

Request for proposal (RFP)

For

**“Design, development, integration, implementation,
operation and maintenance**

of

National Logistics Portal (Marine)

Ver1.0

Volume 3 – Master Service Agreement

Date: 28/09/2020

Bid Reference # IPA/PGAV/NLP-Marine/2020



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1) MASTER SERVICES AGREEMENT

THIS MASTER SERVICE AGREEMENT (“Agreement”) is made on this the <***> day of <***> 20... at <***>, India.

BETWEEN

----- Having its office at -----
----- India hereinafter referred to as **‘Indian Ports Association / ‘IPA’**, which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the <Act Name >, having its registered office at <***>(hereinafter referred to as **‘the Service Provider/SP’** which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

- IPA is desirous of “Design, development, integration, implementation, operation and maintenance of “NLP Marine ver1.0 for the Indian sea port communities and provide technical support for one year to PCS 1x (design, develop, integrate, implement, operate and maintain “NLP Marine ver1.0) for the stakeholder communities of Indian SeaPorts”.
- In furtherance of the same, IPA undertook the selection of a suitable Service Provider through a competitive bidding process for implementing the Project and in this behalf issued Request for Proposal (RFP) dated <***>.
- The successful bidder has been selected as the Service Provider on the basis of the bidresponse set out as Annexure D (Including all the documents submitted as part of the bid submission including technical bid, clarifications, and commercial bids) of this Agreement, to undertake the Project of the development and implementation of the solution, its roll out and sustained operations.

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

1.1 DEFINITIONS AND INTERPRETATION:

1.1.1 Definitions

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

Other terms used in this Agreement are defined where they are used. Unless otherwise specifically defined, those terms, acronyms and phrases in this Agreement that are utilized in the information technology services industry or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context.

1.1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to clauses, sub-clauses, paragraphs, schedules and annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- (b) Words denoting singular use the plural and vice-versa and use of any gender includes the other genders;
- (c) references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (f) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight unless otherwise specified;
- (g) References to a '**Business day**' shall be construed as a reference to a day (other than Saturday, Sunday and other gazetted holidays) on which IPA or its nominated agencies/partners is generally open for business at their respective locations.
- (h) references to times are to Indian Standard Time;
- (i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (j) All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- (k) Service Provider (SP) has been used for the same entity i.e. bidder selected for the project.

1.2 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.

1.3 Ambiguities within Agreement

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

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

1.4 Priority of documents

- (a) This Agreement, including its Schedules and Annexures, represents the entire agreement between the Parties as noted in this clause. If in the event of a dispute as to the interpretation or meaning of this Agreement it should be necessary for the Parties to refer

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to documents forming part of the bidding process leading to this Agreement, then such documents shall be relied upon and interpreted in the following descending order of priority:

- This Agreement alongwith
 - the SLA Agreement,
 - NDA Agreement,
 - Schedules and Annexures;
 - the RFP along with subsequently issued corrigendum
 - Technical and commercial proposal submitted by the successful bidder, to the extent they along with subsequently issued clarifications furnished by the SP in response to the RFP, to the extent they are not inconsistent with any terms of the RFP
- (b) For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures / Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexures / Schedules and Annexures / Schedules shall prevail over the contents and specifications of the RFP.

2. SCOPE OF THE PROJECT

- a) The Service Provider shall be required to design, develop, integrate, implement, operate and maintain “NLP Marine ver1.0 for the Indian sea port communities and provide technical support for one year to PCS 1x (design, develop, integrate, implement, operate and maintain “NLP Marine ver1.0) and during the solution for a period of 2 years for O&M ; from the date of Go-Live, totaling to three years
- b) The roles and responsibilities of the Parties under this Agreement have been set out in detailed out in RFP.
- c) For the avoidance of doubt, it is expressly clarified that this Agreement shall govern the provision of the contracted professional services under the SLA to IPA and its nominated agencies. It is anticipated that new or renewal agreements may be undertaken by creating a separate SLA, with schedules and annexures as required, under this Agreement for each additional engagement.
- d) NLP Marine shall be designed as an “open platform” and in a manner that allows coexistence of multiple service providers (hereinafter referred as Latch-on Service Providers or LSP) to provide EXIM related services independently or by using connectivity options and data as authorized by IPA. The implementation of an ‘Open Platform’ in NLP Marine facilitates various time-tested solutions to connect with PCS and provide an unparalleled ability to enhance services to various stakeholders. The “Latch On” feature is a unique concept built in and delivered with NLP Marine.
- e) The scope of work is defined in volume 2 of the RFP.

3. TERM AND DURATION OF THE AGREEMENT

- (a) This Agreement shall come into effect on <***> (hereinafter the “Effective Date”) and shall, unless terminated earlier in accordance with its terms, expire on the date on which this Agreement expires, which shall be a period of two years from ‘Go-Live’ of Project and any extended period notified by IPA.
- (b) In the case of such extension of contract beyond the stipulated period, the warranties, Performance Bank Guarantee, Exit management protocol, insurance etc. shall be extended

- (c) The Term, for the purposes of any payments to SP, does not include (a) any extension arising out of breach of any obligations by SP, (b) unless otherwise agreed, time duration for implementation of exit management plan.

4. CONDITIONS PRECEDENT & EFFECTIVE DATE

4.1 Provisions to take effect upon fulfilment of Conditions Precedent

- (a) Subject to express terms to the contrary, the rights and obligations under this Agreement (at any point of time during the course of the Agreement) shall take effect only upon fulfilment of all the Conditions Precedent set out below. However, IPA may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the Service Provider. For the avoidance of doubt, it is expressly clarified that the obligations of the Parties (or its nominated agencies) under this Agreement shall commence from the fulfilment of the Conditions Precedent as set forth below.

4.2 Conditions

a. Conditions Precedent of the Service Provider

The Service Provider shall be required to fulfill the Conditions Precedent which are as follows:

- (i) to provide a Performance Security/Guarantee and other guarantees/ payments as and when required to IPA or its nominated agencies; and
- (ii) to provide IPA or its nominated agencies certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Service Provider.

b. Conditions Precedent of IPA

IPA shall be required to fulfill the Conditions Precedent which are as follows:

- (i) Handing over of site; and
- (ii) Necessary clearances (if any);
- (iii) Approval of the Project by a Competent Authority, etc.

For the avoidance of doubt, it is expressly clarified that the obligations of the Parties except the financial obligations of IPA under this Agreement shall commence from the fulfillment of the Conditions Precedent as set forth above.

4.3 Extension of time for fulfillment of Conditions Precedent

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

4.4 Non-fulfillment of the Service Provider's Conditions Precedent

- (a) In the event that any of the Conditions Precedent of the Service Provider has not been fulfilled within 15 days or within such extended time as parties may mutually agree, of

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signing of this Agreement and the same has not been waived fully or partially by IPA or its nominated agencies, this Agreement shall cease to exist;

- (b) In the event that the Agreement fails to come into effect on account of non-fulfilment of the Service Provider's Conditions Precedent, IPA or its nominated agencies shall not be liable in any manner whatsoever to the Service Provider and IPA shall forthwith forfeit the Performance Guarantee.
- (c) In the event that possession of any of IPA or its nominated agencies facilities has been delivered to the Service Provider prior to the fulfilment of the Conditions Precedent, upon the termination of this Agreement such facilities shall immediately revert to IPA or its nominated agencies, free and clear from any encumbrances or claims.

5. Obligations under the SLA:

- (a) The SLA shall be a separate contract in respect of this Agreement and shall be entered into concurrently with this Agreement between IPA and Service Provider;
- (b) In relation to any future SLA entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein.

6. Change of Control

- (a) In the event of a change of control of the Service Provider during the Term, the Service Provider shall promptly notify IPA of the same in the format set out as Annexure A to this Agreement.
- (b) In the event that the net worth of the surviving entity is less than that of Service Provider prior to the change of control, IPA may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the Service Provider from a guarantor acceptable to IPA (which shall not be Service Provider or any of its associated entities).
- (c) If such a guarantee as set out in para (b) herein above, is not furnished within 30 days, or such extended time as mutually agreed between the Parties, IPA may exercise its right to terminate the SLA and/ or this Agreement within a further period of 30 days by serving a written notice, which shall become effective from the date specified in such notice.
- (d) Pursuant to termination, the effects of termination as set out in Clause 15 of this Agreement shall follow.
- (e) Any change in the constitution or internal reorganization of the entity (Service Provider) will be subject to prior approval of IPA.

7. Final testing and certification

The Project shall be governed by the mechanism of final acceptance testing and certification to be put into place by IPA and Service Provider as under:

- (a) Final testing and certification criteria will lay down a set of guidelines following internationally accepted norms and standards for testing and certification for all aspects of project development and implementation covering software, hardware and networking including the processes relating to the design of solution architecture, design of systems and sub-systems, coding, testing, business process description, documentation, version control, change management, security, service oriented architecture, performance in relation to compliance with SLA metrics, interoperability, scalability, availability and compliance with all the technical and functional requirements of the RFP and this

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Agreement;

- (b) Final testing and certification criteria will be finalized from the development stage to ensure that the guidelines are being followed and to avoid large scale modifications pursuant to testing done after the application is fully developed;
- (c) Final testing and certification criteria will include conducting specific tests on the software, hardware, reports, documents, networking, security and all other aspects;
- (d) Final testing and certification criteria will establish appropriate processes for notifying the Service Provider of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the Service Provider to take corrective action; etc.
- (e) Each Party shall ensure that the range of the Services under the SLA shall not be varied, reduced or increased except with the prior written agreement between IPA and Service Provider in accordance with the Change Control Schedule set out in Schedule II of this Agreement. Save and except as provided in the terms of the Terms of Payment Schedule set out in Schedule VI of this Agreement, IPA and its users may purchase any particular category of Services that may become necessary as per the Change Control Schedule set out in Schedule II of this Agreement, without the need to go for a separate procurement process.

8. REPRESENTATIONS AND WARRANTIES

8.1 Representations and warranties of the Service Provider

The Service Provider represents and warrants to IPA that:

- (a) it is duly recognized and validly existing entity 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;
- (b) it is a competent provider of a variety of information technology and business process management services;
- (c) it has taken all necessary corporate and other actions under applicable laws 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;
- (d) from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (e) in providing the Services, it shall use reasonable endeavours not to cause any unnecessary disruption to IPA's normal business operations
- (f) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, and is enforceable against it in accordance with the terms hereof.
- (g) the information furnished in the tender documents and as updated on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as on the date of this Agreement;
- (h) the execution, delivery and performance of this Agreement shall not be in 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;
- (i) there are no material actions, suits, proceedings, or investigations pending nor contemplated against it before any court of law or before any other judicial, quasi-judicial or

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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;

- (j) 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;
- (k) 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;
- (l) no representation or warranty contained herein or in any other document furnished by it to IPA in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact. and
- (m) 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 IPA in connection therewith. For this purpose, IPA will sign integrity pact separately with Service Provider enclosed with this agreement.

8.2 Representations and warranties of IPA

IPA represent and warrant to the Service Provider that:

- (a) 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;
- (b) 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;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) 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;
- (f) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits or proceedings pending or, to its knowledge, contemplated against it before any court of law or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or

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which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;

- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on IPA or its nominated agencies ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects;
- (j) all information provided by it in the RFP in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- (k) all information provided by it in the RFP in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- (l) upon the Service Provider performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Service Provider, in accordance with this Agreement.

8.3 Obligations of IPA

Without prejudice to any other undertakings or obligations of IPA under this Agreement, IPA shall perform the following:

- (a) To provide any support through personnel to enable the Service Provider to conduct the process/ system study, to validate the design of the system and to test the system during the Term;
- (b) To provide any support through personnel and/or test data during development, rollout, steady state operation, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- (c) IPA shall provide the data (both physical stored documents and electronic) to be migrated and validated by SI.
- (d) To authorize the Service Provider to interact for implementation of the Project with all the relevant stakeholders and external entities such as the authorized banks, trademark database etc.
- (e) Provide prompt Deliverable feedback: IPA or its nominated agencies/ partners shall provide sign offs on the deliverable or its comments for changes within a reasonable time period to be finalized at Kick-off of Project.

8.4 Obligations of the Service Provider:

- (a) It shall provide to IPA or its nominated agencies/ partners, the Deliverables as set out in RFP.
- (b) It shall perform the Services as set out in Section 2 of this Agreement and in a good and workmanlike manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, and so as to comply with the applicable Service Levels set out with this Agreement.
- (c) It shall ensure that the Services are being provided as per the Project Timelines set out in the RFP.

9 Approvals and requiredconsents:

- (a) The Parties shall cooperate to procure, maintain and observe all relevant and regulatory and governmental licenses, clearances and applicable approvals (hereinafter the “Required Consents”) necessary for the Service Provider to provide the Services. The costs of such Approvals shall be borne by the Party normally responsible for such costs according to local custom and practice in the locations where the Services are to be provided.
- (b) IPA or its nominated agencies/partners shall use reasonable endeavour to assist Service Provider to obtain the Required Consents. In the event that any Required Consent is not obtained, the Service Provider and IPA will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for IPA to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Required Consent is obtained, provided that the Service Provider shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the Required Consents are obtained if and to the extent that the Service Provider’s obligations are not dependent upon such RequiredConsents.

10 Use of assets by the ServiceProvider:

During the Term the Service Provider shall:

- (a) take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the Service Provider exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the “Assets”) in proportion to their use and control of such Assets;and
- (b) keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as on the date the Service Provider takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- (c) ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Service Provider will be followed by the Service Provider and any person who will be responsible for the use of theAssets;
- (d) take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Service Provider or as may, in the reasonable opinion of the Service Provider, be necessary to use the Assets in a safemanner;
- (e) ensure that the Assets that are under the control of the Service Provider, are kept suitably housed and in conformity with ApplicableLaw;
- (f) procure permission from IPA 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 partyrequirements;
- (g) 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 ApplicableLaw.
- (h) use best efforts to ensure that no lien, mortgage, hypothecation or any other charge is created over the Assets. SP agrees that SP will inform IPA immediately if SP feels or comes to know that a charge may be / has been created over any Asset(s). In the eventa

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charge is created over any of the Assets / Goods which are owned by IPA, IPA shall have the right to get the charge removed at the risk, cost, expense of the SP and SP shall make good all losses, damages, costs, fees, cess, duties, etc. borne or suffered by IPA due to creation of such charge and/or in removal of such charge and/or in discharging the obligations for removal of such charge.

11 Access to IPA or its nominated Agencies'/ Partners' locations:

- (a) For so long as the Service Provider provides services to IPA location, as the case may be, on a non-permanent basis and to the extent necessary, IPA as the case may be shall, subject to compliance by the Service Provider with any safety and security guidelines which may be provided by IPA as the case may be and notified to the Service Provider in writing, provide the Service Provider with:
- reasonable access with prior approval of IPA, in the same manner granted to IPA employees, to IPA as the case may be location twenty-four hours a day, seven days a week;
 - reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other IPA as the case may be location, if any, as may be reasonably necessary for the Service Provider to perform its obligations hereunder and under the SLA.
- (b) Access to locations, office equipment and services shall be made available to the Service Provider on an "as is, where is" basis by IPA as the case may be. The Service Provider agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in RFP for the following purposes:
- for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
 - in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality).

12 Management Phase:

12.1 Governance

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

12.2 Use of Services

- (a) IPA as the case may be or its nominated agencies/ partners, will undertake and use the Services in accordance with any instructions or procedures as per the acceptance criteria as set out in the SLA or this Agreement or any agreement that may be entered into between the Parties from time to time;
- (b) IPA as the case may be or its nominated agencies/ partners shall be responsible for the operation and use of the Deliverables resulting from the Services.

12.3 Changes

Unless expressly dealt with elsewhere in this Agreement, any changes under or to this Agreement or under or to the SLA shall be dealt with in accordance with the Change Control Schedule set out

12.4 Security and Safety

- (a) The Service Provider shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act or Telegraph Act including the regulations issued by dept. of telecom (wherever applicable), IT Security Manual of IPA as specifically stated in the RFP and follow the industry standards related to safety and security (including those as stated in the RFP), insofar as it applies to the provision of the Services/Deliverables under this Agreement.
- (b) Each Party to the SLA/Agreement shall also comply with IPA or the Government of India's security standards and policies in force from time to time at each location of which IPA make the Service Provider aware in writing insofar as the same apply to the provision of the Services.
- (c) The Parties to the SLA/Agreement shall use reasonable endeavour 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 IPA as the case may be or any of their nominee's data, facilities or Confidential Information.
- (d) The Service Provider shall upon reasonable request by IPA as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- (e) As per the provisions of the SLA or this Agreement, the Service Provider shall promptly report in writing to IPA, 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 IPA as the case may be.

12.5 Cooperation

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

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

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

13. Financial Matters:

13.1 Terms of Payment and Service Credits and Debits

- (a) In consideration of the Services and subject to the provisions of this Agreement and of the SLA, IPA shall pay the Service Provider for the Services rendered in pursuance of this Agreement, in accordance with the Terms of Payment Schedule set out in Schedule VI of this Agreement.
- (b) Payments shall be subject to the application of liquidated damages (for period prior to

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“Go Live”) or SLA penalties and its adjustments/corrections (for post “Go-Live”) as may be provided for in the Agreement and the SLA from the relevant milestone(s).

[Note: IPA (on request from successful bidders) can look at having a separate mechanism for settling penalties/ service credits rather than the set off against the invoice as this could lead to revenue recognition issues. However, the successful bidder has to ensure that such settlement happens within a stipulated timeframe]

- (c) IPA reserves the right to levy a reasonable and mutually agreeable service fees from Latch On Service Provider (LSP) from a date/time as may be notified by IPA (the Service Fees) . The same may be discussed with the LSP and the agreed levies and applicable taxes shall be notified to the LSP in writing. The service fees will be based on per activity either in absolute terms (in INR) or percentile of LSP charging to his customers.

IPA agree and confirm that whenever IPA decides and start to levy Service Fee on LSP, a portion of such fees (as may be mutually agreed upon between the IPA and NLP Marine Operator) shall be shared with NLP Marine Operator towards the following:

- Version control of code / Maintenance of Code;
- Technology Upgrades from time to time;
- Implementation of processes from time to time basis regulatory requirements; and
- Maintaining uptime of the services offered by LSP on NLP Marine.

- (d) Save and except as otherwise provided for herein or as agreed between the Parties in writing, IPA shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the Service Provider performance of any obligations under this Agreement or the SLA) other than those covered in Schedule VI of this Agreement. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.

13.2 Invoicing and Settlement

- (a) Subject to the specific terms of the SLA, the Service Provider shall submit its invoices in accordance with the following principles:
- (i) IPA shall be invoiced by the Service Provider for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the Service Provider shall raise an invoice as per Vol-1 of RFP; and
 - (ii) Any invoice presented in accordance with this clause shall be in a form as agreed with IPA.
- (b) The Service Provider alone shall invoice all payments only after receiving due approval of completion of payment milestone from the competent authority. Such invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in RFP
- (c) Payment shall be made within 60 working days of the receipt of invoice along with supporting documents by IPA subject to deduction of applicable liquidated damages and/or service credits/debits. The penalties are imposed on the Service Provider as per the penalty criteria specified in the SLA. Bidder should raise the invoice only after acceptance has been provided for respective deliverable/milestone/item.

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- (d) IPA shall be entitled to delay or withhold payment of any invoice or part of it delivered by the Service Provider where IPA disputes/withholds such invoice or part of it provided that such dispute is bona fide. The withheld amount shall be limited to that which is in dispute. The disputed / withheld amount shall be settled in accordance with the escalation procedure as set out in Schedule V of this Agreement. Any exercise by IPA under this Clause shall not entitle the Service Provider to delay or withhold provision of the Services.
- (e) The Service Provider shall be solely responsible to make payment to its sub-contractors.

13.3 Tax

- (a) IPA or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the Service Provider wherever applicable. The Service Provider shall pay for all other taxes in connection with this Agreement, SLA, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.
- (b) IPA or its nominated agencies shall provide Service Provider with the original tax receipt of any withholding taxes paid by IPA or its nominated agencies on payments under this Agreement. The Service Provider agrees to reimburse and hold IPA harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among IPA, the Service Provider and third party subcontractors.
- (c) If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by IPA for providing the goods and services i.e. service tax or any such other applicable tax from time to time, which increases or decreases the cost incurred by the Implementation Agency in performing the Services, then the remuneration and reimbursable expense otherwise payable to the SP under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule VI. However, in case of any new or fresh tax or levy imposed after submission of the proposal, the SP shall be entitled to reimbursement on submission of proof of payment of such tax or levy.
- (d) The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with the following:
 - (i) any resale certificates;
 - (ii) any relevant information regarding out-of-state or use of materials, equipment or services; and any direct pay permits, exemption certificates or information reasonably requested by the other Party.

14. ACCEPTANCE OF DELIVERABLES AND TESTING

14.1 Acceptance of Deliverables

- (a) The successful completion of the Project requires the acceptance by IPA of all Deliverables prepared and delivered pursuant to the Project. Upon completion of a Deliverable, Service Provider will notify IPA in writing that the Deliverable has been completed and, in the case of

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Deliverables constituted of software, hardware and networking (“Operational Deliverables”), tested and/or certified as being ready for acceptance (“Ready for Acceptance”) by IPA. Promptly after receiving such notice, IPA will evaluate the Deliverable for acceptance in accordance with specific provisions provided in the RFP. The acceptance process outlined below shall not be deemed to extend the Timelines / scheduled completion date for any Deliverable specified in the RFP.

14.2 Acceptance Procedure

Acceptance by IPA (“Acceptance”) requires that the Deliverables be confirmed in writing by IPA to meet applicable acceptance criteria (“Acceptance Criteria”) which, in the case of Operational Deliverables, will include the successful completion of agreed acceptance and performance testing and, in the case of the System as a whole, will include meeting the specifications, performance standards and functional requirements set out in the RFP. In the case of Deliverables that are component parts of the System, in addition to acceptance of the component Deliverables, the System will also be subject to Acceptance in its entirety. Service Provider shall prepare and propose the test procedures, which shall be described in the Acceptance Criteria for each Deliverable and shall be subject to agreement by IPA. While designing the acceptance test procedures the requirements as mentioned in volume II of RFP need to be adhered. The Acceptance tests and test procedures shall be sufficiently broad in scope and rigorous so as to verify that the System and all other Deliverables meet all applicable specifications, acceptance criteria and performance requirements, including assurance that the Deliverables and the System meet such tests of operational integrity as may be reasonably required by IPA. In the case of the System, the Acceptance tests shall consist of unit tests, proto-type test, a system test, and/or stress test, integration tests etc. Acceptance procedures for written Deliverables (which are all Deliverables other than Operational Deliverables) and Operational Deliverables are as follows:

(a) Written Deliverables:

- i. The Service Provider may submit interim drafts of written Deliverables (e.g., system designs and documentation) to IPA for review. IPA agrees to review each interim draft within a reasonable period of time after receiving it from the Service Provider. When the Service Provider delivers a final written Deliverable to IPA, IPA will have the opportunity to review such written Deliverable for an acceptance period as finalized in Kick-off
- ii. In all cases, IPA’s obligation to review a written Deliverable within the applicable Acceptance Period will be contingent on such written Deliverable being delivered to IPA as scheduled. If and to the extent any written Deliverable is delivered earlier or later than scheduled, the Acceptance Period for such written Deliverable shall be extended as reasonably necessary to accommodate the availability of IPA personnel responsible for reviewing such Deliverable. Similarly, if and to the extent multiple written Deliverables are delivered to IPA within an Acceptance Period, the Acceptance Period for all such written Deliverables shall be extended as reasonably necessary to accommodate the availability of IPA personnel responsible for reviewing them.
- iii. IPA agrees to notify the Service Provider in writing by the end of the Acceptance Period either stating that the applicable written Deliverable is accepted / rejected in the form delivered by the Service Provider or describing with reasonable particularity any deficiencies that must be corrected prior to acceptance of such written Deliverable.
- iv. If IPA delivers to the Service Provider a timely notice of rejection/deficiencies, the Service Provider will correct the described deficiencies as quickly as possible and, in any event, within

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(10) days after IPA notifies the Service Provider of the rejection/deficiencies (unless otherwise specified in the agreed Project Plan). Upon receipt of a corrected written Deliverable from the Service Provider, IPA will have a period of seven (7) days to review the corrected written Deliverable.

- v. In addition to the submission of written deliverables for acceptance, the Service Provider shall also arrange workshops for stakeholder groups for presentation, demos, discussions etc. for certain specific deliverables, e.g. design of the system to ensure that the deliverables are accepted after proper understanding of the contents. This is considered as an important activity to ensure the engagement of stakeholders.

(b) Operational Deliverables:

- i. To the extent not already specified in the RFP or agreed Project Plan, prior to the date on which the Service Provider is scheduled to deliver each Operational Deliverable to IPA, both the Service Provider and IPA will agree upon the testing procedures for the Operational Deliverable, including without limitation detailed test cases and expected results (the "Acceptance Tests"). The Acceptance Tests will be designed to determine whether the Operational Deliverable contains any defects. IPA will have the opportunity during the Acceptance Period to evaluate and test each Operational Deliverable in accordance with the following procedures by executing the Acceptance Tests.
- ii. When the Service Provider has completed an Operational Deliverable, it will deliver the Operational Deliverable at the Installation Site (if not already there), install such Deliverable (if not already installed), and perform an installation test reasonably acceptable to IPA to verify that the Deliverable has been properly delivered and installed. The Service Provider shall notify IPA when the Operational Deliverable is 'Ready for Acceptance', provided that, unless otherwise agreed, such notice shall not occur prior to the successful completion by the Service Provider of any installation tests. Such notice will start the Acceptance Period, which will be fifteen (15) days or such other period as is stated in the RFP or agreed Project Plan. As was the case with written Deliverables, IPA's obligation to review any Operational Deliverable within the applicable Acceptance Period will be contingent on such Operational Deliverable being delivered to IPA as scheduled. If and to the extent any Operational Deliverable is delivered earlier or later than scheduled, the Acceptance Period for such Operational Deliverable shall be extended as reasonably necessary to accommodate the availability of the IPA personnel responsible for reviewing such Operational Deliverable. Similarly, if and to the extent multiple Operational Deliverables are delivered to IPA within an Acceptance Period, the Acceptance Period for all Operational Deliverables shall be extended as reasonably necessary to accommodate the availability of the IPA personnel responsible for reviewing them.
- iii. IPA shall notify the Service Provider in writing by the end of the Acceptance Period stating that the Operational Deliverable is accepted/rejected in the form delivered by the Service Provider or describing the defects as provided in Clause 14.2 (b) (iv) below. If the Service Provider does not receive any notice of defects from IPA by the end of the Acceptance Period, the Service Provider shall promptly notify IPA in writing that no such notice was received.
- iv. If IPA determines during the Acceptance Period that the Operational Deliverable as delivered by the Service Provider deviates from its approved specifications or otherwise fails to successfully complete applicable Acceptance Tests (or a defect), IPA will inform the Service Provider in writing, describing the defect(s) in sufficient detail to allow the Service Provider to recreate/rectify them. The Service Provider will correct any defects in an Operational Deliverable as quickly as

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possible after receiving IPA's notice of the defects and, in any event, within ten (10) days after receiving such notice (unless otherwise specified in the Project Plan/RFP), and provide the corrected Operational Deliverable to IPA for re-testing within such ten (10) dayperiod.

- v. IPA will have a reasonable additional period of time after receipt of the corrected Operational Deliverable to re-test it so as to confirm its proper functioning. The Service Provider will correct any further defects identified by IPA during the re-test as quickly as possible, but in no event more than ten (10) days after IPA notifies the Service Provider of the further defects, unless otherwise specified in the agreed Project Plan or RFP or agreed byIPA.

(c) Correction of Deficiencies in Deliverables:

- i. If the Service Provider is unable to correct all deficiencies preventing Acceptance of a Deliverable for which it is responsible after a reasonable number of repeated efforts (but not more than three (3), IPA may at itsselection:
 - allow the Service Provider to continue its efforts to make corrections;or
 - accept the Deliverable with its Deficiencies and deduct such proportionate amounts from the Service Providers fees as deemed appropriate by IPA;or
 - terminate this Agreement for cause in accordance with the procedures set forth in Clause 15 (except that IPA is under no obligation to provide the Service Provider any further opportunity to cure) and recover its damages subject to the limitations set forth in thisAgreement.

14.3 Acceptance

IPA shall be deemed to have accepted the Deliverables and/or System upon the date of delivery to the Service Provider by IPA of a notice (the "Acceptance Notice") to that effect.

15 TERMINATION ANDSUSPENSION

15.1 MaterialBreach

- (a) In the event that either Party believes that the other Party is in material breach of its obligations under this Agreement, such aggrieved Party may terminate this Agreement upon giving a one month's notice for curing the material breach to the other Party. In case the material breach continues, after the notice period, IPA or Service Provider, as the case may be will have the option to terminate the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events and the termination will becomeeffective:
 - (i) If the Service Provider is not able to deliver the services as per the SLAs defined in RFP which translates into material breach, then IPA may serve a 30 days written notice for curing this material breach (the Cure Period). In case the material breach continues, after the expiry of such notice period, IPA will have the option to terminate this Agreement. Further, IPA may do so after affording a reasonable opportunity to the Service Provider to explain the circumstances leading to such a breach.
 - (ii) If there is a material breach by the Purchaser or its nominated agencies which results in not providing support for conducting study, providing inputs, effecting data migration or not providing the certification of User Acceptance then the Implementation Agency will give a one month's notice for curing the material breach to the Purchaser. After the expiry of such notice period, the

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Implementation Agency will have the option to terminate the Agreement.

- (b) IPA may by giving a one month's written notice, terminate this Agreement if a change of control of the Service Provider has taken place. For the purposes of this Clause, in the case of Service Provider, change of control shall mean the events stated in Clause 6, and such notice shall become effective at the end of the notice period as set out in Clause 6.1 (c).
- (c) In the event that Service Provider undergoes such a change of control, IPA may, as an alternative to termination, require a full Performance Guarantee for the obligations of Service Provider by a guarantor acceptable to IPA or its nominated agencies. If such a guarantee is not furnished within 30 days of IPA's demand, or any period extended by IPA, IPA may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the Service Provider.
- (d) The termination provisions set out in this Clause shall apply mutatis mutandis to the SLA.

15.2 Effects of termination

- (a) In the event that IPA terminates this Agreement pursuant to failure on the part of the Service Provider to comply with the conditions as contained in this clause and depending on the event of default, Performance Guarantee furnished by Service Provider may be forfeited.
- (b) Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule III of this Agreement.
- (c) In the event that IPA or the Service Provider terminates this Agreement, the compensation will be decided in accordance with the Exit Management Schedule set out as Schedule III of this Agreement.
- (d) IPA agrees to pay Service Provider for
 - all charges for services Service Provider provides and any Deliverables and/or system (or part thereof) Service Provider delivers through termination, and
 - reimbursable expenses Service Provider incurs through termination. If IPA terminates without cause, IPA also agrees to pay any applicable adjustment expenses Service Provider incurs as a result of such termination (which Service Provider will take reasonable steps to mitigate).
- (e) Any and all payments under this clause shall be payable only after the Service Provider has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of IPA. In case of expiry of the Agreement, the last due payment shall be payable to the Service Provider after it has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of IPA.
- (f) In the event of termination of the Contract under Clause 15.2, IPA shall pay to the SP the following amounts:
 - the Contract Price, properly attributable to the parts of the System executed by the SP as of the date of termination;
 - the costs reasonably incurred by the SP in the removal of the SP's equipment from the site and in the repatriation of the SP's and its Subcontractors' personnel;
 - any amount to be paid by the SP to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;

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- costs incurred by the SP in protecting the System and leaving the site in a clean and safe condition pursuant to Clause 15.2; and
- the cost of satisfying all other obligations, commitments, and claims that the SP may in good faith have undertaken with third parties in connection with the Contract and that are not covered by Clause 15.3 (d) above.

15.3 Termination of this Agreement due to bankruptcy of Service Provider

IPA may serve written notice on Service Provider at any time to terminate this Agreement with immediate effect in the event that the Service Provider reporting an apprehension of bankruptcy to IPA or its nominated agencies.

15.4 Suspension

- a) The Service Provider shall, if ordered in writing by IPA, temporarily suspend the performance of any services or any part thereof under this Agreement for such specified/ ordered period and time. IPA shall inform the Service Provider about such suspension at least 30 days in advance. The Service Provider shall not be entitled to claim compensation for any loss or damage sustained by it by reason of such temporary suspension of the work for a continuous period of maximum 30 days. IPA may consider suitable compensation to the Service Provider in the event of suspension extending beyond a continuous period of 30 days. An extension of time for completion, corresponding with the delay caused by any such suspension of the works as aforesaid shall be granted to the Service Provider, if written request for the same is made. In case the suspension of works lasts for a period of more than 3 months, the Service Provider shall have the right to request IPA to pay reasonable immobilization and mobilization charges as may be consented to by IPA.
- b) In the event that IPA suspends the progress of work for a period in excess of 30 days in aggregate, rendering the Service Provider to extend its performance guarantee then IPA 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 Service Provider producing the requisite evidence from the bank concerned.
- c) IPA may suspend this Agreement only (i) prior to giving consent to the Service Provider for purchase of goods and production licenses; and (ii) after the Go-Live.
- d) Notwithstanding the foregoing & in clause 16, Order for Infrastructure items including Hardware, Software licenses and other system software etc. shall be placed by the Service Provider only after receipt of written confirmation from IPA in this regard.

16. INDEMNIFICATION & LIMITATION OF LIABILITY

- a) Subject to Clause below, Service Provider (the "Indemnifying Party") undertake to indemnify IPA (the "Indemnified Party") from and against all losses on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or willful default in performance or non-performance under this Agreement.
- b) If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim

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against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Indemnified Party.

- c) Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by
- Indemnified Party's misuse or modification of the Service;
 - Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party;
 - Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party;
 - Indemnified Party's distribution, marketing or use for the benefit of third parties of the Service; or
 - information, direction, specification or materials provided by Indemnified Party or any third party contracted to it. If any Service is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either
 - procure the right for Indemnified Party to continue using it,
 - replace it with a non-infringing equivalent,
 - modify it to make it non-infringing. The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.
- d) The indemnities set out in Clause 16 shall be subject to the following conditions:
- (i) the Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
 - (ii) the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such defense;
 - (iii) if the Indemnifying Party does not assume full control over the defense of a claim as provided in this Article, the Indemnifying Party may participate in such defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in losses;
 - (iv) the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
 - (v) all settlements of claims subject to indemnification under this Clause will:
 - a. be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and
 - b. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
 - (vi) the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified

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Party which are to be paid to it in connection with any such claim or proceedings;

- (vii) the Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;
 - (viii) in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and
 - (ix) if a Party makes a claim under the indemnity set out under Clause a above in respect of any particular loss or losses, then that Party shall not be entitled to make any further claim in respect of that loss or losses (including any claim for damages).
- e) The liability of either Party (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 exceed half of the total contract value payable under this Agreement. The liability cap given under this Clause c shall not be applicable to the indemnification obligations set out in Clause 16 and breach of clause 12.4 - 'Safety and Security' and clause 18 - 'Confidentiality'.
- f) In no event, shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) nor for any third party claims (other than those set forth in Clause a) even if it has been advised of their possible existence.
- g) The allocations of liability in this Section 16 represent the agreed and bargained-for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

17 FORCE MAJEURE

17.1 Definition of Force Majeure

The Service Provider or IPA 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"). "Force Majeure" shall mean any event beyond the reasonable control of IPA or of the SP, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected.

17.2 Force Majeure events

- a) A Force Majeure shall include, without limitation, the following:
- war, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
 - strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
 - earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and

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pressure waves, or other natural or physical disaster including a pandemic or epidemic, or any central or state governmental order which hinders the Parties to carry out the obligations/performance under this Agreement or SLA.

- b) If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.
- c) The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The time for achieving Final Acceptance shall be extended.
- d) The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under Clause 17.
- e) No delay or non-performance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:
 - constitute a default or breach of the Contract;
 - give rise to any claim for damages or additional cost or expense occasioned by the delay or non-performance,if, and to the extent that, such delay or non-performance is caused by the occurrence of an event of Force Majeure.
- f) If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.
- g) In the event of termination pursuant to Clause 17, the rights and obligations of IPA and the SP shall be as specified in the clause titled Termination.
- h) Notwithstanding Clause 17.2 (e), Force Majeure shall not apply to any obligation of IPA to make payments to the SP under this Contract.
- i) For the avoidance of doubt, it is expressly clarified that the failure on the part of the SP under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking aren't the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure". In so far as applicable to the performance of Services, Service Provider will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).

18. CONFIDENTIALITY

- a) IPA or its nominated agencies shall allow the Service Provider to review and utilize highly confidential public records and the Service Provider shall maintain the highest level of

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secrecy, confidentiality and privacy with regard thereto.

- b) Additionally, the Service Provider shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- c) IPA shall retain all rights to prevent, stop and if required take the necessary punitive action against the Service Provider regarding any forbidden disclosure.
- d) The Service Provider shall execute a corporate non-disclosure agreement with IPA in the format provided by IPA and shall ensure that all its employees, agents and sub-contractors involved in the project execute individual non-disclosure agreements, which have been duly approved by IPA with respect to this Project.
- e) For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:
 - information already available in the public domain;
 - information which has been developed independently by the Service Provider;
 - information which has been received from a third party who had the right to disclose the aforesaid information;
 - Information which has been disclosed to the public pursuant to a court order.
- f) To the extent the Service Provider shares its confidential or proprietary information with IPA for effective performance of the Services, the provisions of the Clause a to c shall apply mutatis mutandis on IPA.
- g) Notwithstanding anything to the contrary mentioned hereinabove, the SP shall have the right to share the Letter of Intent / work order provided to it by IPA in relation to this Agreement, with its prospective purchasers solely for the purpose of and with the intent to evidence and support its work experience under this Agreement.

19. AUDIT, ACCESS AND REPORTING

The Service Provider shall allow access to IPA to all information which is in the possession or control of the Service Provider and which relates to the provision of the Services as set out in the Audit, Access and Reporting Schedule and which is reasonably required by IPA to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule IV of this Agreement. Such audit rights shall be conducted once in six months.

20. INTELLECTUAL PROPERTY RIGHTS

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

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- b) Bespoke development: Subject to the provisions of Clause 20 (c) and 20 (d) below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie with IPA.
- c) Pre-existing work: All IPR including the source code and materials developed or otherwise obtained independently of the efforts of a party under this Agreement (“pre-existing work”) including any enhancement or modification thereto shall remain the sole property of that party. During the performance of the services for this agreement, each party grants to the other party (and their sub-contractors as necessary) a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of services under this Agreement for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the Service Provider should grant IPA a non-exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to IPA as part of the service or deliverables only for its internal business operations. Under such license, either of parties will have no right to sell the pre-existing work of the other party to a Third Party. IPA’s license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that bidder leaves with IPA at the conclusion of performance of these services.
- d) Residuals: In no event shall Service Provider be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables, set-out in this Agreement or Annexure. In addition, subject to the confidentiality obligations, Service Provider shall be free to use its pre-existing work, general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services.

21. WARRANTY

21.1 Standard:

- a) The SP warrants that the Project, including all the system(s), materials and goods supplied pursuant to the Agreement, shall be free from any defect or deficiency in the material, design, engineering, and workmanship that prevent the system and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the system and/or any of its sub-system(s). Commercial warranty provisions of products supplied under the Agreement shall apply to the extent they do not conflict with the provisions of this Agreement.
- b) The SP also warrants that the products, materials and other goods supplied under the Agreement are new, unused and incorporate all recent improvements in design that materially affect the system’s or subsystem’s ability to fulfil the technical requirements specified in the RFP.
- c) In addition, the SP warrants that all Goods components to be incorporated into the System form part of the SP/OEM’s and/or Subcontractor’s current productlines.
- d) The warranty period shall commence from the date of Final Acceptance of the entire system (as per Volume 2 of this RFP) or on expiry of the products commercial warranty, whichever is earlier and shall extend for as follows:

Component	Period
Hardware	Till the end of Agreement

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COTS Software	1 year post commissioning of the software
Bespoke Software	1 year post commissioning of the software

- e) If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services provided by the SP, the SP shall promptly, in consultation and agreement with Purchaser, and at the Implementation Agency's sole cost repair, replace, or otherwise make good (as the SP shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the system caused by such default, defect or deficiency. Any defective component, excluding hard disks, that has been replaced by the SP shall remain the property of the SP.
- f) The SP may, with the consent of IPA, remove from the site any product and other goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, IPA may give the SP notice requiring that tests of the defective part be made by the IPA immediately upon completion of such remedial work, whereupon the SP shall carry out such tests. If such part fails the tests, the SP shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by IPA and the SP.
- g) If the SP fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within a reasonable time period, IPA may, following notice to the SP, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by IPA in connection with such work shall be paid to IPA by the SP or may be deducted by the IPA from any amount due to the SP.
- h) If the System or any of its sub-systems cannot be used by reason of such default, defect or deficiency and/or making good of such default, defect or deficiency, the warranty period for the Project shall be extended by a period equal to the period during which the Project or any of its system could not be used by IPA because of such defect and/or making good of such default, defect or deficiency.
- i) Items substituted for defective parts of the System during the Warranty Period shall be covered by the Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.
- j) The SP shall have no liability in the case of breach of this warranty due to (i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the SP, (ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the SP; (iii) the deliverables having been tampered with, altered or modified by IPA without the written permission of SP, or (iv) use of the deliverables otherwise than in terms of the relevant documentation
- k) Implied Warranty: The warranties provided herein are in lieu of all other warranties, both express and implied, and all other warranties, including without limitation that of merchantability or fitness for intended purpose is specifically disclaimed.
- l) The Service Provider shall have no liability in the case of breach of this warranty due to (i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the Service Provider, (ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the Service Provider; (iii) the deliverables having been tampered with, altered or modified by IPA without the written permission of the

Service Provider, or (iv) use of the deliverables otherwise than in terms of the relevant documentation.

22. LIQUIDATED DAMAGES

- a) Time is the essence of the Agreement and the delivery dates are binding on the SP. In the event of delay or any gross negligence in implementation of the project before Go-Live, for causes solely attributable to the SP, in meeting the deliverables, IPA shall be entitled at its option to recover from the SP as agreed, liquidated damages, as defined in SLA for each completed week or part thereof subject to a limit of 10% of the total contract value.
- b) The Parties agree that SLA penalties defined in the Service Level Agreement are liquidated damages and that the deduction of any Service Credit by IPA shall be its exclusive monetary remedy for failure of SP to meet the Service Levels and is in full and final settlement of any claim which IPA may have for Losses caused by the failure to meet a Service Level to which a Service Credit applies, provided that this Clause shall not limit the exercise by IPA of its rights to terminate the Agreement for material breach and the associated consequences of termination.

23. Escrow Agreement

- a) SP shall comply with the escrow provisions below for all software including product, bespoke development & customized codes (all software except standard software as defined within the RFP) including subcontractor-owned materials and other Third Party Material incorporated in SP's Proprietary Material, except to the extent SP demonstrates to the satisfaction of the IPA that compliance is not permitted by the nature of SP's limited rights in such material.
- b) Within ninety (90) days after IPA's acceptance of the Solution, the Parties shall enter into a software escrow agreement ("Escrow Agreement") with a reputable, independent, third party that provides software escrow services among its principal business offerings ("Escrow Agent"). The Escrow Agreement shall provide for the regular deposit into escrow of all source code (including without limitation all make files, configurational files, data tables upon which execution is dependent, and the like, collectively the "Source Code"), object code, and documentation with respect to all Public Material and Implementation Agency's Proprietary Material (and cumulative updates thereof), together with (a) continually updated instructions as to the compilation, installation, configuration, deployment, and use of the Source Code, and (b) a list of all non-deposited third party software used in conjunction with the Source Code to provide the full functionality of the deposited materials. In the event of the termination or expiration of the initial Escrow Agreement or any successor agreement, with minimal delay the Parties shall enter into a substantially equivalent agreement with a successor provider of software escrow services (who shall then be known as the "Escrow Agent").
- c) SP will make its initial deposit of Source Code within fifteen (15) days after the effective date of the Escrow Agreement.
- d) SP shall periodically update the escrow deposit as the Parties shall agree in the Escrow Agreement. In addition to other usual and customary terms, the Escrow Agreement shall provide that IPA shall be entitled to obtain the deposited materials from escrow upon the IPA's making a proper claim for release from escrow in the event that (c) proper written notice is given to the Escrow Agent that release of the copy of the deposited materials is pursuant to applicable bankruptcy, insolvency, reorganization, or liquidation statute; (d) SP files articles of dissolution (but not if SP is consolidated or merged into another entity); (e) the Contract expires or terminates for Material Breach of SP.

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- e) The release of deposited materials from escrow shall not confer upon IPA any right of ownership in the deposited materials or the underlying intellectual property embodied therein. In the event of the release of deposited materials to IPA from escrow, IPA shall use the deposited materials solely for the benefit of IPA and its constituents.
- f) The release of materials from escrow, shall not cause any further amounts to accrue as payable to SP by IPA, and the term of the IPA's possessory and usage rights with respect to the released materials shall be perpetual.
- g) The Escrow Agreement shall provide for its automatic termination upon the earlier of five (5) years after the expiration or termination of this Contract, or, release of all Source Code to IPA and the IPA's subsequent confirmation of compliance with the terms of the Escrow Agreement. SP shall pay the escrow costs, as well as all costs associated with causing its subcontractors and other third parties to abide by the Escrow Agreement.

24. INSURANCE COVER

24.1 Obligation to maintain insurance

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

- (a) for the Agreement Period, valid and enforceable insurance coverage for
 - (i) public liability upto an insured value of Rs.....;
 - (ii) either professional indemnity or errors and omissions;
 - (iii) product liability;
 - (iv) theft, fire and natural calamity
 - (v) workers compensation as required by law; and
 - (vi) any additional types specified in Schedule I; and
- (b) for one year following the expiry or termination of the Agreement valid and enforceable insurance policies (if relevant) in the amount not less than the Insurance Cover specified in Schedule I.
- (c) The cost of the Insurance shall be borne by IPA.
- (d) The Liability of Service provider under this Clause shall cease once the source code is handed over to IPA.

24.2 Certificates of currency

The Service Provider must, on request by IPA, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 24. The Service Provider agrees to replace any coverage prior to the date of expiry/cancellation.

24.3 Non-compliance

IPA may, at its election, terminate this Agreement upon the failure of Service Provider, or notification of such failure, to maintain the required insurance coverage after the Cure Period. Inadequate insurance coverage for any reason shall not relieve Service Provider of its obligations under this Agreement.

25. MISCELLANEOUS

25.1 Personnel

- (a) The personnel assigned by Service Provider to perform the Services shall be employees of Service Provider or its subcontractor(s), and under no circumstances shall such personnel be considered employees of IPA. The Service Provider shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.
- (b) The Service Provider shall use its best efforts to ensure that sufficient Service Provider personnel are assigned to perform the Services and those personnel have appropriate qualifications to perform the Services. After discussion with Service Provider, IPA shall have the right to require the removal or replacement of any Service Provider personnel performing work under this Agreement based on bona-fide reasons. In the event that IPA requests that any Service Provider personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.
- (c) In the event that IPA and Service Provider identify any personnel of Service Provider as "Key Personnel", then the Service Provider shall not remove such personnel from the Project without the prior written consent of IPA unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.
- (d) Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of Service Provider to freely assign or reassign its employees; provided that Service Provider shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. IPA shall have the right to review and approve Service Provider's plan for any such knowledge transfer. Service Provider shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.
- (e) Each Party shall be responsible for the performance of all its obligations under this Agreement or the SLA as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- (f) 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.

25.2 Independent Contractor

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

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

25.3 Sub-contractors

Except the work permitted to be sub-contracted, Service Provider shall not subcontract any work without IPA's prior written consent. However, the Service Provider shall provide the list of all the other services planned to be sub contracted, within 30 days of signing the Agreement. It is clarified that the Service Provider shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The Service provider undertakes to indemnify IPA from any claims on the grounds stated hereinabove. Notwithstanding the sub-contracting, the Service Provider shall remain solely responsible for and liable for successful delivery of Deliverables and accomplishment of the Project.

25.4 Assignment

- (a) All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of IPA and their respective successors and permitted assigns.
- (b) Subject to Clause 4.4, the Service Provider shall not be permitted to assign its rights and obligations under this Agreement to any third party except its affiliates, group companies or any other entity under the common management or control.
- (c) IPA may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Service Provider shall be a party to such novation, to any third party contracted to provide outsourced services to IPA or any of its nominees.

25.4 Trademarks, Publicity

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

25.5 Notices

- (a) Any notice or other document which may be given by either Party under this Agreement or under the SLA shall be given in writing in person or by pre-paid recorded delivery post, email or by facsimile transmission.
- (b) In relation to a notice given under this Agreement, any such notice or other document shall be addressed to the other Party's principal or registered office address as set out below:

Shri. XXXXX

<< ADDRESS >>

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Email:

With a copy to:

Service Provider

Tel:

Fax:

Email:

Contact:

- (c) In relation to a notice given under the MSA / SLA, a Party shall specify the Parties' address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause.
- (d) Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.30 am and 6.00 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) or if sent by email.
- (e) Either Party to this Agreement or to the SLA may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

25.6 Variations and Further Assurance

- (a) No amendment, variation or other change to this Agreement or the SLA shall be valid unless authorized in accordance with the change control procedure as set out in the Change Control Schedule set out in Schedule II of this Agreement. Such amendment shall be made in writing and signed by the duly authorized representatives of the Parties to this Agreement or the SLA.
- (b) Each Party to this Agreement or the SLA agrees to enter into or execute, without limitation, whatever other agreement, document, consent and waiver and to do all other things which shall or may be reasonably required to complete and deliver the obligations set out in this Agreement or the SLA.

25.7 Severability and Waiver

- (a) If any provision of this Agreement or the SLA, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this Agreement or the SLA or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.
- (b) No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the SLA of any right, remedy or provision of this Agreement or the SLA shall operate as a waiver of such right, remedy or provision in any

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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.

25.8 Compliance with Applicable Law

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

25.9 Professional Fees

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

25.10 Ethics

The Service Provider 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 IPA 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 IPA standard policies and may result in cancellation of this Agreement, or the SLA.

25.11 Entire Agreement

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

25.12 Amendment

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

26. GOVERNING LAW AND DISPUTE RESOLUTION

- (a) This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement and the performance of the parties contemplated under this Agreement, to the extent that such convention might otherwise be applicable.
- (b) Any dispute arising out of or in connection with this Agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as Schedule V of this Agreement.
- (c) In case the escalations do not help in resolution of the problem within 3 weeks of

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escalation, both the parties should agree on a mediator for communication between the two parties. The process of the mediation would be as follows:

- Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.
 - The mediator shall use his best endeavour to conclude the mediation within a certain number of days of his appointment.
 - If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to Experts for advising on the issue.
- (d) In case the mediation does not help in resolution and it requires expertise to understand an issue, a neutral panel of 3 experts, agreeable to both parties should be constituted. The process of the expert advisory would be as follows:
- Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the timeframe and requesting for expert advisory. This is to be sent with a copy to the mediator.
 - Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute
 - The expert panel shall use his best endeavours to provide a neutral position on the issue.
 - If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.
- (e) Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the Arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of New Delhi, India. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held Delhi, India. Any legal dispute will come under the sole jurisdiction of New Delhi, India
- (f) Compliance with laws: Each party will comply with all applicable export and import laws and regulations.
- (g) Risk of Loss: For each hardware item, Service Provider bears the risk of loss or damage up to the time it is delivered to the Service Provider/IPA-designated carrier for shipment to IPA or IPA's designated location.
- (h) Third party components: Service Provider will provide all third-party components solely on a pass-through basis in accordance with the relevant third-party terms and conditions.

IN WITNESS WHEREOF the Parties have by duly authorized

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

Written in the presence of:

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WITNESSES:

Signed by:

(Name and designation) **For and on behalf of IPA**

(FIRST PARTY)

Signed by:

(Name and designation)

SERVICE PROVIDER

(SECOND PARTY)

(Name and designation) **For and on behalf of Service Provider**

Signed by:

27. SCHEDULES

SCHEDULE I – DEFINITIONS:

Term	Definition
“Bidder” or “SP” or MSP or “Lead Bidder”	Could be interchangeably used and it essentially means the Organization who is fully responsible towards IPA for providing solution for Design Development, Integration, Implementation, Operation, Maintenance and allied services of a community system for the sea port community of India as per the requirements and terms and conditions specified in this tender / contract. The term SP shall be deemed to include the SP's successors, representatives (approved by the Purchaser), heirs, executors, administrators and permitted assigns, as the case may be, unless excluded by the terms of the contract
Adverse Effect	Means material adverse effect on 1. the ability of the Service Provider to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or 2. the legal validity, binding nature or enforceability of this Agreement;
Agreement	Means this Master Services Agreement, Service Level Agreement and Non-Disclosure Agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP; In the event of a conflict between this Agreement and the Schedules, the terms of the Agreement shall prevail;
Applicable Law(s)	Means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
Assets	Means any data, information, deliverable, solutions, services, products and materials tangible or intangible that are procured, produced, developed, installed, maintained and serviced in due course of delivering the scope of Service provided by the Service Provider as per the requirements of this RFP
Bespoke Software	Means is custom or tailor-made software developed for the Purchaser
Bidder	Means the Organization(s) on whose behalf the tender response has been submitted. In case of Consortium, it shall mean the Organization responsible for meeting all obligations of the Tender / Contract and shall necessarily be the Service Provider.
Business Day	Means any day that is not a Sunday or a public holiday and starts at 9.30 AM.

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Term	Definition
Business Hours	Shall mean the working time for IPA users. (9:30 hrs to 1800 hrs)For Web Server and other components which enable successful usage of web portals of IPA the working time should be considered as 24 hours for all the days of the week. It is desired that IT maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance;
Commercial Off-The-Shelf ('COTS')	refers to software products that are readymade and available for sale, lease, or license to the general public.
Confidential Information	Means all information including project 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 (whether a Party to this Agreement or to the SLA) 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 or the SLA);
Contract	Means the Tender and all Annexes thereto, the Agreement entered into between the selected Bidder together with the Purchaser as recorded in the Contract form signed by the Purchaser and the Bidder including all Annexes thereto and the agreed terms as set out in the bid, all documents incorporated by reference therein and amendments and modifications to the above from time to time.
Contract Value	Means the price payable to the bidder under this Contract for the full and proper performance of its contractual obligations. The Contract Value shall be equal to the total Bid Price
Control	Means, in relation to any business entity, the power of a person to secure 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 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;
Data	Means all information required for the system operations Or generated out of operations and transactions including but not restricted to user data which the Implementation Agency obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement

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Term	Definition
Deliverables	Means the products, infrastructure and services agreed to be delivered by the Service Provider in pursuance of the agreement as listed in 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), interalia payment and/or process related etc., source code and all its modifications;
Document	Means any embodiment of any text or image however recorded and includes any data, text, images, sound, voice, codes or and databases or microfilm or computer generated micro fiche
Effective Date	Means the date on which this Contract comes into force. This Contract shall come into force and effect on the date (the “Effective Date”) of the Purchaser’s notice to the SP instructing the SP to begin carrying out the activities.
Final Acceptance Test	Shall be conducted on completion of the following: 1. UAT of the overall integrated solution and loaded on the target production system conforming to specifications and performance standards.
Go-Live	Means operating the full solution on the target production environment successfully as per the scope of work as defined in the RFP by the actual intended users of IPA and integration of existing systems and commissioning the DR set up.
Goods	Means all of the equipment, sub-systems, hardware, software, products accessories and/or other material / items which the Bidder is required to supply, install and maintain under the contract.
Intellectual Property Rights	Means and includes all rights in the Bespoke Software, its improvements, upgrades, enhancements, modified versions that may be made from time to time, database generated, compilations made, source code and object code of the software, the said rights including designs, copyrights, trademarks, patents, trade secrets, moral and other rights therein.
Intellectual Property Rights (‘IPR’)	Means any patent, copyright, trademark, tradename, service marks, brands, propriety information, Application Software whether arising before or after the execution of this Contract and the right to ownership And registration of these rights.
Material Breach	Means a breach by either Party (IPA or Service Provider) of any of its obligations under this Agreement which has or is likely to have an Adverse Effect on the Project which such Party shall have failed to cure;
Original Equipment Manufacturer (‘OEM’)	Means the owner of the IPR or manufacturer of Goods for any equipment /system / software / product which is providing such goods to the Purchaser under the scope of this Tender /Contract

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Term	Definition
Parties	Means IPA and Service Provider for the purposes of this Agreement and “ Party ” shall be interpreted accordingly;
Performance Bank Guarantee	“Performance Guarantee” and “Performance Bank Guarantee” shall mean the guarantee provided by a Nationalized / Scheduled Bank to IPA on behalf of the Service Provider for the amount specified in -as specified in respective Sections of the Volume I of the RFP
Planned Application Downtime	Means the unavailability of the application services due to maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure wherein prior intimation (at least two working days in advance) of such planned outage shall be given and approval sought from IPA as applicable;
Project	Means entire scope of work as envisaged in the Volumes I, II and III of the RFP including Design, Development, Integration, Implementation, Operations, Management and Maintenance across all the locations as envisaged in the RFP and as per the terms and conditions laid down in The RFP and services in conformance to the SLA
Project Data	Means all proprietary data of the project generated out of project operations and transactions, documents and related information including but not restricted to user data which the Service Provider obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement and the SLA;
Project Implementation	Means Project Implementation as per the testing standards and acceptance criteria prescribed by IPA or its nominated agencies;
Purchaser	Means Indian Ports Association (IPA)
Replacement Service Provider	Means any third party that IPA or its nominated agencies appoint to replace Service Provider upon expiry of the Term or termination of this Agreement or the SLA to undertake the Services or part thereof;
Required Consents	Means the consents, waivers, clearances and licenses to use IPA’s Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the software and other items that IPA or their nominated agencies are required to make available to Service Provider pursuant to this Agreement;
Selected Bidder	Means the Organization(s) selected by Purchaser as a result of the tendering process described in this tender document
Service(s)	Means the services delivered to the Stakeholders of IPA or its nominated agencies, employees of IPA or its nominated agencies, and to professionals or stakeholders as defined in the RFP, using the tangible and intangible assets created, procured, installed, managed and operated by the Service Provider including the tools of information and communications technology and includes but is not limited to the list of services specified in this RFP

Term	Definition
Service Level	Means the level of service and other performance criteria which will apply to the Services delivered by the Service Provider as set out in the SLA
SLA	Means the Performance and Maintenance SLA executed by and between Service Provider and IPA, in terms of the Service Level Requirements as per the model set out in this Agreement;
Software	Means the software designed, developed / customized, tested and deployed by the Service Provider for the purposes of the rendering the Services to the Stakeholders of the Project and includes the source code (in case of Bespoke development) along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products except for the customization components on such products (including the COTS products used for the product), proprietary software components and tools deployed by the Service Provider and which, i.e., the bespoke software, shall be solely owned by the IPA.
System	Means all of the components under the scope of this contract together as an integrated solution
Third Party Systems	Means systems (or any part thereof) in which the Intellectual Property Rights are not owned by IPA or Service Provider and to which Service Provider has been granted a license to use and which are used in the provision of Services.

SCHEDULE II – CHANGE CONTROL SCHEDULE

- a) This Schedule describes the procedure to be followed in the event of any proposed change to the Master Service Agreement (“MSA”), Project Implementation Phase, SLA, Scope of Work and Functional / Technical Requirement Specifications. Such changes shall include, but shall not be limited to, changes in the scope of services provided by the Service Provider and changes to the terms of payment as stated in the Terms of Payment Schedule. Once the SRS and BRS are signed off by IPA and the SP as per Annexure F, and development initiated, any new requirement not limited to but inclusive of any changes due to understanding of the scope by IPA and / or any relevant stakeholder will be considered as change request
- b) IPA and SP recognize that frequent change is an inevitable part of delivering services and that a significant element of this change can be accomplished by re-organizing processes and responsibilities without a material effect on the cost. The SP will endeavour, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and IPA will work with the Service Provider to ensure that all changes are discussed and managed in a constructive manner. However, where the cumulative effect of the changes done on different occasions in a preceding three month’s period adds up to 10 mandays or more, then the cost of such changes will be reimbursed by IPA. This Change Control Schedule sets out the provisions which will apply to all the changes to this agreement and other documents except for the changes in SLAs for which a separate process has been laid out in the SLA Agreement. The roles and responsibilities along with the timeline for Change Request shall be finalized during project

a. CHANGE CONTROL NOTE("CCN")

- (i) Change requests in respect of the MSA, the Project Implementation, the operation, the SLA or Scope of work and Functional / Technical Requirement specifications will emanate from the Parties' respective Project Manager who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached as Annexure A hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- (ii) The SP and IPA, during the Project Implementation Phase and IPA during the Operations and Management Phase and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the RFP and is suggested and becomes applicable only after the testing, commissioning and certification of the Pilot Phase and the Project Implementation Phase as set out in this Agreement.
- (iii) It is hereby also clarified here that any change of control suggested beyond 10% of the value of this Project will be beyond the scope of the change control process and will be considered as the subject matter for a separate bid process and a separate contract. It is hereby clarified that the 10 % of the value of the Project as stated in herein above is calculated on the basis of bid value submitted by the Service Provider and accepted by IPA or its nominated agencies or as decided and approved by IPA or its Nominated Agencies. For arriving at the cost / rate for change up to 10% of the project value, the payment terms and relevant rates as specified in Annexure D shall apply.
- (iv) The SLAs defined in this contract are subject to modifications/amendments in view of the annual review or to meet any other project requirements. Any such change in SLA will not be considered as a change request.
- (v) In case change request is beyond 10%, IPA can either arrange for new contract and /or fresh tender. In either of this, the existing Service Provider shall have first right of refusal, matching L1 cost in case the exiting service provider is not L1.

b. Quotation

- (i) The SP shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN the SP 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;
 - 7. Material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work
- (ii) Prior to submission of the completed CCN to IPA, 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 SP shall consider the materiality of the proposed

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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 SP meets the obligations as set in the CCN. In the event the SP 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 SP.

d. Obligations

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

SCHEDULE – III - EXIT MANAGEMENT SCHEDULE

1. PURPOSE

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

2. TRANSFER OF ASSETS

- 2.1. IPA shall be entitled to serve notice in writing on the SP at any time during the exit management period as detailed hereinabove requiring the SP and/or its subcontractors to provide IPA with a complete and up to date list of the Assets within 30 days of such notice. IPA shall then be entitled to serve notice in writing on the SP at any time prior to the date that is 30 days prior to the end of the exit management period requiring the SP to sell the assets, if any, to be transferred to IPA or its nominated agencies at book value as determined as of the date of such notice in accordance with the provisions of relevantlaws.
- 2.2. In case of contract being terminated by IPA, IPA reserves the right to ask SP to continue running the project operations for a period of 6 months after termination orders areissued.
- 2.3. Upon service of a notice under this Article the following provisions shallapply:
 - (i) In the event, if the Assets to be transferred are mortgaged to any financial institutions by the SP, the SP shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished toIPA.
 - (ii) All risk in and title to the Assets to be transferred / to be purchased by IPA pursuant to this Article shall be transferred to IPA, atGo-Live.

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- (iii) SP shall be paid the depreciated book value of the infrastructure cost and other assets. The depreciation rates and method followed will be as per Income Tax Rules.
- (iv) Payment to the outgoing SP shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements.
- (v) The outgoing SP will pass on to IPA and/or to the replacement SP, the subsisting rights in any leased properties/ licensed products on terms not less favourable to IPA/ Replacement SP, than that enjoyed by the outgoing SP.

3. COOPERATION AND PROVISION OF INFORMATION

3.1. During the exit management period:

- (i) The Service Provider will allow IPA 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 IPA to assess the existing services being delivered;
- (ii) promptly on reasonable request by IPA, the SP shall provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with this agreement relating to any material aspect of the services (whether provided by the Service Provider or sub-contractors appointed by the Service Provider). IPA shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The Service Provider shall permit IPA to have reasonable access to its employees and facilities as reasonably required by the Purchaser to understand the methods of delivery of the services employed by the Service Provider and to assist appropriate knowledge transfer.

4. CONFIDENTIAL INFORMATION, SECURITY AND DATA

4.1. The Service Provider will promptly on the commencement of the exit management period supply to IPA or its nominated agency the following:

- (i) information relating to the current services rendered and customer and performance data relating to the performance of consortium partners in relation to the services;
- (ii) documentation relating to Project's Intellectual Property Rights;
- (iii) documentation relating to sub-contractors;
- (iv) all current and updated data as is reasonably required for purposes of IPA transitioning the services to its Replacement Service Provider in a readily available format nominated by IPA, or its nominated agency;
- (v) all other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable IPA, or its Replacement Service Provider to carry out due diligence in order to transition the provision of the Services to IPA, or its Replacement Service Provider (as the case maybe).

4.2. Before the expiry of the exit management period, the Service Provider shall deliver to IPA or its nominated agency all new or up-dated materials from the categories set out in Schedule above and shall not retain any copies thereof, except that the Service Provider shall be permitted to retain one copy of such materials for archival purposes only.

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- 4.3. Before the expiry of the exit management period, unless otherwise provided under the MSA, IPA or its nominated agency shall deliver to the Service Provider all forms of Service Provider confidential information, which is in the possession or control of IPA or its users.

5. EMPLOYEES

- 5.1. Promptly on reasonable request at any time during the exit management period, the Service Provider shall, subject to applicable laws, restraints and regulations, (including in particular those relating to privacy) provide to IPA or its nominated agency a list of all employees (with job titles) of the Service Provider dedicated to providing the services at the commencement of the exit management period.
- 5.2. Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the Service Provider to IPA or its nominated agency, or a Replacement Service Provider ("Transfer Regulation") applies to any or all of the employees of the Service Provider, then the Parties shall comply with their respective obligations under such Transfer Regulations.

6. TRANSFER OF CERTAIN AGREEMENTS

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

7. RIGHTS OF ACCESS TO PREMISES

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

8. GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

- 8.1. The Service Provider shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to IPA or its nominated agency or its Replacement Service Provider and which the Service Provider has in its possession or control at any time during the exit management period.
- 8.2. For the purposes of this Schedule, anything in the possession or control of any Service Provider, associated entity, or sub-contractor is deemed to be in the possession or control of the Service Provider.

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8.3. The Service Provider shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

9. EXIT MANAGEMENT PLAN

9.1. The Service Provider shall provide IPA or its nominated agency with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the MSA as a whole and in relation to the Project Implementation, and the Operation and Management SLA.

- (i) A detailed program of the transfer process that could be used in conjunction with a Replacement Service Provider including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
- (ii) plans for the communication with such of the Service Provider's sub- contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on IPA's operations as a result of undertaking the transfer;
- (iii) (if applicable) proposed arrangements for the segregation of the Service Provider's networks from the networks employed by IPA and identification of specific security tasks necessary at termination;
- (iv) Plans for provision of OEM support for the hardware and software components and any other contingent support for a period of 9 months after the expiry or termination of the contract period as the case may be.

9.2. The Service Provider shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.

9.3. Each Exit Management Plan shall be presented by the Service Provider to and approved by IPA.

9.4. The terms of payment as stated in the Terms of Payment Schedule include the costs of the Service Provider complying with its obligations under this Schedule.

9.5. In the event of termination or expiry of MSA, and Project Implementation, each Party shall comply with the Exit Management Plan.

9.6. During the exit management period, the Service Provider shall use its best efforts to deliver the services.

9.7. Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.

9.8. This Exit Management plan shall be furnished in writing to IPA within 90 days from the Effective Date of this Agreement.

SCHEDULE – IV - AUDIT, ACCESS AND REPORTING

1. PURPOSE

This Schedule details the audit, access and reporting rights and obligations of IPA or its nominated agency and the Service Provider.

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 during the Project Implementation Phase

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and the Operation and Management Phase. Such timetable during the Implementation Phase, IPA or its nominated agency and thereafter during the operation Phase, IPA or its nominated agency shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Service Provider any further notice of carrying out such audits.

- 2.2. IPA or its nominated agency may conduct non-timetabled audits at his/ her own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Service Provider, a security violation, or breach of confidentiality obligations by the Service Provider, provided that the requirement for such an audit is notified in writing to the Service Provider 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 Service Provider considers that the non- timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the GovernanceSchedule.
- 2.3. The frequency of audits shall be (maximum) half yearly, provided always that IPA or its nominated agency shall endeavour to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Service Provider. Any such audit shall be conducted by with adequate notice of 2 weeks to the Service Provider.
- 2.4. IPA will ensure that any 3rd party agencies (except CAG) appointed to conduct the audit will not be the competitor of Service Provider and will be bound by confidentiality obligations.

3. ACCESS

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

4. AUDITRIGHTS

- 4.1. IPA or its nominated agency shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in the RFP), data centres, documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:
 - (i) The security, integrity and availability of all data processed, held or conveyed by the SP on behalf of IPA and documentation relatedthereto;
 - (ii) That the actual level of performance of the services is the same as specified in the SLA;
 - (iii) That the Service Provider has complied with the relevant technical standards, and has adequate internal controls in place;and
 - (iv) The compliance of the Service Provider with any other obligation under the MSA and SLA.
 - (v) Security audit and implementation audit of the system shall be done at least once each year, the cost of which shall be borne by the ServiceProvider.
 - (vi) For the avoidance of doubt, the audit rights under this Schedule shall not include access to the Service Provider's profit margins or overheads, any confidential information relating to the Service Provider" employees, or minutes of its internal Board or Board committee

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meetings including internal audit, or such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the MSA.

5. AUDIT RIGHTS OF SUB-CONTRACTORS, SUPPLIERS AND AGENTS

- 5.1. The Service Provider shall use reasonable endeavour to achieve the same audit and access provisions as defined in this Schedule with sub-contractors, suppliers and agents who supply labor, services, equipment or materials in respect of the services. The Service Provider shall inform IPA or its nominated agency prior to concluding any sub-contract or supply agreement of any failure to achieve the same rights of audit or access.
- 5.2. REPORTING: The Service Provider will provide quarterly reports to the IPA regarding any specific aspects of the Project and in context of the audit and access information as required by IPA or its nominated agency.

6. ACTION AND REVIEW

- 6.1. Any change or amendment to the systems and procedures of the Service Provider, or sub-contractors, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- 6.2. Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to IPA or its nominated agency and the Service Provider Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the MSA.

7. TERMS OF PAYMENT

The SP shall bear the cost of any audits and inspections as per the scope of work defined in of the RFP. The terms of payment are exclusive of any costs of the Service Provider and the sub-contractor, for all reasonable assistance and information provided under the MSA, the Project Implementation, Operation and Management SLA by the Service Provider pursuant to this Schedule.

8. RECORDS AND INFORMATION

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

SCHEDULE – V - GOVERNANCE SCHEDULE

1. PURPOSE

The purpose of this Schedule is to:

- (i) establish and maintain the formal and informal processes for managing the relationship between IPA and the Service Provider including the outputs from other Schedules to this Agreement;
- (ii) define the principles that both Parties wish to follow to ensure the delivery of the Services;

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- (iii) ensure the continued alignment of the interests of the Parties;
- (iv) ensure that the relationship is maintained at the correct level within each Party;
- (v) create the flexibility to revise and maintain the relationship and this Agreement during the Term;
- (vi) set out the procedure for escalating disagreements; and
- (vii) enable contract administration and performance management.

2. GOVERNANCE STRUCTURE

- 2.1. Project Managers: The relationship under this Agreement will be managed by the Project Managers appointed by each Party, who will provide the interface between the executive management of the respective Parties.
- 2.2. Project Implementation Unit (PIU): Within 7 days following the Effective Date, IPA, and the Service Provider shall each appoint a Project Manager. In the event that either Party wishes to substitute its Project Manager it will do so in a manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within 7 days of the substitution.
- 2.3. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
- 2.4. The PIU will meet formally on a fortnightly / monthly / quarterly, as required, basis at a time and location to be agreed between them. These meetings will cover, as a minimum, the following agenda items: (i) consideration of Quarterly Performance Reports; (ii) consideration of matters arising out of the Change Control Schedule; (iii) issues escalated in accordance with the escalation procedure as set out in the Governance Schedule; (iv) matters to be brought before the PIU in accordance with the MSA and the Schedules; (v) any matter brought before the PIU by the Service Provider under this Article; and (vi) any other issue which either Party wishes to add to the agenda.
- 2.5. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in the Terms of Payment Schedule, the Parties agree to discuss in the PIU any appropriate amendment to the Agreement or any Service Level Agreements or Statement of Works including any variation to the terms of payment as stated in the Terms of Payment Schedule. Any variations so agreed shall be implemented through the change control procedure as set out in the Change Control Schedule.

3. GOVERNANCE PROCEDURES

- 3.1. The Service Provider shall document the agreed structures in a procedures manual.
- 3.2. The agenda for each meeting of the PIU shall be set to reflect the discussion items referred to above and extraordinary items may be added either with the agreement of the Parties or at the request of either Party. Copies of the agenda for meetings of the PIU, along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.
- 3.3. All meetings and proceedings will be documented. Such documents to be distributed to the Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.
- 3.4. The Parties shall ensure as far as reasonably practicable that the PIU shall resolve the issues and achieve the objectives placed before them and that members representing that Party are

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empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achievethis.

- 3.5. In order to submit a Disputed Matter formally to the aforesaid for a, one Party ("Claimant") shall give a written notice ("Dispute Notice") to the other Party. The Dispute Notice shall be accompanied by (a) a statement by the Claimant describing the Disputed Matter in reasonable detail and (b) documentation, if any, supporting the Claimant's position on the DisputedMatter.
- 3.6. The other Party ("Respondent") shall have the right to respond to the Dispute Notice within 7 days after receipt of the Dispute Notice. In the event that the parties are unable to resolve the Disputed Matter within a further period of 7 days, it shall refer the Disputed Matter to next level of the dispute resolution for action as per the process mentioned in article9.1.
- 3.7. All negotiations, statements and / or documentation pursuant to these Articles shall be without prejudice and confidential (unless mutually agreedotherwise).
- 3.8. If the Disputed Matter is having a material effect on the operation of the Services (or any of them or part of them) the Parties will use all their respective reasonable endeavour to reduce the elapsed time in reaching a resolution of the DisputedMatter.

SCHEDULE – VI - TERMS OF PAYMENT SCHEDULE

As per the payment terms defined in volume 1 of RFP.

ANNEXURES

ANNEXURE A – FORMAT FOR CHANGE CONTROL NOTICE

Change Control Note	CCN Number:
Part A: Initiation	
Title:	
Originator:	
Sponsor:	
Date of Initiation:	
Details of Proposed Change	
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)	
Authorised by IPA	Date:
Name:	
Signature:	Date:
Received by the SP	
Name:	
Signature:	
Change Control Note	CCN Number:

Part B : Evaluation
(Identify any attachments as B1, B2, and B3 etc.) Changes to Services, charging structure, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue.
Brief Description of Solution:
Impact:
Deliverables:

Timetable:
Charges for Implementation:
(including a schedule of payments)
Other Relevant Information:
(including value-added and acceptance criteria)

Authorised by the Service Provider	Date:
Name:	
Signature:	

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

Rejected Requires Further Information (as follows, or as Attachment 1 etc.)	
For IPA and its nominated agencies	For the Service Provider
Signature	Signature
Name	Name
Title	Title
Date	Date

ANNEXURE B - LIST OF SERVICES PROVIDED BY THE SERVICE PROVIDER

As per the scope of work defined in Volume 2 of RFP.

ANNEXURE C –REQUIRED DELIVERABLE AND ASSOCIATED TIMELINES

As per deliverables and timelines defined in Volume 1 of RFP

ANNEXURE D –Pre-Qualification, Technical and Commercial Proposal submitted by Bidder

Bid Response

ANNEXURE E – BILL OF MATERIAL

As per the bill of material defined in RFP Volume 2 and the proposal submitted by the bidders.

ANNEXURE F – ROLES AND RESPONSIBILITIES OF THE PARTIES

Roles and Responsibilities of Service Provider

- a) Preparation of Detailed Project Plan in line with the overall plan provided in the RFP. The same should be prepared in consultation with IPA.
- b) Study of the processes of the stakeholders of Indian sea-port community and recommend re-engineering the processes;
- c) Design, develop, customize, deploy and implement the proposed NLP Marine ver 1.0 solution as per the functional and technical specifications given in this RFP;
- d) Provide training as required to the stakeholder groups;
- e) Develop and integrate mobile apps for stakeholder groups;
- f) Normalize and simplify the messages of PCS ver 1x and integrate them with NLP Marine ver 1.0
- g) Assess the sizing of the IT infrastructure required for optimum performance;
- h) Identify suitable cloud service provider for hosting the solution to meet the performance requirements (SLAs) specified in this RFP;
- i) Establish a reliable DR site to ensure business continuity
- j) Operate and manage the solution as required;
- k) Provide necessary support for the resolution of bugs, patches & upgrades of the software solution.

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- l) Maintain the applications and carryout the improvements and enhancements as required;
- m) Rectification of system software problems due to crashing or malfunctioning of the OS, RDBMS or front end within the time limits to meet the SLAs as defined in RFP.
- n) Addressing technology obsolescence by appropriate upgradation, replacement and / or replenishment of systems deployed on the cloud;
- o) Insure the entire hardware against the infrastructure deployed at various locations for the entire duration of the contract against vandalism, theft, fire and lightning.
- p) Keep all system software i.e. OS, antivirus, office applications etc., for Servers, PCs etc. up to date by installing regular upgrades / patches.
- q) Provide necessary manpower for managing the Change Requests.
- r) Design various manuals like User manual, Trouble Shooting manual etc. for the system.
- s) Provide computer basic skills training and advanced training on application modules to the staff members and stakeholders of IPA.
- t) Deploy the required manpower to manage the operations.
- u) Management and quality control of all services and infrastructure.
- v) Regular Backup as per the schedule and Disaster Recovery.
- w) Generation of MIS reports as per the requirements of IPA.
- x) Generation of the report for the monitoring of SLAs.
- y) Meet the defined Technical Specifications for the IT Infrastructure including Hardware and networking equipment keeping in mind the application and future requirements of the Corporation.
- z) Obtaining relevant Certifications and adherence to respective Industry Standards as detailed in the RFP.
- aa) Any other services which is required for the successful execution of the project.

Roles and Responsibilities of IPA

- a) Provide adequate space at IPA for setting up of infrastructure, software development and other activities to be carried out by the Bidder.
- b) Coordination among all the stakeholders for providing necessary information for the study and development of the necessary solution.
- c) Coordinate with Bidder for conducting trainings & workshops for the Stakeholder group;
- d) Ensure that the actions arising out of the workshops are followed up and carried out.
- e) Ensure that the award of work for hosting the applications at a cloud service provider is issued based on the recommendations of the SP.
- f) Provide sign off on the deliverables of the project including SRS, design documents etc.
- g) Ensuring the staff members and other stakeholders attend the training programs as per the schedule defined by the bidder and agreed upon by IPA.
- h) Monitoring of overall timelines, SLAs and calculation of penalties accordingly.
- i) Conducting UAT for the application solution deployed.
- j) Issuing the Acceptance Certificate on successful deployment of the software application, and for all the components of the Scope of Work (wherever required).
- k) To create internal capacity for execution of the project after takeover from the bidder.

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- l) Ensure that Data Backups are being taken regularly by bidder as per the schedule agreed upon.
- m) Any other requirements that could arise during operations for effective governance and to meet any administrative requirement.

ANNEXURE G - NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on this the <***> day of <***> 20--- at <***>, India. **BETWEEN**
 ----- having its office at -----
 ----- India hereinafter referred to as 'IPA' or '-----', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the Companies Act, 1956, having its registered office at <***> (hereinafter referred to as 'the **Service Provider/SP**' which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

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

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

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

SIGNED, SEALED AND DELIVERED
 For and on behalf of the Implementation
 Agency by: IPA

SIGNED, SEALED AND DELIVERED
 For and on behalf of the Nodal
 Agency by:

(Signature)
 (Name): Shri.
 (Designation):
 (Address)
 (Fax No.)

(Signature)
 (Name)
 (Designation)
 (Address)
 (Fax No.)

In the presence of:

- 1.
- 2.

Annexure H - SERVICE LEVEL AGREEMENT

THIS AGREEMENT is made on this the <***> day of <***> 20--- at <***>, India. **BETWEEN**

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

AND

<***>, a Company incorporated under the Companies Act, 1956, having its registered office at <***> (hereinafter referred to as 'the Service Provider/SP' which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

1. IPA is desirous to implement the project of -----.
2. IPA and Service Provider have entered into a Master Services Agreement dated <***>(the "MSA")aswellasaServiceLevelAgreementdated<***>(the"SLA")infurtheranceoftheProject.

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

1. Definitions&Interpretation

1.1. Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out in Master Service Agreement (MSA) or assigned herein.

1.2. Interpretation

In this Agreement, unless otherwise specified:

- 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 on which the ports are

- 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 & 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:

- 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. Structure

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

3. Objectives of SLA

The Implementation Agency shall be required to ensure that the Service Levels which shall ensure the following:

- Improving the efficiency of operations for the taxation departments.
- Leveraging the benefits in new system in order to:
 - Reduce of manual records and replace with computerized standardized documents.

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- Infuse transparency in operations by enabling the stakeholders to have easy access to the records and provision of login ids and biometrics to infuse accountability in operations
- Enable faster request processing in delivery of services with better turnaround time.
- Facilitate automated data transfer with Nation-wide connectivity to prevent unnecessary duplication & simplify preparation of registers and reports.
- Generate meaningful MIS from the system.
- Provide inbuilt mechanism of security and quality control for crucial data.

To meet the aforementioned objectives the SP will provide the Service Levels in accordance with the performance metrics as set out in detail in this Agreement. Further this Agreement shall govern the provision of the contracted services of the Implementation Agency to IPA and its nominated agencies after the Go-Live Date.

4. Scope of SLA

This Agreement has been executed in relation to the outsourcing portion of the Project between the Parties. The detailed Service Levels have been set out below in this Agreement. This Agreement shall ensure the following:

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

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

- IPA (Buyer/Purchaser)
- SP

5. Agreement Owners

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

	Title	Telephone	e-Mail
IPA or its Nominated Agencies/ Partners/ Purchaser/ Buyer	Authorized Representative	<***>	<***>
SP	<***>	<***>	<***>

6. ContactList

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

	Title	Telephone	e-Mail
IPA or its Nominated Agencies/ Partners/ Purchaser/ Buyer	Authorized Representative	<***>	<***>
SP	<***>	<***>	<***>

7. Principal Contacts

IPA or its nominated agencies/ partners and SP will nominate a senior staff member to be the principal contact regarding operation of this Agreement. At the date of signing of this Agreement, the nominated principal contacts are:

IPA/ Purchaser/ Buyer principal contact: _____

SP principal contact: _____

8. Commencement and Duration of this Agreement

Agreement shall commence on the date of Go-Live (hereinafter the “SLA Effective Date”) and shall, unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties, expire on the date on which this Agreement expires or terminates, which shall be a period of FOUR years after Go-Live.

9. Exclusions to this Agreement

This Agreement shall not govern the following services:

- SP’s business processes not related to the Project.

10. Terms of Payments and Penalties

In consideration of the Services and subject to the provisions of the MSA and this Agreement, the Buyer shall pay the amounts in accordance with the Terms of Payment Schedule of the MSA.

For the avoidance of doubt, it is expressly clarified that IPA and/or its nominated agencies may also calculate a financial sum and debit the same against the terms of payment as defined in the Terms of Payment Schedule of the MSA as a result of the failure of the SP to meet the Service Levels set out in this Agreement.

10.1. Details of SLA Penalty Mechanism and Calculations

The bidder will get 100% of Quarterly Payout for the concerned quarter if the performance metrics are complied with for all the parameters and the total SLA score in a quarter is 100 or

Volume 3 - RFP for NLP Marine ver 1.0 – Master Service Agreements above. The bidder will get lesser payment in case of a lower performance exhibited by a SLA score of less than 100. The maximum penalty to be levied is 10% of Quarterly Payout. The payments will be as per terms defined under Schedule VI of Volume III of this tender.

The payment will be made by IPA to the bidder on quarterly basis. The quarterly invoice will be submitted by the bidder to the IPA, who will in turn release the 80% of the payment if there is no dispute and after verification/audit of the invoices and necessary documents, release balance 20% payment. The payments will be released subject to acceptance procedure.

The bidder will be eligible for an SLA holiday period wherein the SLAs shall not be applicable. This SLA holiday period will not be more than a quarter from the date of GO-Live, until and unless decided or agreed with IPA. The SLA holiday period is for streamlining the SLA measurement and monitoring process of the project.

The payment and SLA penalty applicability will be depending on the impact.

The SLA has been divided into two Parts

A. During implementation till Go-live

Milestone payout: Here the penalty will be applicable separately against the payment being made as per payment schedule defined under payment schedule of Volume 1

B. After Go-live (5 years during Phase III)

Quarterly payout: The Total Quarterly Payment will be derived after SLA applicability as per payment schedule defined under volume I

IPA reserves the right to modify the SLAs in terms of addition, alteration or deletion of certain parameters, based on mutual consent of all the parties i.e. IPA and bidder.

The Penalties will be calculated based on the following table:

S. No.	SLA Score Range	Deductions (Penalties)
Deductions		
1	<=100 & >=95	0.25 % penalty for every point < 100
2	<95 & >=90	0.5 % penalty for every point < 100
3	<90	0.75 % penalty for every point < 100
Note: The percentage penalty would be calculated on the bill raised by the MSP for the concerned quarter.		
<p><i>Example:</i></p> <ul style="list-style-type: none"> • SLA Score of 98 will lead to a Penalty of 0.5% (i.e. 2 x 0.25 = 0.5%) • SLA Score of 93 will lead to a Penalty of 3.5% (i.e. 7 x 0.5 = 3.5%) • SLA Score of 88 will lead to a Penalty of 9% (i.e. 12 x 0.75 = 9%) 		

Note

1 Annual review SLA shall be done by IPA and appropriate modifications/amendments to the SLAs may be carried out.

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- 2 Cascading effect (effect on multiple SLA criterions) of failure or non-performance of a particular project component on SLAs shall be avoided.
- 3 Web-based SLA monitoring tool providing reports against the parameters mentioned below will be used for measurement. IPA and ports may request for supporting documents in certain cases if required. Such tool needs to be deployed after certification from a Third Party CERT-IN agency such as STQC before Go-live of the project.
- 4 Data other than EMS or modification to EMS data for SLA monitoring has to be preapproved.
- 5 Implementation of a Web-based Project progress and SLA monitoring has to be carried out by before Go-live I in order to receive any payment for the project

SLA During Phase I and II: Implementation and Stabilization				
#	Parameter	Metric	Penalty	Measurement
1	Adherence to timeline for Go-live	Up to 4 calendar weeks delay from the timelines as mentioned Volume II	No Penalty	Go-live certificate
		Delay beyond 4 week up to 8 calendar weeks	INR XXXXX per week delay per port milestone	
		Any delay beyond 8 calendar weeks	INR XXXXX per week delay per port milestone	
2	Substitution of resources from those CVs provided during the technical evaluation	No substitution of resources will be allowed whose CVs have been provided along with the technical bid for the period XX months from the commencement of Project (other than unavoidable reasons e.g. death, disability, departure from the firm, etc.)	Penalty of INR XXXXX per substitution of resources whose CVs have been provided along with the technical bid	Request submitted for substitution along with project plan or thereafter

SLA Parameters during Operations and Maintenance Period

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Parameter	Baseline		Lower Performance		Breach		Measurement
	Metric	Score	Metric	Score	Metric	Score	
Application							
<i>Availability for applications</i>							
Availability (uptime) of applications for doing business activities, except during scheduled down time as agreed with the department Uptime = {1 - [(Application downtime – maintenance Downtime) / (Total Time – Maintenance Downtime)]}	>=99.5%	10	<99.5% to >= 99%	3	<99%	-3	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values against this parameter. End-to-end loop back mechanism must be established for checking the availability of services.
Time for opening of Home Page of portal Average must be achieved with maximum homepage opening time till success for 90% or more of the sample cases being within the stipulated time Web-to-web response time. Time for Home page opening, time for online submission of electronic documents, time for uploading and etc from <= operator to >= operator	<=3 seconds	3	> 3 seconds and <=5 seconds	1	>5 seconds	-1	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values against this parameter.

SLA Parameters during Operations and Maintenance Period

Parameter	Baseline		Lower Performance		Breach		Measurement
	Metric	Score	Metric	Score	Metric	Score	
Time for on-line submission of the electronic forms Average must be achieved with maximum time till success for 90% or more of the total submissions within the stipulated time Web-to-web response time	<=5 seconds	6	>5 seconds and <=7 seconds	1	>7 seconds	-1	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values against this parameter.
Time for uploading data file including xml, txt, etc. (other than images and pdf) on various portals Average must be achieved with maximum time till success for 90% or more of the total uploads within the stipulated time Web-to-web response time	<=20 seconds	6	> 20 seconds and <=30 seconds	2	> 30 seconds	-1	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values against this parameter.
Time for re-sending of the intimation/alerts through email or mobile app from the date of receipt of information of non-delivery.	<= 30 mins	6	>30 mins to <= 4 hours	0.5	>4 hrs	-1	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values against this parameter.
<i>API service availability</i>							
Availability of API services for mobile, portal and other third-party applications	>=99.5%	5	<99.5% and >=99%	3	<99%	-2	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values

SLA Parameters during Operations and Maintenance Period

Parameter	Baseline		Lower Performance		Breach		Measurement
	Metric	Score	Metric	Score	Metric	Score	
							against this parameter. End-to-end loop back mechanism must be established for checking the availability of services.
<i>Response time for API Service requests</i>							
Time for providing response to the request received	<=5 seconds	3	> 5 seconds and < =7 seconds	1	> 7 seconds	-1	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values against this parameter. End-to-end loop back mechanism must be established for checking the availability of services.
<i>Application Maintenance</i>							
Time to deliver the application changes as per desired functionality.	Within Agreed timeline	3	NA	NA	Beyond Agreed timeline	-1	Reports regarding the same to be captured through PMIS tool. All requests will be entered in PMIS by the bidder team as per records and provide status against the same

SLA Parameters during Operations and Maintenance Period

Parameter	Baseline		Lower Performance		Breach		Measurement
	Metric	Score	Metric	Score	Metric	Score	
<i>Documentation Management</i>							
Maintaining document versioning (FRS, SRS, User, Training Manual etc.), application version control,	at the end of every quarter	3	Up to one week beyond the quarter end date	0.5	more than a week beyond the quarter end date	-1	Reports to be displayed through PMIS tool (and if requested by IPA/ports) and emails to provide these details
Integration and interfacing							
Data exchange with defined system							
Time to post information in form of messages after the transaction carried out within defined system	<=10 seconds	3	>10 seconds and < =15 seconds	1	> 15 seconds	-1	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values against this parameter.
Time to receive and update information after receipt of same from system in form of messages	<=5 seconds	3	>5 seconds and < =7 seconds	1	> 7 seconds	-1	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values against this parameter.
Time to reconcile all messages exchanged (received and posted with the defined system)	<=24 hours	3	NA	NA	Beyond 24 hours	-1	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values against this parameter.

SLA Parameters during Operations and Maintenance Period							
Parameter	Baseline		Lower Performance		Breach		Measurement
	Metric	Score	Metric	Score	Metric	Score	
<i>Data exchange with other systems</i>							
Time to post information to other system in form of messages after the transaction carried out within the defined system	as agreed at the time of design	3	NA	NA	Beyond agreed timelines	-1	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values against this parameter.
Time to receive and update information in other system after receipt of same from the defined system in form of messages	as agreed at the time of design	3	NA	NA	Beyond agreed timelines	-1	Automated measurement tool to be developed as part of SLA monitoring tool to provide metric values against this parameter.
Compute and Storage Infrastructure							
<i>Data Centre Availability</i>							
Uptime of all components at DC, (Network infrastructure related) & DR including but not limited to: <ul style="list-style-type: none"> · Servers · Storage · Tape Library · SAN 	>=99.5%	5	<99.5% and >=99%	3	<99%	-3	Automated measurement tool (EMS) to be developed as part of SLA monitoring tool to provide metric values against this parameter. End-to-end loop back mechanism must be established for checking the availability of services.

SLA Parameters during Operations and Maintenance Period							
Parameter	Baseline		Lower Performance		Breach		Measurement
	Metric	Score	Metric	Score	Metric	Score	
<ul style="list-style-type: none"> · Switches · Routers Any downtime for maintenance shall be with prior written intimation and approval of IPA . Uptime = {1 - [(Component downtime – maintenance Downtime) / (Total Time – Maintenance Downtime)]}							
<i>Security Components Availability</i>							

SLA Parameters during Operations and Maintenance Period

Parameter	Baseline		Lower Performance		Breach		Measurement
	Metric	Score	Metric	Score	Metric	Score	
<p>Uptime of all security components for DC and BCP/DR site including but not limited to:</p> <ul style="list-style-type: none"> · Perimeter Security · Firewall etc. <p>Any downtime for maintenance shall be with prior written intimation and approval of IPA.</p> <p>Uptime = {1 - [(Component downtime – maintenance Downtime) / (Total Time – Maintenance Downtime)]}</p>	>99%	5	< 99% to >= 98%	3	<98%	-3	Automated measurement tool (EMS) to be developed as part of SLA monitoring tool to provide metric values against this parameter. End-to-end loop back mechanism must be established for checking the availability of services.
<i>IT Infrastructure Monitoring Availability</i>							
<p>Availability of IT Infrastructure Monitoring Tools (IT Infrastructure Monitoring Tools) at the active site.</p>	>99%	5	< 99% to >= 98%	2	<98%	-2	Automated measurement tool (EMS) to be developed as part of SLA monitoring tool to provide metric values against this parameter. End-to-end loop back mechanism must be established for checking the availability of services.

SLA Parameters during Operations and Maintenance Period

Parameter	Baseline		Lower Performance		Breach		Measurement
	Metric	Score	Metric	Score	Metric	Score	
<i>CPU and RAM Utilization</i>							
Peak CPU and RAM utilization for Application & Database Servers at DC site. The number of such occurrences where in the CPU utilization is more than 80% for a sustained period of more than 4 hours except for scheduled batch processing tasks.	No Breach	3	NA	NA	CPU utilization is more than 80% for a sustained period of more than 4 hours	equal to n Where n is number of such instances in the reporting period	Automated measurement tool (EMS) to be developed as part of SLA monitoring tool to provide metric values against this parameter. End-to-end loop back mechanism must be established for checking the availability of services.
Operations Infrastructure							
<i>Helpdesk Response time *</i>							
Time taken for sending email response & ticket assignment from the time of registering of request. Must be achieved within agreed timeline for resolution for at least 95% of the cases in a quarter.	<=2 hrs	5	>2 hrs and <=8 hrs	1	> 8 hrs	-1	Automated measurement tool (reports from ticket management system) to be developed as part of SLA monitoring tool to provide metric values against this parameter.
Resolution for Critical incident	<=2 hours	3	> 2 hours to <= 4 hrs	1	> 4 Hours	-1	Automated measurement tool (reports from ticket management system) to be

SLA Parameters during Operations and Maintenance Period

Parameter	Baseline		Lower Performance		Breach		Measurement
	Metric	Score	Metric	Score	Metric	Score	
							developed as part of SLA monitoring tool to provide metric values against this parameter.
Resolution for medium level incident	<=4 hours	3	> 4 hours to <= 8 hrs	1	> 8 Hours	-1	Automated measurement tool (reports from ticket management system) to be developed as part of SLA monitoring tool to provide metric values against this parameter.
Resolution for Low level incident	<= 1 day	3	>1 day to <= 3 days	1	> 3 Days	-1	Automated measurement tool (reports from ticket management system) to be developed as part of SLA monitoring tool to provide metric values against this parameter.
Training and capacity building							
<i>Training Rating</i>							
The training and capacity building satisfaction will be measured by	Rating >= 80%	3	Rating<80% and Rating >= 70%	1	Rating < 70%	-1	Feedback rating given by the trainees

SLA Parameters during Operations and Maintenance Period

Parameter	Baseline		Lower Performance		Breach		Measurement
	Metric	Score	Metric	Score	Metric	Score	
feedback rating given by the trainees during online and face to face training. Average rating must be achieved above the specified rating score for more than 80% of the feedback ratings received							during online and face to face training and uploaded on PMIS
<i>Training material</i>							
<i>Update of training materials on portals within 1 week from date of release of modification to software into production environment</i>	Within 1 Week	2	upto 2 weeks	1	more than 2 weeks	-1	Automated measurement tool (reports from PMIS) to be developed as part of SLA monitoring tool to provide metric values against this parameter.
Other Parameters							
<i>Manpower availability</i>							
Manpower availability measures the availability of the required skill sets as proposed by the MSP in its proposal. This parameter shall also take into account the quality of resources in terms of skill set, experience and ability to perform in similar environment besides deployment on the project. In case of replacements, the new resource should be of similar or higher skill set. The skill sets to be taken into account for measuring this parameter includes the following at	No Deviation	3	NA	NA	In case of deviations	-1	All deviations would be recorded and report shall be made available to the IPA

SLA Parameters during Operations and Maintenance Period

Parameter	Baseline		Lower Performance		Breach		Measurement
	Metric	Score	Metric	Score	Metric	Score	
a minimum: • Key Personnel as per Volume I of RFP • Team Leads for each of the tracks/areas • Team members for various skills required for carrying out the activities of the project • Minimum committed resources for helpdesk • Production Support Team							
<i>Monthly Project Progress Report</i>							
Submission of monthly progress report including the following: - Progress against project plan - Key dependencies - Details of non-compliances if any - Issues list - Activities completed within the reporting period - Activities to be completed in the next reporting period	Within 2 days from month end	3	NA	NA	Greater than 2 days	-1	reports to provide metric values against this parameter.

* Classification for Helpdesk services

Severity level	Severity Particulars	Service window
Critical	Outage that does not impact PORT SERVICES	24*7

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Medium	Outage that does not impact PORT SERVICES but affects department services	24*7
Low	Upgrade, shifting and preventive maintenance	7am to 7pm (Monday to Saturday)

* Classification for Helpdesk services

Severity level	Severity Particulars	Service window
Critical	Outage that does not impact PORT SERVICES	24*7
Medium	Outage that does not impact PORT SERVICES but affects department services	24*7
Low	Upgrade, shifting and preventive maintenance	7am to 7pm (Monday to Saturday)

11. Updating of this Agreement

- a) The Parties anticipate that this Agreement shall need to be re-evaluated and modified to account for changes in work environment and technology from time to time. Hence they hereby agree to revise the terms of the Agreement on an annual basis.
- b) The Parties hereby agree upon the following procedure for revising this Agreement:
 - i. Any and all changes to this Agreement will be initiated in writing between IPA and SP, The service levels in this Agreement shall be considered to be standard for the Buyer and shall only be modified if both Parties agree to an appended set of terms and conditions;
 - ii. Only IPA or the SP may initiate a revision to this Agreement;
 - iii. A notice of the proposed revision (“SLA Change Request”) shall be served to the IPA or the SP as the case may be;
 - iv. The SLA Change request would be deemed to be denied in case it is not approved within a period of 45 days;
 - v. In the event that IPA /SP approves of the suggested change the change shall be communicated to all the Parties and the SLA
 - vi. Change request would be appended to the Agreement;
 - vii. The IPA shall update and republish the text of Agreement annually to include all the SLA Change Requests that have been appended to the Agreement during the course of the year. Such republished Agreement shall be circulated to all the Parties within <***> days of such change taking place.

12. DocumentHistory

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

Version	Date	Description of Changes
<***>	<***>	<***>

13. Scope ofServices

- a) SP shall ensure that Services are available at variouslocations as per the requirements of the project;
- b) SP shall provide support services for addressing problemsrelated to the provision of services of the selected bidder through the POC. Such POCshall be available over telephone on <***> number 24 hours a day, 7 days aweek
- c) SP guarantees that he shall achieve the Service Levels forthe Project;
- d) SP shall be liable to Service Credits in case of failure to comply with the Service Levels. However, any delay not attributable to the SP shall not be taken into account while computing adherence to the ServiceLevels.

14. Performance Review

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

- a) Serviceperformance;
- b) Review of specific problems/exceptions and priorities;and
- c) Review of the operation of this Agreement and determine corrective action to overcome deficiencies.

15. Indemnities

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

16. DisputeResolution

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

17. Miscellaneous

- a) **Assignment and Charges**

This Agreement shall be binding on and ensure for the benefit of each Party's successors in

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title. No Party shall assign except the affiliate or group companies, or declare any trust in favour of a third party over, all or any part of the benefit of, or its rights or benefits under this Agreement.

b) Governing Law and jurisdiction

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

c) Waiver of sovereign immunity

The Parties unconditionally and irrevocably:

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

d) Variation

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

e) 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 not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- iv. shall not affect the validity or enforceability of this Agreement in any manner.

f) 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

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representation by either Party not contained in a binding legal agreement executed by both Parties.

g) Survival

a) Termination or expiration of the Term shall:

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

b) All obligations surviving termination or expiration of the Term shall cease on termination or expiration of the Term.

h) Entire Agreement

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Implementation

Agency by: IPA

(Signature)

(Name): Shri.

(Designation):

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of the Nodal

Agency by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

- 1.
- 2.