

Revised Request for Proposal **Vol. III Master Service Agreement**

For
Selection of Service Operators in three Zones to
Operate, Maintain and Manage 51200 Sewa
Kendras in Punjab
(REFERENCE NO. PSEGS/SEWA KENDRAS/2018)



PUNJAB STATE e-GOVERNANCE SOCIETY

Department of Governance Reforms

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AprilMay, 2018

~~*This is Draft Master Service Agreement (MSA). Changes will be incorporated based upon any corrigendum, Clarifications, etc.*~~

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**Master Service Agreement
for
Selection of Service
Operator to Operate,
Maintain and Manage Sewa
Kendras
In the State of Punjab for Zone
No. _____
(RFP Reference No.
PSeGS/UCSDC/2018)
between
Punjab State e-Governance
Society
&
<<Selected Service Operator>>**

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MASTER SERVICES AGREEMENT
MASTER SERVICES AGREEMENT [Note to Draft: Where a successful bidder has won more than one zone, the Authority shall have the option to permit a single SPV to sign separate contracts for each such zone awarded to the successful bidder]

This Master Service Agreement ("Agreement") is made on this the _____ day of <<Month>>, 2018 at Mohali, India.

Between

Punjab State e-Governance Society (PSeGS) having its office at Plot No. D-241, Phase 8B, Industrial Area, Sector 74, Mohali , **Punjab, India** hereinafter referred to as Punjab State e- Governance Society (hereinafter called the "**Authority**", which expression shall, unless the context otherwise requires, include its permitted successors and assigns **OF THE ONE PART**

AND

<<**Name of SPV**>> a company incorporated under the Companies Act, 1956/Companies Act, 2013, having its registered office at <<Address of SPV>> represented by its duly authorized signatory <<Name and Designation>> (hereinafter referred to as the "**Service Operator**" which expression shall, unless the context otherwise requires, include its successors and permitted assigns **OF THE OTHER PART**

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

WHEREAS:

1. Punjab State e-Governance Society is desirous to operate, maintain and manage Sewa Kendras on revenue sharing model.
2. In furtherance of the same, the Authority undertook the bidding process for selection of Service Operator through a competitive bidding process for implementing the Project and had issued Request for Proposal (RFP) dated 14.04.2018.
3. Pursuant to the bidding process in terms of the RFP, the Service Operator has been selected as the Successful Bidder and Letter of Award vide reference no. <<Letter Reference No.>> dated <<DD.MM.YYYY>> to <<**Name of Service Operator**>> had been issued by the Authority to undertake the Project.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and

sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including the definitions and the interpretation) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in ~~the~~ Schedule I of this Agreement.

1.2 Interpretation

1.2.1 In this Agreement, unless otherwise specified or repugnant to the context:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of Punjab, laws of India or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of Punjab and India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;
- (f) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation, equipping, installation and other activities incidental thereto, and "**develop**" shall be construed accordingly;

- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday) on which banks in Punjab are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (k) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;
- (n) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (o) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction to which such person belongs or is incorporated or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (p) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, [license](#) or document of any description shall be construed as reference to that agreement, deed, instrument, [license](#) or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (q) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- (r) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (s) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles,

Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and

- (t) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty ("**Damages**"). If, for any reason, any provisions regarding the payment of Damages are held to be void, invalid or otherwise inoperative and so as to disentitle either Party from claiming Damages, then such Party will be entitled to claim against the other Party for general damages for the relevant default.
- (u) any reference to the terms "other", "otherwise" and like terms shall not be construed ejusdem generis;
- (v) "**tax**" shall be construed so as to include all direct and indirect taxes, cess, duties, levies, withholdings as may be required under the Applicable Laws;

1.2.2 Unless expressly provided otherwise in this Agreement, any document required to be provided or furnished by the Service Operator to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such document with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and for these purposes, the General Clauses Act, 1897 shall not apply.

1.2.5 Parties shall duly comply with all their obligations and responsibilities provided under this Contract using due care and diligence in a professional manner, using sound project management and supervisory principles/procedures and in accordance with Good Industry Practice. Further, the meaning of any technical term not defined in this Agreement can be construed in accordance to the Good Industry Practice. For the purpose of this clause and the Agreement, "Good Industry Practice" shall mean standards, methods, techniques and procedures that are employed by leading domestic and international contractors, while executing project being similar to the Project.

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to 4 (four) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

1.4 Ambiguities within Agreement

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

- I. as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- II. as between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail; and
- III. as between any value written in numerals and that in words, the value in words shall prevail.

1.5 Priority of documents, Clauses and Schedules

1.5.1 Priority of documents

This Agreement, including its Schedules, Annexures and Appendixes, thereof represents the entire agreement between the Parties. 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 the Agreement, then such documents shall be relied upon and interpreted in the following descending order of priority:

- I. This Master Services Agreement along with the Schedules and Annexures;
- II. Letter of approval issued by the Authority to the Service Operator (LOA)
- III. Request for Proposal and Addendum/Corrigendum to the Request for Proposal.
- IV. Letter of acceptance by the Service Operator; and
- V. Bid submitted by the Service Operator.

[Each of the foregoing shall be deemed to form a part of this Agreement.](#)

1.5.2 Priority of Clauses and Schedules

- (i) This Agreement, including its Schedules, Annexures and Appendixes and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement.
- (ii) Subject to the provisions of Clause 1.5.2(i), in case of ambiguities or discrepancies within this Agreement, the following shall apply:
 - (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (c) between any two Schedules, the Schedule relevant to the issue shall prevail; and
 - (d) between any value written in numerals and that in words,

the latter shall prevail.

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ARTICLE 2 - SCOPE OF THE PROJECT & OBLIGATIONS

2.1 Scope of the Project

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the Term of this Agreement:

- (a) operation and maintenance and management of work of the Project being accordance with the provisions of this Agreement and as per the Schedule II to this Agreement;
- ~~(b) the operator shall operate and maintain and manage of the Project in accordance with the provisions of this Agreement;~~
- ~~(c)~~(b) Performance and fulfillment of all other obligations of the Service Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Service Operator under this Agreement.

2.2 Service Operator

The Service Operator shall observe and perform all the Services as set out in the Annexure B of this Agreement. In addition to other consequences stipulated in this Agreement, in case of non-compliance of the Services, the Service Operator shall also be liable for payment of the liquidated damages as stated in this Agreement.

ARTICLE 3- GRANT OF RIGHTS

3.1 The Grant of Rights

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Service Operator the exclusive right, license and authority to operate, maintain and manage the Sewa Kendras located in Zone No. <<Number>> during the Term in accordance with the terms of this Agreement and subject to Applicable Laws.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the rights hereby granted for the Term, shall oblige or entitle (as the case may be) the Service Operator to:
- (a) operate, maintain and manage, the Sewa Kendras (including its assets) as per the terms of the Scope of Work;
 - (b) perform and fulfill all of the Service Operator's obligations under and in accordance with this Agreement; and
 - (c) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Service Operator under this Agreement.

3.2 Conditions Precedent to the Appointed Date

- 3.2.1 Save and except as provided in Articles 1, 3.7, 4, 5, 10, 11 and 15 and related Schedules or unless the context otherwise requires, the respective rights and obligations of the Parties under this Contract shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 3.2 (the "**Conditions Precedent**"), save and except to the extent of waiver partially or fully, if any, that the Authority may grant in accordance with the provisions of Clauses 3.2.2.

3.2.2 Conditions Precedent to the Service Operator

- (i) The Service Operator shall within [15 (fifteen) days] from the date of this Agreement fulfill the Conditions Precedent:
 - ~~(a) extend the validity of the EMD to ensure timely submission to the Authority the Performance Bank Guarantee and Associate guarantees;~~
 - ~~(b)~~(a) _____ is required to be submitted before the execution
 - ~~(c)~~(b) _____ to provide the Authority certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Service Operator; and
 - ~~(d)~~(c) _____ Submit to the Authority the Legal Opinion of the legal counsel of the Service Operator, in a form satisfactory to the Authority, with respect to authority of the Service Operator to enter in to this Agreement and enforceability of the provisions thereof.

(ii) **Extension of the fulfillment of the Conditions Precedent**

- a. Provided that upon request in writing by the Service Operator, the Authority or its nominee may, in its discretion, waive any or all of the Conditions Precedent set forth in this Clause 3.2.2 or grant extension of time for fulfillment thereof, as the case may be. For the avoidance of doubt, the Authority may in its sole discretion grant any waiver hereunder with such conditions as it may deem fit. However, such waiver/extension of time for fulfillment of the Conditions Precedent shall be subject to imposition of damages as stated in Clause 3.2.5 below on the Service Operator linked to the delay in fulfillment in Conditions Precedent.
- b. In the event that this Agreement fails to come into effect on account of non-fulfillment of the Service Operator's Conditions Precedent, the Authority shall not be liable in any manner whatsoever to the Service Operator and the Authority shall forthwith forfeit the EMD and/or Performance Bank Guarantee and claim the amounts thereof.
- c. In the event that possession of any of the Authority facilities/ ~~s~~Sewa ~~k~~Kendras have been delivered to the Service Operator prior to the fulfillment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to the Authority, free and clear from any Encumbrances or claims.

3.2.3 Conditions Precedent of the Authority

Subject to the Service Operator fulfilling all its Conditions Precedent as specified in Clause 3.2.2 (other than any Condition Precedent that has been waived by the Authority), the Authority shall, within a period of 45 (forty five) days from the date of the notice from the Service Operator notifying fulfillment of its Conditions Precedent, fulfill the following Conditions Precedent:

- i) Handing over of all Sewa Kendras/Sites located in Zone no. <<Number>> as per details attached in Annexure F;
- ii) Obtaining of necessary clearances as listed in Schedule IX; and
- iii) Approval of the Project by a competent authority (if required and applicable).

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

3.2.4 Appointed Date

The date on which the Authority fulfills its Conditions Precedent in accordance with Clause 3.2.3 shall be the "**Appointed Date**".

For the avoidance of doubt, the Authority may complete the handing over of the Sewa Kendras/Site or fulfill its other obligations under Clause 3.2.3 in a staggered manner, in which case the Appointed Date shall

be the date on which all of the Conditions Precedent has been fulfilled or waived.

3.2.5 Damages for Delay by the Service Operator

In the event that: (i) the Service Operator does not procure fulfillment or waiver of any or all of its Conditions Precedent set forth in Clause 3.2.2 within the period specified in respect thereof; and (ii) the delay has not occurred due to Force Majeure, the Service Operator shall pay to the Authority ~~damages calculated~~ at the rate of [Rs. 10,000 (Rupees ten thousand)] as a reasonable pre-estimate of Damages for each day's delay until the fulfillment or waiver of all Conditions Precedent, subject to a maximum of [Rs. 12,00,000 (Rupees twelve lakh)].

3.3 Termination upon delay

Without prejudice to the provisions of Clause 3.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason other than breach by the Party seeking termination or Force Majeure, within 180 days from the date of this Agreement, then the Party who is entitled to have the Conditions Precedent set out in Clause 3.2 satisfied shall be entitled to terminate this Agreement forthwith by issuing a written notice to the other Party for that other Party's failure. Upon such termination, all rights, privileges, claims and entitlements of the Parties under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Parties.

Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Service Operator, the Performance Security of the Service Operator or the Bid Security of the ~~Service Operator~~ shall be encashed and appropriated by the Authority as damages thereof in accordance with Clause 8.3 (in addition to the liquidation damages payable under Clause 3.2.5 above).

3.4 Term

3.4.1 This Agreement shall be in full force and effect for a period commencing on the Appointed Date and shall continue to be in effect, unless extended or terminated earlier in accordance with the terms of this Agreement, until the expiration of [61.5 months] commencing from the Appointed Date ("**Term**").

3.4.2 If the Authority is satisfied, on or before the expiration of Term, that the Service Operator shall have discharged its obligations in compliance with this Agreement, the Term shall be extended by Authority at its sole discretion for an additional term of [1 years] on the terms and conditions set out herein (other than the right of extension under this Clause 3.4.2) before expiration of this Agreement. For the avoidance of doubt, on such extension, Term shall include such extended period of [1 years].

3.5 Change in Control

- i. In the event of any proposed change in Control of the Service Operator during the Term, the Service Operator shall promptly notify the Authority of the same in the format set out [as in Schedule III](#) of this Agreement. Notwithstanding anything contrary provided in this Agreement, any change in Control of the Service Operator shall only occur after prior written permission of the Authority.
- ii. In the event that the net worth of the surviving/changed [Controlling](#) entity is less than that [of the previous Controlling entity](#) of Service Operator prior to the change in Control, the Service Operator shall within 30 (thirty) days of such change in Control, in addition to the existing Performance Bank Guarantee furnished by the Service Operator, furnish an additional performance guarantee (in the same format as Performance Bank Guarantee) from a guarantor acceptable to the Authority (which shall not be [the Controlling entity of the](#) Service Operator).
- iii. If such a guarantee is not furnished within 30 (thirty) days and time to furnish such additional performance guarantee is not extended by the Authority in **writing**, the Authority may exercise its right to terminate this Agreement by providing a 30 (thirty) days written notice, which shall be effective from the date of such notice.
- iv. Pursuant to termination, the effects of termination as set out in **Clause 11.2** of this Agreement shall follow.

For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Service Operator shall not be deemed an event of a change in Control for purposes of this Clause. However, for purpose of the foregoing, change in Control shall include (i) person(s) in Control, ceasing to be in Control; and (ii) a third party acquiring/gaining Control.

3.6 Performance Bank Guarantee

A. Submission of Performance Bank Guarantee

- (i) The Service Operator shall submit to the Authority on or before the date of execution of this Agreement, an irrevocable, unconditional and on-demand bank guarantee from a Scheduled Bank for a sum of Rs. 10,00,00,000 (Rupees Ten crores only)- that is payable or confirmed for payment in Chandigarh, Punjab in the form set forth in Schedule VIII (the "**Performance Bank Guarantee**"), to secure the due performance of the Service Operator's obligations and the discharge of the Service Operator's liabilities under this Agreement, whether during or after the Term.
- (ii) Until such time that the Performance Bank Guarantee is submitted by the Service Operator, the Service Operator shall ensure that the EMD submitted by the Service Operator shall remain in full force and effect.
- (iii) If the validity of the EMD is scheduled to expire prior to submission of Performance Security and the validity of the EMD is not extended or if the EMD is not replaced by the Service Operator at

least 15 (fifteen) days prior to such scheduled expiry date, the Authority shall be entitled to forfeit and appropriate the total amount of the EMD as Damages and terminate the Agreement in accordance with Clause 3.3.

- (iv) Upon submission of the Performance Bank Guarantee in accordance with Clause 3.6 A (i), the Authority shall release the EMD to the Service Operator.
- (v) Notwithstanding anything to the contrary contained in this Agreement, if the Performance Bank Guarantee is not submitted by the Service Operator within a period of 21 days from the date of this Agreement, the Authority may encash the EMD and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Service Operator under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Service Operator. Further, the Authority shall be entitled to terminate this Agreement in accordance with Article 11.

B. Validity of Performance Bank Guarantee

- (i) The Performance Bank Guarantee shall remain in full force and effect from the date of its issuance until the expiration of sixty (60) days following the Transfer Date.
- (ii) If the Performance Bank Guarantee is scheduled to expire prior to the period specified in Clause 3.6 (B) (i), then, no less than sixty (60) days prior to the scheduled expiry of the Performance Bank Guarantee, the Service Operator shall arrange for an extension or replacement of the Performance Bank Guarantee meeting the requirements of this Agreement. If the Service Operator fails to extend or replace the Performance Bank Guarantee within the specified time period, the Authority shall be entitled to encash and appropriate the full value of the Performance Security as Damages and to terminate this Agreement in accordance with Article 11.

C. Appropriation of Performance Bank Guarantee

- (i) Upon occurrence of a Service ~~Operator~~^{Operator's} Material Breach or failure by the Service Operator to pay any amount due or to discharge any liability to the Authority in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Bank Guarantee as Damages.
- (ii) Upon such encashment and appropriation from the Performance Bank Guarantee, the Service Operator shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the Performance Bank Guarantee, and in case of appropriation of the entire

Performance Bank Guarantee provide a fresh Performance Bank Guarantee, as the case may be, and the Service Operator shall, within the time so granted, replenish or furnish fresh Performance Bank Guarantee as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with [Article 11](#). Provided that upon failure of the Service Operator to replenish the Performance Bank Guarantee in case of partial appropriation, the Authority shall also be entitled to encash and appropriate the remaining value of the Performance Bank Guarantee.

- (iii) Upon replenishment of the Performance Bank Guarantee, whether by renewal or replacement, the Service Operator shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Service Operator's Material Breach or other failure that resulted in the encashment and appropriation of the Performance Bank Guarantee. If the Service Operator fails to cure the Service Operator' Material Breach or other failure within such 30 (thirty) day period, the Authority shall be entitled to encash and appropriate the full value of the Performance Bank Guarantee as Damages, and to terminate this Agreement in accordance with Article 11.

3.7 Operational Readiness and Acceptance

- (i) The Project shall be governed by the mechanism of operational readiness to be put into place by Service Operator in terms criteria set out in [Schedule I](#) of this Agreement ("**Operational Readiness**") within the period of 30 (thirty) days from the date of possession of the Sewa Kendra after approval from the Authority. Upon the Operational Readiness of the Project in terms of the Schedule I and to the satisfaction of the Authority, the Authority shall issue an operational readiness certificate ("**Operational Readiness Certificate**").
- (ii) **Damage for delay**

If the Service Operator fails to complete the Operational Readiness in terms of Clause 3.7 (i) before the [30th] day, unless the delay is on account of the reason solely attributable to the Authority or due to the Force Majeure, the Service Operator shall pay damages to the Authority as defined in [Annexure B](#).

If the Service Operator fails to complete the Operational Readiness within [30 days] of the Appointed Date for any reason whatsoever, Notwithstanding anything contrary contained in this Agreement, this Agreement shall be deemed to have been terminated by mutual consent of the Parties. Upon such termination, all rights, privileges, claims and entitlements of the Parties under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Parties. Upon termination, the Authority shall be entitled to

encash the Performance Bank Guarantee and appropriate the proceeds thereof as Damages; provided, however, that if Operational Readiness is not completed for the reasons solely attributable to the Authority or due to the Force Majeure, it shall, upon termination, return the Performance Bank Guarantee to the Service Operator forthwith.

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ARTICLE 4- REPRESENTATIONS AND WARRANTIES

4. Representations and Warranties

4.1 Representations and warranties of the Service Operator

The Service Operator represents and warrants to the Authority that:

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

- Agreement;
- xi. it has complied with applicable laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under the Agreement;
 - xii. no representation or warranty by it contained herein or in any other document furnished by it to Authority in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
 - xiii. no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into the Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.

4.2 Representations and warranties of the Authority

The Authority represent and warrant to the Service Operator that:

- i. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein ~~and that it has taken all actions necessary to execute the Agreement, exercise its rights and perform its obligations, under the Agreement and carry out the transactions contemplated hereby;~~
- ~~ii. it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of the Agreement and to validly exercise its rights and perform its obligations under the Agreement;~~
- ~~iii. it has the financial standing and capacity to perform its obligations under the Agreement;~~
- ~~iv. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of the Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;~~
- ~~v. ii.~~ the Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under the Agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;
- ~~vi. the execution, delivery and performance of the Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;~~
- ~~vii. there are no actions, suits or proceedings 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 default or breach/ Material~~

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

- ~~viii. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on the Authority ability to perform its obligations under the 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;~~
- ~~ix. it has complied with Applicable Laws in all material respects;~~
- ~~x. all information provided by it in the RFP Document in connection with the Project is, to the best of its knowledge, true and accurate in all material respects; and~~
- ~~xi. upon the Service Operator performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Service Operator, in accordance with the Agreement.~~

iii. Agreement.

4.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 5 - ACKNOWLEDGEMENT

5.1 Acknowledgement

The Service Operator acknowledges that prior to the execution of this Agreement, Service operator has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, this Agreement, the Scope of the Project and the services to be delivered, the condition of the existing Assets and existing structures, local conditions, physical ~~qualities of assets on the~~ ground, availability of power, water and other utilities, availability of human resources, Applicable Laws and Applicable Permits and all information provided by the Authority or obtained procured or gathered otherwise and has made its own assessment as to all relevant factors for undertaking the Project and quoting the service fee for the Project. The Service Operator is deemed to have knowledge of and to be satisfied with all such findings, information and assessments. The PSeGS has not made any actual or implied warranty regarding the suitability or quality of the equipment or other Assets, the Sewa Kendra's or anything contained therein.

5.2 The ~~<<Service Operator>> and consequently, the Service Operator~~ have has determined to their satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards that are likely to arise or that may be faced by the Service Operator in the course of performance of Services hereunder.

Without prejudice to the foregoing, the Service Operator acknowledges and confirms that any failure of the Selected Bidder/the Consortium or its own failure to: (a) acquaint itself with any Government Instrumentality or exiting facilities or exiting sites or such information; or (b) its failure to make a reasonable assessment as to the costs or other matters; or (c) identify any defect or deficiency in the design, construction, installation or maintenance of the department and offices or the existing equipment, facilities and Assets, shall not relieve the Service Operator from its responsibility for properly estimating the difficulty or cost of successfully performing its Services under the Agreement.

The Service Operator shall keep harmless and indemnify the Authority against all losses, liabilities, damages, costs, expenses, actions, claims, proceedings incurred by or made against the Authority as a result of any adverse conditions or defects or environmental damage at or affecting the Project or the existing Assets (whether pre-existing or caused by or arising from the use of the Project). Such indemnity shall cover all consequential, indirect or extraordinary damages.

5.3 The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any statement or information provided by it or

any assessment or assumption made by the <<Service Operator>> and the Service Operator and the Service Operator confirms that it shall have no claim whatsoever against the Authority in this regard.

5.4 The Service Operator acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby acknowledges and agrees that the Authority shall not be liable or responsible to the Service Operator, or any of their Associate or any person claiming through or under any of them for the same in any manner whatsoever, whether in contract, tort, for breach of statutory duty or otherwise arising.

~~The Parties agree that any mistake or error in or relating to any of the matters set forth above shall not vitiate this Agreement, or render it voidable.~~

5.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Service Operator and the Authority shall not be liable in any manner for such risks or the consequences thereof.

5.6 The Service Operator shall not dispose of the Assets of the Sewa Kendra's and shall at all times deal with the Assets and/or Services in a manner that is consistent with the terms of this Agreement.

ARTICLE 6 - OPERATION OF THE PROJECT

6.1 Obligations of the Authority or its Nominated Agencies

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

- (i) To provide support, to the extent reasonably possible, through personnel to test the system during the Term;
- (ii) To authorize the Service Operator to interact for implementation of the Project with external entities such as the participating departments, state treasury, authorized banks, trademark database etc.

6.2 Obligations of the Service Operator

- (i) It shall provide to the Authority, the Deliverables and Services as set out in the RFP and [Annexure B](#) of this Agreement.
- (ii) It shall perform the Services as set out in the RFP and [Annexure B](#) of this Agreement ~~and~~ in a good and workman like manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, and so as to comply with the applicable Services set out with the Agreement.
- (iii) It shall ensure that the Services are being provided as per the Project Timelines & guidelines set out as [Annexure C](#) to this Agreement.
- (iv) Notwithstanding anything contained in this Agreement, Request for Proposal, Bid or any other documents, or any consent granted by the Authority, the Service Operator agrees and undertakes that at all times, during the term of this Agreement, it shall render the Services, operate the Assets, perform its duties and obligations under this Agreement and undertake all other actions in relation to the Sewa Kendra's in accordance with all Applicable Laws.

6.3 Approvals and Required Consents

- (i) The Service Operator shall procure, maintain and observe all relevant and regulatory and governmental licenses, clearances and applicable approvals; (hereinafter the "Required Consents"), other than the clearances listed in [Schedule IX](#) ~~(hereinafter the "Required Consents")~~ necessary for the Service Operator to fulfill its obligation and provide the Services as per the Scope of Work. The costs of Required Consents shall be borne by the Service Operator. It is understood that the clearances identified in Schedule IX shall be obtained and maintained by the Authority, however the Service Operator shall not do, or permit any acts that would have the effect of placing the Authority in

breach of such clearances.

- (ii) Each Party shall, to the extent reasonably possible, co-operate with the other Party in procuring, maintaining and observing the consents/licenses required to be obtained by it under this Agreement. Further, in the event, any Required Consent has to be obtained in the name of the Authority, the Service hereby agrees to provide all support to the Authority in procuring the said Required Consent, including by way of preparing the supporting documentation and applications, filing and following up the with relevant Governmental Instrumentality, or as maybe otherwise as required for obtaining the Required Consent.

6.4 Use of Assets by the Service Operator

- (i) During the Term the Service Operator shall:
 - a. take all reasonable and proper care of the entire assets, present and future including but not limited to civil infrastructure, furniture, fixtures, gadgets, hardware (IT and Non-IT) and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the Service Operator exclusively in terms of ensuring their usability for the delivery of the Services as per the Agreement (hereinafter the "**Assets**") in proportion to their use and control of such Assets; and
 - b. Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Service Operator 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 Operator will be followed by the Service Operator 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 and notified to the Service Operator or as may, in the reasonable opinion of the Service Operator, be necessary to use the Assets in a safe manner;
 - e. ensure that the Assets that are under the control of the Service Operator, are kept suitably housed and in conformity with Applicable Law;
 - f. procure permission from the Authority 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.
 - h. Obtain and maintain all applicable permits, consents, authorizations, licenses, etc. as may be required to perform its obligations under this Agreement.
- (ii) Access to the Authority locations/Existing Facilities

- i. For so long as the Service Operator provides services in terms of this Agreement, on a non-permanent basis and to the extent necessary, the Authority shall, subject to compliance by the Service Operator with any safety and security guidelines which may be provided by the Authority and notified to the Service Operator in writing, provide the Service Operator with:
 - a. reasonable access to its employees, in each subject to the consent of the Authority (as determined in its sole discretion);
 - b. Access to locations, office equipment's and services shall be made available to the Service Operator on an "as is, where is" basis by the Authority, in each case where expressly such access is contemplated or specified under this Agreement. The Service Operator agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in the Agreement for the following purposes:
 - i. for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character or for any other illegal purpose
 - ii. in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality) or violation of any applicable laws.

ARTICLE 7 - OPERATION OF THE PROJECT

7.1 Governance

The review and management process of this Agreement shall be carried out in accordance with the Governance Schedule set out in [Schedule VI](#) of this Agreement and shall cover all the management aspects of the Project.

7.2 [Use/Provision](#) of Services

The [Authority/Service Operator](#) will undertake and [use/provide](#) the Services in accordance with any instructions or procedures as per the acceptance criteria as set out in this Agreement or any agreement that may be entered into between the Parties from time to time;

7.3 Changes

Unless expressly dealt with elsewhere in this Agreement, any changes under or to this Agreement in relation to the Scope of Work or otherwise shall be dealt with in accordance with the Change Control Schedule set out in Schedule III of this Agreement.

7.4 Security and Safety

- (i) The Service Operator shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act or Telegraph Act or any other applicable laws including the regulations issued by Dept. of Telecom (wherever applicable), IT Security Policy/Guidelines/Manual of the Authority as specifically stated in the Agreement and follow the industry standards related to safety and security (including those as stated in the RFP), insofar as it applies to the provision of the Services.
- (ii) Each Party to the Agreement shall also comply with the Authority or the Government of India, and Government of Punjab security standards and policies in force from time to time at each Sewa Kendras/facilities (under the Scope of Work). [Without prejudice to the generality of which the foregoing](#), the Authority [may](#) make the Service Operator aware in writing insofar [aswhere](#) the same apply to the provision of the Services.
- (iii) The Parties to Agreement shall as far as possible report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Authority, any of their nominees data, facilities or Confidential Information.
- (iv) The Service Operator shall participate in regular meetings when safety and information technology security matters are reviewed by the Authority.
- (v) As per the provisions of the Agreement, the Service Operator shall promptly report in writing to the Authority, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of the

Authority, as the case may be.

7.5 Cooperation

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

- i. does not require material expenditure by the Providing Party to provide the same;
- ii. is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement;
- iii. cannot be construed to be Confidential Information;
- iv. is capable of being reasonably provided by the Providing Party; and
- v. is necessary/required for discharging the Receiving Party's obligations under this Agreement.

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

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ARTICLE 8 - FINANCIAL MATTERS

8.1 Terms of Payment

- i. In consideration of the Services and subject to the provisions of this Agreement, revenue sharing arrangements would be—, in accordance with the Terms of Payment Schedule set out as [Schedule VII](#) of this Agreement.
- ii. All payments are subject to the application of liquidated damages as provided for in the [Annexure B](#) and subject to withholding of taxes as may be required under the Applicable Law, if any. For the avoidance of doubt, it is expressly clarified that the Authority will calculate the applicable liquidated damages and debit/ recover the same against the terms of payment as set out in Schedule VII of this Agreement as a result of the failure of the Service Operator to meet the Service requirement as set out in the [Annexure B](#).
- iii. Save and except as otherwise provided for herein or as agreed between the Parties in writing, the Authority shall not be required to make any payments in respect of the Services other than those covered in Schedule VII of this Agreement. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.

8.2 Revenue sharing and Settlement

~~Detail procedures/SOP to be mentioned here.~~

[Detail procedures/SOP shall be specified by the PSeGS prior to execution of the MSA, including procedures regarding operation of the SPV account into which all revenues from the Sewa Kendras will be deposited]

ARTICLE 9 - TAX

9.1 Tax

- i. The Authority shall be responsible for withholding/ recover taxes from the amounts due and payable to the Service Operator wherever applicable. The Service Operator shall pay for all other taxes in connection with this Agreement, Scope of Work and any other engagement required to be undertaken as a part of this Agreement, including statutory dues, but not limited to, property, sales, use, excise, value- added, goods and services, consumption and other similar taxes or duties as relevant.
- ii. The Authority shall provide Service Operator with the original tax receipt of any withholding/ recovered taxes paid by the Authority on payments under this Agreement. The Service Operator agrees to reimburse and hold the Authority harmless from any deficiency including liquidated damages and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among the Authority, the Service Operator and third party subcontractors.
- iii. If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by the Authority for providing the services i.e. any applicable tax from time to time, which increase or decreases the cost incurred by the Service Operator in performing the Services, then the remuneration and reimbursable expense otherwise payable to the Authority under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in [Schedule VII](#). However, in case of any new or fresh tax or levy imposed after submission of the proposal the Service Operator shall be entitled to reimbursement on submission of proof of payment of such tax or levy.
- iv. The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with the following:
 - a. any resale certificates;
 - b. any relevant information regarding out-of-state or use of materials, equipment or services; and
 - c. any direct pay permits, exemption certificates or information reasonably requested by the other Party, where available.
- v. For avoidance of doubt, ~~the foregoing shall not apply to any payment liability and obligation of~~ corporate or income taxes payable by the Service Operator, ~~payment liability/obligation of which~~ shall at all the times rest with the Service Operator.

ARTICLE 10 - FORCE MAJEURE

10.1 Definition of Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in Punjab of any or all Non-Political Events or occurrence in India of any or all Political Events, as defined in Clauses 10.2 and 10.3 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event

- i. is beyond the reasonable control of the Affected Party,
- ii. the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, *and*
- iii. has Adverse Effect on the Affected Party

10.2 Non-Political Events

- (i) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion not attributable to the Service Operator);
- (ii) strikes or boycotts (other than those involving the Service Operator, its **sub-contractor, vendors** or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting for the continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being a Political Event set forth in Clause 10.3;
- (iii) any failure or delay of a Service Operator but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Service Operator;
- (iv) any judgement or order of any court of competent jurisdiction or statutory authority made against the Service Operator in any proceedings for reasons other than (i) failure of the Service Operator to comply with any Applicable Law or Applicable Permits, or (ii) on account of breach of any Applicable Law or Applicable Permits or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (v) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (vi) any event or circumstance of a nature analogous to any of the

foregoing

10.3 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, revolution, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions stipulated in this Agreement;
- (c) expropriation or compulsory acquisition by the **Authority** or any of their nominated agencies of any material assets or rights of the Service Operator;
- (d) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any Applicable Permits required by the Service Operator to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Service Operator's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Applicable Permits;
- (e) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in a year;
- (f) any civil commotion, boycott or political agitation which prevents rendering of Services by the Service Operator for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (g) any requisition of the Project by any other authority;
- (h) any requisition of the Project by the **Authority** or any of the **nominated** agencies. For the avoidance of doubt, suspension of the Project in accordance with the provisions of this Agreement shall not be considered a requisition for the purposes of Force Majeure event; and
- (i) any event or circumstance of a nature analogous to any of the foregoing.

For the avoidance of doubt, it is expressly clarified that the failure on the part of the Service Operator under this Agreement to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking aren't the forces of nature and hence wouldn't be qualified under the definition of Force Majeure. In so far as applicable to the performance of Service Operator will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene,

best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).

10.4 Duty to report Force Majeure Event

- (i) Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other within [15 days] of occurrence of such Force Majeure Event. Any notice pursuant hereto shall include full particulars of:
 - (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 10 with evidence in support thereof;
 - (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Service Operator's performance of its obligations under this Agreement;
 - (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
 - (d) any other information relevant to the Affected Party's claim.
- (ii) The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other **Party** or its nominee of the occurrence of the Force Majeure Event and given particulars of the probable material effect that the Force Majeure Event as soon as reasonably practicable, and in any event no later than 15 (fifteen) days after the Affected **Party** knew, or ought reasonably to have known, of its occurrence.
- (iii) For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the **other Party** or its nominee with regular (and not less than weekly) reports containing information as required by **Clause 10.4 (i)**, and such other information as the other Party may reasonably request the Affected Party to provide.

10.5 Mitigation of Force Majeure Event

Upon occurrence of a Force Majeure Event, the **Affected Party** shall:

- (a) mitigate or minimize the effects of the Force Majeure Event to the extent reasonably practicable; and
- (b) take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of the Affected Party's failure to carry out its obligations under this Agreement.

10.6 Effect of Force Majeure Event

- (i) Upon the occurrence of any Force Majeure Event prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- (ii) Upon occurrence of a Force Majeure Event after the Effective Date, the costs incurred and attributable to such event and directly

relating to the Project ("**Force Majeure Costs**") shall be allocated and paid as follows:

- a. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, operation and maintenance expenses, any increase in the cost of the Services on account of inflation and all other costs directly attributable to the Force Majeure Event.
- b. upon occurrence of any other event of Force Majeure (i.e. a Political Event), all Force Majeure Costs attributable to such Other Event(s), shall be borne by the Service Operator.
- c. Save and except as expressly provided in this Clause, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof.
- d. Due to any occurrence of a Force Majeure Event after the Effective Date, taking into consideration its nature and impact, the Term of this **Agreement** shall be mutually discussed and decided by both the parties.

ARTICLE 11 - TERMINATION

11.1 Material Breach

- (i) In the event that either Party believes that the other Party is in Material Breach of its obligations under this Agreement, such aggrieved Party may terminate this Agreement upon giving 30 (thirty) days written notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, the Authority or Service Operator, as the case may be will have the option to terminate the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, ~~which could include the following events and the termination will become effective:~~
 - ~~a. If the Service Operator is not able to deliver the Services or fulfill its obligations as per the Agreement which translates into Material Breach, then the Authority may serve a 30 (thirty) days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the **Authority** will have the option to terminate this Agreement after affording a reasonable opportunity to the Service Operator to explain the circumstances leading to such a breach.~~
 - ~~b. If there is a Material Breach by the Authority as per the Agreement, then the Service Operator may serve a 30 (thirty)~~

~~days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the Service Operator will have the option to terminate this Agreement after affording a reasonable opportunity to the Authority to explain the circumstances leading to such a breach.~~

- (ii) Without prejudice to the generality of sub-clause (i) above, The Authority may by giving 30 days written notice, terminate this Agreement if a change in Control of the Service Operator has taken place and the Service Operator is in non-compliance of the provisions of Clause 3.5. For the purposes of this Clause, in the case of Service Operator, change in Control shall mean the events stated in Clause 3.5, and such notice shall become effective at the end of the notice period as set out in Clause 3.5 (iii).

11.2 Effects of termination

- i. In the event that the Authority terminates this Agreement pursuant to failure on the part of the Service Operator to comply with the terms and conditions as contained in this Clause, Performance Bank Guarantee and additional performance guarantee (if any) furnished by Service Operator shall be forfeited.
- ii. Upon any termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule IV of this Agreement.
- iii. The Authority agrees to pay Service Operator for i) all charges for Services Service Operator provides and any Deliverables, Services and/or system (or part thereof) Service Operator delivers up to termination, and ii) reimbursable expenses Service Operator incurs up to termination. For the avoidance of doubt it is clarified that the Authority will not be required to make any payments to the Service Operator in respect of the assets that are transferred by the Service Operator back to the Authority upon termination of this Agreement.

11.3 Termination of this Agreement due to bankruptcy of Service Operator

The Authority may serve written notice on Service Operator at any time to terminate this Agreement with immediate effect, in the event the Service Operator becomes voluntarily or involuntarily the subject of proceedings under any bankruptcy or insolvency law, or other law or procedure for the relief of financially distressed debtors, or is unable, or admits in writing its inability, to pay its debts as they mature, or takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any part of its assets and, in the event any act of the aforesaid character is involuntary, the consequences thereof are not cured within a period of 90 days.

11.4 Termination for Convenience

On the Launch of Sewa Kendras, PSeGS reserves the right to terminate, by prior written notice of minimum 180 days and maximum 12 months, the whole or part of the contract, at any time for its convenience. The notice of termination shall specify that termination is for PSeGS's

convenience, the extent to which performance of the work under the contract is terminated, and the date upon which such termination becomes effective. In such event, it will be incumbent on ~~service operator~~Service Operator to deliver services for the entire duration of notice period strictly as per the scope of work and terms and conditions of the contract. PSeGS would pay to the service operator eligible due payment for services performed till the last day of the notice period after approval of competent authority.

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ARTICLE 12 - INDEMNITY

Indemnification & Limitation of Liability

- 12.1 Subject to Clause 12.2 below, Service Operator (the "**Indemnifying Party**") undertakes to indemnify the Authority (the "**Indemnified Party**") from and against all direct and indirect losses or damages including on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to: (i) the Indemnifying Party's breach, default or non-compliance with the terms of this Agreement; (ii) any of the representations and warranties made by the Indemnifying Party being misleading, incorrect or false; (iii) any of breach of Applicable Law by the Indemnifying Party; and/or (iv) negligence or willful default in performance, or any non-performance under this Agreement by the Indemnifying Party. In case a third party claims against Indemnified Party in relation to any Service provided by the Indemnifying Party including on the ground that anythe Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, the Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against incurred or accrued by Indemnified Party. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by (a) Indemnified Party's misuse or modification of the Service; (b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party; (c) Indemnified Party's distribution, marketing or use other than for the benefit of third parties of the Service; or (d) information, direction, specification or materials provided by Indemnified Party or any third party contracted to it. If any Service is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either (i) procure the right for Indemnified Party to continue using it, (ii) replace it with a non-infringing equivalent, (iii) modify it to make it non-infringing.
- 12.2 The indemnities set out in Clause 12.1 shall be subject to the following conditions:
- i. the Indemnified Party as promptly as practicable, informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise, provided that any delay or failure to inform shall not be prejudice to the rights of the Indemnified Party;
 - ii. the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the defense of such claim including reasonable access to all relevant information, documentation and personnel, provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such defense;
 - iii. if the Indemnifying Party does not assume full control over the Defense of a claim as provided in this Clause and the Indemnified

- Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be recoverable from the Indemnifying Party;
- iv. the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
 - v. all settlements of claims subject to indemnification under this Clause will:
 - a. be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release of the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim;
 - b. and include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
 - vi. the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
 - vii. the Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;
 - viii. in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Clause, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates, provided that the foregoing shall not entitle the Indemnifying Party to make any claims (including any contributory claims) against any officers, employees or representative of the Authority; and
 - ix. if a Party makes a claim under the indemnity set out under Clause 12.1 above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages-) in respect of the same cause of action.

12.3 The liability of Service Operator (whether in contract, negligence, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event in the aggregate ~~exceed the Annual Net Project Value (to be calculated based on the Net Project Value as mentioned in Schedule VII of this Agreement).~~ of revenue earned by the Service Operator as of the date of the claim or INR 90 Crore (whichever is higher). The liability cap given under this Clause 12.3 shall not be applicable to:

- (i) Any indemnification of the Indemnified Party under Clause 12.1 for any (a) breach of Applicable Laws by the Indemnifying Party, (b) breach of any Intellectual Property Rights by the Indemnifying Party, AND (c) fraud, gross negligence or willful misconduct of the

Indemnifying Party; and
(ii) Breach of Clause 12.4 and 13.

12.4 In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, ~~loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) nor for any third party claims (other than those set forth in Clause 12.1)~~ even if it has been advised of their possible existence.

12.5 The allocations of liability in this Article 12 represent the agreed and bargained- for understanding of the parties and compensation for the Services reflects such allocations. ~~Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.~~

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ARTICLE 13 - CONFIDENTIALITY

- 13.1 The Authority shall allow the Service Operator to review and utilize highly confidential public records and the Service Operator shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- 13.2 Additionally, the Service Operator shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- 13.3 The Authority shall retain all rights to prevent, stop and if required take the necessary punitive action against the Service Operator regarding any forbidden disclosure.
- 13.4 The Service Operator shall execute individual non-disclosure agreements with all its employees, agents and sub-contractors with respect to this project and shall submit a declaration in writing to the Authority regarding the same. The Authority may ask Service Operator to share all or any of such non-disclosure agreement.
For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:
- a. information already available in the public domain;
 - b. information which has been developed independently by the Service Operator;
 - c. Information which has been received from a third party who had the right to disclose the aforesaid information. Other than the information received from the users/persons to whom Services have been provided by the Service Operator, which shall only be utilized by the Service Operator for the purposes of rendering Services and/or for other aspects as permitted by the Authority;
 - d. Information which has been disclosed to the public pursuant to a court order.
- 13.5 To the extent the Service Operator shares its confidential or proprietary information with the Authority for effective performance of the Services, the provisions of the Clause 13.1 to 13.3 shall apply mutatis mutandis on the Authority.
- 13.6 The business details and information of SPV will not be shared to any external entity and will be deemed to be covered under section 8(1)(d) of the RTI Act, 2005.

ARTICLE 14 - DISPUTE RESOLUTION

1. Governing Law and Dispute Resolution

- (i) This Agreement shall be governed by and construed in accordance with the laws of India.
- (ii) Any dispute arising out of or in connection with this Agreement shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as Schedule VI of this Agreement.
- (iii) In case the escalations do not help in resolution of the problem within 3 weeks of escalation, both the parties should agree on a mediator for communication between the two parties. The process of the mediation would be as follows:
 - a. Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.
 - b. The mediator shall use his best endeavors to conclude the mediation within a certain number of days of his appointment.
 - c. If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to experts for advising on the issue.
- (iv) In case the mediation does not help in resolution and it requires expertise to understand an issue, a neutral panel of 3 experts, agreeable to both parties should be constituted. The process of the expert advisory would be as follows:
 - a. Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the timeframe and requesting for expert advisory. This is to be sent with a copy to the mediator.
 - b. Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute.
 - c. The expert panel shall use his best endeavors to provide a neutral position on the issue.
 - d. If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.
- (v) Subject to the above clauses of Clause 14, any dispute or difference whatsoever arising between the parties to the Agreement out of or relating to the construction, meaning, scope, operation or effect of the Agreement or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the Arbitrator within a period of 45 days from the receipt of notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of Punjab & Haryana at Chandigarh, India, at the request of either of the party. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to

legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the (Indian) Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at Chandigarh, India. Any legal dispute will come under the sole jurisdiction of the courts at Chandigarh, India.

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ARTICLE 15 - MISCELLANEOUS

15.1 Audit, Access and Reporting

The Service Operator shall allow access to the Authority to all information which is in the possession or control of the Service Operator and which relates to the provision of the Services (and collection/depositing of statutory fees and facilitation charges by the Service Operator) as set out in the [Schedule – V](#) i.e. Audit, Access and Reporting Schedule and which is reasonably required by the Authority to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule VI of this Agreement.

15.2 Intellectual Property Rights

i. Products and fixes:

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

ii. Bespoke development:

Subject to the provisions of Clause 15.2 (iii) and 15.2 (iv) below, the IPR rights for any bespoke development of Punjab Sewa Portal done during the implementation of the project will lie with the Authority. Service Operator shall be entitled to a broad license back in the bespoke development for its internal usage ~~and other e-governance project for the Project.~~

iii. Pre-existing work:

All IPR (if created) including the source code and materials developed or otherwise obtained independently of the efforts of a Party under this Agreement ("~~pre~~**Pre-existing work**") including any enhancement or modification thereto shall remain the sole property of that party. During the performance of the services for this agreement, each party grants to the other party (and their sub-contractors as necessary) a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a Statement of Services, upon payment in full, the Service Operator should grant the Authority a non-exclusive, perpetual, fully paid-up

license to use the pre-existing work in the form delivered to the Authority as part of the Service or Deliverables only for its internal business operations. Under such license, either of Parties will have no right to sell the pre-existing work of the other party to a Third Party. The Authority's license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that Service Operator leaves with the Authority at the conclusion of performance of the Services.

iv. **Residuals:**

In no event shall Service Operator be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the Deliverables set-out in this Agreement. In addition, subject to the confidentiality obligations, Service Operator shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services.

v. **Protection and Transfer of Information/Data:**

During the Term, the Service Operator shall ensure that any and all information, data, documents, which is in the possession or control of the Service Operator, pertaining to the citizens/users/persons to whom it has provided Services, shall be properly secured/protected and shall not be transferred to any person, except for the purpose of performing its obligations hereunder or if requested by the Authority.

On termination or expiry of this Agreement, the Service Operator shall transfer all such information, data, documents, to the Authority. Further, Service Operator shall ensure that it does not retain copy of any such information, documents, or data.

15.3 **Warranty:**

The Service Operator warrants that the Project, including all the system(s), materials and Services provided hereunder, shall be free from any defect or deficiency that prevents the Project and/or the Services provided pursuant to the Project from fulfilling the requirements/specifications as specified in this Agreement. If any defect or deficiency is found in the performance/workmanship of the Project and other Services provided by the Service Operator, the Service Operator shall promptly, in consultation and agreement with the Authority, and at its sole cost repair, replace, or otherwise make good such default, defect or deficiency as well as any damage to the Project caused by such default, defect or deficiency.

The Service Operator shall have no liability in the case of breach of this warranty due to (i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the Service Operator, (ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the

Service Operator; (iii) the deliverables having been tampered with, altered or modified by the Authority without the written permission of the Service Operator, or (iv) use of the deliverables otherwise than in terms of the relevant documentation.

15.4 **Liquidated Damages**

Time is the essence of the Agreement and the performance and Services under this Agreement are binding on the Service Operator. In the event of delay or any gross negligence for causes attributable to the Service Operator in meeting the deliverables, **Services** and meeting its obligations, the Authority shall be entitled at its option to recover from the Service Operator as follows:

A Sewa Kendra will be deemed to be operational only after being certified by GoP (or its nominated agency/ies). Service Operator will be required to operationalize Sewa Kendras within 30 days of handover. ~~No revenue support to be granted during the delay period for any Sewa Kendra + Liquidated damages of Rs.~~ Damages of Rs. 5000 per Sewa Kendra that has been delayed, per additional day of delay from the schedule, shall be payable by the Service Operator.

15.5 **Versioning**

The Service Operator shall be responsible for the procurement, deployment as well as operations & maintenance of the software(s) developed and maintained by him including requisite software provisioning and also for maintaining source code for the tenure of this Agreement, with no additional cost implication to the Authority at all.

15.6 **Insurance Cover**

i. **Obligation to maintain insurance**

The Service Operator shall effect and maintain at its own cost, during the term of this Agreement, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with industry Practice to protect the interests of the Service Operator and the Authority. The Service Operator shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Service Operator during the terms of the Agreement.

ii. Without prejudice to the provisions contained in Clause 15.6 (i), the Service Operator shall, during the term or termination of the Project and one year thereafter, procure and maintain Insurance Cover, for an amount not less than insurance cover specified in the Schedule I, including but not limited to the following:

- a. public liability;
- b. professional indemnity and errors and omissions;
- c. product liability (if applicable);
- d. workers' compensation as required by law; and
- e. any other policy as specified in Vol. I of the RFP or as informed by

- the Authority any time during the Term.
- f. Cash, Cash/Instruments in Transit;
 - g. fidelity insurance to protect against any incident of misappropriation by staff ;
 - h. Group insurance (Statutory obligations such as ESI has to be complied with)

Service Operator shall ensure that the Authority is identified as a co-insured/beneficiary under all insurance policies (-for assets provided by PSeGS) obtained by the Service Operator hereunder. Service Operator agrees to provide copy of all such insurance policies to the Authority, including copies of the renewed policy.

iii. Termination for non-compliance

The **Authority** may, at its discretion, terminate this Agreement upon the failure of Service Operator, to maintain the required insurance coverage in terms of this Clause 15.6. Inadequate insurance coverage for any reason shall not relieve Service Operator of its obligations under this Agreement.

iv. Remedy for failure to insure

If the Service Operator shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such **premium** and recover the costs thereof from the Service Operator.

v. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Service Operator pursuant to this Clause 15.6 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

vi. Service Operator's waiver

The Service Operator hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Service Operator may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Service Operator pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

vii. Application of insurance proceeds

The proceeds from all insurance claims, except proceeds received towards loss of life and injury and proceeds received under the third party liability insurance, shall be paid to the Service Operator and it shall, notwithstanding anything to the contrary contained in this Agreement, firstly apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of in relation to the Project.

15.7(A) **Personnel**

- i. The personnel assigned/ deployed (directly or indirectly) by Service Operator to perform the Services shall be employees of Service Operator or its subcontractor(s), and under no circumstances shall such personnel be considered employees of the Authority or state **Government**. The Service Operator shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Laws.
- ii. The Service Operator shall use its best efforts to ensure that sufficient Service Operator personnel are assigned to perform the Services and that such personnel have appropriate qualifications to perform the Services. After discussion with Service Operator, the Authority shall have the right to require the removal or replacement of any Service Operator personnel performing work under this Agreement based on bonafide reasons. In the event that the Authority requests that any Service Operator personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.
- iii. In the event that the Authority and Service Operator identify any personnel of Service Operator as "**Key Personnel**", then the Service Operator shall not remove such personnel from the Project without the prior written consent of the Authority unless such removal is the result of an unavoidable circumstance like resignation, termination and medical leave.
- iv. Except as stated in this Clause, nothing in this Agreement will limit the ability of Service Operator to freely assign or reassign its employees; provided that Service Operator shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. The Authority shall have the right to review and approve Service Operator's plan for any such knowledge transfer. Service Operator shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced. However all resource substitution/replacement related ~~liquidated damages~~Damages shall remain applicable.
- v. Each Party shall be responsible for the performance of all its obligations under this Agreement as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- vi. Neither Party will solicit for employment or knowingly hire an employee

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

15.7(B) **Independent Contractor**

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

- a. incur any expenses on behalf of the other Party;
- b. enter into any engagement or make any representation or warranty on behalf of the other Party;
- c. pledge the credit of or otherwise bind or oblige the other Party; or
- d. commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

15.7(C) **Sub-contractors**

The Service Operator shall not subcontract any work related to the Agreement without Authority's prior written consent. However the Service Operator shall provide the list of services planned to be sub contracted, within 45 days of signing the Agreement or at least 45 days before the start of proposed subcontracted work. It is clarified that the Service Operator shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the subcontractors, and shall, notwithstanding such sub-contract (or any approval thereof by the Authority) continue to be liable for any work or services provided by any subcontractors. The Service Operator undertakes to indemnify the Authority from any claims on the grounds stated hereinabove. The Service Operator shall not allow a sub-contractor to assign or enter into further secondary subcontract for any of the work to be carried out by the sub- contractor. For avoidance of doubt, Service Operator shall not be allowed to sub-contract the entire Project/work/Services.

15.8 **Assignment and Charge**

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

~~Subject to Clause 3.5, the~~

~~The~~ Service Operator shall not be permitted to assign its rights and obligations under this Agreement to any third party.

The Authority may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Service Operator shall be a party to such assignment or novation after mutual discussion, to any third party contracted to provide outsourced services to Authority or any of its nominees.

The Service Operator shall not create or permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights or interests in the Project, the existing or future Assets or the

facilities of the Project.

15.9. Trademarks, Publicity

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

15.10 Notices

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

For Authority

Member Secretary,
Punjab State e-Governance Society, Department of Governance
Reforms, Plot No. D-241, Industrial Area, Sector 74, SAS
Nagar.Punjab;

For Service Operator:

<< _____ >>

- (iii) Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) between the hours of 9.00 am and 5.00 pm of any business day at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 (seven) days from the date of posting (if by letter).

The Party to this Agreement may change its address, telephone number, fax number and nominated contact within India, for notification purposes by giving the other party prior written notice of the new information and its effective date.

15.11 Variations and Further Assurance

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

15.12 Severability and Waiver

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

15.13 Compliance with Applicable Law

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

15.14 Change in Law

(i) Increase in costs

If as a result of Change in Law, the Service Operator suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 10,00,000/- (Rupees Ten Lakhs Only) in any Accounting Year, the

Service Operator may so notify the Authority and the Parties shall mutually agree for compensation parameters so as to place the Service Operator in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Service Operator, the Parties shall meet, as soon as reasonably practicable, but no later than [30 (thirty)] days from the date of notice, and agree on mutually agreed arrangement:

Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Service Operator may by notice require the Authority to pay an amount that would place the Service Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Service Operator, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 15.14 (i) shall be restricted to Changes in Law directly affecting the Service Operator's costs of performing its obligations under this Agreement.

(ii) Reduction in costs

If as a result of Change in Law, the Service Operator benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 10,00,000/- (Rupees Ten lakhs only), the Authority may so notify the Service Operator and the Parties shall mutually agree for making necessary adjustments in compensation or other relevant parameters, as the case may be, so as to place the Service Operator in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable, but no later than [30 (thirty)] days from the date of notice, and agree on mutually agreed arrangement:

Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Authority may by notice require the Service Operator to pay an amount that would place the Service Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Service Operator shall pay the amount specified therein to the Authority; provided that if the Operator shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 15.14 (ii) shall be restricted to Changes in Law directly affecting the Service Operator's costs of performing its obligations under this Agreement.

(iii) Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash

compensation under this Article 15.14 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than [2 (two)] years from the close of such Accounting Year.

15.15 Professional Fees

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

15.16 Ethics

The Service Operator represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of the Authority in connection with this agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of Authority standard policies and may result in cancellation of this Agreement.

15.17 Entire Agreement

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

15.18 Amendment

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

15.19 Language

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

IN WITNESS WHEREOF the Parties have by duly authorized

Representatives set their respective hands and seal on the date first above
Written in the presence of:

WITNESSES:

**Signed on behalf of
Punjab State –Governance Society**

<<Name>
Member Secretary,

**Signed on behalf of
<<Service Operator>>.**

<<Service Operator)

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SCHEDULES

SCHEDULE – I – DEFINITIONS

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| Adverse Effect | <p>a. means material adverse effect on</p> <p>b. the ability of the relevant party to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or</p> <p>c. the legal validity, binding nature or enforceability of this Agreement;</p> |
| Agreement or Contract | <p>includes Master Services Agreement, together with all Articles, Annexures, Schedules thereof, the RFP (including all addenda and corrigenda thereto), the letter of approval issued by the Authority to the Service Operator, letter of acceptance by the Service Operator, the bid submitted by the Service Operator, as further set forth in Clause 1.5.1;</p> |
| Applicable Law(s) | <p>Includes any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;</p> |
| Applicable Permits | <p>means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the operation, maintenance and management of the Project, during the subsistence of this Agreement.</p> |
| Assets | <p>shall have the same meaning ascribed to it in Clause 6.4 (i) (a)</p> |
| Authority | <p>Shall means Punjab State e-Governance Society or its nominated agencies as the case may be;</p> |
| Software | <p>means the software designed, developed / customized, tested and deployed by the Service Operator, if any for the purposes of the Project and includes the source code (in case of Bespoke development) along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project;</p> |
| Business Hours | <ul style="list-style-type: none"> • For the Authority and other state Government departments, shall mean the working time which is 9:00 A.M to 5:00 P.M. |

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| | <ul style="list-style-type: none"> • For the Server(s) and other components which enable successful usage of web portals of Authority including the IT maintenance, other batch process (like backup) etc. business hours shall mean 24 hours for all the days of the week (24*7). • For the Sewa Kendras, as decided by the Authority. |
| Change in Law | <p>means the occurrence of any of the following after the date of the Bid:</p> <ol style="list-style-type: none"> a. the enactment of any new Applicable Law as applicable to the State or the imposition, adoption or issuance of any new Applicable Law by any Government Instrumentality; b. the repeal, modification, amendment, alteration or re- enactment of any existing Applicable Law; c. the commencement of any Applicable Law which has not entered into effect until the date of Bid; d. a change in the interpretation, application or enforcement of any Applicable Law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or e. any introduction of any new taxes or change in the rates of any of the existing taxes that have a direct effect on the Project, <p>provided that such event was not reasonably foreseeable as on the date of the Bid; and provided further that any introduction of or amendments to or change in the rates of any direct taxes, such as but not limited to income tax, wealth tax, etc. shall not be treated as a Change in Law, if occurring after the date of the Bid.</p> |
| Confidential Information | <p>means all information including <i>Authority data</i> (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how, plans, budgets and personnel of each party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement as defined above (including such information received during negotiations, location visits and meetings in connection with this Project);</p> |
| Control | <p>includes, in relation to any business entity</p> <ol style="list-style-type: none"> i. possession (whether directly or indirectly) of the power to exercise 50% or more of the voting rights of such business entity <u>and includes instruments convertible into equity share capital</u>; and/or |

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| | <p>ii. beneficial ownership (whether directly or indirectly) of 50% or more of the shares/ownership interest of such business entity; and/or</p> <p>iii. power to direct or indirect control over the management, policies or affairs of such business entity, including the right to appoint majority of directors, by contract or otherwise.</p> <p><u>“Controlled” and “Controlling” shall be interpreted accordingly.</u></p> |
| Deliverables | includes the products, infrastructure and services agreed to be delivered by the Service Operator in pursuance of the Agreement as elaborately defined in the RFP; includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related); inter-alia payment and/or process related etc., source code and all its modifications; |
| Department and Offices | Punjab Government department and offices in relation to the Sewa Kendras, field offices etc. |
| Effective Date | shall mean the date of execution of this Agreement. |
| Encumbrance | means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment by way of security, retention of title, privilege or priority of any kind having the effect of security interest or other arrangement or agreement having substantially the same effect, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy. |
| Punjab State eGovernance Society Data | means all proprietary data of the department generated out of operations and transactions, documents all taxpayers data and related information including but not restricted to user data which the Service Operator obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement. |
| Operational Readiness | <p>Operational readiness is making the Sewa Kendras ready with all the infrastructure, manpower, training of manpower, standard operating procedures etc. as per the scope of work so that they are ready for providing services to the citizens. This readiness will be checked and certified by the Authority</p> <p>Post certification from the Authority on the operational readiness of the Sewa Kendras, Service Operator will be required to launch the sewa kendras immediately<u>immediately</u> from the date of said certification. Launch of Sewa Kendra would be the date the Sewa Kendras are opened for the public / citizens for delivering services.</p> |
| Force Majeure | shall have the same meaning ascribed to it in Article 10 |

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| Force Majeure Costs | shall have the same meaning ascribed to it in Clause 10.6 |
| Indemnifying Party | shall have the same meaning ascribed to it in Article 12 |
| Indemnified Party | shall have the same meaning ascribed to it in Article 12 |
| Intellectual Property Rights | Intellectual Property Rights means all rights in written designs, trademarks, patents, copyrights and other intellectual property rights, moral rights, rights (whether or not any of these are registered including pending applications for registration); |
| Insurance Cover | Includes <ul style="list-style-type: none"> • Public liability insurance for an insured amount of {INR 5 Crore% of Net Project Value} per occurrence and not less than {INR 50 Crores% of the Net Project Value} in aggregate <u>or as per applicable laws/ acts and rules.</u> • Professional indemnity and errors and omissions insurance for an insured amount of {INR 1.5% Crores of Net Project Value} per occurrence and not less than {INR 30 Crores50% of the Net Project Value} in aggregate <u>or as per applicable laws/ acts and rules.</u> • Product liability <u>(if applicable)</u> for an insured amount of {INR 5 Crore5% of Net Project Value} per occurrence and not less than {INR 50 Crores50% of the Net Project Value} in aggregate <u>or as per applicable laws/ acts and rules.</u> • Workers compensation as required by law |
| Letter of Award (LOA) | Shall mean notification of award of the Project to the Successful Bidder by the Authority; 7 |
| Material Breach | means a breach by either Party (<i>Authority</i> or Service Operator) of any of its obligations and terms and conditions under the Agreement which has or is likely to have an Adverse Effect on the Project which such Party shall has failed to cure; |
| Required Deliverables | shall have the same meaning ascribed to it in Annexure C of this Agreement; |
| Parties | means <i>Punjab State eGovernance Society</i> and Service Operator for the purposes of this Agreement and " Party " shall be interpreted accordingly; |
| Project | mean operation, maintenance and management of the Sewa Kendras stated falling under [Zone I & Zone II and Zone III] in the state of Punjab in terms of this Agreement; |
| Project Implementation Unit (PIU) | may be constituted by Authority to monitor the activities, deliverables and progress of the Project. PIU will comprise of the staff members of the |

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| | Authority, other officials from concerned department and external experts. |
| Project Steering Committee | shall be constituted by <i>Authority</i> to monitor the activities, deliverables and progress of the Project. |
| Project Timelines | shall have the same meaning ascribed to in Annexure C |
| Providing Party | shall have the same meaning ascribed to it in Clause 7.5 |
| Receiving Party | shall have the same meaning ascribed to it in Clause 7.5 |
| Replacement Service Operator | means any third party that <i>the Authority</i> appoint to replace Service Operator upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof; |
| Required Consents | Required Consents shall have the same meaning ascribed to it in Clause 6.3 |
| Services | means the services and service levels delivered to the Stakeholders of the Authority, employees of the Authority, and to professionals using the tangible and intangible assets created, procured, installed, managed and operated by the Service Operator including the tools of information and communications technology as per the list of services specified in Annexure B and includes any additional services necessary to deliver the scope of work of this Agreement. |
| Service Fee / Facilitation Charges | means the fee payable by the Authority to the Service Operator after such additions, limitations and deductions as may be made in accordance with Article 8 in accordance with the terms of this Agreement, all of which shall be determined in accordance with Article 8 read with Schedule VII. |
| Stakeholders | includes the Departments, Citizens, Authority, employees of Punjab State eGovernance Society's and the Departments of State Government; |
| Term | shall have the same meaning ascribed to it in Clause 3.4 |
| Third Party Systems | means systems (or any part thereof) in which the Intellectual Property Rights are not owned by the Authority or Service Operator and to which Service Operator has been granted a license to use and which are used in the provision of Services; |

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| Transfer Date | means the date on which this Agreement expires pursuant to the provision of this Agreement or is terminated as per this Agreement; |
| Unplanned Downtime | means the total time for all the instances where required from the Service Operator are not available |
| Network | means all the IT assets installed by the Service Operator as part of the Project for networking; |
| Government Instrumentality | shall mean Government of India, Government of any State in India or any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any state Government or both, any political subdivision of any of them including any court of appropriate commission or tribunal or judicial or quasi-judicial body in India |
| RFP | <p>Means the RFP document (Vol I, Vol II & Vol. III) issued by the Authority on 14.04.2018 for appointment of the Service Operator for operation, maintenance and managing the Sewa Kendras.</p> <p>Without prejudice, the RFP Document shall include all addenda/corrigendum issued by the Authority, any written responses of queries, mails and any other documents (to the extent expressly identified as forming part of the RFP) made available by the Authority to the Bidders from time to time during the Bidding Process including the Contract.</p> |

SCHEDULE – II – SCOPE OF THE PROJECT

Scope of the Project as per RFP.

SCHEDULE – III – CHANGE CONTROL SCHEDULE

This Schedule describes the procedure to be followed in the event of any proposed change to the Master Service Agreement ("**MSA**"), Project Implementation and Scope of Work etc. Such change shall include, but shall not be limited to, changes in the scope of services provided by the Service Operator and changes to the terms of payment as stated in the Terms of Payment Schedule.

The Authority and Service Operator recognize that frequent change is an inevitable part of delivering services and that a significant element of this change can be accomplished by re-organizing processes and responsibilities without a material effect on the cost. The Service Operator will endeavor, as far as possible, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and the Authority will work with the Service Operator to ensure that all changes are discussed and managed in a constructive manner. This Change Control Schedule sets out the provisions which will apply to all the changes to the agreement and other documents.

This Change Control Schedule sets out the provisions which will apply to changes to the MSA.

CHANGE MANAGEMENT PROCESS

A. CHANGE CONTROL NOTE ("CCN")

- (i) Change requests in respect of the MSA, the Project Implementation, the operations, Scope of work, functional requirement specifications etc. will emanate from the Parties' respective authorized official who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached as Annexure A hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- (ii) The Service Operator and the Authority, during the validity of contract and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the RFP and is suggested and applicable only after the **successful** project execution as set out in this Agreement.
- (iii) It is hereby also clarified here that any change control suggested beyond 25 % of the value of this Project will be beyond the scope of the change control process and will be considered as the subject matter for a separate bid process and a separate contract. It is hereby clarified that the 25% of the value of the Project as stated in herein above is calculated on the basis of bid value submitted by the Service Operator

and accepted by the Authority or as decided and approved by The Authority or **its nominated Agencies**. For arriving at the cost / rate for change up to 25% of the project value, the payment terms and relevant rates as specified in Annexure D shall apply.

B. Quotation

- (i) The Service Operator shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN the Service Operator shall provide as a minimum:
 - a. a description of the change
 - b. a list of deliverables required for implementing the change;
 - c. a time table for implementation;
 - d. an estimate of any proposed change
 - e. any relevant acceptance criteria
 - f. an assessment of the value of the proposed change;
 - g. material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work
- (ii) Prior to submission of the completed CCN to the Authority, the Service Operator will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the Service Operator shall consider the materiality of the proposed change in the context of the Agreement affected by the change and the total effect that may arise from implementation of the change.

C. Costs

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the Service Operator meets the obligations as set in the CCN. In the event the Service Operator is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party will be borne by the Service Operator. However due government procurement procedure shall be followed by the Authority to get the work of such CCN completed by the **third** party after giving 15 days' notice to Service Operator.

D. Obligations

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

In the event that the parties are unable to agree in writing upon its scope, price and/or schedule impact, the matter shall be subject to dispute resolution in accordance with the provisions of this Agreement, provided that pending the resolution of such dispute, the Service Operator shall be required to implement the change in the manner and to the extent as required by the Authority.

E. Exception to Change

For the purpose of this Schedule, following events shall not be termed or lead to change:

- (i) Providing of the additional services which are necessary in order for Service Operator to satisfy its responsibility under this Agreement;
- (ii) Providing of additional services required due to delays attributable to the Service Operator, or due to rectification or remedy of defects or deficiencies;
- (iii) Providing of additional services required because of a breach of any of the warranties by the Service Operator; or
- (iv) Changes relating to re-performance of any of the service because of Service Operator's failure to follow the service level as provided in this Agreement.

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SCHEDULE –IV - EXIT MANAGEMENT SCHEDULE

1. PURPOSE

- 1.1 This Schedule sets out the provisions, which will apply on expiry or termination of this Agreement.
- 1.2 In the case of expiry or termination of the Agreement, the Parties shall agree at that time whether, and if so during what period, the provisions of this Schedule shall apply ("**Exit Management Period**").
- 1.3 The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Schedule.

2. TRANSFER OF ASSETS

- 2.1 The Authority shall be entitled to serve notice in writing on the Service Operator at any time during the Exit Management Period as detailed hereinabove requiring the Service Operator and/or its sub-contractors to provide the Authority with a complete and up to date list of the Assets within 30 days of such notice. The Authority shall then be entitled to serve notice in writing on the Service Operator at any time prior to the date that is 30 days prior to the end of the Exit Management Period requiring the Service Operator to sell the Assets, if any, to be transferred to the Authority at a nominal value of Rs. One. Notwithstanding anything contrary provided in this Agreement, transfer of all Assets (which are in the possession or control of the Service Operator) which were present ~~SEWA KENDRA~~in sewa kendra at the time possession of the relevant ~~SEWA KENDRA~~sewa kendra was provided to the Service Operator, shall only be returned to the Authority, and no amounts shall be payable in respect thereof.
- 2.2 In case of contract being terminated by the Authority, the Authority would reserve the right to ask Service Operator to continue running the Project operations for minimum of 6 months and maximum for a period up to 12 months after termination orders are issued on same terms and conditions.
- 2.3 Upon service of a notice under this Article the following provisions shall apply:
 - (i) in the event, if the Assets to be transferred are mortgaged to any financial institutions by the Service Operator, the Service Operator shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to the Authority.
 - (ii) All risk in and title to the Assets (any and all rights of the Service Operator therein) to be transferred/to be purchased by the pursuant to this Agreement shall be transferred to the Authority, on the last day of the Exit Management Period.
 - (iii) The outgoing Service Operator will pass on to the Authority and/or to the Replacement Service Operator, the subsisting rights in any leased properties/ licensed products on terms not less favorable to the Authority/ Replacement Service Operator,

than that enjoyed by the outgoing Service Operator.

3. COOPERATION AND PROVISION OF INFORMATION

3.1 During the Exit Management Period:

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

4. CONFIDENTIAL INFORMATION, SECURITY AND DATA

4.1 The Service Operator shall promptly on the commencement of the Exit Management Period supply to the Authority the following:

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

4.2 Before the expiry of the Exit Management Period, the Service Operator shall deliver to the Authority all new or up-dated materials from the categories set out in Schedule IV and shall not retain any copies thereof, except that the Service Operator shall be permitted to retain one copy of such materials for archival purposes only.

- 4.3 Before the expiry of the Exit Management Period, unless otherwise provided under the MSA, the Authority shall deliver to the Service Operator all forms of Service Operator confidential information, which is in the possession or control of Chairperson, PIU/ or its users.
- 4.4 Save as otherwise provided in this Agreement, before the expiry of the Exit Management Period, the Service Operator shall deliver/transfer to the Authority, all information, data, documents, records, etc., which is in the possession or control of the Service Operator, pertaining to the citizens/users/persons to whom it has provided Services during the Term, and further shall ensure that the it does not retain the copy of such information/documents/data/ records.

5. **EMPLOYEES**

- 5.1 Promptly on reasonable request at any time during the Exit Management Period, the Service Operator shall, subject to applicable laws, rules and regulations (including in particular those relating to privacy) provide to the Authority or its nominated agency a list of all employees (with job titles) of the Service Operator dedicated to providing the services at the commencement of the Exit Management Period.
- 5.2 Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the Service Operator to the Authority, or a Replacement Service Operator ("**Transfer Regulation**") applies to any or all of the employees of the Service Operator, then the Parties shall comply with their respective obligations under such Transfer Regulations.
- 5.3 To the extent that any Transfer Regulation does not apply to any employee of the Service Operator, department, or its Replacement Service Operator may make an offer of employment or contract for services to such employee of the Service Operator and the Service Operator shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the Authority or any Replacement Service Operator.

6. **TRANSFER OF CERTAIN AGREEMENTS**

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

7. **RIGHTS OF ACCESS TO PREMISES**

- 7.1 At any time during the Exit Management Period, where Assets are

located at the Service Operator's premises, the Service Operator will be obliged to give reasonable rights of access to (or, in the case of Assets located on a third party's premises, procure reasonable rights of access to) the Authority and/or any Replacement Service Operator in order to make an inventory of the Assets.

- 7.2 The Service Operator shall also give the Authority, or any Replacement Service Operator right of reasonable access to the Implementation Partner's premises and shall procure the Authority and any Replacement Service Operator rights of access to relevant third party premises during the Exit Management Period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to the Authority, or a Replacement Service Operator.

8. GENERAL OBLIGATIONS OF THE SERVICE OPERATOR

- 8.1 The Service Operator shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the Authority or its Replacement Service Operator and which the Service Operator has in its possession or control at any time during the Exit Management Period.
- 8.2 For the purposes of this Schedule, anything in the possession or control of any Service Operator, associated entity, or sub-contractor is deemed to be in the possession or control of the Service Operator.
- 8.3 The Service Operator shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

9. EXIT MANAGEMENT PLAN

- 9.1 The Service Operator shall provide the Authority with a recommended exit management plan ("**Exit Management Plan**") which shall deal with all the Clauses 2 to 8 above and including but not limited to the following aspects of exit management in relation to the MSA.
- i. A detailed program of the transfer process that could be used in conjunction with a Replacement Service Operator including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
 - ii. plans for the communication with such of the Service Operator's sub- contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the Authority's operations as a result of undertaking the transfer;
 - iii. proposed arrangements for the segregation of the Service Operator's networks from the networks employed by the Authority and identification of specific security tasks necessary at termination;
 - iv. Plans for provision of contingent support to the Authority, and Replacement Service Operator for a reasonable period of up to

12 months after transfer.

- 9.2 The Service Operator shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
 - 9.3 Each Exit Management Plan shall be presented by the Service Operator to and approved by the Authority.
 - 9.4 The terms of payment as stated in the Terms of Payment Schedule include the costs of the Service Operator complying with its obligations under this Exit Management Schedule.
 - 9.5 In the event of termination or expiry of MSA, including its Schedules, Annexures and Appendixes, each Party shall comply with the Exit Management Plan.
 - 9.6 During the Exit Management Period, the Service Operator shall use its best efforts to deliver the services.
 - 9.7 Payments during the Exit Management Period shall be made in accordance with the Terms of Payment Schedule.
 - 9.8 This Exit Management plan shall be furnished in writing to the Authority within 90 days from the Effective Date of this Agreement
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SCHEDULE – V - AUDIT, ACCESS AND REPORTING

1. PURPOSE

This Schedule details the audit, access and reporting rights and obligations of the Authority and the Service Operator.

2. AUDIT NOTICE AND TIMING

2.1 As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavors to agree to a timetable for routine audits during the Project. Such timetable during the Term of the Agreement, the Authority shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Service Operator any further notice of carrying out such audits.

2.2 The Authority may conduct non-timetabled audits at his/ her own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Service Operator, a security violation, or breach of confidentiality obligations by the Service Operator, provided that the requirement for such an audit is notified in writing to the Service Operator a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the Service Operator considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Governance Schedule.

2.2.3 The frequency of audits shall be a (maximum) half yearly, provided always that the Authority shall endeavor to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Service Operator. Any such audit shall be conducted by with adequate notice of 2 weeks to the Service Operator.

2.3.4 The Authority will ensure that any 3rd party agencies (except CAG) appointed to conduct the audit will not be the competitor of Service Operator and will be bound by confidentiality obligations.

3. ACCESS

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

4. AUDIT RIGHTS

- 4.1 The Authority shall have the right to audit and inspect suppliers, agents and third party facilities, data centres, documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify including but not limited to:
- i. The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of the Authority and documentation related thereto;
 - ii. That the actual level of performance of the services is the same as specified in the Agreement;
 - iii. That the Service Operator has complied with the relevant technical standards, and has adequate internal controls in place; and
 - iv. The compliance of the Service Operator with any other obligation under the MSA.
 - v. Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the Service Operator.

For the avoidance of doubt the audit rights under this Schedule shall not include access to the Service Operator's profit margins or overheads, any confidential information relating to the Service Operator employees, or minutes of its internal Board or Board committee meetings including internal audit, or such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the MSA.

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

- 5.1 The Service Operator shall as far as possible achieve the same audit and access provisions as defined in this Schedule with sub-contractors, suppliers and agents who supply labour, services, equipment or materials in respect of the services. The Service Operator shall inform the Authority prior to concluding any sub-contract or supply agreement of any failure to achieve the same rights of audit or access.

5.2 REPORTING:

The Service Operator will provide quarterly reports to the Authority regarding any specific aspects of the Project and in context of the audit and access information as required by the Authority.

6. ACTION AND REVIEW

- 6.1 Any change or amendment to the systems and procedures of the Service Operator, or sub-contractors, where applicable arising from the audit report shall be agreed within reasonable time but not exceeding 60 (Sixty) working days from the submission of the said report.
- 6.2 Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the Authority and the Service Operator Project Manager who shall determine [what action should be taken in respect of such discrepancies in accordance with the terms of the MSA. the necessary actions required to rectify such discrepancies in](#)

accordance with the terms of the MSA. Failure on the part of the Service Operator to rectify the discrepancies within 30 days of being informed of the actions required to be undertaken in order to rectify the discrepancies shall be deemed to be a Material Breach of this Agreement and the Authority shall be entitled to exercise its rights in accordance with Clause 11.

7. TERMS OF PAYMENT

The Authority shall bear the cost of any audits and inspections. The terms of payment are exclusive of any costs of the Service Operator and the sub-contractor, for all reasonable assistance and information provided under the Agreement by the Service Operator pursuant to this Schedule.

8. RECORDS AND INFORMATION

For the purposes of audit in accordance with this Schedule, the Service Operator shall maintain true and accurate records in connection with the provision of the services (including collection and depositing of the statutory fees and facilitation charges by the Service Operator) and the Service Operator shall handover all the relevant records and documents upon the termination or expiry of the MSA, including its Schedules, Annexures and Appendixes.

SCHEDULE – VI - GOVERNANCE SCHEDULE

1. PURPOSE

The purpose of this Schedule is to:

- i. establish and maintain the formal and informal processes for managing the relationship between the Authority and the Service Operator including the outputs from other Schedules to this Agreement;
- ii. define the principles that both Parties wish to follow to ensure the delivery of the Services;
- iii. ensure the continued alignment of the interests of the Parties;
- iv. ensure that the relationship is maintained at the correct level within each Party;
- v. create the flexibility to revise and maintain the relationship and this Agreement during the Term;
- vi. set out the procedure for escalating disagreements; and
- vii. enable contract administration and performance management.

2. GOVERNANCE STRUCTURE

- i. **Project Managers:** The relationship under this Agreement will be managed by the Project Managers appointed by each Party, who will provide the interface between the executive management of the respective Parties. Also at a district level, there shall be District Sewa Managers for managing the operations in a

- District.
- ii. Within 15 working days following the signing of Agreement, the Authority and the Service Operator shall each appoint a Project Manager. In the event that either Party wishes to substitute its Project Manager it will do so in manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within 15 working days of the substitution.
 - iii. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
 - iv. Project Steering Committee: The Project Steering Committee (at two levels- District and State levels) will meet periodically, as required by the **Authority**, a. These meetings will cover, at least, the following agenda items: (i) consideration of Performance Reports; (ii) consideration of matters arising out of the Change Control Schedule; (iii) issues escalated in accordance with the escalation procedure as set out in the Governance Schedule; (iv) matters to be brought before the Project Steering Committee in accordance with the MSA and the Annexures, Schedules and Appendixes (v) any matter brought before the Project Steering Committee by the Service Operator under this Agreement; and (vi) any other issue which either Party wishes to add to the agenda.
 - v. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in the Terms of Payment Schedule, the Parties agree to discuss in the Project Steering Committee any appropriate amendment to the Agreement or Statement of Works including any variation to the terms of payment as stated in the Terms of Payment Schedule. Any variation so agreed shall be implemented through the change control procedure as set out in the Change Control Schedule.

3. **GOVERNANCE PROCEDURES**

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

placed before them and that members representing that Party are empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achieve this.

- 3.5 In order formally to submit a Disputed Matter to the aforesaid for a, one Party ("**Claimant**") shall give a written notice ("**Dispute Notice**") to the other Party. The Dispute Notice shall be accompanied by (a) a statement by the Claimant describing the Disputed Matter in reasonable detail and (b) documentation, if any, supporting the Claimant's position on the Disputed Matter.
- 3.6 The other Party ("**Respondent**") shall have the right to respond to the Dispute Notice within 30 days after receipt of the Dispute Notice. In the event that the parties are unable to resolve the Disputed Matter within a further period of 30 days, it shall refer the Disputed Matter to next level of the dispute resolution for action as per the process mentioned in **Clause 14**
- 3.7 All negotiations, statements and / or documentation pursuant to these Clause shall be without prejudice and confidential (unless mutually agreed otherwise).
- 3.8 If the Disputed Matter is having a material effect on the operation of the Services (or any of them or part of them) the Parties will use all their respective reasonable endeavors to reduce the elapsed time in reaching a resolution of the Disputed Matter.

SCHEDULE – VII - TERMS OF REVENUE SHARING SCHEDULE

To be Drafted

1. Revenue Sharing Schedule

[To be drafted in accordance with the value computation mentioned in Volume II of the RFP]

Schedule – VIII

Performance Bank Guarantee no.

Bank

Value

Valid Upto:

Copy of Performance Bank Guarantee attached.

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Schedule – IX – List of Necessary Clearances

[Note: PSeGS and Service Operator will be responsible to take respective clearances and consents, as required. The list may be added here with mutual consent during execution of contract. Provided that any clearance not specifically identified to be obtained by PSeGS, but required for the Sewa Kendras, or the operations thereat would be required to be obtained by the Service Operator]

[Not Used]

1. (.)

2. (.)

3. (.)

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ANNEXURES

ANNEXURE – A – FORMAT FOR CHANGE CONTROL NOTICE

| | |
|---|--------------------|
| Change Control Note | CCN Number: |
| Part A: Initiation | |
| Title: | |
| Originator: | |
| Sponsor: | |
| Date of Initiation: | |
| Details of Proposed Change | |
| (To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.) | |
| | |
| Authorized by <i>Punjab State eGovernance Society</i> | Date: |
| Name: | |
| Signature: | Date: |
| Received by the SERVICE OPERATOR | |
| Name: | |
| Signature: | |
| Change Control Note | CCN Number: |
| Part B : Evaluation | |
| (Identify any attachments as B1, B2, and B3 etc.) | |
| Changes to Services, charging structure, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue. | |
| Brief Description of Solution: | |
| Impact: | |
| Deliverables: | |
| Timetable: | |
| Charges for Implementation: (including a schedule of payments) | |
| Other Relevant Information: (including value-added and acceptance criteria) | |

| | |
|---|--------------|
| Authorized by the Service Operator | Date: |
|---|--------------|

| | |
|-------------------|--|
| Name: | |
| Signature: | |

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

| | |
|--|---------------------------------|
| Rejected Requires Further Information (as follows, or as Attachment 1 etc.) | |
| For Punjab State eGovernance Society and its nominated agencies | For the Service Operator |
| Signature | Signature |
| Name | Name |
| Title | Title |
| Date | Date |

ANNEXURE – B - LIST OF SERVICES AND SERVICE LEVELS PROVIDED BY THE SERVICE OPERATOR

Various services to be offered by the Service Operator will be as per RFP and proposal of Service Operator.

Note:

Punjab State eGovernance Society will sign the end user license agreement for the software brought from any 3rd party for the purpose of this Project however Service Operator shall be solely responsible to make payment for the cost of **software** to such third party **software** vendor.

Services Levels

In case of default in ensuring delivery of quality services to citizens, following ~~liquidated damages~~ Damages shall be applicable for each zone separately:-

1. General SLAs based on online logs...machines will ping on the PSeGS centralized system

| Sr. No | Category | Definition | Baseline | Penalty Level Damages | Method of Measurement |
|--------|------------------------------|---|--------------------------------|------------------------------------|--|
| 1. | Denial of G2C Service | Denial of any G2C service(s) to the applicant presents with all the prerequisite documents required for service delivery and yet service is not rendered. | Zero instances | Rs. 1000/- per instance | a) Complaint lodged by the Applicant with in 48 hours b) Finding by PSeGS or its designated agency or by authorized person of PSeGS |
| 2. | Non availability of Manpower | Non availability of manpower causing any impact on service delivery operations at counter during working hours. | Zero instances | Rs. 1000/- per person per instance | a) Biometric attendance record b) Monitoring by CCTVs by PSeGS designated agencies c) Finding by PSeGS or its designated agency or by authorized person of |

| | | | | | |
|----|--|---|---------------------------|--|--|
| | | | | | PSeGS |
| 3. | Non operationalization of Centre (Complete closure of centre on a working day) | Sewa Kendra not operational on a given working day without any valid justification... <u>log_ based on logs</u> | <u>Zero instances</u> | <ul style="list-style-type: none"> • Type1: Rs. 2 Lakh per day per center • Type 2: Rs. 1 Lakh per day per center • Type 3: Rs.50000/- per day per center | a) Complaint lodged by the applicant b) Biometric attendance record Monitoring by CCTVs by PSeGS designated agencies c) Finding by PSeGS or its designated agency or by authorized person of PSeGS |
| 4. | Non operationalization of a counter due to any reason <u>except unavailability of PSP Portal</u> | - Equipment downtime - Unavailability of equipment, consumables etc. <u>based on logs...log</u> | <u>30-minutes 2 hours</u> | Rs. 1000/- per hour per counter | a) Complaint lodged by the applicant b) Biometric attendance record c) Monitoring by CCTVs by PSeGS designated gencies |

| | | | | | |
|----|---------------------------------------|---|-------------------------------|----------------------------------|--|
| | | | | | <ul style="list-style-type: none"> d) Login details of common user interface e) Finding by PSeGS or its designated agency or by authorized person of PSeGS |
| 5. | Non adherence to Center working hours | Sewa Kendras not operating during the defined working hours | Zero instance | Rs. 10000/- per day per instance | <ul style="list-style-type: none"> a) Complaint lodged by the applicant b) Biometric attendance record c) Monitoring by CCTVs by PSeGS designated agencies d) Finding by PSeGS or its designated agency or by authorized person of PSeGS |
| 6. | Housekeeping non | Untidy, unclean Sewa | Zero instance | Rs. 5000/- per NC | <ul style="list-style-type: none"> a) Complaint |

| | | | | | |
|----|---|---|--|------------------------|---|
| | conformities (NC) and proper display boards | Kendras premises | | | lodged by the applicant b) Finding by PSeGS or its designated agency or by authorized person of PSeGS |
| 7. | Courteousness to citizens below 7 marks on the scale of 0-10 (10 being highest) | Satisfaction level of citizens as gauged by feedback forms or any other feedback mechanism | Consolidated feedback for a Calendar month for each Sewa Kendra >7 ratings with a reason | Rs. 1000/- per center | a) Complaint lodged by the applicant b) Finding by PSeGS or its designated agency or by authorized person of PSeGS c) Written feedback by Citizen |
| 8. | Poor Quality of printing and stationary | a) Illegible outputs with respect to ink, graphics, transparency etc. b) Usage of paper quality not less than 70 gsm | Zero instance | Rs. 500/- per Instance | a) Complaint lodged by the applicant b) Finding by PSeGS or its designated agency or by authorized |

| | | | | | person of PSeGS |
|-----|---|---|----------------------|---|--|
| 9. | Non adherence of pre-defined stock levels of spares and consumables | Service Operator to maintain a minimum stock excluding diesel of 7 days operations | 7 days | Rs. 5000/- per center | Finding by PSeGS or its designated agency or by authorized person of PSeGS |
| 10. | Non-functioning of Electronic/electrical equipment/fixtures like token machine | Non-functioning of electronic equipment/fixtures beyond permitted repair period with no justification | 1 working day | Rs. 2000/- per equipment per instance | Finding by PSeGS or its designated agency or by authorized person of PSeGS |
| 11. | Non maintenance of civil works and furniture | Repair of breakage, leakage, damage beyond permitted repair period with no justification | 2 working days | Rs. 5000/- per equipment per instance | Finding by PSeGS or its designated agency or by authorized person of PSeGS |
| 12. | Unauthorized and/or illegal use of Sewa Kendra premises and its property for any activity beyond the scope of agreement (only B2C services, no products) | Any service beyond the permitted scope of work or without approval of PSeGS | <u>Zero instance</u> | 1. Rs. 1.0 lakhs per center per instance for first 3 Instances. 2. Authority shall be entitled to terminate the agreement or exercise other rights | Finding by PSeGS or its designated agency or by authorized person of PSeGS |
| 13. | Delay in deposit of | Statutory/Government fee | By next | 2% per day of the | Finding by |

| | | | | | |
|-----|--|--|----------------|---|--|
| | Statutory/Government fees in Treasury account through designated banks. | not deposited within defined time lines | working day | amount due along with interest 18% per annum for delay beyond three working days | PSeGS or its designated agency or by authorized person of PSeGS |
| 14. | Theft, misplacement and/or mishandling of any Government record, filled forms, documents, certificates, holograms or any other specific stationary | Theft, misplacement and/or mishandling of any Government record, filled forms, documents, certificates, holograms or any other specific stationary due to negligence of the Service Operator | 2 working days | FIR or other Legal action as per government procedures Replacement at the cost of Service Operator and he may recoup from the Insurance | Finding by PSeGS or its designated agency or by authorized person of PSeGS |
| 15. | Non adherence to timelines of getting readiness to operate and maintain Sewa Kendras within 30 days . | | 30 days | Rs 10000/- per center per day | Finding by PSeGS or its designated agency or by authorized person of PSeGS |
| 16. | <u>Data Entry</u> | <u>The wrong data entry by the operator</u> | <u>Zero</u> | <u>Rs. 100/- per instance</u> | a) <u>Complaint lodged by the applicant</u> b) <u>Finding by PSeGS or its designated agency or by</u> |

| | | | | | |
|------------|---|--|--|---|---|
| | | | | | <u>authorized person of PSeGS</u> <u>c) _____ Written feedback by Citizen</u> |
| <u>17.</u> | <u>Misbehaviour by Service Operator</u> | <u>Any written/ verbal complaint logged by citizen for misbehaviour by Service Operator</u> | <u>Zero</u> | <u>Rs. 2000/- per instance</u> | <u>a) Complaint lodged by the applicant</u> <u>b) Finding by PSeGS or its designated agency or by authorized person of PSeGS</u> |
| <u>18.</u> | <u>Delay in deposit of Facilitation Charges</u> | <u>PSeGS share of Facilitation Charges not deposited in PSeGS account within defined timelines</u> | <u>10th of the subsequent month or next working day in case of holiday</u> | <u>Interest of 12% per annum compounded monthly and 3 instances in tenure or non-depositing in 30 days will be treated as material breach</u> | <u>Finding by PSeGS or its designated agency or by authorized person of PSeGS</u> |
| <u>19.</u> | <u>Misreporting of Transactions / Revenue</u> | <u>Wilful misrepresentation of the fact reported which leads to revenue loss to PSeGS</u> | <u>Zero</u> | <u>Fee of the service Multiplied by instances reported in a month multiplied</u> | <u>a) Complaint lodged by the applicant</u> |

| | | | | | |
|------------|---|--|--|--|--|
| | | | | <u>by tenure in months multiplied by total number of Sewa Kendras.</u> | <u>b) Finding by PSeGS or its designated agency or by authorized person of PSeGS</u> <u>c) Written feedback by Citizen</u> |
| <u>20.</u> | <u>Theft of any IT/ Non IT asset at Sewa Kendra</u> | <u>Theft of any IT/Non IT Infrastructure at Sewa Kendra to be reported to nearest Police Station</u> | <u>PSeGS to be informed within 1 working day and Claim process to be initiated within 5 days. Sewa Kendra to be made operational in 2 weeks.</u> | <u>Penalty of Rs. 5000 per day in case baseline not met.</u> | <u>a) Complaint lodged by the applicant</u> <u>b) Finding by PSeGS or its designated agency or by authorized person of PSeGS</u> <u>c) Written feedback by Citizen</u> |

*Incase for an applicability of penalty Damages due to multiple violation of SLAs happens, highest value of the penalties will be only applicable.

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Citizen Service Delivery SLAs

| SLA No. | SLA Parameter | Baseline performance | Penalty calculation <u>Calculation of Damages payable per month</u> | Method of measurement |
|---------|---|----------------------|--|--|
| | Average Transaction Time at the Window | 10 Minutes | 10-15 minutes: INR 5000 per Kendra for the month More than 15 minutes: INR 20000 per Kendra for the month | 1. Average for one month for each Sewa Kendra. |
| | <u>Average wait time between token generations to call of token</u> | <u>45 minutes</u> | <u>45-60 minutes: INR 5000 per Kendra for the month.</u> <u>More than 60 minutes: INR 20000 per Kendra for the month.</u> | <u>1. Average for one month for each Sewa Kendra</u> |

- Above SLAs shall be calculated for every month for all services handled through all Sewa Kendras.
- The final SLAs shall be calculated on the basis of gross average SLAs after summing of all debit/credit points accrued during the month. Any net credit of points shall not be carried over for subsequent months.
- ~~The applicable liquidation damages on performance of the gross average SLAs for the month shall be levied as below:~~

~~Baseline: None~~

~~• Lower Performance: 0.5% of Monthly payout~~

~~• Breach: 5% of monthly Payout. In case of continuous breach of 3 months, PSeGS reserves the rights to terminate the contract.~~

- In future, more SLAs may be defined with mutual agreement of PSeGS and Service Operator, shall be categorized as follows:
 - **Baseline Performance:** if the performance is in-line with or consistent with the Baseline Performance for all parameters, then no Damages shall be payable by the Service Operator to the PSeGS. Baseline Performance shall be determined as per table above, and where not specified then a deviation from the method of measurement specified in the table above
 - **Lower Performance:** In any case, overall total deduction from the payment due to Service Operator will not exceed 15% of monthly payment. This deduction is in addition to the other liquidity damages as mentioned in this RFP.
 - All above liquidated damages shall be levied on the Service Operator for any failure happened on his part in any of the agreed Timelines/SLAs/Terms & Condition. However, in any case, the total value of the liquidated damages shall not be greater than 10% of the Net Project Value beyond which PSeGS reserves the right to terminate the contract. Performance by the Service Operator that is below the Baseline Performance shall be “Lower Performance”

- In case of Lower Performance, the Service Operator shall be liable to pay to the PSeGS the Damages specified in the tables above. Provided that the aggregate liquidated damages for a given month shall be capped at the higher of (“LD Cap”): (a) 15% of the total revenue generated by all Sewa Kendra’s in the relevant month, or (b) Value defined for minimum deduction towards operational cost as defined in Financial Forms of RFP Vol II Annexure-IV (for the relevant zone).

For the avoidance of doubt it is clarified that the payment of Damages shall be in addition to the profit share required to be paid by the Service Operator to the PSeGS in accordance with the terms of this Agreement. Moreover, it is agreed that the Damages specified herein are a genuine pre-estimate of the loss that the PSeGS would suffer on account of a Lower Performance by the Service Operator. It being clarified that the Damages are not in the nature of a penalty or penal in nature, but merely represent a pre-estimate of the loss suffered by the PSeGS and are not a quantification of the amount of loss suffered that shall be suffered by the PSeGS.

- The occurrence of any of the following events shall constitute a Material Breach of this Agreement by the Service Operator and the PSeSG shall be entitled to exercise the rights specified in this Agreement (including without limitation under Clause 11):
 - (i) Lower Performance events where there is a (cumulative) 50% or more deviation for any of the Baseline Performance for the SLAs mentioned at SLA No. 4, and the Citizen Service Delivery SLA, across all Sewa Kendra’s in any month; and

(ii) 500 instances of performance below the Baseline for all SLAs (other than those mentioned in (i) above) across all Sewa Kendra's in any month;

(iii) The aggregate amount of Damages paid by the Service Operator for Lower Performance exceeding the LD Cap specified in these SLAs.

General Conditions of SLA

i. Applicability and Exclusion of SLAs

All the defined 'Operational SLAs' will not be applicable for first 30 days of launching of services at Sewa Kendra.

ii. SLA Review

PSeGS will review the performance of the Service Operator against the SLA at any given time or duration. The supervision report about the performance of any Services pursuant to this SLA by the Service Operator or any other agency as appointed by PSeGS shall form the basis for imposing ~~damages~~Damages for breach of contract. The results of said review will be shared by PSeGS with the Service Operator. PSeGS reserves the right to appoint a third party auditor/ agency to validate the Deliverables under this SLA. Based on the instructions of the PSeGS, the findings of the third party auditor/ agency shall be accepted and addressed by the Service Operator with the consultation of the PSeGS.

iii. Reporting Procedures

The Service Operator's representative will prepare and distribute SLA performance reports in the format prescribed by PSeGS for the entire term (including renewal, if any, thereof) of the contract. These reports shall include "actual versus target" SLA performance, a variance analysis and discussion of appropriate issues or significant events. Service Operator will design the SLA reporting formats (daily, weekly, monthly and quarterly) and get sign off on these formats from the PSeGS.

iv. Issue Management Procedures

The issue management process under this SLA, briefly stated, would be as under:

- Either the Service Operator or PSeGS may document any issue(s) which arises/ noticed at any time during the performance

- of this SLA (the “**Issue(s)**”) and communicate the same to the other Party hereto within 7 days of it arising;
- The document referred to in sub-clause above shall contain an objective summary of the Issue(s), the viewpoints of both Service Operator and PSeGS and possible solutions thereof;
 - Project Steering Committee will act as the issue resolution authority to resolve the Issue(s);
 - A meeting will be conducted between the Parties and the issue resolution authority to resolve the Issue(s) in a timely manner. The documented Issue(s) will be distributed to the participants at least 24 hours prior to the discussion if the Issue(s) is not of an emergent nature requiring immediate attention;
 - The selected issue resolution authority will resolve the Issue(s) and communicate the same to the Parties; and
 - In the event any significant business Issue(s) is still unresolved, either Party may have recourse to the Dispute Resolution Procedure set forth in the Contract.

v. Management Escalation Procedures

- The purpose of this escalation process is to provide a quick and orderly method of notifying both parties that an Issue is not being successfully resolved at the lowest possible management level. Implementation of this procedure will ensure that PSeGS and Service Operator are communicating at the appropriate levels. It is agreed that escalation should take place on an exception basis and only if successful Issue resolution cannot be achieved in a reasonable time frame
- All Issues would be raised to the PSeGS, which will be completely responsible for the day to day management of the implementation of Services and Deliverables under the Contract including this SLA. The Program Monitoring Unit team shall classify the Issues based on their severity level and resolve them within appropriate timelines ensuring that there are no delays in provision of Services.
- If the Program Monitoring Unit is unable to resolve an issue, the Issue would be escalated to the Project Steering Committee and further to Executive Committee of PSeGS with options/ risks detailed for decision. The PSeGS will make decisions based on the options/ risks presented by the Program Monitoring Unit

ANNEXURE – C –REQUIRED DELIVERABLE AND ASSOCIATED TIMELINES

The project shall commence for each zone simultaneously with tentative timelines as given below:

| S. No. | Description | Time for completion |
|---------------|---------------------------------------|--|
| 1. | Signing of Contract | T |
| 2. | Possession of Sewa Kendras | T1 (T+15 days) |
| 3. | #Operational Readiness and Acceptance | T2 (Within 30 days from the date of possession) |
| 4. | Operations & Maintenance Period | T3 (60 months from launch of Sewa Kendras) |
| 5. | End of Contract | 60 months from launch of all Sewa Kendras (T3 + 60 months) |

#Operational Readiness is making the Sewa Kendras ready with all the infrastructure, manpower, training of manpower, standard operating procedures etc. as per the scope of work so that they are ready for providing services to the citizens. This readiness will be checked and certified by the PSeGS

ANNEXURE – D - BID

1. TECHNICAL BID RESPONSE AND SUBSEQUENT CORRESPONDENCES

TECHNICAL BID RESPONSE as per bid submitted by Service Operator on Punjab e-Tender Portal and subsequent correspondences submitted are part of this contract.

2. COMMERCIAL PROPOSAL RESPONSE:

ANNEXURE – EF – ROLES AND RESPONSIBILITIES OF THE PARTIES

Roles and Responsibilities of Service Operator

As per RFP and Bidder Proposal

Roles and Responsibilities of Punjab State eGovernance Society

As per RFP

ANNEXURE – F – Details of Zone No. 1