

Corrigendum 2

Sub: RFP for selection of a System Integrator for building and managing ONDC Web Portal

With reference to ONDC RFP No. ONDC/OPS/WP/04-2023/P-08 dated 19.04.2023 and Corrigendum 1 dated 28.04.2023, please find below the corrigendum details:

RFP Section/clause	Original Clause	Revised Clause
3.1	Criteria 3: Should have more than 100 employees on company payroll tagged to IT development related services	Criteria 3: Should have more than 100 employees on company payroll
8, Table Sr. No 2	Timelines for P1 T + 1 Month – UAT T + 1.5 Month - Live	Timelines for P1 T + 1.5 Month – UAT T + 2 Month - Live
8, Table Sr. No 3	Timelines for P2 T + 2 Month – UAT T + 2.5 Month - Live	Timelines for P2 T + 2.5 Month – UAT T + 3 Month - Live
8, Table Sr. No 4	Timelines for P3 T + 5 Month - Live	Timelines for P3 T + 5.5 Month – UAT T + 6 Month - Live
3.2	Technical evaluation, addition to existing section	Table
Section 3. Draft agreement to be signed with successful bidder	Will be shared with successful bidder.	Draft MSA attached. Suggestion/comments may be submitted along with bid response - under section 4.3.7 Declaration towards compliance to RFP stated requirements

All other terms & conditions of the RFP and Corrigendum will remain the same.

Thanking You,

OPEN NETWORK FOR DIGITAL COMMERCE

SERVICE AGREEMENT

This Service Agreement (hereinafter referred to as the “**Agreement**”) is made at [New Delhi] on the [●] day of [●], [●] by and between:

Open Network for Digital Commerce, a private company incorporated under Section 8 of the Companies Act, 2013, having its registered office at 3rd Floor, 7/6, Siri Fort Institutional Area, August Kranti Marg, New Delhi- 110049 represented herein by its authorized representative, [name], [designation], (hereinafter referred as the “**Client**” which expression shall include its successors and assigns) of the **FIRST PART**.

AND

[Name], [a private company/ limited liability partnership/ general partnership firm] incorporated under [the Companies Act, 2013/ Limited Liability Partnership Act, 2008/ Indian Partnership Act, 1932], having (PAN:[●]), having its registered/ principal office at [●], represented herein by its authorized representative, [name], [designation] (hereinafter referred as the “**Service Provider**” or “**System Integrator**” which expression shall include its successors and permitted assigns) of the **SECOND PART**.

(hereinafter the Client and the Service Provider shall be collectively referred to as “**Parties**” and individually as “**Party**”, as the context may require.)

WHEREAS:

- (a) The Client is engaged in the development of an open, interoperable network, to enable e-Commerce across domains and intends to procure the services of a suitable service provider for building and managing ONDC Web Portal (“**Project or Web Portal**”).
- (b) In furtherance of the same, Client undertook the selection of a suitable service provider through a competitive bidding process for implementing the Project and in this behalf issued a Request For Proposal bearing number **ONDC/OPS/WP/04-2023/P-08** dated (“RFP” or “Request for Proposal”).
- (c) The Service Provider has represented to the Client that it possesses and has requisite professional skills, expertise, facilities, financial ability, personnel, technical resources, permits and authorizations required to perform its obligations under this Agreement.
- (d) The Service Provider has been selected as the successful bidder to undertake and implement the Project on the basis of the Proposal dated **_____**.
- (e) The Client has agreed to accord the Service Provider the mandate to undertake and implement the Project in order to achieve the defined objective and scope of work mentioned in the RFP.
- (f) Service Provider in pursuance of its Proposal undertakes to implement the Project on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, receipt and sufficiency of which is hereby mutually acknowledged, the Parties hereto agree as follows:

1. APPOINTMENT AND SCOPE OF WORK

- 1.1 The Client hereby appoints the Service Provider on a non-exclusive, non-assignable, non-transferable basis to render the Services (defined hereinafter) and Deliverables (defined hereinafter) subject to the terms and conditions of this Agreement and the RFP and the Service Provider hereby accepts such appointment for providing such Services and Deliverables.
- 1.2 The Service Provider agrees to provide the services set forth in this Agreement (“**Services**”) and deliverables as set forth in this Agreement and the Request for Proposal (“**Deliverables**”), both of which are described in detail in Annexure 1 attached hereto, in a competent and professional manner

in accordance with the best industry standards. The Service Provider shall discharge its obligations in a timely manner, efficiently and to the full satisfaction of the Client in terms of this Agreement and the RFP.

- 1.3 Any change to the Services and/ or Deliverables and/ or the terms of this Agreement shall be in accordance with clause 9.6 under section 2 of the RFP and must be approved in writing by both Parties.
- 1.4 The Client in its sole discretion may request similar or same services or deliverables from any other party.

2. CONDITIONS PRECEDENT

- 2.1 Subject to express terms to the contrary, the rights and obligations under this Agreement shall take effect only upon fulfilment of all the Conditions Precedent set out below. However, Client 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 under this Agreement shall commence from the fulfilment of the Conditions Precedent as set forth below under clause 2.2 and clause 2.3.
- 2.2 The Service Provider shall be required to fulfil the Conditions Precedent which are as follows:
 - (a) To provide a Performance Security/Guarantee and other guarantees/ payments within 15 days after the receipt of Letter of Award from Client.
 - (b) To provide Client certified true copies of its constitutional documents and Board Resolution or Power of Attorney authorizing the execution, delivery and performance of this Agreement by the Service Provider.
- 2.3 Client shall be required to fulfil the Conditions Precedent which are as follows:
 - (a) To provide a demarcated area at Client's site for the Project; and
 - (b) Approval of the Project by a Competent Authority, etc.
- 2.4 The Parties may, by mutual written agreement extend the time for fulfilling the Conditions Precedent and the Term of this Agreement.
- 2.5 In the event that any of the Conditions Precedent of the Service Provider have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by Client, this Agreement shall cease to exist.
- 2.6 In the event that the Agreement fails to come into effect on account of non-fulfilment of the Service Provider's Conditions Precedent, the Client shall not be liable in any manner whatsoever to the Service Provider and the Client shall forthwith forfeit the Earnest Money Deposit.
- 2.7 In the event that possession of any of the Client facilities has been delivered to the Service Provider prior to the fulfilment of the Conditions Precedent, upon the termination of this Agreement such Client facilities shall immediately revert to Client free and clear from any encumbrances or claims.

3. DUTIES AND RESPONSIBILITIES

- 3.1 During Implementation stage and Support stage, the Service Provider agrees to fulfill various duties and responsibilities including the responsibilities set out in Annexure 2 attached hereto pro-actively, efficiently, professionally, in a workman like manner, accurately, diligently and with the least possible delay for the benefit of the Client. The Service Provider shall provide the Services and Deliverables in accordance with the timelines and/ or milestones as set forth in Clause 8 under Section 2 of the RFP in accordance with the best industry practices in due compliance with all applicable laws and the duties which shall include the following:

- (i) It shall use its best efforts to begin as soon as possible and to continue rendering the Services and provide Deliverables with all due diligence. The Service Provider shall perform its obligations and duties under this Agreement as per best industry standards and practices, with diligence and in accordance with the instructions, specifications, procedures, standards, guidelines, and timeframe agreed in the RFP.
- (ii) It shall not perform any act which would or might reflect adversely upon the operations, integrity or goodwill of the Client.
- (iii) It shall diligently use its best endeavor to ensure regular correspondence with the Client.
- (iv) Provide its assistance, advice and guidance on how Services should be pursued and how to best proceed with them.
- (v) Any deviation by the Service Provider from the specific instructions or requests made by the Client shall require the Client's prior written approval and shall be documented in writing.
- (vi) No right shall be conferred upon the Service Provider or its Personnel regarding the Client's property except as approved by the Client for the limited right to use such property in furtherance of this Agreement. All such property, regardless of its physical location or use, shall be deemed to be in the care, custody and control of the Client and Service Provider or its Personnel shall return all such property in good and usable condition to the Client on completion of the rendering of the Services and/ or Deliverables or as and when requested, without any delay, demur or demand.
- (vii) For executing any Services, Service Provider shall allocate a contact person/s approved by the Client, who will be in charge of the implementation of this Agreement and will be available during regular office hours at Client's site in order to discuss issues or request relating to the Services and/ or Deliverables under this Agreement.
- (viii) Service Provider shall provide Client and its employees with training consultations with respect to the use of the Web Portal as may reasonably be requested by Client from time to time at no additional costs to Client ("Training Period"). Service Provider shall deliver a detailed user's manual to Client on or before completion of acceptance that will enable Client's employees who are otherwise unfamiliar with the Web Portal to become adequately informed about using the Web Portal. All training that Service Provider is required to provide hereunder shall be performed at Client's registered office and at such times as is mutually agreed by the Parties in writing. Upon the completion of the Training Period and following Client's request, Service Provider will provide any support services necessary to ensure Client's continued use of the Web Portal at no additional cost and on terms set out in the RFP.

For purposes of this Agreement, Implementation Stage Period means the Project implementation as per the testing standards and acceptance criteria prescribed by Client and which shall commence from the Effective Date of the Agreement until the Go-Live.

- 3.2 The Client shall be responsible for the following:
- (i) Providing reasonable information/ documents as may be necessary and required for the rendition of the Services and/ or Deliverable, provided the same is within the scope of the Client.
 - (ii) Providing reasonable assistance as may be necessary and required for the rendition of the Services and/ or Deliverable, provided the same is within the scope of the Client.
- 3.3 Each of the Services and the Deliverables shall be subject to acceptance by the Client. The acceptance criteria with regard to each Services and the Deliverables is as set forth in the Annexure 3 In absence of any express approval in writing, the Services and/ or the Deliverables shall not be deemed to be accepted and completed. If any comments are provided on the Services and/ or Deliverables by the Client based on which the Services and/ or deliverables are revised, the revised Services and/ or deliverables shall be subject to the acceptance by the Client.

3.4 ACCEPTANCE PROCEDURE FOR IMPLEMENTATION STAGE

1. Acceptance Test Plan. Service Provider in consultation with the Client shall, prepare and be responsible for a plan for the Client's acceptance test ("Acceptance Test Plan"). The Acceptance

Test Plan shall describe how the Client acceptance test will be carried out, and shall contain a detailed description of the tests to be performed. Acceptance Test Plan will include submission of Deliverables and completing the scope of work as has been specified within RFP.

2. Acceptance Period: Client will havedays following the date of delivery of the Web Portal to inspect, test, and access the Web Portal and determine whether it satisfies the acceptance criteria in accordance with the procedures set.
 3. Conditional Approval: If the Client approves the acceptance test, then the Client shall give Service Provider written notice to such effect.
 4. Rejection: If the Client refuses to approve the acceptance test, such rejection shall be explained in writing. The Service Provider in that case shall have business days to send a timetable for repairing the errors associated with the Web Portal. The Service Provider shall give written notice to the Client when repairs have been completed and Client shall resume acceptance test.
 5. Commissioning / Go-Live: The Web Portal shall be put into regular operation after the Client acceptance test has been approved by the Client in writing.
- 3.5 Service Provider shall perform the implementation, on the Designated System(s), and validate the implementation. Service Provider shall provide Client with standard test cases sufficient to test that the Web Portal substantially in accordance with the documentation. Client may supplement the standard test cases prior to the start of User Acceptance Testing (UAT).
- 3.6 Review Meetings etc. during Implementation Stage and Support stage
- (i) On the dates and at the locations as may be specified by the Client, the representatives of Client and Service Provider shall meet to discuss the status of the Services, Deliverables, the development or implementation of any individual tasks under this Agreement and any difficulties or issues that may exist, including personnel issues and any proposed changes to any implementation milestones and/or changes to any date or other item set forth in the Agreement. The Service Provider shall record and keep minutes of all status meetings in form and substance required by the Client, and the Service Provider shall issue copies of the minutes to all meeting attendees within forty eight (48) hours of each meeting.
 - (ii) The Service Provider shall provide to the Client such reports and in such formats as set forth in the RFP or as the Client may reasonably request.
 - (iii) It is understood and agreed that Service Provider's Services may include advice and recommendations. Service Provider will not perform management functions or make management decisions for Client or its partners/ associates/ end client.

4. **RELATIONSHIP OF THE PARTIES**

- 4.1 The relationship between the Parties hereto shall be on a principal to principal basis and this Agreement shall always be construed accordingly. Nothing in this Agreement shall be deemed to create a partnership, joint venture, agency, employer-employee relationship or similar relationship between the Parties hereto for any purpose or between the partners, officers, members, or employees of the Parties as the case may be, by virtue of either this Agreement or actions taken pursuant to this Agreement.
- 4.2 The Service Provider shall have no authority to bind the Client by any contract, representation or understanding. Nothing in this Agreement shall be deemed to authorize either Party hereto to make any representations or warranties on behalf of or otherwise to act for, represent or bind the other Party hereto in any manner whatsoever except as specifically authorized in writing.
- 4.3 This Agreement does not in any way create a master and servant relationship between Service Provider and/ or its employees on one side and Client on the other side. Under no circumstances shall the Service Provider and / or its employees be considered as employees of Client and no such relationship be considered to exist. All employees engaged by Service Provider to provide the Services and/ or Deliverables shall be in the sole employment of Service Provider and Service

Provider shall be solely responsible for their salaries, wages, remunerations and/ or any other statutory or other payments.

5. **TERM**

5.1 The Agreement shall be effective from [Date] (“Effective Date”) and is divided into two parts i.e Implementation stage and Support stage and period for the same are as follows:

1. Implementation Stage Period:to....., and
2. Support Stage Period:to.....

(collectively the “**Term**”).

If the Implementation Stage Period gets extended by then the Support Stage Period will also get automatically extended by the same period as per mutual agreement of the Parties in writing subject to the payment of liquidated damages as specified under clause 10 (Service Level Agreements) in Section 2 of the RFP.

5.2 The rendition and delivery of Services and/ or Deliverables shall start on [●] unless agreed otherwise by the Parties in writing.

6. **CONSIDERATION AND OUT OF POCKET EXPENSES**

6.1 In consideration of the Services to be rendered and the Deliverable to be provided by the Service Provider to the Client’s satisfaction, the Client shall pay to the Service Provider such amount (“**Service Fees**”) as may be specified in the Annexure 4.

6.2 The Service Provider shall raise the invoice and debit notes, if applicable, to the Client in accordance with the Annexure 4 and the Client will settle such invoice and debit notes within such timelines as agreed in the Annexure 4. Notwithstanding anything contained in this Agreement and without prejudice to the rights available under the law or otherwise, the payment of Service Fees shall not be deemed to be acceptance, functionality, correctness and usability of the Services and/ or Deliverables by the Client.

6.3 The Client will not be responsible for any payments made by the Service Provider to its Personnel (whether engaged at the Client’s site or not) for provision of the Services and/ or Deliverables under this Agreement.

6.4 Unless otherwise agreed in Annexure 4, the Service Provider shall be solely responsible for paying all the out-of-pocket costs and expenses incurred by it in connection with the Services and performance of its duties under this Agreement.

6.5 Client reserves the right to discontinue or forfeit any payments that might otherwise be due to the Service Provider if it is in default of its obligations under this Agreement and such default, if curable, is not cured within a period of 10 days from the date of notice thereof by the Client.

6.6 No payment made by Client shall constitute a waiver by Client of any breach by Service Provider of any of its obligations hereunder or prejudice Client’s rights in the future to question or dispute any portion of any invoice or the Services and/ or Deliverables provided by Service Provider. Any payment withheld by Client shall be without prejudice to any other rights and remedies of Client under the terms of this Agreement or at law or in equity or otherwise.

6.7 The Parties agree that in the event the Client has any claim against the Service Provider under the provisions of this Agreement, the Client shall be entitled, in the first instance, to set-off such sums from the amount payable to the Service Provider and claim the balance (if any) from the Service Provider. Client shall be entitled to deduct such amount by giving prior written notice.

7. REPRESENTATIONS AND WARRANTIES

7.1 The Service Provider hereby represents, warrants and undertakes that :

- (i) Is fully qualified to render Services and provide the Deliverables under the applicable laws and that it shall continue to exist, operate and conduct its business in accordance with all applicable laws and provisions.
- (ii) it will use adequate number of qualified Personnel with suitable training, education, experience. and skill to perform the Services. Service Provider shall be responsible for the acts of its Personnel deployed by it for performing its obligations pursuant to the Project.
- (iii) it is a competent provider of a variety of information technology and business process and management services.
- (iv) it have the financial standing and capacity to undertake this assignment in accordance with the terms of this Agreement and the RFP.
- (v) in providing the Services, it shall use reasonable endeavours not to cause any unnecessary disruption to Client's normal business operations.
- (vi) it shall comply with all laws and regulations for the time being in force with respect to any activities relating to the Services and/ or Deliverables.
- (vii) shall comply with the data privacy and protection requirements/ compliances under the Information Technology Act, 2000, as amended or replaced and Rules and Directions issued thereunder such as the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011, as amended or replaced and / or any other new law on the data privacy (collectively "**Data Protection Rules**") and provide the warranties set out in **Annexure 5**.
- (viii) it has all valid registrations and all other necessary permissions/ registrations/ licenses to implement the Project including providing the Services and/ or Deliverables and shall keep valid all applicable registrations, permissions and licenses at all times during the subsistence of this Agreement, which are required for implementing the Project including performing the Services and provision of Deliverables under this Agreement, and obtain all future licenses, permits and consents which are necessary or desirable and in so carrying out its obligations and not to put the Client, or itself, in breach of any law. The Service Provider will inform the Client immediately in case any authorizations are invalid or of any other non-compliance with the laws, if any.
- (ix) has all required power and authority to execute and deliver this Agreement and to perform its obligations hereunder and constitutes its valid and binding obligation;
- (x) it is competent and has the necessary skills to carry out its obligation as provided under this Agreement and will use its best efforts in performing its obligation under this Agreement;
- (xi) it shall be responsible for ensuring that it's Personnel abide by Client's security rules, guidelines, policies & procedures, if any, as applicable, from time to time, during the Term of this Agreement;
- (xii) it shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice or fraudulent practice;
- (xiii) there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- (xiv) 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;
- (xv) The execution and delivery by the Service Provider of this Agreement and performance of its obligations hereunder does not violate the terms of any contract, agreement, arrangement or understanding (oral or written, express or implied) to which Service Provider is a party or by which it is bound.

- (xvi) Shall be responsible for the usability, functionality and the correctness of the Deliverables and ensure that the Deliverables meet the requirements specified in the RFP , including the specifications, directions, Service Level Agreements, and other requirement as specified in this Agreement.
- (xvii) Shall be wholly responsible for all taxes, insurance or other contributions which may be payable out of, or as a result of the receipt of any Service Fees (hereinafter defined), etc. and accordingly indemnify and hold the Client harmless against all costs, claims, penalties, interest, liability or proceedings whatsoever arising out of or in connection with such payments.
- (xviii) Inform the Client in writing immediately or as soon as possible of any claim which may be brought against the Service Provider relating to or arising out of this Agreement. The Service Provider shall be solely responsible for all claims and expenses referred to above, and shall indemnify the Client for all claims and expenses against the Client.
- (xix) In the event of a conflict or potential conflict of interest between the interests of the Client and the interest of any other customer/client of the Service Provider, the Service Provider shall promptly inform the Client of such conflict or potential conflict and the Client shall have the right, in its discretion to take appropriate action in order to protect its interests. The Service Provider will give no less favorable treatment to the Client vis-a-vis other client of the Service Provider in all circumstances.
- (xx) In the event of any disagreement between the Parties with respect to any aspect of this Agreement and/or any Service or the performance thereof and/ or Deliverables, shall not, of itself, be a reason for Service Provider to intentionally delay and/or withhold the execution of this Agreement and/or any Services/ Deliverables and it shall not delay and/or suspend the Services/ Deliverables. Any such intentional delay and/or suspension by it, shall constitute a breach by Service Provider of the terms of this Agreement.
- (xxi) The Service Provider shall ensure timely performance of all its obligations under this Agreement and the RFP.
- (xxii) Shall observe all directions and instructions/requests given by the Client in relation to the Services/ Deliverables and in the absence of any such directions or instructions, act in such manner as the Service Provider reasonably considers to be most beneficial to the Client's interests.
- (xxiii) No representation or warranty of the Service Provider contained herein or in any other agreement, document or instrument furnished by or its behalf to the Client contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances in which it was made.
- (xxiv) There is no litigation pending or threatened to which Service Provider is a party that, if adversely determined, would have a material Adverse Effect on its financial condition or prospects or business or its ability to perform its obligations under this Agreement.
- (xxv) the information furnished in the Service Provider's response to the RFP and thereafter is true and accurate in all material respects and no material information is withheld. Further, no false or misleading information is furnished by the Service Provider.
- (xxvi) All its rights and interests in the Project that are to be transferred to the Client, pursuant to this Agreement shall pass to and vest in the Client free and clear of all liens, claims and encumbrances. without any further act or deed on its part or that of the Client.
- (xxvii) It shall provide a monthly SLA Report as specified in the RFP, in the format suggested by the Client, to the Client at the end of every month containing summary of all incidents reported to it and Service Provider's related performance measurement for that period. The monthly SLA Report will be deemed to be accepted by the Client upon review and signoff by both Service Provider and Client.
- (xxviii) It will achieve all the Service Levels within the time lines defined in Service Level Agreement in the RFP and in its failure of achieving the same, it shall be liable to pay liquidated damages to the Client as specified in the RFP.
- (xxix) it will perform its responsibilities under the Agreement and the RFP in a manner that does not infringe any patent, copyright, trademark, trade secret, or other proprietary rights of Client or any third party.
- (xxx) The Service Provider undertakes to make good and/or rectify any Services and / or Deliverables not in compliance with the Client's requirements and brought to its attention either during the course of the rendering of or after completion of the Services and / or Deliverables. To the extent that any Services

and/or Deliverables are defective or delivered with errors or the Service Provider defaults in any other manner in the carrying out of such Services or Deliverables, the Service Provider undertakes to redo all defective work and remedy all defects at no charge and with the utmost diligence and expedition. Notwithstanding anything contained in this Agreement, in case the Service Provider delays or fails to rectify such Service or Deliverables, then without prejudice to all other rights and remedies available to the Client under law, contract and in equity, the Client shall have an unconditional right to (i) forfeit any Service Fee payable to the Service Provider and/ or (ii) get the same rectified from the third party at the cost, risk and expense of the Service Provider.

In addition to the Service Provider bearing the actual cost of correcting any non-compliant work or any other actual damages resulting from Service Provider's breach of this Agreement, the Service Provider agrees to pay the Client liquidated damages in the amount of per day for every day that the Services/ and/or Deliverables to be provided pursuant to this Agreement have not been timely delivered to the Client or in compliance with the Scope of Work set forth herein.

The representations and warranties contained herein above are given and made on and as of the date hereof and shall continue during the subsistence of this Agreement and the Service Provider shall not take any action or permit action to be taken which would cause any of such representations or warranties to be no longer true or correct in any respect during the subsistence of this Agreement.

8. PERSONNEL

- 8.1 The Service Provider, in consultation with the Client and in accordance with the RFP shall assign its Personnel to perform the Services, and use its reasonable efforts to replace or reassign such Personnel without any costs as may be required by the Client from time to time.
- 8.2 The Service Provider shall ensure that all Personnel are committed to provide a consistently high standard of Services to the Client and the fulfillment of Service Provider's obligations under this Agreement.
- 8.3 Unless otherwise agreed between the Parties, the Client has the right, on reasonable grounds and based on the assessment of the Client provided to Service Provider that the person in question is incompetent to carry out the tasks expected of him/her or found that person does not really possess the skills /experience/qualifications as projected in his/her profile or on the ground of security concerns or breach of ethics., to require the replacement of any of the Personnel and the Service Provider will implement the Client's request and replace such Personnel within seven working days. Any replaced Personnel shall have no less professional skills, qualifications and knowledge than their predecessors.
- 8.4 The Service Provider shall coordinate its Personnel's vacation time with the designated authorised representative of Client and shall notify the designated authorised representative, in a timely manner, of any foreseeable absence of any Personnel and/or of any intention, by Personnel who render Services to the Client pursuant to this Agreement. In any case of temporary or permanent absence of the Personnel, the Service Provider, under its own responsibility, shall ensure the continuous rendition of the Services with no interruption or interference, and, in cases of permanent absence, it shall arrange, at its own cost and expense and under its own responsibility, for a suitable substitute for the absent Personnel. All such alternate Personnel shall be selected in consultation with the Client.
- 8.5 The Service Provider shall ensure that its Personnel shall:
 - (i) Act diligently, ethically, soberly and honestly;
 - (ii) Comply with the applicable laws, rules, regulations, policies and guidelines of the governmental authority(ies);

- (iii) Follow the Client's practices and procedures prevailing from time to time including the reporting of working hours and activity and the preparation of reports/deliverables as required by the Client's representatives; and
- (iv) Comply with all procedures, rules, regulations, standards of conduct and instructions of the Client including directions in respect of use of its premises, equipment, business ethics or methodology, or contact with its staff.

8.6 In the event that any laptop/equipment is made available by the Client to the Personnel for the purpose of rendering the Services, at the end of the assignment of such Personnel and/or the rendering of Services or as and when requested by the Client, the said equipment shall be returned to the Client in a functional and usable state. In the event that any equipment is not returned in such state, the Service Provider shall be liable to the Client for the cost of replacing such equipment. The Client shall have the right to set off the cost of such equipment against the amount owed by the Client to the Service Provider, without prejudice to any other right of the Client under law, contract or otherwise.

8.7 Personnel assigned by Service Provider to render the Services and / or Deliverables shall be employees of Service Provider and under no circumstances will such personnel be considered employees of the Client.

8.8 Service Provider agrees that no right of any employment with Client shall accrue or arise by virtue of engagement of Personnel by Service Provider, pursuant to this Agreement.

8.9 All remuneration, claims, wages, dues of such Personnel of Service Provider is agreed to be paid by Service Provider alone and the Client shall not have any direct or indirect liability or obligation, to pay any charges, claims or wages of any of such Personnel. Service Provider has the responsibility for payment of such Personnel's entire compensation, including salary, withholding of income taxes and other taxes as applicable, worker's compensation, employee and disability benefits and the like and shall be responsible for all employer obligations under all applicable laws

8.10 Service Provider shall have the sole responsibility for supervision, management and control of its Personnel and ensuring that they carry out their assigned job in a professional manner.

8.11 Service Provider shall use its best efforts to ensure that sufficient Personnel are employed to perform the Services, and also that such Personnel have appropriate qualifications to perform the Services.

8.12 The identified Personnel of the Service Provider whose profiles were the basis for the evaluation of the competence of Service Provider to carry out the implementation of the Project shall be "Key personnel" with requisite qualifications and proficiency as named by the Service Provider in its Proposal. It is the responsibility of Service Provider to deploy these resources for the activities they have been proposed to be deployed during the Project as per the Proposal to the RFP submitted by Service Provider.

8.13 The Service Provider shall not remove or replace any Key Personnel without the prior written consent of the Client

8.14 The 'Key Personnel should remain available as per as per the deployment plan given in the Proposal and accepted by the Client.

8.15 Except as stated in this Clause, nothing in this Agreement 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. Client 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 of the personnel being replaced.

- 8.16 Service Provider shall define a succession plan for the Key Personnel as attached as Annexure 6.
- 8.17 Under exceptional circumstances when the Key Personnel are to be replaced, the Client will have the right to accept or reject these substitute profiles.
- 8.18 In the event that any Key Personnel is to be replaced for reasons not attributed to the Client, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule and procedure in writing.
- 8.19 Service Provider agrees to be responsible for managing the activities of its Personnel or personnel of its subcontractors (if any) and shall be accountable for both.
- 8.20 It is agreed between the Parties that the Service Provider shall be the principal employer of the Personnel engaged by the Service Provider and shall be vicariously liable for all the acts, deeds or things, whether the same is within the scope of instructions or outside the scope of instructions set out in the Agreement.
- 8.21 During the warranty period, the Client will have the right to identify Service Provider personnel and demand their presence for knowledge transfer to the Client as set out in the RFP.

9. USE OF ASSETS BY THE SERVICE PROVIDER

9.1 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 and Deliverables as per this Agreement (hereinafter the “Assets”) in proportion to their use and control of such Assets;
- (b) keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at 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 the Assets;
- (d) take such steps as may be properly recommended by the manufacturer of the Assets or as may, in the reasonable opinion of the Service Provider, be necessary to use the Assets in a safe manner;
- (e) ensure that the Assets that are under the control of the Service Provider, are kept suitably housed and in conformity with applicable law;
- (f) procure permission from Client and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- (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 applicable law.

10. CONFIDENTIALITY

10.1 For this Agreement “Confidential Information” shall include and mean any and all information relating to the Client, any of its affiliates, partners, network participant(s), associates, furnished at any time by and / or on behalf of the Client, its Affiliates, partners, network participant(s), or associates including any data, analysis, compilations, notes, extracts, materials, reports, designs, specifications,

plans, memoranda or other documents, or materials relating to the software, the modules, source code, object codes, and all enhancements and updates, services, systems, processes, ideas, concepts, formulas, methods, know how, trade secrets, design, research, techniques, processes, algorithms, schematics, testing procedures, software design and architecture, computer code, product requirements, analysis and performance information, business affairs, Project, technology, finances (including revenue projections, cost summaries, pricing formulae), clientele, markets, marketing and sales programs or any existing or future plans, forecasts or strategies in respect thereof, directly or indirectly to the Service Provider and / or its Personnel including any other such information received, accessed or viewed by the Service Provider and / or its Personnel or any information developed for the Client by the Service Provider and / or its Personnel pursuant hereto, whether in oral, written, graphic, visual or machine-readable form, whether tangible or intangible, whether or not designated as confidential or proprietary information. The existence of discussions between the Parties, details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities and this Agreement shall also be deemed to be Confidential Information. The Client Data (as defined below) shall also be considered as part of Confidential Information.

- 10.2 Subject to Clause 10.6 , the Service Provider shall treat as confidential all Confidential Information received and shall not disclose such Confidential Information to any third party without the prior written consent of the Client nor use the Confidential Information for any purpose other than the performance of its obligations under this Agreement.
- 10.3 The Service Provider acknowledges that the Confidential Information contains valuable proprietary and confidential information of the Client and other stakeholders. The Service Provider shall not either directly or indirectly, copy (in whole or in part), sell, assign, lease, license, disclose, give or otherwise transfer the Confidential Information or any copy or extracts thereof to any third party including its affiliates or associates and shall take all the necessary steps that the Confidential Information is secured against accessibility of its affiliates or associates.
- 10.4 The Service Provider may disclose the Confidential Information only to Personnel deputed for Agreement who (i) “need to know” such Confidential Information in order to enable the Service Provider to use such Confidential Information for the purposes of this Agreement; (ii) have been advised of the confidential and proprietary nature of the Confidential Information; and (iii) are legally bound not to use or disclose such Confidential Information for any other purpose, and have signed confidentiality agreements containing terms substantially similar to the terms contained in this Agreement and in the format provided by Client and which have been duly approved by Client with respect to the Project. The Service Provider agrees that all efforts will be made by the Service Provider, in case where any Personnel left the Service Provider and had access to Confidential Information, to prevent, by all legal means, the use of Confidential Information by such Personnel(s). The Service Provider shall not disclose the Confidential Information to any of its affiliate or associate or consultant, legal adviser, insurers, auditors and other professional advisers retained by the Service Provider, except upon the prior written consent of the Client.
- 10.5 The Service Provider shall treat the Confidential Information with the same degree of confidentiality as it keeps its own Confidential Information, but in all events no less than a reasonable degree of confidentiality. The Service Provider shall safeguard any and all copies, summaries, notes, extracts, reports, statistics, data, plans, etc. of the Confidential Information against unauthorized disclosure, shall not tamper with, bypass or alter its security features or attempt to do so, and shall take all reasonable steps to ensure that the provisions of this Agreement are not violated by any person under the Service Provider’s control or in the Service Provider’s service. The Service Provider shall be responsible for any breach of this Agreement by its Personnel and shall indemnify the Client in connection with any loss or damage or claim or expenses incurred or suffered by the Client due to such breach. This confidentiality obligation shall be binding on the Service Provider, its Personnel

and affiliates/ associates and their employees, officers, sub-contractors, vendors, successors of the Service Provider, as applicable.

10.6 Clause 10.2 shall not apply to information which the Service Provider can demonstrate by documentary evidence to be:

- (a) in the public domain other than as a result of a breach of this Clause; or
- (b) already in the Service Provider's possession, prior to disclosure by the Client; or
- (c) required to disclose by law or any court or the request of any government or regulatory authority or other competent body or if required to do so by statute, including any statute in respect of the freedom of information or similar legislation; or
- (d) independently developed by the Service Provider.

10.7 Upon termination of this Agreement for any reason whatsoever the Service Provider shall immediately cease all further use in any manner whatsoever of the Confidential Information.

10.8 If Client, at any time, requests the Service Provider to return the Confidential Information, the Service Provider shall promptly surrender to the Client all such documents, records, notes, copies, computer files and other material containing or incorporating the Confidential Information and shall not retain any copies thereof in any medium whatsoever.

10.9 Promptly following the termination or expiration of this Agreement for any reason and, subject to the other provisions of this Agreement, the Service Provider shall either destroy or deliver without retaining any copies or extracts thereof to the Client all Confidential Information received pursuant to the terms of this Agreement and certify the same in writing to the Client.

10.10 The provisions of this Clause shall survive the expiry/ termination of this Agreement.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 Products and fixes: All Commercial Off-the Shelf (COTS) products and related solutions and fixes provided, pursuant to this Agreement shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. Such licenses shall be brought on behalf of and in the name of Client or mentioning Client as the end user of such licenses. Where deemed necessary by Client, Client may execute end user licence agreements with respective Original Equipment Manufacturers (OEM). The 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 Client 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 the Service Provider when performing Services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing. All Intellectual Property Rights in any development/enhancement/customization etc. done on the COTS products pursuant to this Agreement shall be owned exclusively by Client.

11.1 Bespoke development: Upon acceptance of any bespoke development as per this Agreement or RFP, the ownership of all IPR rights in any and all bespoke development done during the Term for implementation of the Project under this Agreement will lie with Client. The Service Provider shall provide source code, object code and all other relevant materials, artefacts etc. of all bespoke development to Client and Client shall own all IPRs in them. All material related to such bespoke development shall be treated as confidential information by the Service Provider. This will also include any developments on COTS.

11.2 Training and other material: The ownership of all IPR rights in any and all documents, artefacts,

etc. (including all training material) made during the Term for implementation of the Project under this Agreement will lie exclusively with Client.

1.1 Pre-existing work of the Service Provider : For the purpose of this Agreement, 'pre-existing work of the Service Provider shall mean such work of Service Provider and that of its subcontractors, agents, representatives which has been evidently developed by Service Provider and that of its subcontractors, agents, representatives prior to execution of the Agreement. To the extent Service Provider uses any of pre-existing work of the Service Provider (or its subcontractors, agents, representatives) in provision of Services / Deliverables and / or implementation of the Project under this Agreement, the Service Provider hereby acknowledges and agrees that the Client shall have the entitlement to fully use, exploit the Pre-existing work of the Service Provider and/or that of its subcontractors, agents, representatives to Client., including a right for the Client to successfully continue using, maintaining, developing, licensing or transferring any Pre-existing work without any additional cost and on such terms and conditions as Client may deem fit in its absolute and sole discretion.

Service Provider shall provide to Client (to the satisfaction of Client) all documentation including, without limitation, source code, object code, SRS, FRS, operational documents etc. of such pre-existing work of the Service Provider and/or that of its subcontractors, agents, representatives before using such pre-existing work of the Service Provider and/or that of its subcontractors, agents, representatives in provision of Services / Deliverables and / or implementation of the Project under this Agreement.

11.3 Third Party Products: Subject to clause 11.1 above, if license agreements are necessary or appropriate between the Service Provider and third parties for purposes of enabling / enforcing/implementing the provisions hereinabove, the Service Provider shall enter into such agreements at its own sole cost, expense and risk.

11.4 The Parties agree and acknowledge that nothing in this Agreement shall give the Service Provider any right in any Intellectual Property Rights in (i) the Deliverables and / or (ii) any information, material, specifications, assets provided by the Client or a third party through the Client in relation to this Agreement (collectively "**Client Data**"), and any translations, compilations, partial copies, modifications, updates, amendments and enhancements made thereto (collectively "**Client Materials**"), which shall remain the exclusive property of the Client and/ or its affiliates, associates or partners, as the case may be. The Service Provider agrees not to bring any action or proceedings challenging the Intellectual Property Rights of Client and/ or its affiliates, associates or partners in the Client's Materials or file any claim for registration of such Intellectual Property Rights belonging to Client and/ or its affiliates, associates or partners. The Service Provider hereby waives or shall procure the waiver of any moral rights in Client's Materials.

11.5 The entire right, title and interest throughout the world to all the Client Materials (i.e. Deliverables and Client Data), all methods, inventions, discoveries, designs, works, materials, software, source code, executable or object code, documentation, methods, apparatus and the like, and/or trademarks, copyrights, designs, etc. that are conceived, prepared, procured, generated or produced, whether or not reduced to practice, by the Service Provider or its Personnel, either solely or jointly with others during the course of, in connection with, or as related to the provision of the Services and/or the Deliverables and / or the implementation of the Project under this Agreement (collectively, "**Works**"),

- (i) to the extent the Works qualify as "work made for hire" under applicable law, will be considered a work made for hire and will be owned solely and exclusively by the Client; and
- (ii) to the extent the Works are not considered as "work made for hire" under applicable law, are hereby assigned by the Service Provider to the Client (and the Service Provider waives rights, including all moral rights, irrevocably to the extent permitted by law).

In addition, the Service Provider:

- (iii) agrees to execute any and all documents prepared by Client and to do all other lawful acts as may be necessary, useful or convenient for the Client to establish, document, and protect such rights;
- (iv) has acquired and/ or shall acquire from each of its employees / Personnel all rights to all such Works produced or developed by such employees /Personnel in providing the Services and/ or the Deliverables and / or implementation of the Project under this Agreement that are or may be necessary for the Service Provider to convey to the Client the rights granted in this Clause 11.7. The Service Provider shall fully cooperate to secure to Client or its nominees the rights that the Client has acquired and shall hereafter acquire in accordance with the provisions of this Clause 11.
- (v) shall have a limited, non-transferable, non-exclusive, royalty free license to use the Clients Materials, for the sole purpose of performing its obligations under this Agreement and nothing in this Agreement shall operate to transfer any ownership or others rights therein to the Service Provider. Upon termination of this Agreement (howsoever caused) such license in the Clients Materials will automatically terminate and the Service Provider will cease all such use, unless otherwise agreed in writing by the Client.
- (vi) In the event the Client is unable for any reason after reasonable effort, to secure the Service Provider's signature on any document in accordance with Clauses 11.7(iii), the Service Provider hereby irrevocably designates and appoints the Client and its authorized employees as its agent and attorney in fact and at law, which appointment is coupled with an interest, to act for and on its behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of Clause 11.7 (iii) with the same legal force and effect as if executed by the Service Provider. The Service Provider hereby waives and quit all claims, of any nature whatsoever, which the Service Provider may now or hereafter have for infringement of any Works assigned hereunder to Client.

11.6 The Service Provider agrees that any and all goodwill and other right, title or interest that it may acquire through the use of the Client Materials and Works and the Intellectual Property Rights therein will inure to the sole benefit of Client and/or its affiliates, associates or partners. The Service Provider further agrees that it will not take any action disparaging, disputing, attacking, challenging, impairing, diluting, or in any way tending to harm the reputation or goodwill associated with the Client Materials and Works and the Intellectual Property Rights therein against Clients or its affiliates, associates or partners.

11.7 The Service Provider acknowledges and agrees that the Client shall have the entitlement to fully use and exploit (in any manner whatsoever) all Client Materials and Works without any restriction or obligation to make any further payment, both during the course of this Agreement and after the termination of this Agreement (howsoever caused) including, a right for Client to successfully continue using, maintaining, developing, licensing or transferring any Client Materials and Works on such terms and conditions as Client may deem fit in its absolute and sole discretion.

11.8 Without prejudice to any other rights or remedies Client may have, the Service Provider shall indemnify, keep indemnified and hold harmless the Client against any and all losses arising out of or in connection with any claim for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Services and/or the Deliverables and / or implementation of the Project.

11.9 If any third party makes a claim or notifies an intention to make a claim that may fall under Clause 11.5 or if either Party otherwise becomes aware of a possible claim under Clause 11.5, without prejudice to any other rights or remedies that Client may have, if requested by Client, the Service Provider shall, as per the discretion of the Client, promptly at its own cost:

- (a) procure for the Client the right to continue using the item which is subject to the claim or potential claim and the right to continue use the Works as provided herein; or
- (b) replace or modify the infringing item with a non-infringing substitute, provided that: (i) the functionality and capability of the replaced item is equivalent to or greater than the functionality and

capability of the original item; and (ii) the terms of this Agreement shall apply to the replaced or modified item and its development.

If (a) or (b) are not possible, the Service Provider shall refund to the Client all amounts paid to the Service Provider by Client for all the Services and Deliverables that, according to Client constitute an infringement. The Service Provider will also be liable to pay to the Client any and all amounts incurred by the Client in arranging alternate Services and Deliverables, provided that where the Service Provider has refunded any amounts to the Client towards the infringing Services and Deliverables, the replacement costs payable by the Client to Service Provider will be limited to what is incurred by Client over and above the amount received back from the Service Provider.

11.10 It is agreed that the Deliverables especially reports may be branded as work of Client only without reference to the Service Provider and the Service provider has no objection to the same. The Client is not required to pay any additional Service Fee for such branding.

12. WARRANTY AND MAINTENANCE

Standard: The Service Provider warrants that the Project, including all the Services and / or Deliverables, Portal, system(s) and materials supplied pursuant to the Agreement, shall be free from any defect or deficiency in the material, design, engineering, and workmanship that prevent the Project and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the Project and / or any of its systems. Commercial warranty provisions of products supplied under the Agreement shall apply to the extent they do not conflict with the provisions of this Agreement.

- a) The Service Provider 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.
- b) In addition, the Service Provider warrants that: (i) all goods components to be incorporated into the system form part of the Service Provider /OEM's and or subcontractor's current product lines.
- c) The warranty period shall commence post implementation from the date of Go-Live of the Project and shall extend for a period of one year as specified in the RFP.
- d) 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 Service Provider, the Service Provider shall as soon as practicable and without any delay, in consultation and agreement with Client, and at the Service Provider's sole cost repair, replace, or otherwise make good (as the Service Provider 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.
- e) The Service Provider may, with the written consent of Client, 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 replacement 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, Client may give the Service Provider notice requiring that tests of the defective part be made by the Service Provider immediately upon completion of such remedial work, whereupon the Service Provider shall carry out such tests. If such part fails the tests, the Service Provider 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 the Client and the Service Provider.
- f) If the Service Provider 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, Client may, following notice to the Service Provider, proceed to do such work or contract a third party (or parties) to do such work, and the costs incurred by Client in connection with such work shall be paid to Client by the Service Provider or may be deducted by the Client from any amount due to the Service Provider.

- g) 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, attributable to Service Provider, the warranty period for the defective System or any of its sub-systems shall be extended by a period equal to the period during which the defective system or any of its sub-systems could not be used by the Client because of such defect and/or making good of such default, defect or deficiency. For reasons not attributable to Service Provider, the Service Provider shall not be liable. It is clarified that if any defective system or any of its sub-systems have impact on the Project as a whole, then the warranty shall be extended for the entire Project for such period.
- h) 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.

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.

13. INDEMNITY

13.1 The Service Provider shall indemnify, defend, and hold the Client, its affiliates, partners or associates and their officers, directors, employees harmless from and against any and all liabilities, losses, damages, injuries, claims, suits, settlements, judgments, causes of action, costs and expenses (including reasonable attorneys' fees) arising out of, in relation to or consequent upon:

- (i) any act or omission by the Service Provider under this Agreement; or
- (ii) any breach of the Service Provider's obligations, undertakings or warranties herein or claims by third parties; or
- (iii) incorrect statement, representation or warranty of the Service Provider ;
- (iv) bodily injury or death, including death of Client's employees or third party;
- (v) damage to the Service Provider's own property, or property belonging to Client or third parties;
- (vi) fraud, dishonest misconduct and similar activities in which the Service Provider is involved; and
- (vii) the insufficiency or inaccuracy of the Services and/ or Deliverables provided by the Service Provider.

Client shall notify the Service Provider promptly of any claim threatened or commenced against the Client. The Service Provider shall assume control and direct the defense, investigation and handling of the claim for and on behalf of the Client, provided however that the Service Provider shall not settle or consent to judgment without the Client's approval. The Client shall cooperate with the Service Provider. If the Service Provider fails to assume control of the defence of any claim, or, having elected to assume control, thereafter fails to diligently defend the claim, the Client shall, without limitation to the Service Provider's obligations hereunder, be entitled to contest, settle or pay the amount of the claim, and the Service Provider shall be bound by the results obtained by the Client with respect to the claim.

13.2 In no event shall the Client including its directors, officers, employees be liable to the Service Provider for any indemnification. Unless otherwise as stated in this Agreement, no Party shall be liable to other Party for any special, incidental or consequential damages arising under or as a result of this Agreement

(or termination thereof), including, but not limited to the loss of prospective profits/ Service Fee or anticipated sales, or on account of expenses, investments, or commitments in connection with the business or goodwill or otherwise.

13.3 This indemnity is a continuous obligation and independent from other obligations of the Service Provider and survives the expiry or earlier termination of this Agreement.

13.4 Under no circumstances shall a Party's aggregate liability arising out of or related to this Agreement, whether in contract, tort, equity or under any theory of liability exceed an amount to be paid to the Service Provider under this Agreement immediately preceding the event giving rise to the first such claim. Notwithstanding the foregoing, the limitation of liability contemplated in this Clause excludes any amount covered under indemnification obligations under clause 13 of this Agreement, breach of Intellectual Property Rights, Confidentiality, fraud, misrepresentation, willful misconduct, gross negligence and any other liability that cannot be excluded under law.

14. AUDIT, ACCESS AND REPORTING

The Service Provider shall allow access to to the auditors of Client or authorized representatives of Client 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 the Client to comply with the terms of the Audit, Access and Reporting Schedule set out as Annexure 7 of Agreement. Service Provider should provide the the Client or its authorized representatives necessary information / right to inspect the documents or information as per Annexure 7 of this Agreement.

15. TERMINATION

15.1 Either Party shall have the right to terminate this Agreement for convenience. However, Client shall give [7 (seven) days'/ 15 (fifteen) days'/ 1 (one) months'] notice and the Service Provider shall give [1 (one) months'/ 2 (two) months'/ 3 (three) months'] notice for such termination.

15.2 In addition to the above, the Client shall have the right to terminate the Agreement at any time by giving a written notice to the Service Provider upon the occurrence of any of the following events:

- (i) the Service Provider not being capable of carrying out its obligation under this Agreement including voluntary dissolution of the Service Provider being a company or LLP, dissolution of general partnership;
- (ii) If the Service Provider commits a breach of any of the terms of this Agreement and where the Client considers that such breach is remediable, fails to remedy the same within 15 days of being required by the Client to do so;
- (iii) the Service Provider assigns this Agreement or any of its rights hereunder, except as provided in this Agreement (the word "assign" to include, without limiting the generality thereof, a transfer of a majority interest of the Service Provider);
- (iv) If any of the Service Provider becomes or is deemed to be insolvent or bankrupt or is unable to pay their debts or enters into a deed of arrangement or compounds with their creditors or if a receiving order is made against them or if an order is made for the appointment of an administrator to manage the affairs business and property of the Service Provider or if a receiver is appointed over any of the Service Provider assets or undertaking;
- (v) If the Service Provider's ability to carry out their obligations hereunder is prevented or adversely interfered with for any reason whatsoever (whether or not within the control of the Service Provider(s) including without limitation by reason of any regulation or other action of the government);
- (vi) If any direction or order from any authority is made, or there is any change in applicable statutes,

- rules and regulations or government policies, which prevents or significantly impairs the implementation of this Agreement or directly or indirectly so restricts the scope and exercise of rights and privileges of the Client so as to render the objectives of this Agreement impossible to achieve;
- (vii) the Service Provider acts in a manner which is likely to bring the Client to disrepute.
 - (viii) Notwithstanding anything contained above, the non-performance or breach by the Service Provider of any of the obligations of this Agreement, or any action or omission on the Service Provider's part that adversely affects Client's interests shall be considered just cause for Client to terminate this Agreement and/ or any of the rights granted hereunder forthwith.

15.3 Every obligation of the Service Provider under this Agreement is an independent condition, breach of which by the Service Provider will entitle the Client to the rights and remedies available to it under this Agreement.

15.4 Consequences of Termination:

Upon termination of this Agreement for whatever reason:

- (i) The Service Provider shall in no event be entitled to any compensation or damages or other payment whatsoever, whether in respect of goodwill, loss of profit/Service Fee or otherwise.
- (ii) The Service Provider undertakes to return to the Client, immediately, any written information, technical data, documents, including Confidential Information, in its possession or under its control.
- (iii) The Service Provider shall cease immediately in the rendition of any further Services save as expressly authorized by the Client in writing.
- (iv) Service Provider shall immediately handover the documents, access and all rights associated with the working solution to ONDC.

15.5 The termination of this Agreement (for whatever reason) shall not affect the respective rights and liabilities of each of the Parties accrued prior to such termination.

15.6 a) Client agrees to pay the Service Provider for all undisputed charges for Services / Deliverables provided by the Service Provider and accepted by Client till effective date of termination.

15.7 Any and all undisputed 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 as set out in the attached Annexure 8 to the satisfaction of Client. In case of expiry of the Agreement, the last due undisputed 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 Client.

15.8 In the event that Client terminates this Agreement pursuant to failure on the part of the Service Provider to comply with its obligations under this Agreement, Performance Bank Guarantee furnished by Service Provider may be forfeited. Notwithstanding the above, the Service Provider shall be liable to pay the liquidated damages and / or other costs as provided in the RFP.

15.9 The provisions of this Clause shall survive the expiry or earlier termination of the Agreement.

16. ANTI-BRIBERY

16.1 The Service Provider shall, and shall cause their Personnel, officers, employees, etc. acting on their behalf, to comply fully with all applicable laws, regulations related to anti-bribery or anti-corruption and without in any manner limiting the generality of the foregoing, under no circumstance shall the Service Provider or their Personnel, offer or make, directly or indirectly, any payment of funds or other thing of value to any employee or Service Provider of any potential Client or any officer of the government/government authority/regulatory authority/any agency/any political person

etc. in respect of rendition of Services and/ or Deliverables and / or implementation of the Project under this Agreement. Any bribes, commissions, gifts or advantage given, promised or offered by or on behalf of the Service Provider or their Personnel in relation to the offering or for procuring of a Project as part of the Services and/ or Deliverables required to be rendered under this Agreement or for showing or for hearing to show favour or disfavour to any person in relation to the Project shall result in immediate cancellation/ termination of this Agreement and also for payment of any actual loss or damage to the Client resulting therefrom.

17. GOVERNING LAW AND DISPUTE RESOLUTION

17.1 This Agreement is made in, governed by, and shall be construed in accordance with the laws of India.

17.2 Any dispute, controversy or claim (each, a "Dispute") arising out of or relating to this Agreement, or the interpretation, breach, termination, validity or invalidity thereof, shall be settled amicably within 30 days of its notice and if not, then the Dispute shall be referred to a sole arbitrator to be mutually appointed by the Parties.

17.3 The Arbitration proceedings shall be held at Delhi, India and shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendment thereof for the time being in force without reference to any conflict of law rules.

17.4 The arbitral proceedings shall be conducted in English.

17.5 The award of the arbitral tribunal shall be final and binding upon the Parties.

18. JURISDICTION

Subject to clause 17 , the Parties shall submit to the exclusive jurisdiction of the Courts at Delhi.

19. NOTICE

19.1 Any notice or other written communication required or permitted to be made or given hereunder may be made or given by either Party by first-class registered mail, postage prepaid; or by courier to the mailing address or email set as below:

If to the **Client**:

Open Network for Digital Commerce

Address: [●]

Attention: [●]

E-mail: [Email address]

If to the **Service Provider**:

[Name of the Service Provider]

Address: [●]

Attention: [●]

Email: [Email address]

or to such other addresses or email as either Party shall designate by notice, similarly given, to the other Party. Notices or written communications shall be deemed to have been sufficiently made or given: (i) if mailed, seven days after being dispatched by registered mail, postage prepaid; (ii) if by courier, on the date of confirmed delivery; or (iii) By email, if received during business hours same day, otherwise the same would be deemed to be received next day.

20. SURVIVAL

The provisions of clause 10 - Confidentiality, clause 11 – Intellectual Property Rights, clause 13 – Indemnity, Clause 15.4 Consequences of Termination, Clause 17 - Governing Law and Dispute Resolution, Clause 18 - Jurisdiction, Clause 19 – Notice, Clause 20 - Survival and Clause 21 - Miscellaneous shall survive the expiry or earlier termination of this Agreement.

21. MISCELLANEOUS

- 21.1 **Non-Solicitation:** The Service Provider agrees that, for a period of [two (2) years] after the termination or cessation of its engagement with the Client, it shall not in any capacity, either separately, jointly or in association with others, directly or indirectly, employ, recommend for employment, solicit or contact in connection with, or in furtherance of, for any purpose whatsoever, any of Client's (or its affiliates, associates or partners) employees, consultants, agents, suppliers, vendors, customers or prospects that were such with respect to Client at any time during the two (2) years immediately preceding the date of termination or cessation of its engagement with Client or that become such with respect to Client at any time during the two (2) years immediately following the date of termination or cessation of its engagement with Client. The obligations under this clause shall survive the termination or cessation of this Agreement. It is clarified that the geographical area for the purpose of this paragraph is "worldwide".
- 21.2 **Assignability:** The rights and obligations of the Service Provider under this Agreement are personal in nature and accordingly shall not be assignable in whole or in part to third parties including sub-contractors, unless specifically agreed to in writing by the Client. However, the Client is free to assign this Agreement or any of its rights and obligations hereunder.
- 21.3 **Severability:** Should any part or provision of this Agreement be held unenforceable or in conflict with the applicable laws or regulations of any applicable jurisdiction, the invalid or unenforceable part or provision shall, provided that it does not affect the essence of this Agreement, be replaced with a revision acceptable to the Client which accomplishes, to the extent possible, the original commercial purpose of such part or provision in a valid and enforceable manner, and the balance of this Agreement shall remain in full force and effect and binding upon the Parties hereto, unless the Client decides in its discretion that the effect of such unenforceable part or provision may defeat the original intention of the Parties, in which case the Client shall be entitled to terminate this Agreement on thirty (30) days written notice to the Service Provider.
- 21.4 **Entire Agreement:** This Agreement includes its Annexures constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements, arrangements, dealings or writings between the Parties. This Agreement may not be amended, varied, completed or supplemented except in writing signed by the Parties' authorized representatives.
- 21.5 **Risk Purchase:** Notwithstanding anything to the contrary stated herein, in the event the Service Provider is (i) unable to fulfill; and/or (ii) delays to fulfill its obligations under this Agreement consistent with the terms of this Agreement; and/or (iii) Client reasonably has the reason to believe that the Service Provider will not be able to fulfill its obligations, the Client reserves the unconditional right to replace the Service Provider and obtain performance of Services / Deliverables or any part thereof from other third party at the Service Provider's sole risk, cost and expense.
- 21.6 **Waiver:** No waiver of any right, breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent right, breach or default of the same or similar nature.
- 21.7 **Cumulative remedies:** Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall

be in addition to every other remedy given there under or existing at law or in equity by statute or otherwise.

21.8 **Counterparts:** This Agreement may be executed in counterparts, each of which when executed and delivered shall be an original and all of which when taken together shall constitute one and the same instrument.

21.9 **Further Assurances:** Service Provider 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 and / or the RFP.

22. **Performance Bank Guarantee**

22.1 The Service Provider shall, within fifteen (15) days after thereceipt of Letter of Award from Client, furnish an unconditional, irrevocable and continuing Performance Bank Guarantee (PBG) to Client for an amount equal to 10% of the Total Value of the Project from any Scheduled Commercial bank (and not from any Co-operative Bank) in the format acceptable to Client. The PBG shall be valid for the entire Term and six months thereafter. If the PBG is liquidated /encashed, in whole or in part, during the currency of the Performance PBG, the Service Provider shall top up the PBG with the same amount as has been encashed within fifteen (15) days of such encashment without delay or demur.

22.2 In the event of the Service Provider opting for advance payment as per the RFP, it shall also furnish an unconditional, irrevocable and continuing Advance Payment Security/Guarantee to Client for an amount equal to 110% of the value of advance payment from any Commercial bank in the format acceptable to Client. The Advance Payment Guarantee shall be returned to the Service Provider once the advance payment is completely set off against due and payable payments to it by Client.

22.3 Notwithstanding what has been stated elsewhere in this Agreement and the Annexures attached herein, in the event the Service Provider is unable to meet the obligations pursuant to the implementation of the Project and/or provide the Services and / or Deliverables and any related scope of work as stated in this Agreement and the RFP, the Client will, inter alia, have the right to invoke the PBG without giving any notice or intimation to Service Provider. Such right of the Service Provider shall be without prejudice to any other rights or remedies available under law or Agreement.

23. **Insurance**

In connection with the provision of the Services and / or Deliverables and / or implementation of the Project, the Service Provider may obtain and maintain adequate standard forms of comprehensive insurance including for (i) public liability; (ii) either professional indemnity or errors and omissions; (iii) product liability; (iv) workers compensation as required by law; and (v) any other insurance.

The Service Provider further agrees to provide to the Client on request copies of such policy of insurance and evidence that the premiums have been made.

24. **Change of Control**

24.1 In the event of a change of control and / or change of management of the Service Provider without seeking prior written consent from the Service Provider, the Client shall have the right to terminate this Agreement for cause on thirty days prior written notice to Service Provider. In the event Client chooses not to terminate this Agreement, the Service Provider's rights and obligations shall be fulfilled by Service Provider or its successor, as applicable.

24.2 In case of successor, the Client may require replacement of existing Performance Guarantee furnished by the Service Provider with fresh Performance Bank Guarantee as acceptable to the Client.

24.3 If such new Performance Bank Guarantee is not furnished within 30 days of the Client requiring the replacement, the Client may exercise its right to terminate this Agreement by giving 15 days written notice.

24.4 Pursuant to termination under sub-clause (a) or (c), the effects of termination as set out in Clause _____ of this Agreement shall follow.

25. Ambiguities within Agreement

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

- (a) as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- (b) as between the provisions of this Agreement and the Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Annexures; and
- (c) as between any value written in numerals and that in words, the value in words shall prevail.
- (d) Between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

26. Agreement Documents

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

If in the event of a dispute as to the interpretation or meaning of this Agreement it should be necessary for the Parties to refer to documents forming part of the bidding process leading to this Agreement, then such documents shall be relied upon and interpreted in the following descending order of priority:

.....

- (a) This Agreement and all the attached Annexures.
- (b) The RFP issued to bidders on _____, the addenda and pre-bid clarifications issued subsequent to the release of the RFP document, if any
- (c) The undertakings submitted by the Service Provider as part of the bid response, if any
- (d) The Proposal dated _____ submitted by Service Provider, subsequent clarifications submitted by Service Provider and the technical presentation submitted by the Service Provider in response to the RFP, if any.
- (e) The Commercial Bid dated _____ submitted by the Service Provider in response to the RFP.

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

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORIZED REPRESENTATIVES AS OF THE DATE FIRST WRITTEN ABOVE.

Open Network for Digital Commerce

[Name of Service Provider]

By: _____
[Name of authorized person]
Title: []

By: _____
[Name of authorized person]
Title: []

Witnesses:

1. _____

2. _____

ANNEXURE 1

SERVICES AND DELIVERABLES

The Services and Deliverables are as per the RFP and shall also include the following:

1. The Professional shall deploy its resource for this engagement who shall work on a hybrid model i.e. 15 days at ONDC office and 15 days working remotely as mutually agreed in writing from time to time.

ANNEXURE 2

Roles and Responsibilities of Service Provider

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

20. Meet the defined Technical Specifications for the IT Infrastructure including Hardware and networking equipments keeping in mind the application and future requirements of the Client.
21. Obtaining relevant Certifications and adherence to respective Industry Standards as detailed in the RFP.
22. Any other services which is required for the successful execution of the Project.

Annexure 3

ACCEPTANCE CRITERIA

Annexure 4

SERVICE FEE/ADVANCE – GENERAL TERMS & CONDITIONS

- a) Service Fee payable to the Service Provider is as per clause 9 (Payment Terms) of Section 2 of the RFP subject to the following:
- b) The Service Fee will be exclusive of GST as applicable in India. The GST shall be marked up in the invoice for Service Fee on actual basis and shall be borne and paid by Client to the Service Provider. The responsibility to pay such taxes to the applicable authorities will be that of the Service Provider. The Service Provider shall ensure timely deposit of GST amount as well as filing of GST returns with the applicable authorities such that the Client is able to avail inputs credit on such GST amount. The Service Provider shall ensure to make timely payments and file timely returns with the applicable authorities such that Client can avail input tax credit of the same. In case of any non-compliance or default by Service Provider with respect to same, then Client is entitled to recover and / or adjust any such tax, expenses, cost, loss, levy, penalty, interest etc. incurred by Client from the Service Provider or Service Fee payable to the Service Provider under this Agreement or otherwise.
- c) The Service Fee payable hereunder shall be paid subject to deduction of income tax at source / withholding taxes, levies or other deductions at the applicable rates.
- d) Payment terms and conditions:-
1. Submission and Payment of Invoices. The Service Provider shall submit invoice for performance of the Services and Deliverables as per this Annexure 4. Invoices shall be submitted to the designated contact of the Client. Invoices must include a description of tasks performed, deliverables delivered and hours spent performing such tasks broken down by dates, as applicable.
 2. Subject to (i) satisfactory performance of the Services and/ or Deliverables and/ or (ii) the terms of this Agreement, invoices will be paid within [thirty (30)] days after receipt of such invoices.
 3. Any eligible pre-approved out of pocket expenses (including travel expenses) incurred by the Service Provider for the performance of the Services and/ or Deliverables will be reimbursable within [thirty (30)] days after receipt of debit note. Such debit note for out of pocket expenses shall be supported by receipts, tickets (or other evidence verifying such expense to the reasonable satisfaction of Client) and in the case of a dispute concerning any expense the decision of Client shall be final and binding.

Annexure 5

Data Protection Obligations

The Service Provider warrants that:

1. It will implement, before providing the Services and Deliverables, such technical and organisational security measures as from time to time required under the Data Protection Rules or applicable laws and shall thereafter maintain the same.
2. It will process the Data only to the extent, and in such a manner, as is necessary for the purposes of provision of the Services and Deliverables; and in compliance with the Data Protection Rules or as is required by any applicable law or by any regulatory body.
3. It shall maintain technical and organisational security measures against the unauthorised or unlawful access, use or processing of Data and against the accidental loss or destruction of, or damage to, Data as may be required, to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful access, use or processing, or loss, destruction or damage and the nature of the Data to be protected; and, where relevant, in accordance with such additional technical and organisational security provisions as from time to time be required under the Rules and any applicable law.
4. It shall not do any of the following without the Client's prior specific written authorisation:
 - i. retain or process the Data for longer than is necessary to carry out the purposes of this Agreement or as may be required by the Data Protection Rules or any other applicable data protection legislation;
 - ii. use the Data for any other purposes other than the purposes of this Agreement;
5. Other than as required/ permitted under the Data Protection Rules, the Service Provider will not disclose, transfer, or allow access to Data to any third party whatsoever.
6. If so required by Client, the Service Provider will provide Client with evidence of compliance with the Data Protection Rules or such other applicable data protection legislation regarding the purpose or usage as provided in the Data Protection Rules or other applicable data protection legislation.
7. It shall notify Client immediately if it becomes aware of, or reasonably suspects the occurrence of, any unauthorised or unlawful access, processing, misuse of, loss of, damage to, corruption or destruction of any of the Data. Where such occurrence is as a direct result of breach of any provision contained in this Agreement the Service Provider will restore such Data at its own expense should any such event occur to the Data or the Data becomes unusable.
8. If the Service Provider wishes to engage any agent and/or contractor to perform any of the Services, the Service Provider must seek prior written approval from the Client. Such approval may be withheld for any reason by Client. If approval is granted, it may be subject to a condition that Service Provider's agreement with the agent and/or contractor contains equivalent provisions as those set out in this Annexure or any such additional requirements as required under the Data Protection Rules and any applicable laws.
9. It will ensure that if it receives any complaint, notice or communication which relates directly or indirectly to the access, use or processing of the Data or to Service Provider's compliance with the Data Protection Rules in the provision of the Services and Deliverables, Service Provider will

immediately notify Client and Service Provider will provide Client with full co-operation and assistance in relation to any such complaint, notice or communication.

10. It will ensure that access to the Data is limited to those Personnel who absolutely need access to the Data to meet Service Provider's obligations under this Agreement and that they are informed of the confidential nature of the Data and their continuing obligation to treat the Data as confidential. The Service Provider shall ensure that any of its Personnel involved in providing the Services and/or Deliverables are bound by an undertaking in substantially the same terms as contained herein. This obligation shall survive termination or expiry of this Agreement for any reason.

11. That on the termination or expiry of the Agreement, the Service Provider shall, at the discretion of Client return all Data or shall destroy all the Data and certify to Client that Service Provider has done so.

12. It shall provide access to Client or any supervisory authority to audit its processes and systems as it may reasonably need, to ensure itself of the Service Provider's compliance with these data protection provisions, or to investigate in the event of a breach.

13. It shall indemnify the Client against any loss or damage suffered by Client in relation to any breach by Service Provider of the warranties set out in this Annexure.

For purposes of the Agreement and this Annexure, 'Data' means any and all information relating to identified or identifiable natural persons.

Annexure 6

SUCCESSION PLAN

Annexure 7

AUDIT, ACCESS AND REPORTING

1. Purpose

This Annexure details the audit, access and reporting rights of the Client and respective obligations of Service Provider under the Agreement.

2. Audit Notice and Timing

- a) 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. Such time table may be reviewed every 3 months on the sole discretion of Client. During the Term, the Client or Client's nominated agencies shall conduct routine audits in accordance with such agreed timetable and shall not be required to give Service Provider any further notice of carrying out such audits.
- b) The Client, may conduct non-timetabled (ad hoc) audits at its 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 Service Provider provided that the requirement for such an audit is notified in writing to Service Provider a reasonable period of 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.
- c) The frequency of audits which shall be six (6) monthly provided always that the Client or its nominated agency or its authorized representative shall endeavour to conduct such audits with the lowest levels of inconvenience and disturbance as practicable being caused to Service Provider. Any such audit shall be conducted by with adequate notice of 2 weeks to the Service Provider. The Client or its nominated agency or its authorized representative shall abide by the confidentiality obligations equivalent to as that stated under this Agreement.
- d) The audit and access rights contained shall survive the termination or expiration of the Agreement for a period of twenty-four (24) months.

3. Access

Service Provider shall, provide to the Client or its nominated agencies, or its or their authorised representatives, reasonable access to employees, subcontractors, suppliers, third party facilities (subject to their reasonable consent), including leased premises, data centers, documents, records (shall always mean to exclude any internal costing records) and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The Client or its nominated agencies during the Project shall have the right to copy and retain copies of any relevant records excluding data for personal and sensitive information related to Service Provider. Service Provider shall make every reasonable effort to co-operate with them in effecting the Audit.

4. Audit Rights

The Client shall have the right to audit and inspect suppliers, agents, third party facilities (subject to their reasonable consent), including leased premises, data centers, documents, records, procedures and systems relating to the Project, but only to the extent that they relate to these, as shall be reasonably necessary to verify:

- a) The security, integrity and confidentiality availability of all the Client Data processed, held or

conveyed by Service Provider on behalf of the Client or its nominated agencies and its Users and Documentation related thereto,

- b) The actual level of performance of the services is the same as specified in the Service Level Agreement in the RFP.
- c) Security audit and implementation audit of the system shall be done once each year the cost of which shall be borne by Service Provider
- d) That Service Provider has complied with the relevant technical standards and has adequate internal controls in place; and
- e) the compliance of Service Provider with any other obligation under the Agreement.

5. Audit Rights of Sub-Contractors, Suppliers and Agents

- a) Service Provider shall use reasonable endeavours to achieve for itself as well as for Client the same audit and access provisions as defined in this Annexure with sub- contractors, suppliers and agents who supply labour, services, equipment or materials in respect of the Services and/ or Deliverables. Service Provider shall inform the Client prior to concluding any sub-Contract or supply agreement of any failure to achieve the same rights of audit and/or access.
- b) Reporting: Service Provider will provide reports to the Client regarding any specific aspects of the Project and in context of the audit and access information as required by the Client.

6. Action and Review

- a) Any change or amendment to the systems and procedures of 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.
- b) Any discrepancies identified by any audit pursuant to this Annexure shall be immediately notified to the Client who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the Agreement.

7. Terms of payment

The Service Provider shall bear the cost of any audits and inspections.

8. Records and Information

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

Annexure 8

Exit Management Plan