

REQUEST FOR PROPOSAL

Volume III : Draft Master Service Agreement

**SELECTION OF SERVICE OPERATOR
TO OPERATE, MAINTAIN AND MANAGE
SEWA KENDRAS
IN THE STATE OF PUNJAB
(Reference No. PSeGS/UCSDC/2014)**

**PUNJAB STATE e-GOVERNANCE SOCIETY
Department of Governance Reforms
SCO 193-195, SECTOR 34 A
CHANDIGARH**

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This is Draft Master Service Agreement (MSA). Changes will be incorporated based upon any corrigendum, clarification, bidder proposal, legal vetting etc.

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A. MASTER SERVICES AGREEMENT

THIS MASTER SERVICE AGREEMENT ("Agreement") is made on this the day of Month, 2015 at Chandigarh, India.

BETWEEN

Punjab State e-Governance Society having its office at **SCO 193-195, Sector 34-A, Chandigarh - 160022, Punjab, India** hereinafter referred to as Punjab State e-Governance Society (hereinafter called the PSeGS, which expression shall, unless the context otherwise requires, include its permitted successors and assigns **OF THE FIRST PART**

;

AND

<<Bidder Name>>, a Company incorporated under the Companies Act, 1956, having its registered office at _____ represented by its duly authorized signatory _____ <<Name, Designaton>> (hereinafter referred to as the 'Service Operator' which expression shall, unless the context otherwise requires, include its permitted successors and assigns **OF THE SECOND PART**

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

WHEREAS:

1. Punjab State e-Governance Society is desirous to implement the project of Service Operator to Operate, Maintain and Manage Sewa Kendras in the State of Punjab.
2. In furtherance of the same, Punjab State e-Governance Society undertook the selection of a suitable Service Operator through a competitive bidding process for implementing the Project and in this behalf issued Request for Proposal (RFP) dated 26th November 2014.
3. The successful bidder has been selected as the Service Operator on the basis of the bid response and subsequent correspondences set out as [Annexure D](#) of this Agreement, to undertake the Project of the Operation, Maintenance and Management of Sewa Kendras in State of Punjab.

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

1. Definitions and Interpretation

1.1 Definitions

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

1.2 Interpretation

In this Agreement, unless otherwise specified:

- I. references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- II. use of any gender includes the other genders;
- III. references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- IV. references to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal entity);

- V. a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- VI. any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- VII. references to a 'working day' shall be construed as mentioned in the Volume I of the RFP;
- VIII. references to a 'business day' shall be construed as a reference to a day on which PSeGS's office is generally open for business;
- IX. a reference to times are to Indian Standard Time;
- X. a reference to any other document referred to in the Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- XI. all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of the Agreement.
- XII. Service Operator has been used for the same entity i.e. bidder selected for the project.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

- 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

The MSA, including its Schedules, Annexures and Appendixes, alongwith the NDA, SLA and the Schedules and Annexures thereof represents the entire agreement between the Parties as noted in this Clause. If in the event of a dispute as to the interpretation or meaning of the 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 Agreement along with the SLA agreement, NDA agreement, Schedules and Annexures other than mentioned at point number 1.5 (II) and 1.5 (III) as below;
- II. Request for Proposal and Addendum/Corrigendum to the Request for Proposal.
- III. Letter of Intent
- IV. Letter of acceptance by the selected bidder
- V. Technical and Commercial Proposal along with the subsequent correspondences and clarifications submitted by the Service Operator.

For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures/Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexures/Schedules and Annexures/Schedules shall prevail over the contents and specifications of the RFP, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures;

2. Scope of the Project

The Scope of work has been detailed out in **Volume I of the RFP**.

The roles and responsibilities of the Parties under this Agreement have been set out in detail as [Annexure F](#) of this Agreement.

For the avoidance of doubt, it is expressly clarified that this Agreement shall govern the provision of the contracted professional services under the SLA to the Punjab State e-Governance Society and its nominated agencies. New or renewal agreements may be undertaken by creating a separate SLA, with schedules and annexures as required, under this Agreement for each additional engagement.

2.1 Scope of work

The Broad Scope of Work of the Service Operator shall be as following. However the detailed Scope of Work shall be as per the Request for Proposal & Corrigendum to RFP, which is also annexed to this contract as Appendix 1 (Request for Proposal, Corrigendum to RFP and Response to Queries to the RFP).

- 1.A RFP Volume I (___ pages)
- 1.B RFP Volume II (___ Pages)
- 1.C Corrigendum to the RFP (___ Pages)
- 1.D Response to Queries to the RFP (___Pages)

3. Term and Duration of the Agreement

- 3.1 This Agreement shall come into effect on Month, 2015 (hereinafter the 'Effective Date') and shall continue till the completion date of the

operation and maintenance of the project to the Punjab State e-Governance Society or its nominated agencies. However, any further extension will be discussed with the Service Operator before the expiry of the existing term.

4. Conditions Precedent & Effective Date

4.1 Provisions to take effect upon fulfillment of Conditions Precedent

Subject to express terms to the contrary, the rights and obligations under this Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out below. However, 'Punjab State e-Governance Society' or its nominated agencies may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the Service Operator.

4.2

a. Conditions Precedent of the Service Operator

The Service Operator shall be required to fulfill the Conditions Precedent as follows:

- I. to provide a Performance Security/Guarantee and other guarantees/ payments as and when required to the Punjab State e-Governance Society or its nominated agencies; and
- II. to provide the Punjab State e-Governance Society or its nominated agencies certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Service Operator.

b. Conditions Precedent of the Punjab State eGovernance Society

The Punjab State e-Governance Society shall be required to fulfill the Conditions Precedent as follows:

- I. Handing over of Sewa Kendras/Sites
- II. Necessary clearances
- III. Approval of the Project by a Competent Authority.

For the avoidance of doubt, it is expressly clarified that the obligations of the Parties except the financial obligations of Punjab State e-Governance Society or its nominated agencies under this Agreement shall commence from the fulfillment of the Conditions Precedent as set forth above.

4.3 Extension of time for fulfillment of Conditions Precedent

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

For the avoidance of doubt, it is expressly clarified that any such extension of time shall be subject to imposition of penalties on the Service Operator linked to the delay in fulfilling the Conditions Precedent.

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

- I. In the event that any of the Conditions Precedent of the Service Operator have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by Punjab State e-Governance Society or its nominated agencies, this Agreement shall cease to exist;
- II. In the event that the Agreement fails to come into effect on account of non fulfillment of the Service Operator's Conditions Precedent, the Punjab State e-Governance Society or its nominated agencies shall not be liable in any manner whatsoever to the Service Operator and the Punjab State e-Governance Society shall forthwith forfeit the Performance Guarantee.
- III. In the event that possession of any of the Punjab State e-Governance Society or its nominated agencies facilities has 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 Punjab State e-Governance Society or its nominated agencies, free and clear from any encumbrances or claims.

5. Obligations under the SLA

- 5.1 The SLA shall be a separate contract in respect of this Agreement and shall be entered into concurrently with this Agreement between Punjab State e-Governance Society and Service Operator.
- 5.2 In relation to any future SLA entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein.

5.3 Change of Control

- I. In the event of a change of control of the Service Operator during the Term, the Service Operator shall promptly notify Punjab State e-Governance Society and/or its nominated agencies of the same in the format set out as [Annexure A](#) of this Agreement.
- II. In the event that the net worth of the surviving entity is less than that of Service Operator prior to the change of control, the Punjab State e-Governance Society or its nominated agencies will within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the Service Operator from a guarantor acceptable to the Punjab State e-Governance Society or its nominated agencies (which shall not be Service Operator or any of its associated entities).
- III. If such a guarantee is not furnished within 30 days of the Punjab State e-Governance Society or its nominated agencies requiring the replacement, the Punjab State e-Governance Society may exercise its

right to terminate the SLA and/ or this Agreement within a further 30 days by written notice, to become effective as specified in such notice.

- IV. Pursuant to termination, the effects of termination as set out in **Clause 14.2** 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 of control for purposes of this Clause unless the surviving entity is of less net worth than the predecessor entity.

5.4 Final testing and certification

The Project shall be governed by the mechanism of final acceptance testing and certification to be put into place by the Punjab State e-Governance Society and Service Operator as under:

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

- 5.5 The Parties shall each ensure that the range of the Services under the SLA shall not be varied, reduced or increased except with the prior written agreement between the Punjab State e-Governance Society and Service Operator in accordance with the Change Control Schedule set out in

[Schedule II](#) of this Agreement. Save for the express terms of the Terms of Payment Schedule set out as [Schedule VI](#) of this Agreement, Punjab State e-Governance Society or its nominated agencies and its users may purchase any particular category of Services that may become necessary as per the Change Control Schedule set out in [Schedule II](#) of this Agreement, without the need to go for a separate procurement process.

6. Representations and Warranties

6.1 Representations and warranties of the Service Operator

The Service Operator represents and warrants to the Punjab State e-Governance Society or its nominated agencies 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 Punjab State e-Governance Society normal business operations
- VI. this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- VII. the information furnished in the tender documents 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 Punjab State e-Governance Society or its nominated agencies 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 Punjab State e-Governance Society or its nominated agencies in connection therewith.

6.2 Representations and warranties of the Punjab State e-Governance Society or its nominated agencies

Punjab State e-Governance Society or its nominated agencies 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. 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 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 Punjab State e-Governance Society or its nominated agencies 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 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.

7. Obligations of the PSeGS or its Nominated Agencies

Without prejudice to any other undertakings or obligations of the Punjab State e-Governance Society or its nominated agencies under the Agreement, the Punjab State e-Governance Society or its nominated agencies shall perform the following:

- I. To provide any support through personnel to test the system during the Term;
- II. To provide any support through personnel and/or test data during development, rollout, steady state operation, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- III. 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.

8. Obligations of the Service Operator

- 8.1 It shall provide to the Punjab State e-Governance Society or its nominated agencies, the Deliverables/Services as set out in [Annexure C](#) of this Agreement.
- 8.2 It shall perform the Services as set out in **Clause 2** of this Agreement and in a good and workmanlike manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by the Agreement, and so as to comply with the applicable Service Levels set out with the Agreement.
- 8.3 It shall ensure that the Services are being provided as per the Project Timelines & guidelines set out as [Annexure C](#) to this Agreement.

9. Approvals and required consents

- 9.1 The Parties shall cooperate to procure, maintain and observe all relevant and regulatory and governmental licenses, clearances and applicable approvals (hereinafter the “*Required Consents*”) necessary for the Service Operator to provide the Services. The costs of such Approvals shall be borne by the Party normally responsible for such costs according to local custom and practice in the locations where the Services are to be provided.
- 9.2 Punjab State e-Governance Society or its nominated agencies shall as far as possible assist Service Operator to obtain the Required Consents or vice versa, depending on the Scope of work defined in the RFP. In the event that any Required Consent is not obtained, the Service Operator and the Punjab State e-Governance Society or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the Punjab State e-Governance Society or its

nominated agencies to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Required Consent is obtained, provided that the Service Operator shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the Required Consents are obtained if and to the extent that the Service Operator's obligations are not dependent upon such Required Consents.

10. Use of assets by the Service Operator

10.1 During the Term the Service Operator shall:

- a. take all reasonable and proper care of the entire 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 Punjab State e-Governance Society or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- 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.

11. Access to the PSeGS or its Nominated Agencies Locations

11.1 For so long as the Service Operator provides services to the Punjab State e-

Governance Society or its nominated agencies location, as the case may be, on a non-permanent basis and to the extent necessary, the Punjab State e-Governance Society as the case may be or its nominated agencies shall, subject to compliance by the Service Operator with any safety and security guidelines which may be provided by the Punjab State e-Governance Society as the case may be or its nominated agencies and notified to the Service Operator in writing, provide the Service Operator with:

- I. reasonable access, in the same manner granted to the Punjab State e-Governance Society or its nominated agencies employees, to the Punjab State e-Governance Society as the case may be location twenty-four hours a day, seven days a week;
- II. reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other the Punjab State e-Governance Society as the case may be location, if any, as may be reasonably necessary for the Service Operator to perform its obligations hereunder and under the SLA.

11.2 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 Punjab State e-Governance Society as the case may be or its nominated agencies. 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.

12. Management Phase

12.1 Governance

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

12.2 Use of Services

- I. The Punjab State e-Governance Society as the case may be or its nominated agencies, will undertake and use the Services in accordance with any instructions or procedures as per the acceptance criteria as set out in the SLA or this Agreement or any agreement that may be entered into between the Parties from time to time;

- II. The Punjab State e-Governance Society as the case may be or its nominated agencies shall be responsible for the operation and use of the Deliverables resulting from the Services.

12.3 Changes

Unless expressly dealt with elsewhere in this Agreement, any changes under or to this Agreement or under or to the SLA shall be dealt with in accordance with the Change Control Schedule set out in [Schedule II](#) of this Agreement.

12.4 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 Punjab State e-Governance Society 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 SLA/Agreement shall also comply with Punjab State e-Governance Society or the Government of India, and Government of Punjab security standards and policies in force from time to time at each location of which Punjab State e-Governance Society or its nominated agencies make the Service Operator aware in writing insofar as the same apply to the provision of the Services.
- III. The Parties to the SLA/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 Punjab State e-Governance Society as the case may be or 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 PSeGS or its nominated agencies.
- V. As per the provisions of the SLA or this Agreement, the Service Operator shall promptly report in writing to the Punjab State e-Governance Society or its nominated agencies, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of Punjab State e-Governance Society or its nominated agencies(s), as the case may be.

12.5 Cooperation

Except as otherwise provided elsewhere in this Agreement or the SLA, each

Party (“**Providing Party**”) to this Agreement or to the SLA undertakes promptly to provide the other Party (“**Receiving Party**”) with all such information and co-operation which the Receiving Party reasonably requests, provided that such information and co-operation:

- 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 or the SLA;
- III. cannot be construed to be Confidential Information; and
- IV. is capable of being provided by the Providing Party.

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

13. Financial Matters

13.1 Terms of Payment

- I. In consideration of the Services and subject to the provisions of this Agreement and of the SLA, the Punjab State e-Governance Society shall pay the Service Operator for the Services rendered in pursuance of this agreement, in accordance with the Terms of Payment Schedule set out as [Schedule VI](#) of this Agreement.
- II. All payments are subject to the application of penalties as provided for in the SLA. For the avoidance of doubt, it is expressly clarified that the Punjab State e-Governance Society will calculate the applicable penalties and debit the same against the terms of payment as set out in [Schedule VI](#) of this Agreement as a result of the failure of the Service Operator to meet the Service Level as defined in SLA.
- III. Save and except as otherwise provided for herein or as agreed between the Parties in writing, the Punjab State e-Governance Society shall not be required to make any payments in respect of the Services other than those covered in [Schedule VI](#) of this Agreement. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.

13.2 Invoicing and Settlement

- I. Subject to the specific terms of the SLA, the Service Operator shall submit its invoices in accordance with the following principles:

- II. Service Operator will collect the money on behalf of PSeGS from the citizens as per pre-defined per service rates which includes facilitation charges & Statuary fee defined by the State Government. Facilitation charges to be charged from the citizens for delivering the services through these Sewa Kendras will be decided by the PSeGS.
- III. Service Operator will submit its invoices to the PSeGS for the Services on monthly basis. Any invoice presented in accordance with this Clause will be in a form agreed with the PSeGS.
- IV. Service operator will reconcile & settle the money so collected on fortnightly basis. Any surplus money after retaining his proportionate revenue share, will be transferred to PSeGS designated bank account on fortnightly basis i.e. on 5th & 20th of every month, failing which an interest @ 12% per annum will be levied on the due amount. However, if money so collected is not commensurate with the proportionate share of the Service Operator, PSeGS will make the payment of such deficit after proper verification of invoices submitted by the bidder.
- V. The Service Operator will invoice all payments by 7th of subsequent month, only after receiving due approvals from the competent authorities. Such invoices will be accurate and include all adjustments to or changes in the terms of payment. PSeGS reserves the right to ask Service Operator to provide all the information/ clarifications/ additional supporting documents required to verify the invoice.
- VI. Final payment will be settled/made within 60 days of the receipt of invoice along with supporting documents, subject to (i) all supporting documents being in order, (ii) necessary verification of all supporting documents and invoice, (iii) deduction of all applicable penalties and (iv) acceptance & approval of invoice by the PSeGS.
- VII. The PSeGS will be entitled to delay or withhold part of the payment of any invoice which is under a dispute. The withheld amount shall be limited to that which is the disputed amount. The disputed amount shall be referred to the escalation procedure as set out in the agreement. Any exercise by the PSeGS under this Clause shall not entitle the Service Operator to delay or withhold provision of the Services.
- VIII. The Service Operator will be solely responsible to make payment to its sub-contractors.
- IX. Since Service provider is allowed to retain his share out of money collected hence all applicable penalties (if any), will be deducted from the (i) amount pending for reimbursement to the service operator, (ii) subsequent month's payment or (iii) by invoking the PBG.

13.3 Tax

- I. The Punjab State eGovernance Society or its nominated agencies shall be responsible for withholding 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, SLA, 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.

- II. The Punjab State eGovernance Society or its nominated agencies shall provide Service Operator with the original tax receipt of any withholding taxes paid by Punjab State eGovernance Society or its nominated agencies on payments under this Agreement. The Service Operator agrees to reimburse and hold the Punjab State eGovernance Society or its nominated agencies harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among the Punjab State eGovernance Society or its nominated agencies, 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 Punjab State eGovernance Society for providing the services i.e. service tax or any such other 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 Punjab State eGovernance Society under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in [Schedule VI](#). However, in case of any new or fresh tax or levy imposed after submission of the proposal the 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.

14. Termination

14.1 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 a one month's notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, the Punjab State eGovernance Society 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 as per the Agreement which translates into Material Breach, then the *Punjab State eGovernance Society* may serve a 30 days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the *Punjab State eGovernance Society* 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 PSeGS or its nominated agencies as per the Agreement, then the Service Operator may serve a 30 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 PSeGS to explain the circumstances leading to such a breach.
- II. The Punjab State eGovernance Society may by giving a one month's written notice, terminate this Agreement if a change of control of the Service Operator has taken place. For the purposes of this Clause, in the case of Service Operator, change of control shall mean the events stated in **Clause 5.3**, and such notice shall become effective at the end of the notice period as set out in **Clause 5.3 (III)**.
- III. In the event that Service Operator undergoes such a change of control, Punjab State eGovernance Society may, as an alternative to termination, require a full Performance Guarantee for the obligations of Service Operator by a guarantor acceptable to Punjab State eGovernance Society or its nominated agencies. If such a guarantee is not furnished within 30 days of Punjab State eGovernance Society's demand, the Punjab State eGovernance Society may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the Service Operator.

- IV. The termination provisions set out in this Clause shall apply mutatis mutandis to the SLA.

14.2 Effects of termination

- I. In the event that Punjab State eGovernance Society terminates this Agreement pursuant to failure on the part of the Service Operator to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by Service Operator shall be forfeited.
- II. Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as [Schedule III](#) of this Agreement.
- III. In the event that Punjab State eGovernance Society or the Service Operator terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as [Schedule VI](#) of this Agreement.
- IV. Punjab State eGovernance Society 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 upto termination, and ii) reimbursable expenses Service Operator incurs upto termination.

14.3 Termination of this Agreement due to bankruptcy of Service Operator

The *Punjab State eGovernance Society* may serve written notice on Service Operator at any time to terminate this Agreement with immediate effect in the event that the Service Operator reporting an apprehension of bankruptcy to the *Punjab State eGovernance Society* or its nominated agencies.

15. Indemnification & Limitation of Liability

- 15.1 Subject to Clause 15.2 below, Service Operator (the "Indemnifying Party") undertakes to indemnify Punjab State eGovernance Society (the "Indemnified Party") from and against all losses on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or willful default in performance or non-performance under this Agreement. In case a third party claims against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Indemnified Party. 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 use of the Service in combination with any product or information not owned or developed by Indemnifying Party; (d) Indemnified Party's distribution, marketing or use for the benefit of third parties of the Service; or (e) 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 noninfringing equivalent, (iii) modify it to make it noninfringing.

15.2 The indemnities set out in Clause 15.1 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;
- 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, the Indemnified Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be 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; and
 - B. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
- VI. the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in

favour of the Indemnified 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; and
- IX. if a Party makes a claim under the indemnity set out under **Clause 15.1** 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).

15.3 The liability of Service Operator (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event in the aggregate exceed the Total Contract Value (i.e. Total Project Cost as mentioned in Annexure D of MSA). The liability cap given under this **Clause 15.3** shall not be applicable to the indemnification obligations set out in **Clause 15.1** and breach of **Clause 12.4** and **17**.

15.4 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 15.1**) even if it has been advised of their possible existence.

15.5 The allocations of liability in this Section 15 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.

16. Force Majeure

16.1 Definition of Force Majeure

The Service Operator or the Punjab State eGovernance Society as the case may be, shall be entitled to suspend or excuse performance of its respective obligations

under this Agreement to the extent that such performance is impeded by an event of force majeure ('Force Majeure').

16.2 Force Majeure events

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

- I. is beyond the reasonable control of the affected Party;
- II. such Party could not have prevented or reasonably overcome by exercising best possible efforts;
- III. does not result from the negligence of such Party or the failure of such Party to perform its obligations under this Agreement;
- IV. is of an incapacitating nature and prevents or causes a delay or impediment in performance; and
- V. may be classified as all or any of the following events:

Such events include:

Non-Political Events

- A. act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions;
- B. radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the Service Operator's use of radiation or radio-activity or biologically contaminating material;
- C. strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances as the case may be not arising on account of the acts or omissions of the Service Operator and which affect the timely implementation and continued operation of the Project; or
- D. any event or circumstances of a nature analogous to any of the foregoing.

Political Events

- E. Change in Law, other than any Change in Law for which relief is provided under this Agreement;
- F. expropriation or compulsory acquisition by the Punjab State eGovernance Society or any of their nominated agencies of any material assets or rights of the Service Operator;
- G. unlawful or unauthorized revocation of, or refusal by Punjab State eGovernance Society or any of their nominated agencies, Government of India (GoI) or any of its agencies to renew or grant any clearance or Required Consents required by the Service Operator to perform its obligations without valid cause, 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 Required Consents applied on a non-discriminatory basis;

- H. any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Service Operator in any proceedings for reasons other than failure of the Service Operator to comply with Applicable Laws or Required Consents or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement;
- I. any requisition of the Project by any other authority; or
- J. any requisition of the Project by the Punjab State eGovernance Society or any of their nominated agencies.
- K. 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.

Other Events

- L. an act of war (whether declared or undeclared), hostilities, invasion, armed conflict or act of foreign enemy, blockade, embargo, prolonged riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage, for a continuous period exceeding seven (7) days.

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

16.3 Notification procedure for Force Majeure

- a. The affected Party shall notify the other Party of a Force Majeure event within fifteen (15) days of occurrence of such event. If the other Party disputes the claim for relief under Force Majeure it shall give the claiming Party written notice of such dispute within thirty (30) days of

such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in accordance with Clause

- b. Upon cessation of the situation which led the Party claiming Force Majeure, the claiming Party shall within fifteen (15) days hereof notify the other Party in writing of the cessation and the Parties shall as soon as practicable thereafter continue performance of all obligations under this Agreement.

16.4 Allocation of costs arising out of Force Majeure

- a. 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.
- b. 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:
 - 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.
 - upon occurrence of an Other Events of Force Majeure, all Force Majeure Costs attributable to such Other Event(s), shall be borne by the Service Operator. 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.
 - 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.

16.5 Consultation and duty to mitigate

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

17. Confidentiality

- 17.1 The *Punjab State eGovernance Society* or its nominated agencies 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.
- 17.2 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.
- 17.3 The Punjab State eGovernance Society or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Service Operator regarding any forbidden disclosure.
- 17.4 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 PSeGS regarding the same. PSeGS 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;
 - d. Information which has been disclosed to the public pursuant to a court order.
- 17.5 To the extent the Service Operator shares its confidential or proprietary information with the *Punjab State eGovernance Society* for effective performance of the Services, the provisions of the **Clause 17.1 to 17.3** shall apply mutatis mutandis on the *Punjab State eGovernance Society* or its nominated agencies.

18. Audit, Access and Reporting

The Service Operator shall allow access to the *Punjab State eGovernance Society* or its nominated agencies to all information which is in the possession or control of the Service Operator and which relates to the provision of the Services as set out in the Audit, Access and Reporting Schedule and which is reasonably required by the *Punjab State eGovernance Society* to comply with the terms of the Audit, Access and Reporting Schedule set out as [Schedule IV](#) of this Agreement.

19. Intellectual Property Rights

19.1 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 *Punjab State eGovernance Society* 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.

19.2 Bespoke development:

Subject to the provisions of **Clause 19.3 and 19.4** below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie with Punjab State eGovernance Society. Service Operator shall be entitled to a broad license back in the bespoke development for its internal usage and other eGovernance project.

19.3 Pre-existing work:

All IPR including the source code and materials developed or otherwise obtained independently of the efforts of a party under this Agreement ("pre-existing work") including any enhancement or modification thereto shall remain the sole property of that party. During the performance of the services for this agreement, each party grants to the other party (and their sub-contractors as necessary) a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of 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 Punjab State eGovernance Society a non-exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to Punjab State eGovernance Society 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. Punjab State eGovernance Society's license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that bidder leaves with Punjab State eGovernance Society at the conclusion of performance of the services.

19.4 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 or Annexure. 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.

20. Warranty

20.1 Standard:

The Service Operator warrants that the Project, including all the system(s) and other Services provided, shall be free from any defect or deficiency in the material, design, engineering, and performance/workmanship that prevent the Project and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the Project and/or any of its system(s) as per the performance guarantee / warranty period defined in the Schedule. If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services provided by the Service Operator, the Service Operator *shall* promptly, in consultation and agreement with *Punjab State eGovernance Society*, and at the Service Operator's 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. Any defective system that has been replaced by the Service Operator *shall* remain the property of the Service Operator. If the Project or any of its System cannot be used by reason of such default, defect or deficiency and/or making good of such default, defect or deficiency, the warranty period for the Project shall be extended by a period equal to the period during which the Project or any of its system could not be used by the *Punjab State eGovernance Society* because of such defect and/or making good of such default, defect or deficiency.

20.2 Implied Warranty:

The warranties provided herein are in lieu of all other warranties, both express and implied, and all other warranties, including and without limitation that of merchantability or fitness for intended purpose is specifically disclaimed.

20.3 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 Punjab State eGovernance Society without the written permission of the Service Operator, or (iv) use of the deliverables otherwise than in terms of the relevant documentation.

21. Liquidated Damages

Time is the essence of the Agreement and the delivery dates 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, the *Punjab State eGovernance Society* shall be entitled at its option to recover from the Service Operator, liquidated damages of a sum of 0.5% of the value of the deliverable which suffered delay or gross negligence for each completed week or part thereof subject to a limit of 5% of the relevant deliverable value.

22. Versioning

22.1 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 contract, with no additional cost implication to PSeGS at all.

23. Insurance Cover

23.1 Obligation to maintain insurance

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

- (a) for the Agreement Period, valid and enforceable insurance coverage for:
 - (i) public liability;
 - (ii) professional indemnity and errors and omissions;
 - (iii) product liability;
 - (iv) workers' compensation as required by law; and
 - (v) any additional types specified in **Schedule I**; and
- (b) for one year following the expiry or termination of the Agreement, valid and enforceable insurance policies ,
in the amount not less than the Insurance Cover specified in [Schedule I](#).

23.2 Certificates of currency

The Service Operator must, on request by the *Punjab State eGovernance Society*, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by **Clause 23**. The Service Operator agrees to replace any coverage prior to the date of expiry/cancellation.

23.3 Non-compliance

Punjab State eGovernance Society or its nominated agencies may, at its discretion, terminate this Agreement upon the failure of Service Operator, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve Service Operator of its obligations under this Agreement.

24. Miscellaneous

24.1 Personnel

- a. 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 Punjab State eGovernance Society or its nominated agencies or state Governemnt. 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.
- b. 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, Punjab State eGovernance Society or its nominated agencies 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 Punjab State eGovernance Society or its nominated agencies requests that any Service Operator personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.
- c. In the event that the Punjab State eGovernance Society 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 Punjab State eGovernance Society or its nominated agencies unless such removal is the result of an unavoidable circumstance like resignation, termination and medical leave.
- d. Except as stated in this Clause, nothing in this Agreement or the SLA 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. Punjab State eGovernance Society or its nominated agencies 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 penalties shall remain applicable.

- e. Each Party shall be responsible for the performance of all its obligations under this Agreement or the SLA as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- f. Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.

24.2 Independent Contractor

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

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

24.3 Sub-contractors

Service Operator shall not subcontract any work related to the Agreement without Punjab State eGovernance Society's prior written consent. However the Service Operator shall provide the list of services planned to be sub contracted, within 30 days of signing the Agreement or at least 30 days before the start of 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 sub-contractors. The Service Operator undertakes to indemnify the Punjab State eGovernance Society or its nominated agencies 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.

24.4 Assignment

- a. All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the *Punjab State eGovernance Society* and their respective successors and permitted assigns.
- b. Subject to **Clause 5.3**, the Service Operator shall not be permitted to assign

its rights and obligations under this Agreement to any third party.

- c. The *Punjab State eGovernance Society* 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 *Punjab State eGovernance Society* or any of its nominees.

24.5 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, the SLA 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 *Punjab State eGovernance Society* or its nominated agencies in its client lists for reference to third parties subject to the prior written consent of *Punjab State eGovernance Society*. Such approval shall apply to each specific case and relate only to that case.

24.6 Notices

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

Member Secretary
Punjab State e-Governance Society,
Department of Governance Reforms,
SCO 193-195, Sector 34-A, Chandigarh - 160022
Tel: (0172) - 2600971 Fax: (0172) - 2646320
Email: dgr@punjab.gov.in

With a copy to:

<<Other authorized official of PSeGS>>
Punjab State e-Governance Society, Department of Governance
Reforms,

SCO 193-195, Sector 34-A, Chandigarh - 160022

Tel: (0172) - 2661808 (Ext: 137) Fax: (0172) - 2666265

Email:

Service Operator:

-
- c. 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 b 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 days from the date of posting (if by letter).
- d. Either Party to this Agreement or to the SLA 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.

24.7 Variations and Further Assurance

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

24.8 Severability and Waiver

- a. If any provision of this Agreement or the SLA, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the

other provisions of this Agreement or the SLA or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.

- b. No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the SLA of any right, remedy or provision of this Agreement or the SLA shall operate as a waiver of such right, remedy or provision in any 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.

24.9 Compliance with Applicable Law

Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to its business like the Implementation Agency/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 II](#) of this Agreement.

24.10 Professional Fees

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

24.11 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 Punjab State eGovernance Society or its nominated agencies in connection with this agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of Punjab State eGovernance Society standard policies and may result in cancellation of this Agreement, or the SLA.

24.12 Entire Agreement

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

24.13 Amendment

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

24.14 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 NDA shall be in writing and in the English language.

25. Governing Law and Dispute Resolution

25.1 This Agreement shall be governed by and construed in accordance with the laws of India. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement and the performance of the parties contemplated under this Agreement, to the extent that such convention might otherwise be applicable.

25.2 Any dispute arising out of or in connection with this Agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as [Schedule V](#) of this Agreement.

25.3 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:

- Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.
- The mediator shall use his best endeavors to conclude the mediation within a certain number of days of his appointment.

- If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to Experts for advising on the issue.

25.4 In case the mediation does not help in resolution and it requires expertise to understand an issue, a neutral panel of 3 experts, agreeable to both parties should be constituted. The process of the expert advisory would be as follows:

- Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the timeframe and requesting for expert advisory. This is to be sent with a copy to the mediator.
- Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute
- The expert panel shall use his best endeavors to provide a neutral position on the issue.
- If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.

- 25.5** 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. 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 Chandigarh, India.
- 25.6 Compliance with laws:** Each party will comply with all applicable export and import laws and regulations.
- 25.7 Risk of Loss:** For each hardware item, Service Operator bears the risk of loss or damage during tenure of project.
- 25.8 Third party components:** Service Operator will provide all third party components solely on a pass-through basis in accordance with the relevant third party terms and conditions.

IN WITNESS WHEREOF the Parties have by duly authorized

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

Written in the presence of:

WITNESSES:

PSeGS:

**Signed by: <<Authorized Official>> for and on behalf of Punjab State
eGovernance Society**

Service Operator:

Signed by: <<Authorized Official>> for and on behalf of Service Operator

26. Schedules

SCHEDULE - I - Definitions

Adverse Effect	means material adverse effect on (a) the ability of the Service Operator 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 (b) the legal validity, binding nature or enforceability of this Agreement;
Agreement	includes Master Services Agreement, Service Level Agreement and Non-Disclosure Agreement together with all Articles, Annexures, Schedules thereof and the contents and specifications of the RFP;
Applicable Law(s)	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;
Assets	shall have the same meaning ascribed to it in Clause 10.1 (a)
Software	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, but does not include the third party software products (including the COTS products used for the product), proprietary software components and tools deployed by the Service Operator;
Business Hours	<ul style="list-style-type: none"> • For the PSeGS and other state Government departments, shall mean the working time which is 9:00 A.M to 5:00 P.M.

	<ul style="list-style-type: none"> • For the Server(s) and other components which enable successful usage of web portals of PSeGS 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 PSeGS.
Certificate(s) of Compliance	shall have the same meaning ascribed to it in Clause 5.4
Confidential Information	means all information including <i>Punjab State eGovernance Society 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);
Control	means, in relation to any business entity, the power of a person to secure <ul style="list-style-type: none"> (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person's wishes and in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;
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;
Proprietary Information	shall have the same meaning ascribed to it in Clause 19.1
Effective Date	shall have the same meaning ascribed to it in Clause 3.1
Punjab State eGovernance Society Data	means all proprietary data of the department or its nominated agencies 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;
Final Acceptance Test (FAT)	Means test conducted on completion of all the following: <ol style="list-style-type: none"> 1. Deployment & operational infrastructure at requisite locations, 2. User Acceptance Test (UAT) of the overall integrated solution and portal.
Final Testing and Certification Agency	shall have the same meaning ascribed to it in Clause 5.4
Force Majeure	shall have the same meaning ascribed to it in Clause 16
Force Majeure Costs	shall have the same meaning ascribed to it in Clause 16.4
Gol	means the Government of India
Indemnifying Party	shall have the same meaning ascribed to it in Clause 15
Indemnified Party	shall have the same meaning ascribed to it in Clause 15
Intellectual Property Rights	means all rights in written designs and copyrights, moral rights, rights in databases and Bespoke Software / Pre-existing work including its up-gradation systems and compilation 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% of Total Contract Value] per occurrence and not less than [INR 50% of the Total Contract Value] in aggregate - Professional indemnity and errors and omissions insurance for an insured amount of [INR 5% of Total

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	<p><i>Contract Value</i>] per occurrence and not less than [INR 50% of the Total <i>Contract Value</i>] in aggregate.</p> <ul style="list-style-type: none"> - Product liability for an insured amount of [INR 5% of Total <i>Contract Value</i>] per occurrence and not less than [INR 50% of the Total <i>Contract Value</i>] in aggregate. - Workers compensation as required by law
Additional Insurance	N.A
Material Breach	means a breach by either Party (<i>Punjab State eGovernance Society</i> or Service Operator) of any of its obligations 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;
Performance Guarantee	Means the guarantee provided by a Scheduled Bank in favor of the Service Operator for an amount of 10% of the overall cost of the project which shall remain valid till six months after the completion of the project as per the terms of the Agreement.
Planned Application Downtime	means the unavailability of the application services due to maintenance activities such as configuration changes, up gradation or changes to any supporting infrastructure provided either developed and maintained by Service Operator or developed and maintained by other System Integrators of departments. Prior intimation (at least two working days in advance) of such planned outage shall be given and is approved by the <i>Punjab State eGovernance Society</i> as applicable under the Agreement
Planned network outage	means the unavailability of the network services due to infrastructure maintenance activities such as configuration changes, up gradation or changes to any supporting infrastructure provided. Prior intimation (at least two working days in advance) of such planned outage shall be given to/by the <i>Punjab State eGovernance Society</i> or any other network provider agency identified by PSeGS as

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	applicable under the Agreement
Project	means Project Implementation (roll out) and Maintenance in terms of the Agreement;
Project Implementation	means Project Implementation as per the testing standards and acceptance criteria prescribed by <i>Punjab State eGovernance Society</i> or its nominated agencies;
Project Implementation Phase	shall be from the Effective Date of the Agreement to the date of final acceptance testing & certification as set out in Clause 5 of this Agreement;
Project Implementation Unit (PIU)	may be constituted by <i>Punjab State eGovernance Society</i> to monitor the activities, deliverables and progress of the Project. PIU will comprise of the staff members of the <i>Punjab State eGovernance Society</i> , other officials from concerned department and external experts.
Project Steering Committee	shall be constituted by <i>Punjab State eGovernance Society</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 12.5
Receiving Party	shall have the same meaning ascribed to it in Clause 12.5
Replacement Service Operator	means any third party that <i>Punjab State eGovernance Society</i> or its nominated agencies appoint to replace Service Operator upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
Required Consents	means the consents, waivers, clearances and licenses to use <i>Punjab State eGovernance Society's</i> Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the software and other items that <i>Punjab State eGovernance Society</i> or their nominated agencies are required to make available to Service Operator pursuant to the Agreement;
Services	means the services delivered to the Stakeholders of <i>Punjab State eGovernance Society</i> or its nominated agencies, employees of <i>Punjab State eGovernance Society</i> or its nominated agencies, and to professionals using the tangible and intangible assets created, procured, installed, managed and operated by the Service Operator

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	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 Level	means the level of service and other performance criteria which will apply to the Services delivered by the Service Operator;
SLA	means the Performance and Maintenance Service Level Agreement executed as part of the Agreement;
Stakeholders	includes the Departments, Citizens, <i>Punjab State eGovernance Society</i> or its nominated agencies, employees of <i>Punjab State eGovernance Society's</i> and the Departments of State Government;
Term	shall have the same meaning ascribed to it in Clause 3.1
Third Party Systems	means systems (or any part thereof) in which the Intellectual Property Rights are not owned by the <i>Punjab State eGovernance Society</i> or Service Operator and to which Service Operator has been granted a license to use and which are used in the provision of Services;
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;
Unplanned network outage	means the total time for all the instances where services in the software requirement specification document prepared by the Service Operator are not available for more than 5 consecutive minutes;
Application	means the software application developed as a part of scope of work set out in Clause 2
Application Downtime	means the time for which user/s is not able to access the application, excluding the planned downtime
Network Uptime	Means network availability between <i>Punjab State eGovernance Society's</i> Head Quarters to Data center.
% Uptime	means ratio of 'up time' (in minutes) in a month to Total time in the month (in minutes) multiplied by 100
Warranty / AMC Period	Shall be 7 (Seven) years from the date of successful completion /Go-live.

SCHEDULE - II - 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, SLA 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 *Punjab State eGovernance Society* 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 *Punjab State eGovernance Society* or its nominated agencies 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 except for the changes in SLAs for which a separate process has been laid out in **Clause 11** of the SLA.

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, the SLA or 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 *Punjab State eGovernance Society* or its nominated agencies, 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 of 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 *Punjab State eGovernance Society* or its nominated agencies or as decided and approved by *Punjab State eGovernance Society* 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:
 1. a description of the change
 2. a list of deliverables required for implementing the change;
 3. a time table for implementation;
 4. an estimate of any proposed change
 5. any relevant acceptance criteria
 6. an assessment of the value of the proposed change;
 7. material evidence to prove that the proposed change is not already covered within the Agreement and the scope of work
- ii. Prior to submission of the completed CCN to the *Punjab State eGovernance Society*, or its nominated agencies, the Service Provider will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the Service Operator shall consider the materiality of the proposed change in the context of the MSA and the Project Implementation affected by the change and the total effect that may arise from implementation of the change.

C. Costs

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the 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 PSeGS 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. Service Operator will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact.

SCHEDULE - III - EXIT MANAGEMENT SCHEDULE

1. PURPOSE

- 1.1 This Schedule sets out the provisions, which will apply on expiry or termination of the MSA, the Project Implementation, Operation and Management SLA.
- 1.2 In the case of termination of the Project Implementation and/or Operation and Management, the Parties shall agree at that time whether, and if so during what period, the provisions of this Schedule shall apply.
- 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 *Punjab State eGovernance Society* 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 *Punjab State eGovernance Society* with a complete and up to date list of the Assets within 30 days of such notice. *Punjab State eGovernance Society* 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 *Punjab State eGovernance Society* or its nominated agencies at book value as determined as of the date of such notice in accordance with the provisions of relevant laws.
- 2.2 In case of contract being terminated by *Punjab State eGovernance Society*, *Punjab State eGovernance Society* reserves the right to ask Service Operator to continue running the project operations for a period up to 12 months after termination orders are issued.
- 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 *Punjab State eGovernance Society*.
 - (ii) All risk in and title to the Assets to be transferred / to be purchased by the *Punjab State eGovernance Society* pursuant to this Agreement shall be transferred to *Punjab State eGovernance Society*, on the last day of the exit management period.
 - (iii) *Punjab State eGovernance Society* shall pay to the Service Operator on the last day of the exit management period such sum representing the Net Block (procurement price less depreciation as per provisions of Companies Act) of the Assets to be transferred as stated in the Terms of Payment Schedule.

- (iv) Payment to the outgoing Service Operator shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements.
- (v) The outgoing Service Operator will pass on to Punjab State eGovernance Society and/or to the Replacement Service Operator, the subsisting rights in any leased properties/ licensed products on terms not less favorable to Punjab State eGovernance Society/ 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 *Punjab State eGovernance Society* 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 *Punjab State eGovernance Society* to assess the existing services being delivered;
- (ii) promptly on reasonable request by the Punjab State eGovernance Society or its nominated agencies, 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 Punjab State eGovernance Society or its nominated agencies 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 Punjab State eGovernance Society or its nominated agencies to have reasonable access to its employees and facilities as required by the PSeGS 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 *Punjab State eGovernance Society* or its nominated agency 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 *Punjab State eGovernance Society* or its nominated agencies transitioning the services to its Replacement Service Operator nominated by the *Punjab State eGovernance Society* 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 *Punjab State eGovernance Society* or its nominated agencies, or its Replacement Service Operator to carry out due diligence in order to transition the provision of the Services to *Punjab State eGovernance Society* or its nominated agencies, 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 *Punjab State eGovernance Society* or its nominated agency all new or up-dated materials from the categories set out in Schedule III 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 *Punjab State eGovernance Society* or its nominated agency 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.

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 *Punjab State eGovernance Society* 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 *Punjab State eGovernance Society* or its nominated agency, 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 PSeGS or any Replacement Service Operator.

6. TRANSFER OF CERTAIN AGREEMENTS

On request by the *Punjab State eGovernance Society* or its nominated agency the Service Operator shall effect such assignments, transfers, licenses and sub-licenses as the PSeGS 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 *Punjab State eGovernance Society* or its nominated agency 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 *Punjab State eGovernance Society* or its nominated agency and/or any Replacement Service Operator in order to make an inventory of the Assets.

7.2 The Service Operator shall also give the *Punjab State eGovernance Society* or its nominated agency, or any Replacement Service Operator right of reasonable access to the Implementation Partner's premises and shall procure the *Punjab State eGovernance Society* or its nominated agency 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 *Punjab State eGovernance Society* or its nominated agency, 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 *Punjab State eGovernance Society* or its nominated agency 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 *Punjab State eGovernance Society* or its

nominated agency 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 as a whole and in relation to the Project Implementation, and the Operation and Management SLA.

- (i) A detailed program of the transfer process that could be used in conjunction with a Replacement Service 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 *Punjab State eGovernance Society'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 *Punjab State eGovernance Society* and identification of specific security tasks necessary at termination;
- (iv) Plans for provision of contingent support to Punjab State eGovernance Society, 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 *Punjab State eGovernance Society* or its nominated agencies.

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, along with the NDA, SLA and the Schedules and Annexures thereof and Project Implementation, 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 *Punjab State eGovernance Society* or its nominated agencies within 90 days from the Effective Date of this Agreement.

SCHEDULE - IV - AUDIT, ACCESS AND REPORTING

1. PURPOSE

This Schedule details the audit, access and reporting rights and obligations of the *Punjab State eGovernance Society* or its nominated agency 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 Implementation Phase and the Operation and Management Phase. Such timetable during the Implementation Phase, the *Punjab State eGovernance Society* or its nominated agency and thereafter during the operation Phase, the *Punjab State eGovernance Society* or its nominated agency 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 *Punjab State eGovernance Society* or its nominated agency may conduct non-timetabled audits at his/ her own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Service 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.

2.3 The frequency of audits shall be a (maximum) half yearly, provided always that the *Punjab State eGovernance Society* or its nominated agency 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.

2.4 *Punjab State eGovernance Society* 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 *Punjab State eGovernance Society* or its nominated agency reasonable access to employees, subcontractors, suppliers, agents and third party facilities as detailed in the RFP, documents, records and systems reasonably required for audit and shall provide all such persons with

routine assistance in connection with the audits and inspections. The *Punjab State eGovernance Society* 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 *Punjab State eGovernance Society* or its nominated agency shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in the RFP), data centres, documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify including but not limited to:

- (i) The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of *Punjab State eGovernance Society* and documentation related thereto;
- (ii) That the actual level of performance of the services is the same as specified in the SLA;
- (iii) That the 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 and SLA.
- (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.
- (vi) 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 *Punjab State eGovernance Society* or its nominated agency prior to concluding any sub-contract or supply agreement of any failure to achieve the same rights of audit or access.

5.2 **REPORTING:** The Service Operator will provide quarterly reports to the *Punjab State eGovernance Society* regarding any specific aspects of the Project and in context of the audit and access information as required by the *Punjab State eGovernance Society* or its nominated agency.

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 *Punjab State eGovernance Society* or its nominated agency 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.

7. TERMS OF PAYMENT

The *Punjab State eGovernance Society* 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 MSA, the Project Implementation, Operation and Management SLA 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 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, alongwith the NDA, SLA and the Schedules and Annexures thereof.

SCHEDULE - V - GOVERNANCE SCHEDULE

1. PURPOSE

The purpose of this Schedule is to:

- (i) establish and maintain the formal and informal processes for managing the relationship between the *Punjab State eGovernance Society* 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

1. **Project Managers:** The relationship under this Agreement will be managed by the Project Managers appointed by each Party, who will provide the interface between the executive management of the respective Parties.
2. Within 15 working days following the signing of Agreement, *Punjab State eGovernance Society* or its nominated agencies 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.
3. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
4. **Project Steering Committee:** The Project Steering Committee will meet periodically, as required by PSeGS, 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.
5. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in the Terms of Payment Schedule, the Parties agree to discuss in the Project Steering Committee any appropriate amendment to the Agreement or any Service Level Agreements or Statement of Works including any variation to the terms of payment as stated in the Terms of Payment Schedule. Any 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 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 9.1**
- 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 - VI - TERMS OF PAYMENT SCHEDULE

The following schedule would be followed for payment:

Milestone	Payment
Monthly installment as under:	Category wise proportionate payment equal to:
Year 1	1.00% of contract value payable on monthly basis
Year 2	1.05% of contract value payable on monthly basis
Year 3	1.12% of contract value payable on monthly basis
Year 4	1.18% of contract value payable on monthly basis
Year 5	1.25% of contract value payable on monthly basis
Year 6	1.33% of contract value payable on monthly basis
Year 7	Equated monthly installment of balance contract value

Key note:

<<Conditions of Payment, invoicing etc. will be produced here>>

1. _____
2. _____
3. _____

27. 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		
Brief Description of Solution:		
Impact:		
Deliverables:		
Timetable:		
Charges for Implementation: (including a schedule of payments)		
Other Relevant Information: (including value-added and acceptance criteria)		

Service Operator To Operate, Maintain And Manage Sewa Kendras In The State Of Punjab

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 PROVIDED BY THE SERVICE OPERATOR

Various services to be offered by the Service Operator will consist of:

<<List of Services as per RFP and bidder proposal will be produced here>>

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.

DRAFT

ANNEXURE - C -REQUIRED DELIVERABLE AND ASSOCIATED TIMELINES

<<List of Deliverables as per RFP, Bidder proposal will be produced here>>

DRAFT

ANNEXURE - D - BID

1. TECHNICAL BID RESPONSE AND SUBSEQUENT CORRESPONDENCES

2. FINANCIAL BID RESPONSE:

DRAFT

ANNEXURE - D - Bill of Material

<<Bill of Material will be produced here>>

Note:

- In case of un-ability of the Service Operator to provide the above said products during the tenure of the Agreement, the Service Operator shall be liable to supply equivalent or better product. Also Service Operator shall submit a certificate from the respective OEM in this regard.
- PSeGS shall have all the right to reduce quantity of various items/ services to be provided by the Service Operator as part of this bid. The payment to the Service Operator shall be made on the basis of actual items provided/ Services rendered by the Service Operator.
- Any augmentation of the proposed solution or sizing of any of the proposed solutions (including system software, hardware and any other component) in order to meet the minimum RFP requirements and/or the requisite service level requirements given by Punjab State e-Governance Society will be carried out at no additional cost to Punjab State e-Governance Society during the entire period of Contract.
- All software shall be of latest version.

ANNEXURE - F - ROLES AND RESPONSIBILITIES OF THE PARTIES

Roles and Responsibilities of Service Operator

As per RFP and Bidder Proposal:

- 1.
- 2.
- 3.

Roles and Responsibilities of *Punjab State eGovernance Society*

- 1.
- 2.
- 3.

B. NON-DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT “NDA” is made on this the ___ day of January 2015 at Chandigarh, India.

BETWEEN

Punjab State e-Governance Society having its office at SCO 193-195, Sector 34-A, Chandigarh - 160022, Punjab, India hereinafter referred to as Punjab State e-Governance Society (hereinafter called the PSeGS, which expression shall, unless the context otherwise requires, include its permitted successors and assigns;

AND

<<Bidder Name>>, a Company/LLP incorporated under the Companies Act, 1956/LLP Act, having its registered office at _____ (hereinafter referred to as ‘the Service Operator’ which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

1. *Punjab State eGovernance Society* is desirous to implement the project of operate, maintain and mainage Sewa Kendras in the State of Punjab.
2. The *Punjab State eGovernance Society* and Service Operator have entered into a Master Services Agreement dated Month, 2015 (the “MSA”) as well as a Service Level Agreement dated Month, 2015 (the “SLA”) in furtherance of the Project.
3. Whereas in pursuing the Project (the “*Business Purpose*”), a Party (“Disclosing Party”) recognizes that they will disclose certain Confidential Information (*as defined hereinafter*) to the other Party (“Receiving Party”).
4. Whereas such Confidential Information (*as defined hereinafter*) belongs to Receiving Party as the case may be and is being transferred to the Disclosing Party to be used only for the Business Purpose and hence there is a need to protect such information from unauthorized use and disclosure.

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

1. Definitions and Interpretation

1.1. Definitions

Terms and expressions used in this Non Disclosure Agreement (NDA) (including the Introduction) shall have the same meanings set out in Schedule I of Master Service Agreement.

1.2. Interpretation

In this Non Disclosure Agreement (herein after NDA, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs and Schedules are to clauses, sub-clauses, paragraphs of and schedules to this NDA;
- (b) use of any gender includes the other genders;
- (c) references to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a 'person' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal entity);
- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (f) any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- (g) references to a 'business day' shall be construed as a reference to a day (other than a Sunday) on which PSeGS's office is generally open for business;
- (h) references to times are to Indian standard time;
- (i) a reference to any other document referred to in this NDA is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (j) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this NDA.

1.3. Measurements and Arithmetic Conventions

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

1.4. Ambiguities within Agreement

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

- (a) as between two Clauses of this NDA, the provisions of a specific Clause

relevant to the issue under consideration shall prevail over those in a general Clause;

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

1.5. Priority of agreements

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

2. Term

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

3. Scope of the Agreement

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

4. Obligations of the Receiving Party

The Receiving Party shall:

- (a) use the Confidential Information only for the Business Purpose and shall hold the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, taking into account the nature of the Confidential Information, and
- (b) grant access to Confidential Information only to its employees on a ‘need to know basis’ and restrict such access as and when not necessary to carry out the Business Purpose.
- (c) cause its employees to comply with the provisions of this NDA;

- (d) reproduce Confidential Information only to the extent essential to fulfilling the Business Purpose;
- (e) prevent disclosure of Confidential Information to third parties;
- (f) disclose the Confidential Information to its consultants/contractors on a 'need to know basis', provided that by doing so, the Receiving Party agrees to bind such consultants/ contractors to terms at least as restrictive as those stated herein. The Receiving Party upon making a disclosure under this Clause shall:
 - I. advise the consultants/contractors of the confidentiality obligations imposed on them by this Clause.
 - II. upon the Disclosing Party's request, the Receiving Party shall either return to the disclosing party all Confidential Information or shall certify to the disclosing party that all media containing Confidential Information have been destroyed.
 - III. Provided, however, that an archival copy of the Confidential Information may be retained in the files of the Receiving Party's counsel, solely for the purpose of proving the contents of the Confidential Information.
 - IV. not to remove any of the other Party's Confidential Information from the premises of the Disclosing Party without prior written approval.
 - V. exercise extreme care in protecting the confidentiality of any Confidential Information which is removed, only with the Disclosing Party's prior written approval, from the Disclosing Party's premises. Each Party agrees to comply with any and all terms and conditions the disclosing party may impose upon any such approved removal such as that the removed Confidential Information and all copies must be returned by a certain date, and that no copies are to be made off of the premises.
 - VI. Upon the Disclosing Party's request, the Receiving Party shall promptly return to the Disclosing Party all tangible items containing or consisting of the disclosing party's Confidential Information and all copies thereof.

5. Exceptions to Confidential Information

The foregoing restrictions on each party's use or disclosure of Confidential Information shall not apply to the Confidential Information that the Receiving Party can demonstrate that such Confidential Information was independently developed by or for the Receiving Party without reference to the Information, or was received without restrictions; or

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

- I. was in the Receiving Party's possession without restriction or was known by the Receiving Party without restriction at the time of disclosure; or
- II. is the subject of a subpoena or other legal or administrative demand for disclosure; Provided, however that the Receiving Party has given the disclosing party prompt notice of such demand for disclosure and the

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

6. Ownership of the Confidential Information

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

7. Dispute Resolution

- I. If a dispute arises in relation to the conduct of this NDA (Dispute), a party must comply with this **Clause 7** before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this **Clause 7**.

- II. A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.
- III. During the 45 days after a notice is given under clause 7(II) (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of the jurisdiction specified in this agreement. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at the jurisdiction specified in **Clause 25** of MSA. Any legal dispute will come under the sole jurisdiction specified in **Clause 25** of MSA.
- IV. The Receiving Party agrees that the Disclosing Party shall have the right to obtain an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

8. Variation

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

9. Waiver

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

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

10. Exclusion of Implied Warranties

This NDA expressly excludes any warranty, condition or other undertaking implied

at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

11. Entire Agreement

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

12. Severability

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

13. No Partnership

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

14. Third Parties

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

15. Successors and Assigns

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

16. Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this NDA shall be in

writing and shall be given by hand delivery, recognized courier, registered post, email or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Punjab State eGovernance Society:

Member Secretary
Punjab State e-Governance Society, Department of Governance
Reforms,
SCO 193-195, Sector 34-A, Chandigarh - 160022
Tel: (0172) - 2600971 Fax: (0172) - 2646320
Email: dgr@punjab.gov.in

With a copy to:

<<*Authorized official of PSeGS*>>
Punjab State e-Governance Society, Department of Governance
Reforms,
SCO 193-195, Sector 34-A, Chandigarh - 160022
Tel: (0172) - 2661808 (Ext: 137) Fax: (0172) - 2666265
Email:

If to the Service Operator:

<<*Name of address of bidder*>>

17. Language

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

18. Counterparts

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

19. Mitigation

Without prejudice to any express provisions of this NDA on any mitigation obligations of the Parties, each of the Punjab State eGovernance Society and the Service Operator shall at all times take all reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this NDA.

20. Removal of Difficulties

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

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

SIGNED, SEALED AND DELIVERED
For and on behalf of the Service
Operator by:

(Signature)

SIGNED, SEALED AND DELIVERED
For and on behalf of the *Punjab*
State eGovernance Society by:

(Signature)

In the presence of:

- 1.
- 2.

C. SERVICE LEVEL AGREEMENT

THIS SERVICE LEVEL AGREEMENT 'SLA' is made on this the day of January 2014 at Chandigarh, India.

BETWEEN

Punjab State e-Governance Society having its office at SCO 193-195, Sector 34-A, Chandigarh - 160022, Punjab, India hereinafter referred to as '*Punjab State eGovernance Society*' or '*PSeGS*', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

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

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

WHEREAS:

1. *Punjab State eGovernance Society* is desirous to implement the project of Operate, Maintain and Manage Sewa Kendras in State of Punjab.
2. The PSeGS and Service Operator have entered into a Master Services Agreement dated Month, 2015 (the "*MSA*").

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

1. Definitions and Interpretation

1.1 Definitions

Terms and expressions used in this SLA (including the Introduction) shall have the meanings set out in Annexure A.

1.2 Interpretation

In this Agreement, unless otherwise specified:

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

- (ii) use of any gender includes the other genders;
- (iii) references to a ‘**company**’ shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (iv) references to a ‘**person**’ shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (v) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (vi) any reference to a ‘day’ (including within the phrase ‘business day’) shall mean a period of 24 hours running from midnight to midnight;
- (vii) references to a ‘business day’ shall be construed as a reference to a day (other than a Sunday) on which PSeGS’s office is generally open for business;
- (viii) references to times are to Indian Standard Time;
- (ix) a reference to any other document referred to in this SLA is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (x) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this SLA.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

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

1.5 Priority of agreements

The Parties hereby expressly agree that for the purpose of giving full and proper effect to this SLA, the MSA and this SLA shall be read together and

construed harmoniously. In the event of any conflict between the MSA and this SLA, the provisions contained in the MSA shall prevail over this SLA.

2. Structure

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

3. Objectives of this SLA

The Service Operator shall be required to ensure the Service Levels which in turn shall ensure the following:

Improving the efficiency of operations for the departments.

Leveraging the benefits in new system in order to:

- I. Reduce of manual records and replace with computerized standardized documents.
- II. Infuse transparency in operations by enabling the stakeholders to have easy access to the records and provision of login ids and biometrics to infuse accountability in operations
- III. Enable faster request processing in delivery of services with better turn around time.
- IV. Facilitate automated data transfer with state-wide connectivity to prevent unnecessary duplication & simplify preparation of registers and reports.
- V. Generate meaningful MIS from the system.
- VI. Provide inbuilt mechanism of security and quality control for crucial dealer data.

To meet the aforementioned objectives the Service Operator will provide the Service Levels in accordance with the performance metrics as set out in detail in this SLA. Further this SLA shall govern the provision of the contracted professional services of the Service Operator to the *Punjab State eGovernance Society* and its nominated agencies after the Effective Date.

4. Scope of SLA

This SLA has been executed in relation to the outsourcing portion of the Project between the Parties. The detailed Service Levels have been set out in Annexure B to this SLA.

This SLA shall ensure the following:

Service Operator To Operate, Maintain And Manage Sewa Kendras In The State Of Punjab

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

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

- I. PSeGS
- II. Service Operator

5. Agreement Owners

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

	Title	Telephone	Email
Punjab State eGovernance Society	Member Secretary	(0172) - 2600971	dgr@punjab.gov.in
Bidder			

6. Contact List

In the event that there is any change in the listed contacts, the same shall be communicated and updated prior to such change occurring. The Single Point of Contact ("SPOC") for the Service Operator shall be _____, Designation, contact number and will be available 24X7.

Name	Title	Location	Telephone
Punjab State eGovernance Society	Member Secretary	Punjab State e-Governance Society, Department of Governance Reforms, SCO 193-195, Sector 34-A, Chandigarh - 160022	(0172) - 2600971
Bidder			

7. Principal Contacts

The PSeGS and the Service Operator will nominate a senior staff member to be the principal contact regarding operation of this SLA. At the date of signing of this SLA, the nominated principal contacts are:

PSeGS principal contact: Member Secretary, PSeGS.

Service Operator principal contact: _____

8. Commencement and Duration of this SLA

The SLA shall commence on the date on which it is executed by the PSeGS and the Service Operator (hereinafter the “**Effective Date**”) and shall, unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties, expire on the date on which this SLA expires or terminates, which shall be a period of three years starting from the date of Go-Live.

9. Exclusions to the Agreement

This SLA shall not govern the following services:

- I. Consulting services; and
- II. Service Operator’s business processes not related to the Project.

10. Terms of Payment and Penalties

- I. In consideration of the Services and subject to the provisions of the MSA and this SLA, the PSeGS shall pay the amounts in accordance with the Terms of Payment Schedule of the MSA.
- II. For the avoidance of doubt, it is expressly clarified that the PSeGS and/or its nominated agencies may also calculate a financial sum and debit the same against the terms of payment as defined in the Terms of Payment Schedule of the MSA as a result of the failure of the Service Operator to meet the Service Levels set out as Annexure B of this SLA, such sum being determined in accordance with the terms of the set out as Annexure B of this SLA.
- III. No price revision/escalation shall be entertained during the entire contract period.

11. Updating of this Agreement

- I. The Parties anticipate that this SLA shall need to be re-evaluated and modified to account for changes in work environment and technology from time to time. Hence they hereby agree to revise the terms of the SLA on an annual basis.
- II. The Parties hereby agree upon the following procedure for revising this SLA:
 - A. Any and all changes to this SLA will be initiated in writing between the PSeGS and the Service Operator, The service levels in this SLA shall be

- considered to be standard for the PSeGS and shall only be modified if both Parties agree to an appended set of terms and conditions;
- B. Only the PSeGS or the Service Operator may initiate a revision to this SLA;
 - C. A notice of the proposed revision (“**SLA Change Request**”) shall be served to the PSeGS or the Service Operator as the case may be;
 - D. The SLA Change request would be deemed to be denied in case it is not approved within a period of 120 days;
 - E. In the event that PSeGS/Service Operator approves of the suggested change the change shall be communicated to all the Parties and the SLA Change request would be appended to the SLA;
 - F. The PSeGS shall update and republish the text of SLA annually to include all the SLA Change Requests that have been appended to the SLA during the course of the year. Such republished SLA shall be circulated to all the Parties within 60 days of such change taking place.

12. Document History

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

Version	Date	Description of changes
<<'Version'>>	<<'Date'>>	<<'Desc'>>

13. Scope of Services

- I. The Service Operator shall ensure that Services are available at various locations as per the requirements of the project;
- II. The Service Operator shall provide support services for addressing problems related to the provision of services of the selected bidder through the SPOC. Such SPOC shall be available over telephone on _____ number 24 hours a day, 7 days a week
- III. The Service Operator guarantees that he shall achieve the Service Levels for the Project;
- IV. The Service Operator shall be liable to penalties in case of failure to comply with the Service Levels. However any delay not attributable to the Service Operator shall not be taken into account while computing adherence to the Service Levels.

14. Performance Review

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

- I. Service performance;
- II. Review of specific problems/exceptions and priorities; and
- III. Review of the operation of this SLA and determine corrective action to overcome deficiencies.

15. Representations and Warranties of PSeGS

The PSeGS hereby represents and warrants to the Service Operator as follows:

- I. it has full power and authority to execute, deliver and perform its obligations under this SLA and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this SLA, exercise its rights and perform its obligations, under this SLA and carry out the transactions contemplated hereby;
- II. it has taken all necessary actions under Applicable Law to authorize the execution, delivery and performance of this SLA and to validly exercise its rights and perform its obligations under this SLA;
- III. it has the financial standing and capacity to perform its obligations under the SLA;
- IV. this SLA 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 SLA shall be legally valid, binding and enforceable obligations against it in accordance with the terms thereof;
- V. the execution, delivery and performance of this SLA 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;
- VI. 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 of this SLA 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 this SLA;

- VII. 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 material adverse effect on the Service Operator's ability to perform its obligations under this SLA and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this SLA.

16. Representations and Warranties of the Service Operator

The Service Operator hereby represents and warrants to the PSeGS as follows:

- I. it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this SLA and to carry out the transactions contemplated hereby;
- II. it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this SLA;
- III. this SLA has been duly executed by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this SLA shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- IV. It has the financial standing and capacity to perform its obligations under the SLA;
- V. the execution, delivery and performance of this SLA shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required 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;
- VI. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this SLA 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 SLA;
- VII. 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 material adverse effect on its ability to perform its obligations under this SLA and no fact or

circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this SLA;

- VIII. it has complied with Applicable Law 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 a material adverse effect on its ability to perform its obligations under this SLA;
- IX. no representation or warranty by it contained herein or in any other document furnished by it to the PSeGS or to any government instrumentality 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
- X. no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this SLA or for influencing or attempting to influence any officer or employee of the PSeGS in connection therewith.

17. Indemnities

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

18. Dispute Resolution

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

19. Miscellaneous

I. Assignment and charges

This SLA shall be binding on and enure for the benefit of each Party's successors in title. No Party shall assign, or declare any trust in favour of a third party over, all or any part of the benefit of, or its rights or benefits under, this SLA.

II. Governing law and jurisdiction

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

III. Waiver of sovereign immunity

The Parties unconditionally and irrevocably:

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

IV. Variation

This SLA shall only be varied in writing and signed by both Parties.

V. Waiver

- A. Waiver including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this SLA:-
 1. shall be in writing
 2. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this SLA;
 3. shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
 4. shall not affect the validity or enforceability of this SLA in any manner.

VI. Exclusion of implied warranties

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

VII. Survival

- A. Termination or expiration of the Term shall:
 - 1. not relieve the Service Operator or the PSeGS, as the case may be, of any obligations hereunder which expressly or by implication survive hereof; and
 - 2. except as otherwise provided in any provision of this SLA expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or expiration or arising out of such termination or expiration.
- B. All obligations surviving termination or expiration of the Term shall cease on termination or expiration of the Term.

(h) Entire Agreement

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

(i) Severability

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

(j) No partnership

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

(k) Third parties

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

(l) Notices

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

If to Punjab State eGovernance Society:

Member Secretary
Punjab State e-Governance Society, Department of Governance
Reforms,
SCO 193-195, Sector 34-A, Chandigarh - 160022
Tel: (0172) - 2600971 Fax: (0172) - 2646320
Email: dgr@punjab.gov.in

With a copy to:

<<Authorized Official of PSeGS>>
Punjab State e-Governance Society, Department of Governance
Reforms,
SCO 193-195, Sector 34-A, Chandigarh - 160022
Tel: (0172) - 2661808 (Ext: 137) Fax: (0172) - 2666265
Email:

If to the Service Operator:

<<Bidder name with contact details>>

(m) 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 SLA shall be in writing and in the English language.

(n) Counterparts

This SLA may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this SLA.

(o) Mitigation

Without prejudice to any express provisions of this SLA on any mitigation obligations of the Parties, each of the PSeGS and the Service Operator shall at all times take all reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this SLA.

(p) Removal of Difficulties

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Service Operator by:

(Signature)

SIGNED, SEALED AND DELIVERED

For and on behalf of the PSeGS by:

(Signature)

In the presence of:

- 1.
- 2.

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20. ANNEXURE A - Definitions

Service level Agreement	means this Service Level agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP;
Applicable Law(s)	means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of the <i>Punjab State eGovernance Society</i> as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
Business Hours	<ul style="list-style-type: none"> • For the PSeGS and other state Government departments, shall mean the working time which is 9:00 A.M to 5:00 P.M. • For the Server(s) and other components which enable successful usage of web portals of PSeGS 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 PSeGS.
Effective Date	shall have the same meaning ascribed to it in Clause 8 of SLA
MSA	means the Master Service Agreement together with all the Articles, Annexure, Schedules and Appendixes
Parties	means the PSeGS and Service Operator for the purposes of this SLA; “Party” shall be interpreted accordingly;
SPOC	shall have the same meaning ascribed to it in Clause 6 of SLA
Project	shall have the same meaning ascribed to it in Schedule 1
SLA Change Request	shall have the same meaning ascribed to it in Clause 11 of SLA
Service Level	means the level of service and other performance criteria which will apply to the Services as set out in the SLA parameters in Annexure B of SLA effective during the Term of this SLA;
Term or Agreement Period	Means the duration of this SLA as set out in Clause 8 of this SLA.
Application	Defined as time the system takes to fetch requested form or a

Response Time	report from the server.
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21. ANNEXURE B - Service Levels

I. Purpose:

This document describes the service levels to be established for the Services offered by the Service Operator to the State. The Service Operator shall monitor and maintain the stated service levels to provide quality service.

II. Definitions

- (a) "Scheduled Maintenance Time" shall mean the time that the System is not in service due to a scheduled activity as defined in this SLA. The scheduled maintenance time would not be during 16X6 timeframe. Further, scheduled maintenance time is planned downtime with the prior permission.
- (b) "Scheduled operation time" means the scheduled operating hours of the System for the month. All scheduled maintenance time on the system would be deducted from the total operation time for the month to give the scheduled operation time.
- (c) "System or Application downtime" means accumulated time during which the System is totally inoperable within the Scheduled Operation Time but outside the scheduled maintenance time and measured from the user log a call with the Service Operator team of the failure or the failure is known to the Service Operator from the availability measurement tools to the time when the System is returned to proper operation.
- (d) "Availability" means the time for which the services and facilities are available for conducting operations on the system including application and associated infrastructure. Availability is defined as:
 - i. $\{(Scheduled\ Operation\ Time - System\ Downtime) / (Scheduled\ Operation\ Time)\} * 100\%$
- (e) "Helpdesk Support" shall mean the 9x6 basis support centre which shall handle Fault reporting, Trouble Ticketing and related enquiries during this contract.
- (f) "Incident" refers to any event / abnormalities in the functioning of the Data Centre Equipment / Services that may lead to disruption in normal operations of the Data Centre, System or Application services.
- (g) "Error" in data digitization or data migration exercise, refers to the mistakes made intentional/ unintentional by SERVICE OPERATOR which may or may not change the actual meaning of the subject.

III. Interpretations.

- (a) The business hours are 9:00AM to 5:00 PM on all working days (Mon-Fri) excluding Public Holidays or any other Holidays observed by the State. The Service Operator however recognizes the fact that the PSeGS offices will require to work beyond the business hours on need basis.
- (b) "Non-Business Hours" shall mean hours excluding "Business Hours".

- (c) 12X7 shall mean hours between 8:30AM -8.30 PM on all days of the week.
- (d) The SLA parameters shall be monitored on a monthly basis as per the individual SLA parameter requirements. However, if the performance of the system/services is degraded significantly at any given point in time during the contract and if the immediate measures are not implemented and issues are not rectified to the complete satisfaction of the PSeGS, then the PSeGS will have the right to take appropriate disciplinary actions including termination of the contract.
- (e) A Service Level violation will occur if the Service Operator fails to meet Minimum Service Levels, as measured on a monthly basis, for a particular Service Level. Overall Availability and Performance Measurements will be on a monthly basis for the purpose of Service Level reporting. An “Availability and Performance Report” will be provided by the Service Operator on monthly basis in the suggested format and a review shall be conducted based on this report. A monthly Availability and Performance Report shall be provided to at the end of every month containing the summary of all incidents reported and associated Service Operator performance measurement for that period. The monthly Availability and Performance Report will be deemed to be accepted by the PSeGS upon review and signoff by both Service Operator and the PSeGS. Where required, some of the Service Levels will be assessed through audits or reports e.g. utilization reports, measurements reports, etc., as appropriate to be provided by the Service Operator on a monthly basis, in the formats as required by audit will need to be provided by the Service Operator. Audits will normally be done on regular basis or as required by the PSeGS and will be performed by the PSeGS or the PSeGS appointed third party agencies.
- (f) SLA Tools used in this system shall play a critical role in monitoring the SLA compliance and hence will have to be customized accordingly. The 3rd party testing and audit of the system shall put sufficient emphasis on ensuring the capability of SLA Tools to capture SLA compliance correctly and as specified in this RFP. The PSeGS will audit the tool and the scripts on a regular basis.
- (g) The Post Implementation SLAs will prevail from launch of services at Sewa Kendras. However, SLAs will be subject to being redefined, to the extent necessitated by field experience and the developments of technology practices globally. The SLAs may be reviewed on an annual/bi-annual basis as the PSeGS decides after taking the advice of the Service Operator and other agencies. All the changes would be made by the PSeGS in consultation with the Service Operator.
- (h) The Service Operator is expected to provide the following service levels. In case these service levels cannot be achieved at service levels defined in the tables below, it shall result in a breach of contract and invoke the penalty clause. Payments to the Service Operator are linked to the compliance with

the SLA metrics laid down in the tables below. The penalties will be computed and calculated as per the computation explained in this Annexure. During the contract period, it is envisaged that there could be changes to the SLA, in terms of addition, alteration or deletion of certain parameters, based on mutual consent of both the parties i.e. the PSeGS and Service Operator.

- (i) Following tables outlines the key service level requirements for the system, which needs be ensured by the Service Operator during the operations and maintenance period. These requirements shall be strictly imposed and either the PSeGS or a third party audit/certification agency shall be deployed for certifying the performance of the Service Operator against the target performance metrics as outlined in the tables below.

IV. Service Level Agreements (SLAs)

DRAFT

1.1. Penalty Calculation

1.1.1. Applicable penalty and Amount at Risk

Applicable Penalties are calculated as provided in RFP Volume I.

1.1.1.1. Reporting of Service Levels

Service Level performance are measured and reported periodically (or as per PSeGS request) in Service Operator's regular reports. The periodic reports shall also describe all failures to achieve Service Levels for the period, reasons for any excused failures, results of root cause analyses, and corrective action proposed and taken to prevent recurrence of failures to meet Service Levels.

1.1.2. Continuous Improvement

Minimum Service Levels may be modified at twelve (12) month intervals for each Service Category promptly following the anniversary of the date related Service Levels were first effective. Upon PSeGS or its nominated agency's request, Minimum Service Levels may be increased to the average figure for the preceding six (6) months; provided that increase shall not exceed five percent (5%) of the difference between one hundred percent (100%) and the relevant Minimum Service Level then in effect.

1.1.3. General Provisions

1.1.3.1. Waivers

PSeGS or its nominated agency's may waive any Service Level Failure or applicable penalty, but no such waiver shall be binding or effective unless given in writing, and no such waiver shall constitute a continuing waiver of similar or other such Service Level Failures or other breaches of the Agreement. PSeGS or its nominated agency's may at any time direct future compliance with any waived requirement.