disclosure agreements, which have been duly approved by the Purchaser with respect to this Project.
- v. The Implementation Partner may only disclose the Confidential Information in the following circumstances:
  - a) with the prior written consent of the Purchaser;
  - b) to a member of the Implementation Partner’s Team (“Authorised Person”) provided the Authorised Person needs to know the Confidential Information for accomplishment of the Services and the Authorised Person has executed a confidentiality agreement with the Purchaser prior to receiving such information; and
  - c) if and to the extent that the Implementation Partner is compelled legally to disclose the Confidential Information.
- vi. When the Implementation Partner is aware of any steps being taken or considered to compel legally the Implementation Partner or an Authorised Person to disclose the Confidential Information, it shall:
  - a. 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;
  - b. promptly notify the Purchaser; and
  - c. do anything reasonably required by the Purchaser to oppose or restrict that disclosure.
- vii. The Implementation Partner 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.
- viii. The Implementation Partner 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 Implementation Partner’s personnel shall follow the Purchaser’s Information Security policy. The Implementation Partner 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 Implementation Partner 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 Implementation Partner to protect its own proprietary information. The Implementation Partner 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 Implementation Partner could damage the Purchaser, and that by reason of the Implementation Partner's duties hereunder, the Implementation Partner may come into possession of such proprietary information, even though the Implementation Partner 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 Implementation Partner shall use such information only for the purpose of performing the said services. The Implementation Partner shall, upon termination of this Agreement for any reason, or upon demand by the Purchaser, whichever is earliest return any and all information provided to the Implementation Partner by the Purchaser, including any copies or reproductions, both hardcopy and electronic.

- ix. The confidentiality obligations of the part of the Implementation Partner under this Agreement shall remain in force for the Term of the Agreement and shall survive for a period of 3 (three) years after the expiration or termination of the Agreement. It is clarified that the confidentiality obligations shall not apply to the following:
- a. information already available in the public domain;
  - b. information which has been developed independently by the Implementation Partner without use of information or inputs provided by Purchaser under this Agreement;
  - c. information which has been received by Implementation Partner from a third party who had the right to disclose the information without confidentiality obligations;
  - d. information which needs to be disclosed pursuant to a court order.

#### ***17. Audit, Access and Reporting***

- i. The Purchaser reserves the right to inspect and monitor/assess the progress of the project at any time during the course of the Agreement, after providing due notice to the Implementation Partner. 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.
- ii. 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 Implementation Partner of its obligations/functions in accordance with the standards committed to or required by the Purchaser and the Implementation Partner 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. Any deviations or contravention, identified as a result of such audit/assessment, would need to be rectified by the Implementation Partner 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 Implementation Partner is out of the purview of audit/inspections.

- iii. Without prejudice to the foregoing, the Implementation Partner shall allow access to the Purchaser or its nominated agencies to all information which is in the possession or control of the Implementation Partner 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.

## ***18. Ownership and Intellectual Property Rights***

- i. The Purchaser shall own and have a right in perpetuity to use all newly created Intellectual Property Rights which have solely arisen out of or have been developed solely during execution of this Agreement, including but not limited to all processes, products, specifications, reports, drawings and other documents which have been newly created and developed by the Implementation Partner solely during the performance of the Services and for the purposes of, inter-alia, use or sub-license of such Services under this Agreement. The Implementation Partner undertakes 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.
- ii. Further, the Implementation Partner shall be obliged to ensure that all approvals, registrations, licenses, permits and rights which are, inter-alia, necessary for use of the Deliverables, applications, services etc. provided by the Implementation Partner under this Agreement shall be acquired in the name of the Purchaser, prior to termination of this Agreement and which shall be assigned by the Purchaser to the Implementation Partner for the purpose of execution of any of its obligations under the terms of this Agreement. However, subsequent to the term of this Agreement, such approvals etc. shall endure to the exclusive benefit of the Purchaser.
- iii. 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 also have rights to use and copy all process, specifications, reports and other document drawings, manuals, and other documents provided by Implementation Partner as part of the Scope of Works under this Agreement for the purpose of this Agreement on non-exclusive, non-transferable, perpetual, royalty-free license to use basis.
- iv. Third Party Products: If license agreements are necessary or appropriate between the Implementation Partner and third parties for purposes of enabling / enforcing/implementing the provisions hereinabove, the Implementation Partner shall enter into such agreements at its own sole cost, expense and risk. However, the Implementation Partner shall use all commercially reasonable endeavours to pass through to Purchaser any third party's warranties relating to such Third Party Products. In the event that such warranties cannot be passed through to or enforced by Purchaser, the Implementation Partner will enforce such warranties on Purchaser's behalf and account to Purchaser for so doing.
- v. Commercially-Off-The-Shelf Software (COTS): For all COTS products whose source code and IPR vest with the COTS owner, the licenses for such COTS shall be in the name of Purchaser. Purchaser shall retain exclusive and irrevocable intellectual property rights to the customized enhancements of the COTS/ application, forms and the compilations of the Project in perpetuity and nothing herein shall or will be construed or deemed to grant to the Implementation Partner any right, title, license, sub-license, proprietary right or other claim against or interest in, to or under (whether by estoppels, by implication or otherwise) to the aforesaid rights.
- vi. 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 Implementation Partner in the course of performing the Services. Forthwith upon expiry or earlier termination of this Agreement and at any other time on demand by the Purchaser, the Implementation Partner shall deliver to the Purchaser all Documents provided by or originating from the Purchaser and all Documents produced by or from or for the Implementation Partner in the course of performing the Services, unless otherwise directed in writing by the Purchaser at no additional cost. The Implementation Partner shall not, without the prior



written consent of the Purchaser store, copy, distribute or retain any such Documents.

- vii. The ownership of all IPR rights in any and all documents, artefacts, etc. (including all training materials) made during the Term for implementation of the Project under this Agreement will lie with Purchaser.
- viii. Notwithstanding anything contained herein, the Implementation Partner may use in its business activities the ideas, concepts and know-how which are retained in the unaided memories of its employees who have worked in the project under this Agreement. The foregoing does not permit intentional memorization of the any information for the purpose of evading obligations contained in this Agreement.

## **19. Warranty**

- i. General: The warranties and remedies provided in this Clause 19 are in addition to, and not in derogation of, the warranties provided in Volume 1 of the RFP and the two are to be read harmoniously. The Implementation Partner represents, warrants and covenants that: (a) the Implementation Partner is the lawful owner or licensee of the materials used in the performance of the Services and delivery of the Deliverables, (b) the bespoke development and such materials have been lawfully developed or acquired by the Implementation Partner, and (c) the Implementation Partner has the rights to the bespoke development and such materials, including the rights of access to and use of the bespoke development, which it grants under this Agreement, without the consent of any other person or entity. The Implementation Partner represents, warrants and covenants that during the Warranty Period it will promptly provide the Purchaser with any and all maintenance modifications, enhancements, upgrades, updates and related Documentation which the Implementation Partner makes available to any other person or entity.
- ii. Warranty for Software-
  - a) The Implementation Partner represents, warrants and covenants that on the Acceptance Date and for the Warranty Period, the Software will be free of material programming errors and will operate and conform to the respective Software's Documentation including, inter alia, FRS and SRS and other manuals. The Implementation Partner also represents, warrants and covenants that the medium on which the Software is contained when delivered to the Purchaser will be free from defects in material or workmanship and shall be free from any viruses, bugs etc.
  - b) The Implementation Partner represents warrants and covenants that the technical documentation delivered to the Purchaser for the software will be sufficient to allow a reasonably knowledgeable information technology professional to maintain and support such Software. The Implementation Partner represents, warrants and covenants that the user Documentation for the software will accurately describe in terms understandable by a typical end user the functions and features of the software and the procedures for exercising such functions and features.
- iii. Warranty for Services – The Implementation Partner represents, warrants and covenants 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 similar to the services under this Agreement. The Implementation Partner represents, warrants and covenants that it shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services hereunder.
- iv. The representations, warranties and covenants provided by the Implementation Partner under this

Agreement will not be affected by Purchaser's modification of any portion of the software so long as the Implementation Partner can discharge its obligations despite such modifications, or following their removal by the Purchaser.

- v. If during the Warranty Period of any component mentioned above, any of the warranties are found breached, the Implementation Partner shall promptly (but in no event more than 7 days), in consultation and agreement with the Purchaser, and at the Implementation Partner's sole cost make good such default, defect or deficiency as well as any damage to the Project caused by such default, defect or deficiency. Notwithstanding the foregoing, these are not the sole and exclusive remedies available to the Purchaser in case of breach of any warranty and are also not the sole and exclusive obligations on the Implementation Partner in case of breach of any warranty.

## **20. Insurance Cover**

### **20.1 Obligation to maintain Insurance**

The Implementation Partner shall take out and maintain, at its cost adequate standard forms of insurance including liability which are mandatorily to be maintained as per the Applicable Laws and further agrees to provide Purchaser on request copies of such policy of insurance and evidence that the premiums have been paid..

- i. The Implementation Partner shall at the Purchaser's request, provide evidence to the Purchaser showing that such insurance has been taken out and maintained and that the current premium thereof have been paid

## **21. Miscellaneous**

### **21.1 Personnel**

- i. The personnel assigned by the Implementation Partner to perform the Services shall be employees of the Implementation Partner, and under no circumstances shall such personnel be considered employees of the Purchaser or its nominated agencies. The Implementation Partner 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.
- ii. The Implementation Partner shall ensure that the Implementation Partner'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. The Implementation Partner shall ensure that the Services are performed through the efforts of the Implementation Partner's team, in accordance with the terms hereof and to the satisfaction of the Purchaser. Nothing in this Agreement relieves the Implementation Partner from its liabilities or obligations under this Agreement to provide the Services in accordance with the Purchaser's directions and requirements and as stated in this Agreement, the Implementation Partner shall be liable for any non-performance, non-compliance, breach or other loss and damage resulting either directly or only in case of gross negligence or willful misconduct, indirectly by or on account of its team.
- iii. The Implementation Partner shall appoint any individual as its authorized representative through a written notice to the Purchaser. The Implementation Partner's Representative shall have the authority to exercise all of the powers and functions of the Implementation Partner 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 Implementation Partner in relation to any matter arising out of or in connection with this Agreement. The Implementation Partner shall be bound by all undertakings and representations made by the authorized representative of the Implementation Partner and any covenants stipulated hereunder, with respect to this Agreement, for and on their behalf. The Implementation Partner's representative shall have all the power requisite for the performance of the work under this Agreement. The Implementation Partner'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 Implementation Partner'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 Implementation Partner shall comply with any instructions that are given by the Purchaser's representative during the course of this Agreement in relation to the performance of its obligations under the terms of this Agreement and the RFP. Implementation Partner's Representative shall also have complete charge of the Implementation Partner's personnel engaged in the performance of the works and to ensure compliance of rules, regulations and safety practice. Such Implementation Partner's representative shall be available to the Purchaser's Representative during the execution of Services.

- iv. The Implementation Partner 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 resource leaving the Implementation Partner's organization, the same shall be require approval of the Purchaser. The Implementation Partner shall promptly inform the Purchaser in writing if any such revision or change is necessary. In case of replacement of any manpower resources, the Implementation Partner shall ensure efficient knowledge transfer from the outgoing resource to the incoming resource and adequate hand holding period and training for the incoming resource.
- v. The Implementation Partner shall be fully responsible for the deployment, transportation, accommodation and catering of all its employees required for the execution of the work and for all costs/charges in connection thereof.
- vi. The Purchaser's Representative may at any time request the Implementation Partner to remove from the Services any employee of the Implementation Partner or any person(s) deployed by the Implementation Partner for professional incompetence or negligence or for being deployed for work for which he is not suited or for unethical, corrupt, fraudulent behaviour. The Implementation Partner shall consider the Purchaser's Representative request and may accede to or disregard it except that in case of unethical, corrupt, fraudulent behaviour the Implementation Partner shall remove the person immediately. The Purchaser's Representative, having made a request, as aforesaid in the case of any person, which the Implementation Partner 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 Implementation Partner to remove that person from deployment on the work, which the Implementation Partner 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 Implementation Partner in writing his reasons for any request or requirement pursuant to this clause. The Implementation Partner 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.
- vii. During the Term and 12 months thereafter, neither Party will solicit for employment or knowingly

hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.

### **21.2 Independent Contractor**

Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the Parties to this Agreement and, except as expressly stated 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:

- i. Incur any expenses on behalf of the other Party;
- ii. Enter into any engagement or make any representation or warranty on behalf of the other Party;
- iii. Pledge the credit of or otherwise bind or oblige the other Party; or
- iv. Commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

### **21.3 Assignment**

- i. All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the Purchaser and the Implementation Partner and their respective successors and permitted assigns.
- ii. Except as otherwise expressly provided in this Agreement, the Implementation Partner shall not be permitted to assign its rights and obligations under this Agreement to any third party.
- iii. The Purchaser may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Implementation Partner shall be a party to such novation, to any third party contracted to provide outsourced services to the Purchaser or any of its nominees.

### **21.4 Trademarks, Publicity**

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that the Implementation Partner 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 along 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 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 Implementation Partner may include the Purchaser or its Purchaser 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.

### **21.5 Notices**

- i. 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.

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

<Insert Address>

Tel:

Fax:

Email:

Contact:

With a copy to:

Implementation Partner Tel:

Fax:

Email:

Contact:

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

#### ***21.6 Variations and Further Assurance***

- i. No amendment, variation or other change to this Agreement shall be valid unless authorised in accordance with the change request procedure and approved by the Purchaser. Such amendment shall be made in writing and signed by the duly authorised representatives of the Parties to this Agreement.
- ii. Each Party to this Agreement agrees to enter into or execute, without limitation, whatever other agreement, document, consent and waiver and to do all other things which shall or may be reasonably required to complete and deliver the obligations set out in this Agreement.

#### ***21.7 Severability and Waiver***

- i. 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.

- ii. 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.

### ***21.8 Compliance with Applicable Law***

- i. The Implementation Partner shall comply with the provision of all laws including labour laws, rules, regulations and notifications 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 Implementation Partner shall abide by these laws. The Implementation Partner shall take all measures necessary or proper to protect the personnel, work and facilities and shall observe all reasonable safety rules and instructions. The Implementation Partner 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 Implementation Partner shall also adhere to all security requirement/regulations of the Purchaser during the execution of the work.
- ii. Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to its business like the Implementation Partner 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 approved by the buyer.
- iii. During the tenure of this Agreement, the Implementation Partner 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 Implementation Partner in contravention of any Applicable Law or any amendment thereof and the Implementation Partner shall keep the Purchaser indemnified in this regard.

### ***21.9 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.

### ***21.10 Ethics***

The Implementation Partner 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.

### ***21.11 Entire Agreement***

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

### ***21.12 Amendment***

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

### ***21.13 Conflict of Interest***

The Implementation Partner shall disclose to the Purchaser in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the IP or the IP's Team) in the course of performing the Services as soon as practical after it becomes aware of that conflict.

### ***21.14 Change request process***

#### **a) Change Control Note ("CCN")**

- i. Change requests in respect of this Agreement, the SLA or Scope of work will emanate from the Parties' respective Project Manager who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached as Annexure B hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- ii. The IP and the Purchaser, during the Project and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in Volume I of the RFP and as set out in this Agreement.
- iii. It is hereby clarified that any individual CCN suggested beyond 15 % of the value of this Project will be beyond the scope of the change control process and will be considered as the subject matter for a separate bid process and a separate contract.

#### **(b) Quotation**

The IP shall assess the CCN and complete Part B of the CCN. In completing the Part B of the CCN, the IP shall provide as a minimum:

1. a description of the change;
2. a list of deliverables required for implementing the change;
3. a time table for implementation;
4. an estimate of any proposed change;

5. any relevant acceptance criteria;
6. an assessment of the value of the proposed change; and
7. Material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work.

Prior to submission of the completed CCN to the Purchaser, the Service Provider will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the IP shall consider the materiality of the proposed change in the context of the MSA and the Project Implementation affected by the change and the total effect that may arise from implementation of the change.

(c) Costs

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the IP meets the obligations as set in the CCN. In the event the IP is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party will be borne by the IP.

(d) Obligations

The IP shall be obliged to implement any proposed changes once approval in accordance with above provisions has been given, with effect from the date agreed for implementation and within an agreed timeframe.

## **22. *Performance Bank Guarantee***

- i. The Implementation Partner shall, within 7 days from the date of issuance of the Purchase Order/ Work Order, furnish an unconditional, irrevocable and continuing Performance Security/Guarantee to the Purchaser for an amount equal to 10% of the Total Value of Contract from a nationalized bank in the format as prescribed in the RFP. The Performance Security shall be valid for entire Term and 90 days post satisfactorily completion of the overall engagement. If the Performance Security is liquidated /encashed, in whole or in part, during the currency of the Performance Security, the Implementation Partner shall top up the Performance Security with the same amount as has been encashed within 15 days of such encashment without demur.
- ii. In the event of the Implementation Partner being unable to service the Agreement for whatever reason, the Purchaser shall have the right to invoke the PBG. Notwithstanding and without prejudice to any rights whatsoever of the Purchaser under the Agreement in the matter, the proceeds of the PBG shall be payable to the Purchaser as compensation for any loss resulting from the Implementation Partner's failure to perform/comply its obligations under the contract. MyGov shall notify the bidder in writing of the exercise of its right to receive such compensation within 30 days from the date of notice, indicating the contractual obligation(s) for which the Implementation Partner is in default. MyGov may, in its sole discretion, allow the bidder to cure the breach within such 30 days' notice period and if the breach is cured to the satisfaction of MyGov within such period, the PBG will not be invoked. The cure period does not in any impact the application of SLAs and Liquidated damages.
- iii. The Purchaser shall also be entitled to make recoveries from the Implementation Partner's bills, PBG, 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.



- iv. In case the Project is delayed beyond the Timelines as mentioned in RFP, the PBG shall be accordingly extended by the Implementation Partner till completion of scope of work as mentioned in RFP.

### **23. *Governing Law and Dispute Resolution***

- i. This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules.
- ii. Bidder and the MyGov shall endeavour their best to amicably settle all disputes arising out of or in connection with the Contract in the following manner:
  - a. The Party raising a dispute shall address to the other Party a notice requesting an amicable settlement of the dispute within seven (7) days of receipt of the notice.
  - b. The matter will be referred for negotiation between CEO MyGov/Purchaser and the Authorized Official of the Bidder. The matter shall then be resolved between them and the agreed course of action documented within a further period of 15 days.
- iii. In case any dispute between the Parties, is not settled by negotiation in the manner as mentioned above, the same may be resolved exclusively by arbitration and such dispute may be submitted by either party for arbitration within 20 days of the failure of negotiations. Arbitration shall be held in New Delhi and conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof. Each Party to the dispute shall appoint one arbitrator each and the two arbitrators shall jointly appoint the third or the presiding arbitrator.
- iv. The “Arbitration Notice” should accurately set out the disputes between the parties, the intention of the aggrieved party to refer such disputes to arbitration as provided herein, the name of the person it seeks to appoint as an arbitrator with a request to the other party to appoint its arbitrator within 45 days from receipt of the notice. All notices by one party to the other in connection with the arbitration shall be in writing and be made as provided in this tender document.
- v. The arbitrators shall hold their sittings at New Delhi. The arbitration proceedings shall be conducted in English language. Subject to the above, the courts of law at New Delhi alone shall have the jurisdiction in respect of all matters connected with the Contract/Agreement even though other Courts in India may also have similar jurisdictions. The arbitration award shall be final, conclusive and binding upon the Parties and judgment may be entered thereon, upon the application of either party to a court of competent jurisdiction. Each Party shall bear the cost of preparing and presenting its case, and the cost of arbitration, including fees and expenses of the arbitrators, shall be shared equally by the Parties unless the award otherwise provides. The Bidder shall not be entitled to suspend the Service/s or the completion of the job, pending resolution of any dispute between the Parties and shall continue to render the Service/s in accordance with the provisions of the Contract/Agreement notwithstanding the existence of any dispute between the Parties or the subsistence of any arbitration or other proceedings.

**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 President  
of India (FIRST PARTY)**

Signed by:

(Name and designation)

**Implementation**

**Partner** (SECOND  
PARTY)

(Name and designation) For and on behalf of Implementation Partner

Signed by:

# **SCHEDULES**

### *Schedule I – Definitions*

1. 'Agreement' means this Master Services Agreement and includes the RFP, the Proposal, the work order issued by the Purchaser, the signed copy of work order from the Implementation Partner together with all Annexures, Schedules, referenced documents and all amendments, corrigendum, addendums and changes thereto;
2. Additional Cost means the cost asked by Purchaser for any resources which might be utilized by Purchaser during the Project including work emulating from change requests. The utilization of the cost during the Project is the sole discretion of Purchaser but the cost will be used for evaluation purpose.
3. Applicable Law(s) means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
4. Analytics Solution means supply of Analytics solution, Implementation of Analytics Solution, Project management, planning and schedule.
5. Assets shall have the same meaning ascribed to it in Clause 9.1 (i);
6. Application/ Software means all bespoke software designed, developed / customized, tested and deployed by the Implementation Partner for the purposes of the Project and includes the source code of such software along with all associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, , as part of scope of work set out in Volume 1 of the RFP
7. Bid means offer by the Bidder/ Implementation Partner to fulfil the requirement of the Purchaser for an agreed price. It shall be a comprehensive commercial response to the RFP.
8. Confidential Information means the products, infrastructure, documents and services agreed to be delivered by the Bidder/Implementation Partner in pursuance of the Agreement. It includes all information including Purchaser's Data including MyGov Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how, plans, budgets and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement);
9. Control means, in relation to any business entity, the power of a person to secure:
  - i. by means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or
  - ii. by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person's wishes and in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;

10. Deliverables means the Software, all other products , licenses, and services etc. agreed to be delivered by the Implementation Partner as per the scope of work stipulated in this Agreement and other provisions of this Agreement and the RFP and includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related), inter alia payment and/or process related etc., source code and all its modifications;
11. Effective Date shall have the same meaning ascribed to it in Clause 3;
12. Report Generation shall have the meaning ascribed to such term in Volume I of the RFP.
13. Force Majeure shall have the same meaning ascribed to it in Clause 15.1;
14. Force Majeure Costs shall have the same meaning ascribed to it in Clause 15.4 (b);
15. Indemnifying Party shall have the same meaning ascribed to it in Clause 14.1;
16. Indemnified Party shall have the same meaning ascribed to it in Clause 14.1;
17. Integrated solution means Software product & services required to satisfy the Purchaser' requirements
18. Intellectual Property Rights means all rights in written designs and copyrights, moral rights, rights in databases and Application/ Bespoke Software / Pre-existing work including its up-gradation systems and compilation rights (whether or not any of these are registered and including application for registration);
19. IP means Implementing Partner/ Implementation Partner/ Successful Bidder
20. Month/ Week means calendar month & Week shall mean calendar week;
21. Parties means the Purchaser and the Implementation Partner for the purposes of this Agreement and "Party" shall be interpreted accordingly;
22. Performance Guarantee means Guarantee provided by any Nationalized Bank in favour of the Bidder.
23. Replacement Bidder means any third party that MyGov or its nominated agencies appoint to replace Bidder upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
24. Request for Proposal(RFP) / Tender Document means Request for Proposal(Volume I & Volume II), released dated 2<sup>nd</sup> March 2017, along with its respective annexures, corresponding corrigenda/ addenda and any other documents provided or issued to prospective bidders by MyGov during the course of the selection of bidder for implementation of MyGov Analytics project, seeking a set of solution(s), services(s), materials and/or any combination of them;
25. 'Timelines' means the project milestones for performance of the Scope of Work and delivery of the Services as described in Volume 1 of the RFP;
26. Services means the services delivered or to be delivered by the Implementation Partner as specified

- in Volume 1 of the RFP and includes any Deliverables to be provided as part of the Services or Scope of Work;
27. 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 1 of the RFP;
  28. Successful Bidder /Selected Agency/ Implementation Partner means the successful party with whom MyGov signs this agreement for rendering of services for implementation of this project.
  29. ‘SLA’ means the performance and operation SLA specified in Volume 1 of the RFP;
  30. Term shall have the same meaning ascribed to it in Clause 3;
  31. Third Party Systems means Systems (or any part thereof) in which the Intellectual Property Rights are not owned by the MyGov or IP and to which IP has been granted a license to use and which are used in the provision of Services;
  32. COTS means Commercial off-the-shelf products which the Implementation Partner maybe required to provide under this Agreement;
  33. Total Value of Contract means [\_\_\_\_\_] i.e. the amount quoted by the Implementation Partner (inclusive of taxes) in its commercial proposal.
  34. Employer/Owner/Purchaser/ Principal means MyGov having its Registered Office at Electronics Niketan, 6, CGO Complex, Lodhi Road, New Delhi, 110003 and includes Employer’s representatives or successors or assigns. Employer’s representatives includes “Project Manager”
  35. ‘Scope of Work’ mean the Services, Deliverables, Software and other products and services to be provided by the Implementation Partner as specified in Volume 1 of the RFP.
  36. Project Manager means person appointed by MyGov in the manner provided in Clause in RFP Volume 1 to perform the duties delegated by MyGov.
  37. Site means the locations and places wherever business activities are conducted by MyGov.
  38. Contractor/ Supplier/ Implementation Partner/ Bidder/ Analytics Solution Bidder/ Implementation Partner (IP) shall mean whose tender has been accepted and shall include his/her/its/their heirs, executors, administrators, legal representatives/ successors/assigns and his/her/its/their Indian Agents approved by MyGov. Implementation Partner can be a company or a corporation and is the agency that provides all necessary services in pursuant to this Agreement and the RFP for the Implementation of the Analytics solution, and integration with the MyGov environment.
  39. ‘Project/ Engagement’ means Implementation of Analytics Solutions for MyGov and generation of reports as defined in volume I of this RFP.
  40. ‘Non-Disclosure Agreement’ mean the Non-disclosure agreement executed or to be executed by the Implementation Partner with the Purchaser in the format provided by the Purchaser.
  41. Schedule/ Annexure shall mean the accepted schedules and annexures between the Analytics Solution IP and MyGov forming part of the contract.

42. Award of Work/ Work Order/ Notice of award/ Letter of Award (LOA) means communication from MyGov to the Successful Bidder/Selected Agency that the agency has been selected and awarded the work for Implementation of Analytics Solution for MyGov
43. Notice in Writing/Written Notice means a notice in written, typed or printed characters sent (unless delivered personally or otherwise proved to have been received) by registered post to the address given in the tender or last known business address or registered office of the Analytics Solution Bidder and shall be deemed to have been received when in the ordinary course of post it would have been delivered.
44. Date of award of contract shall mean the date of issuance of work order to the Implementation Partner by MyGov for the Implementation of Analytics Solution for MyGov.
45. Analytics Solution Implementation Partner means agency supplying, deploying, configuring and operating the Analytics solution under this project and for the Term of the project.
46. Technical Requirements means the requirements mentioned & referred in the Scope of Work given in Volume 1 of the RFP.
47. Bidding Documents refers to the collection of documents issued by MyGov to instruct and inform bidders of the processes for bidding, selection of the winning bid, and Contract formation, as well as the Contractual conditions governing the relationship between MyGov and the Analytics Solution IP .
48. System/Sub-system means any application component, developed application or module of the Analytics Solution proposed to meet the technical requirements that may be supplied, installed, tested, and commissioned individually before implementation of the entire solution in MyGov environment.
49. Project Plan means the document to be developed by the Analytics Solution IP and submitted to governing body for approval based on the requirements of the Contract and the Development and Implementation Plan included in the bid. For the sake of clarity, “the Agreed and Finalized Project Plan” refers to the version of the Project Plan approved by MyGov. The project plan may be changed/ modified during the course of the project. Should the Project Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail.
50. Delivery means delivery of services/ analytics solution as per the scope given in Volume 1 of this of this RFP.
51. Installation means that the System or a Subsystem procured, deployed and configured to meet the scope of work as stipulated in the Volume 1 of this RFP
52. Acceptance of Deliverables is as defined in section 8 of this volume of the RFP
53. Helpdesk Support means the 16x7x365 basis support which shall handle Fault reporting, Trouble Ticketing and related enquiries during the currency of the Agreement.
54. Training refers to the training of the stakeholders and MyGov officials by IP. The IP has to get the training plan approved by MyGov and ensure smooth implementation of the same. The training plan need to be categorised with respect to the various modules and categories as required for operating the analytics solution provided under this engagement.

## *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 Implementation Partner. This Schedule is in addition to, and in derogation of, the audit rights and process provided in the RFP.

### **2. AUDIT NOTICE AND TIMING**

- 2.1 As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavours to agree to a timetable for routine audits (Other than those mentioned as part of the mandatory requirements for successful delivery and acceptance of the System) during the Project Term. The Purchaser shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Implementation Partner any further notice of carrying out such audits.
- 2.2 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 Implementation Partner, a security violation, or breach of confidentiality obligations by the Implementation Partner, provided that the requirement for such an audit is notified in writing to the Implementation Partner a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the Implementation Partner 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.
- 2.3 Except as provided in 2.2 above, audits shall be conducted by with adequate notice of 2 weeks to the Implementation Partner.

### **3. ACCESS**

The Implementation Partner shall provide to the Purchaser or its nominated agency reasonable access to employees, 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 Implementation Partner shall make every reasonable effort to co-operate 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 only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify after serving a prior notice of \_\_\_ days:

- i. The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of the Purchaser and documentation related thereto;



- ii. That the actual level of performance of the services is the same as specified in the SLA;
- iii. That the Implementation Partner has complied with the relevant technical standards, and has adequate internal controls in place;
- iv. Implementation Partner's development and testing facilities;
- v. Implementation Partner's internal testing results, but only to the extent that they relate to the provision of the service; and
- vi. The compliance of the Implementation Partner with any other obligation under the Agreement;

Unless otherwise provided in the RFP, Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the Purchaser.

For the avoidance of doubt the audit rights under this Schedule shall not include access to the Implementation Partner's profit margins or overheads, any confidential information relating to the Implementation Partner'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**

- 5.1 The Implementation Partner shall use reasonable endeavours to achieve the same audit and access provisions as defined in this Schedule with suppliers and agents who supply labour, services, equipment or materials in respect of the services. The Implementation Partner 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.
- 5.2 **REPORTING:** The Implementation Partner 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**

- 6.1 Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the Purchaser or its nominated agency and the Implementation Partner's Project Manager shall inform the Purchaser about the actions that would be taken by the Implementation Partner 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.
- 6.2 Any change or amendment to the systems and procedures of the Implementation Partner, 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 Implementation Partner within a period of not more than 30 days or such other period as may be requested by the Implementation Partner and agreed to by the Purchaser.

## **7. TERMS OF PAYMENT**

Except for the audits that are required to be conducted by the Implementation Partner as provided in Volume I of the RFP for which the costs will be borne by the Implementation Partner, the Purchaser shall bear the cost of other audits and inspections. The Implementation Partner shall bear all costs for all reasonable assistance and information provided under the AGREEMENT.

## **8. RECORDS AND INFORMATION**

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

*Schedule III – Project Deliverables and Payment Schedule*

**i. Deliverable**

<p><b>Manpower Deployment</b></p>	<p>Deployment of proposed manpower at MyGov by the IP</p>	<p>Deployment of Analytical Solution: T (T being date of provisioning of Hardware by MyGov) OR Deployment of Analytical Solution: N ('N' being date of award of Work Order)</p>
<p><b>Deployment of Analytical Solution</b></p>	<p>Deployment of the Analytics Tool for generation of initial set of analytical reports on MyGov &amp; Other Media content</p>	<p><b>MyGov Analytics</b> - T + 4 Weeks (T being date of provisioning of Hardware by MyGov) OR <b>Other Media Analytics</b> – N + 2 Weeks ('N' being date of award of work order)</p>
<p><b>Generation of Reports</b></p>	<p>Generation of the report as stipulated in the scope of work</p>	<p>As per Frequency of the reports.  Consolidated Quarterly Report on the Number of delivery need to be submitted by IP to MyGov.</p>
<p><b>Manpower Deployment</b></p>	<p>Deployment of proposed manpower at MyGov by the IP</p>	<p>Deployment of Analytical Solution: T (T being date of provisioning of Hardware by MyGov) OR Deployment of Analytical Solution: N ('N' being date of award of Work Order)</p>

**ii. Terms of Payment**

Milestone	Activity	Payments
M1	License Cost	<p>40% of B on deployment of Solution and generation of first set of initial reports</p> <p>20% of B after one month of successful operations</p> <p>20% of B after completion of successful operations for first quarter</p> <p>20% of B after completion of successful operations for second quarter</p>
M2	Manpower Cost	Cost quoted for A to be paid in 8 equal quarterly installments on successful delivery of reports to MyGov as per scope
<b>Annual Technical Support Cost</b>		
M3	Annual Technical Support for the solution	<p>100% advance annually as quoted in C per year at the start of support period.</p> <p><i>Note - MyGov reserves the right to either award or not award ATS for all the four years.</i></p>
<b>Other Payment Milestone</b>		
M4	Language Development Cost	<p>100% of rate quoted for each language.</p> <p><i>Note - Payment shall be released after completion of each languages having successfully integrated with analytics solution and report generation</i></p>
M5	Additional Manpower Cost	Quarterly for the approved effort of deployed category of resource(s) as per rates discovered in A.

Note:

- (1) All payments to the Implementation Partner shall be made upon submission of invoices along with relevant sign-offs from MyGov

- (2) The above payments are subject to meeting of SLA's failing which the appropriate deductions as mentioned in the SLA section of this RFP
- (3) The payments for the Manpower deployment cost will be made at the end of every quarter after the delivery of the services upon satisfactorily adhering to the SLAs defined in the RFP and deductions of penalties, if any. The IP will be required to submit a compliance report every month and a consolidated compliance report at the end of 3 months (quarterly) based on which these payments may be released
- (4) All payments will be released on the basis of the unit rates agreed upon in the final contract
- (5) First quarterly payment for manpower deployment shall be paid subject to above mentioned conditions on completion of generation of first set of Basic Reports
- (6) Any monetary figure in decimal shall be rounded off to the nearest INR
- (7) Project Completion is defined as the transfer of the knowledge and document or license held by the IP to MyGov, Ministry of Electronics and Information Technology, Government of India.

### *Schedule IV - Exit Management Schedule*

#### **1. PURPOSE**

- (i) This Schedule sets out the provisions which will apply six (6) months prior to expiry of the Term of the Agreement or from the effective date of termination of the Agreement. In the case of termination of any part of the Agreement or Services, the provisions of this Schedule shall, *mutatis mutandis*, apply to the part of Agreement or Services terminated.
- (ii) In this Schedule, the term ‘Replacement Implementation Partner’ shall mean any third party that the Purchaser or its nominated agencies appoint to replace the Implementation Partner upon expiry of the Term or earlier termination of this Agreement to undertake the Services or part thereof;
- (iii) The Implementation Partner shall ensure that its respective associated entities, Implementation Partners carry out their respective obligations set out in this Exit Management Schedule.

#### **2. CONTINUATION OF PROJECT**

- (i) In case of the Agreement being terminated by the Purchaser, the Purchaser reserves the right to ask the Implementation Partner to continue running the project operations for a period of 6 months after termination orders are issued and the Implementation Partner shall be obliged to provide such services for such period without any additional cost and expense to the Purchaser and without any impediment in the quality of services (measured against the target service levels defined in the Service Level Agreement in Volume 1 of the RFP).
- (ii) The Implementation Partner will pass on to the Purchaser and/or to the Replacement Implementation Partner, the subsisting rights in any licensed products on terms not less favourable to the Purchaser/ the Replacement Implementation Partner, than that enjoyed by the Implementation Partner.

#### **3. COOPERATION AND PROVISION OF INFORMATION**

- (i) During the exit management period:
  - a) The Implementation Partner will allow the Purchaser or its nominated agency access to information reasonably required to define the then current mode of operation associated with the provision of the Services to enable the Purchaser to assess the existing services being delivered;
  - b) The Implementation Partner, on reasonable request by the Purchaser, shall promptly provide access to and copies (hard and soft copies as deemed necessary by the Purchaser) of all information held or controlled by the Implementation Partner which it has prepared or maintained in accordance with this Agreement relating to any material aspect of the Services (whether provided by the previous Implementation Partner, the Implementation Partner). The Purchaser shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The Implementation Partner shall permit the Purchaser and/or its nominated agencies to have reasonable access to the employees engaged for providing services and facilities as reasonably required by the

Purchaser to understand the methods of delivery of the services employed by the Implementation Partner and to assist appropriate knowledge transfer.

- (ii) During the exit management period, the Replacement Implementation Partner shall submit periodic reports on the progress of the transition with the Purchaser and the Implementation Partner. The Implementation Partner shall ensure that any issues and gaps highlighted in such reports shall be resolved to the satisfaction of the Purchaser.

#### **4. CONFIDENTIAL INFORMATION, SECURITY AND DATA**

- (i) The Implementation Partner will promptly on the commencement of the exit management period supply to the Purchaser or its nominated agency the following:
  - a) information relating to the current services rendered and customer and performance data relating to its performance in relation to the services;
  - b) documentation relating to Project’s Intellectual Property Rights;
  - c) documentation relating to the services;
  - d) all current and updated data as is reasonably required for purposes of the Purchaser or its nominated agencies transitioning the services to its Replacement Implementation Partner in a readily available format nominated by the Purchaser and/or its nominated agency;
  - e) all other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable the Purchaser or its nominated agencies, or its Replacement Implementation Partner to carry out due diligence in order to transition the provision of the Services to the Purchaser or its nominated agencies, or its Replacement Implementation Partner (as the case may be).
- (ii) Before the expiry of the exit management period, the Implementation Partner shall deliver to the Purchaser or its nominated agency all new or up-dated materials from the categories set out above (or any other information and data requested by the Purchaser) and shall not retain any copies thereof, except that the Implementation Partner may be permitted to retain one copy of such materials for archival purposes only as approved by the Purchaser.
- (iii) On completion of the exit management period, the Implementation Partner shall delete all confidential information and data from the Implementation Partner’s system and provide a certificate to the Purchaser stating the completion of deletion of all such data and information.

#### **5. EMPLOYEES**

- (i) Promptly, on reasonable request at any time during the exit management period, the Implementation Partner shall, subject to Applicable Laws, restraints and regulations (including in particular those relating to privacy) provide to the Purchaser or its nominated agency a list of all employees (with job titles and contact information) of the Implementation Partner dedicated to providing the services at the commencement of the exit management period.

## **6. TRANSFER OF CERTAIN AGREEMENTS**

On request by the Purchaser or its nominated agency the Implementation Partner shall effect such assignments, transfers, licences and sub-licences as the Purchaser may require in favour of the Purchaser or its nominated agencies or its Replacement Implementation Partner in relation to any equipment lease, maintenance or service provision agreement between the Implementation Partner and third party lessors, Implementation Partners, and which are related to the services and reasonably necessary for the carrying out of replacement services by the Purchaser or its nominated agency or its Replacement Implementation Partner.

## **7. RIGHTS OF ACCESS TO PREMISES**

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

## **8. GENERAL OBLIGATIONS OF THE IMPLEMENTATION PARTNER**

- (i) The Implementation Partner shall provide all such information as may reasonably be necessary to effect as seamless handover as practicable in the circumstances to the Purchaser or its nominated agency or its Replacement Implementation Partner and which the Implementation Partner has in its possession or control at any time during the exit management period.
- (ii) For the purposes of this Schedule, anything in the possession or control of any Implementation Partner, associated entity, is deemed to be in the possession or control of the Implementation Partner.
- (iii) The Implementation Partner shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

## **9. EXIT MANAGEMENT PLAN**

- (i) The Implementation Partner shall provide to the Purchaser or its nominated agency with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the Agreement as a whole and in relation to the various facets of the Project:
  - a) a detailed program of the transfer process that could be used in conjunction with a Replacement Implementation Partner including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the



- services and of the management structure to be used during the transfer;
- b) plans for the communication with such of the Implementation Partner's staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the Purchaser's operations as a result of undertaking the transfer;
  - c) (if applicable) proposed arrangements for the segregation of the Implementation Partner's networks from the networks employed by the Purchaser and identification of specific security tasks necessary at termination;
  - d) plans for provision of contingent support to the Purchaser, and Replacement Implementation Partner for a reasonable period after transfer.
- (ii) The Implementation Partner shall re-draft the Exit Management Plan every six (6) months thereafter to ensure that it is kept relevant and up to date.
  - (iii) Each Exit Management Plan shall be presented by the Implementation Partner to and approved by the Purchaser or its nominated agencies.
  - (iv) The terms of payment as stated in the Terms of Payment Schedule include the costs of the Implementation Partner complying with its obligations under this Schedule.
  - (v) In the event of termination of the Agreement/ Services or any part thereof, or 6 months prior to expiry of the Term of the Agreement, each Party shall comply with the Exit Management Plan envisaged in this Schedule.
  - (vi) During the exit management period, the Implementation Partner shall use its best efforts to deliver the services.
  - (vii) Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule and the express provisions of the Agreement. However, the Implementation Partner shall, within 30 days of commencement of the exit management period, submit a complete, accurate and up to date account of (a) all payments made by the Purchaser till the effective date of commencement of the exit management period to the Implementation Partner; (b) all payments that are due and payable to the Implementation Partner by the Purchaser till the effective date of commencement of the exit management period; and (c) all payments that may be payable by the Purchaser to the Implementation Partner till the effective date of completion of the exit management period.
  - (viii) This Exit Management plan shall be furnished in writing to the Purchaser or its nominated agencies within 90 days from the Effective Date of this Agreement.

# **Annexure**

*Annexure A – Format for Change Control Notice*

<b>CCN Number:</b> <<Number>>	
<b>Change of Control Details:</b>	
<b>Before Change of Control</b>	<b>After Change of Control (Surviving Entity)</b>
Legal Name of Entity:	Legal Name of Entity:
Registered Office Address:	Registered Office Address:
Date of Incorporation (as per Companies Act, 1956):	Date of Incorporation of Surviving Entity (as per Companies Act, 1956):
Certificate of Incorporation:	Certificate of Incorporation:
Annual Turnover (in INR) during last three Financial Years	Annual Turnover (in INR) during last three Financial Years
Entity Financial Net worth (measured as paid-up capital plus free reserves)	Entity Financial Net worth (measured as paid-up capital plus free reserves)
Profitability (in INR) during last three Financial Years:	Profitability (in INR) during last three Financial Years:
<b>Name &amp; Designation:</b>	
Name:	
Designation:	
Date:	

Note: All the information provided above should be supported by documentary evidences signed by concerned authorized signatories and the Purchaser may ask for any additional information as desired in case of occurrence of a Change of Control event.

**Annexure B – Format for Change Request Notice**

<b>PART A: INITIATION</b>	
<b>CRN Number:</b> <<Number>>/A	<b>Date:</b>
<b>Title:</b>	
<b>Initiator:</b>	
<b>Brief Description of Proposed Change:</b> (To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)	
<b>Name &amp; Designation:</b> (On behalf of Initiator)	
<b>Signature:</b>	<b>Date:</b>

<b>Part B : EVALUATION</b>	
<b>CRN Number:</b> <<Number>>/B	<b>Date:</b>
<b>Detailed Description of Change:</b> (To include Changes to Deliverables, Cost/ Charging Structure, Payment Details, Documentation, Training, Service Levels, Working Arrangements and any other contractual issue or change. Identify any attachments as B1, B2, and B3 etc.)	
<b>Impact:</b>	
<b>Deliverables Involved:</b>	
<b>Detailed Timelines:</b>	
<b>Cost/ Charges for Proposed Change:</b> (including detailed costing to arrive at such cost structure and schedule of payments, if change is approved)	

<b>Any Other Relevant Information:</b>	
<b>Name &amp; Designation</b> (on behalf of Initiator)	
<b>Signature:</b>	<b>Date:</b>
<b>Authority to Proceed:</b> Implementation of this CRN as submitted in Part A, in accordance with Part B is: (tick as appropriate)	
<b>Approved</b> Comments:	<b>Rejected</b> Comments:
<b>For Purchaser</b>	<b>For Implementation Partner</b>
Signature	Signature
Name:	Name:
Designation:	Designation:
Date:	Date:

*Schedule V – Service Level Agreement*

**Project Implementation SLAs**

Deployment Related Service Level Agreement (SLA) Criteria								
Explanation: The deduction mentioned in this table shall be made from the next due payment to the IP								
S. No.	Description	Baseline	Lower Performance		Lowest performance and violation of Service level agreement		Basis of Measurement	Remarks
		Metric	Metric	Deduction	Metric	Deduction		
1	Deployment of the Analytics Tool as per model 1	T+4 Weeks	One week after the due date	1 % of the License Cost	For further delay of every week after one week till third week from due date post which it would be considered breach of contract	2% of the License Cost	Dates for submission of deliverable i.e. T + 2 Weeks	For the purpose of this SLA, submission of deliverable would mean formal submission by IP. Deliverable should have acceptable level of quality standards. SLA will be measured subject to provisioning of Hardware by MyGov at T.
2	Deployment of the Analytics Tool as per model 2	N+2 Week	One week after the due date	1 % of the License Cost	For further delay of every week after one week till third week from due date post which it would be considered breach of contract	2% of the License Cost	Dates for submission of deliverable i.e. N+ 1Week	For the purpose of this SLA, submission of deliverable would mean formal submission by IP. Deliverable should have acceptable level of quality standards. SLA will be measured from the award of Work Order i.e. N

**Manpower Deployment SLA**

<b>Manpower deployment Service Level Agreement (SLA) Criteria</b>								
Explanation: The deduction mentioned in this table shall be made from the next due payment to the IP								
S. No.	Description	Baseline	Lower Performance		Lowest performance and violation of Service level agreement		Basis of Measurement	Remarks
		Metric	Metric	Deduction	Metric	Deduction		
1	Deployment of Key Resources at the project site	Model 1 = T Model 2 = N	Delay in deployment of 1 day upto 3 days	0.1% of the total cost of Manpower Cost	Delay in deployment of more than 3 days up to 7 days after which it will be a breach of contract.	0.2% of the total Manpower Cost	The bidder should ensure that the named resource are deployed at MyGov as per the Model adopted for operationalisation of the Project.	NA
	Deployment of proposed named Key resources from the date of award of work	No Deviation	Change of 1 resource	0.1% of the total cost of Manpower Cost	Change of more than 1 till 3 resources	0.2% of the total Manpower cost	The bidder should ensure that the named resource are deployed at the MyGov with the award of work	For the purpose of the SLA, named resources shall have to be deployed. CVs of such resources will be used for assessment of deployed resource. SLAs

<b>Manpower deployment Service Level Agreement (SLA) Criteria</b>								
Explanation: The deduction mentioned in this table shall be made from the next due payment to the IP								
S. No.	Description	Baseline	Lower Performance		Lowest performance and violation of Service level agreement		Basis of Measurement	Remarks
		Metric	Metric	Deduction	Metric	Deduction		
								will be relaxed if the replacement is done after taking prior approval from MyGov
2	Unauthorised Leave by the deployed resources	2 Leaves per quarter per resource	More than 2 upto 4 Leaves per resource per quarter	0.1% of the manpower cost per resource per day	More than 4 Upto 6 leave	0.2% of manpower cost per resource per day. Beyond 6 days .5% of the manpower cost per day per resource till 10 days; beyond which it would be a breach of contract	Presence of the resources at the project site as per the schedule	For the purpose of the SLA, named resources shall have to be present at MyGov during office hours and sometimes extended office hours as well. All leaves to be approved for each resource by MyGov.



<b>Manpower deployment Service Level Agreement (SLA) Criteria</b>								
Explanation: The deduction mentioned in this table shall be made from the next due payment to the IP								
S. No.	Description	Baseline	Lower Performance		Lowest performance and violation of Service level agreement		Basis of Measurement	Remarks
		Metric	Metric	Deduction	Metric	Deduction		
3	Deployment of additional manpower	Within 3 working days of intimation from MyGov	5 working days of intimation from MyGov	0.25 % of the Manpower Cost per day per resource	7 working days of intimation from MyGov	0.50 % of the Manpower Cost per day per resource	Delay in deployment of additional manpower for the new set of customized reports.	For the purpose of this SLA, deployment of skilled manpower for the required set of activity by IP at MyGov.

**Analytics & Reporting SLA**

<b>Reporting Related Service Level Agreement (SLA) Criteria</b>								
Explanation: The deduction mentioned in this table shall be made from the next due payment to the IP								
S. No.	Description	Baseline	Lower Performance		Lowest performance and violation of Service level agreement		Basis of Measurement	Remarks
		Metric	Metric	Deduction	Metric	Deduction		
1	New Set of Customized Report SLA	<p>Delivery Date(M)</p> <p>This is the third day from the date of intimation to the IP to generate the report.</p>	M+1 Day	0.25 % of the Manpower Cost per day per customised report asked for	M+ 5 Days	1 % of the Manpower Cost per day per category of reports till M+10 day post which it will be considered breach of contract.	Delay in Delivery of the Report from the delivery date	For the purpose of this SLA, submission of deliverable would mean formal submission by IP. Deliverable should have acceptable level of quality standards. SLA will be measured on model of the reports adopted (i.e. T or M)
2	Initial Set of Reports	<p>Model 1 = T +4</p> <p>Model 2 = N+2</p>	Delay of 1 day	0.1% of the Manpower cost	Delay of more than 1 day upto 3 day after which it will	.2% of the manpower cost	Delay in Delivery of the Report from the delivery date	Initial set of reports need to be delivered as per the deployment model.

<b>Reporting Related Service Level Agreement (SLA) Criteria</b>								
Explanation: The deduction mentioned in this table shall be made from the next due payment to the IP								
S. No.	Description	Baseline	Lower Performance		Lowest performance and violation of Service level agreement		Basis of Measurement	Remarks
		Metric	Metric	Deduction	Metric	Deduction		
					be breach of contract			However, IP shall be provided SLA waiver for the first month on report generation timeline. In all cases, reports have to be generated and delivered to MyGov

***Helpdesk Management and IT Related SLAs***

The IT support would have to ensure that the various severity level issue need to be handled at the earliest. Any delay of the same would lead to termination of contract.

### Helpdesk and IT Support Related Service Level Agreement (SLA) Criteria

Explanation: The deduction mentioned in this table shall be made from the next due payment to the IP

S. No.	Description	Baseline	Lower Performance		Lowest performance and violation of Service level agreement		Basis of Measurement	Remarks
		Metric	Metric	Deduction	Metric	Deduction		
	Helpdesk - Problem Response time	<p>For Severity 1, &gt;=95% of the incidents should be acknowledged within 30 minutes (Severity of violation: High)</p> <p>For Severity 2, &gt;=95% of the incidents should be acknowledged within 60 minutes (Severity of violation: Medium)</p> <p>For Severity 3, &gt;=95% of the incidents should be acknowledged within 120 minutes (Severity</p>	<p>For Severity 1, &lt;95% and &gt;=90% of the incidents should be acknowledged within 30 minutes</p> <p>For Severity 2, &lt;95% and &gt;=90% of the incidents should be acknowledged within 60 minutes</p> <p>For Severity 3, &lt;95% and &gt;=90% of the incidents should be acknowledged</p>	Rs. 1,00,000 per 1% drop till 90%	<p>For Severity 1, &lt;90% of the incidents should be acknowledged within 30 minutes</p> <p>For Severity 2, &lt;90% of the incidents should be acknowledged within 60 minutes</p> <p>For Severity 3, &lt;90% of the incidents should be acknowledged within 120 minute</p>	Rs. 2,00,000 per 1% drop till 85% below which it would be considered as a breach of contract	Measured as % of calls tickets raised by users in a quarter	Average time taken to acknowledge and respond once an incident is logged through one of the agreed channels. This is calculated for all incidents reported within the reporting quarter (16x7x365)

<b>Helpdesk and IT Support Related Service Level Agreement (SLA) Criteria</b>								
Explanation: The deduction mentioned in this table shall be made from the next due payment to the IP								
S. No.	Description	Baseline	Lower Performance		Lowest performance and violation of Service level agreement		Basis of Measurement	Remarks
		Metric	Metric	Deduction	Metric	Deduction		
		of violation: Low)	within 120 minute					
2	Helpdesk - Time to Resolve	For Severity 1, 100% of the incidents should be resolved within 8 hours from acknowledgement of issue  (Severity of Violation: High)  For Severity 2, >=95% of the incidents should be resolved	NA	NA	<100% incidents should be resolved within 8 hours from acknowledgement of issue for Severity 1  <95% incidents should be resolved within 24 and 48 hours respectively from acknowledgement	Rs. 2,00,000 per severity 1 incident resolved beyond 8 hours from acknowledgement of issue  Rs. 1,00,000 per severity 2 and 3 incident resolved beyond 24 and 48 hours respectively from acknowledgement of issue beyond	Time taken to resolve the reported problem as per the severity and measured as % of calls tickets raised by users in a quarter	Severity will be assigned by MyGov to the business processes for the monitoring of such SLAs

<b>Helpdesk and IT Support Related Service Level Agreement (SLA) Criteria</b>								
Explanation: The deduction mentioned in this table shall be made from the next due payment to the IP								
S. No.	Description	Baseline	Lower Performance		Lowest performance and violation of Service level agreement		Basis of Measurement	Remarks
		Metric	Metric	Deduction	Metric	Deduction		
		within 24 hours from acknowledgement of issue  (Severity of Violation: Medium)  For Severity 3, >=95% of the incidents should be resolved within 48 hours from acknowledgement of issue  (Severity of Violation: Low)			of issue for Severity 2 and 3 below which it would be considered as a breach of contract	which it would be considered breach of contract		

**Language Development Related SLAs**

The Bidder need to ensure the solution is able to support the multilingual feature as per the mutually agreed timeline. Breach of the Timeline will lead to breach of the contract.

<b>Language Development Related Service Level Agreement (SLA) Criteria</b>								
Explanation: The deduction mentioned in this table shall be made from the next due payment to the IP								
S. No.	Description	Baseline	Lower Performance		Lowest performance and violation of Service level agreement		Basis of Measurement	Remarks
		Metric	Metric	Deduction	Metric	Deduction		
1	Availability of the mutually agreed Language feature during signing of contract in the solution.	Mutually Agreed Timeline	Mutually Agreed Timeline + 2 Week	10% of the total cost of Language development cost	Mutually Agreed Timeline + 4 Week	20% of the Language Development Cost Quoted Crossing the Same would lead to breach of Contract.	Viability of the Language capability in the deployed solution	NA

## *Schedule VI – Non-Disclosure Agreement (NDA)*

**THIS NON-DISCLOSURE AGREEMENT (“NDA”)** is made on this the <\*\*\*> day of <\*\*\*> 2017 at New Delhi, India

### **BY AND BETWEEN**

The President of India, acting through the \_\_\_\_\_, New Delhi 110003 (herein after referred to as “Purchaser”/ “MyGov, Ministry of Electronics & Information Technology ”, which expression shall unless excluded by or repugnant to the context deemed to include its successor/s in office or assign) of the First Part;

### **AND**

<\*\*\*>, a Company incorporated under the Companies Act, 1956, having its registered office at <\*\*\*> (hereinafter referred to as ‘**Implementation Partner**’ 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. << ‘MyGov’>> is desirous to implement the project of-----  
-.
2. The << ‘MyGov’>> and << ‘Implementation Partner’>> have entered into a Master Services Agreement dated << ‘Date’>> (the “**MSA**”) as well as a Service Level Agreement dated << ‘Date’>> (the “**SLA**”) in furtherance of the Project.
3. Whereas in pursuing the Project (the “**Business Purpose**”), a Party (“Disclosing Party”) recognizes that they will disclose certain Confidential Information (*as defined hereinafter*) to the other Party (“Receiving Party”).
4. Whereas such Confidential Information (*as defined hereinafter*) belongs to Receiving Party as the case may be and is being transferred to the Disclosing Party to be used only for the Business Purpose and hence there is a need to protect such information from unauthorized use and disclosure.
5. **NOW THEREFORE**, in consideration of the mutual covenants, promises, assurances, representations and provisions set forth herein, the Parties hereto agree as follows

### **Definitions and Interpretation**

#### **1.1 Definitions**

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

#### **1.2 Interpretation**



In this Agreement, unless otherwise specified:

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

use of any gender includes the other genders;

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

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

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

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

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

references to times are to Indian standard time;

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

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

### **1.3 Measurements and Arithmetic Conventions**

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

### **1.4 Ambiguities within Agreement**

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

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

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

## **1.5 Priority of agreements**

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

## **2 Term**

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

## **3 Scope of the Agreement**

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

## **4 Obligations of the Receiving Party**

The Receiving Party shall:

- (a) use the Confidential Information only for the Business Purpose and shall hold the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, taking into account the nature of the Confidential Information, and

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

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

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

prevent disclosure of Confidential Information to third parties;

disclose the Confidential Information to its consultants/contractors on a need to know basis; provided that by doing so, the Receiving Party agrees to bind such consultants/ contractors to

terms at least as restrictive as those stated herein. The Receiving Party upon making a disclosure under this Clause shall:

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

## **5 Exceptions to Confidential Information**

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

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

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

- I. was in the Receiving Party's possession without restriction or was known by the Receiving Party without restriction at the time of disclosure; or
- II. is the subject of a subpoena or other legal or administrative demand for disclosure; provided, however, that the Receiving Party has given the disclosing party prompt notice of such demand for disclosure and the Receiving Party reasonably cooperates with the disclosing party's efforts to secure an appropriate protective order; or

- III. is disclosed with the prior consent of the disclosing party; or
- IV. was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing party and was not previously acquired by the Receiving Party from the disclosing party under an obligation of confidence; or
- V. the Receiving Party obtains or has available from a source other than the disclosing party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the disclosing party.

## **6 Ownership of the Confidential Information**

- I. Each Party recognizes and agrees that all of the disclosing Party's Confidential Information is owned solely by the Disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain.
- II. By disclosing the Confidential Information or executing this Agreement, Disclosing Party does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right. The Disclosing Party disclaims all warranties regarding the information, including all warranties with respect to infringement of intellectual property rights and all warranties as to the accuracy or utility of such information.
- III. Access to Confidential Information hereunder shall not preclude an individual who has seen such Confidential Information for the purposes of this Agreement from working on future projects for the Disclosing Party which relate to similar subject matters, provided that such individual does not make reference to the Confidential Information and does not copy the substance of the Confidential Information during the Term. Furthermore, nothing contained herein shall be construed as imposing any restriction on the Receiving Party's disclosure or use of any general learning, skills or know-how developed by the Receiving Party's personnel under this Agreement.
- IV. Execution of this Agreement and the disclosure of Confidential Information pursuant to this Agreement do not constitute or imply any commitment, promise, or inducement by either Party to make any purchase or sale, or to enter into any additional agreement of any kind.

## **7 Dispute Resolution**

- I. If a dispute arises in relation to the conduct of this Contract (Dispute), a party must comply with this clause 7 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 7.
- II. A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.
- III. During the 14 days after a notice is given under clause 7(b) (or longer period if the

parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of the jurisdiction specified in this agreement. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at the jurisdiction specified in Item 27. Any legal dispute will come under the sole jurisdiction specified in Item 27.

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

## **8 Variation**

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

## **9 Waiver**

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

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

## **10 Exclusion of Implied Warranties**

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

## **11 Entire Agreement**

[This Agreement and the Annexure together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.]

## **12 Severability**

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

## **13 No Partnership**

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

## **14 Third Parties**

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

## **15 Successors and Assigns**

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

## **16 Notices**

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

If to <<'State Designated Agency'>>:  
Attn: <\*\*\*>

Tel:

Fax:

Email:

Contact:

With a copy to:

If to the <<'Implementation Partner'>>:  
Attn. <\*\*\*>

Phone: <<'SI Telephone'>>

Fax No. <<'SI Fax'>>

**17 Language**

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

**18 Counterparts**

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

**19 Mitigation**

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

**20 Removal of Difficulties**

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

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

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

For and on behalf of the <<'State  
Designated Agency'>> by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

In the presence of:

1.

2.



