

Process of engagement and other terms & conditions to be considered while engagement of agencies

A. Process of Award of Work by Department:

- a. The decision regarding engagement of any empanelled agency and award of work lies with the concerned Department/ Board/ Corporation.
- b. Department takes approval from the competent authority as per procedure before allotment of project to Company/Agency.
- c. Department invites technical proposal from the empanelled Companies/Agencies for providing Software Development & Implementation Services, on the basis of scope of work which will be circulated by the department alongwith clearly defined selection criteria, milestones, payment terms & conditions, SLAs etc.
- d. Payments are to be made by the concerned Department on the basis of an invoice as per the payment milestones applicable to the engagement. The payment terms & conditions are to be defined at the time of allotment of projects. No out of pocket expenses are to be provided and the same are the responsibility of the agency. However, expenses relating to tours are to be borne by the concerned Department as per Govt. procedures equivalent to that post, which is to be addressed at the time of allotment.
- e. Department to take a Performance Bank Guarantee (PBG) equal to 10% of total engagement value from the selected Agency which is returned back after successful completion of work awarded.
- f. The ownership of all deliverables including Source Code and artefacts resulting from such engagements including any intellectual property are vest solely with the State Govt. The proprietorship of the application/software component developed is of the State Govt. and the Company cannot use the same developed software for any other purpose/department/state/country.
- g. Any Software developed for any Departments/Boards/Corporations of the state under this empanelment is the property of the State. The Company has to take complete rights from other States for which any project has already been developed.
- h. If State on request of Party grant permission to use the source code for any other State/Country, the Company/Agency have to pay the charges to State Govt. /Department to the tune of minimum 20% of the project for each instance.

B. Services for which the agencies can be engaged:

The broad scope of services for various types of projects, including web-based/mobile application development, to be provided by the empanelled agencies is as under:

- a. Requirements Study/Analysis of processes to be computerized.
- b. Preparation of SRS.
- c. Recommendations for Business Process Re-engineering in the Department.
- d. Report on hardware and network capacity planning & sizing.
- e. Development & Deployment of various software modules including mobile application development.
- f. Integration with legacy software (if required)
- g. Performing all forms of Testing
- h. User Acceptance Test of all modules
- i. Data Migration including planning
- j. Comprehensive Training of Employees for developed software
- k. Final User Acceptance Test of integrated Application Software
- l. Security Audit of the Software
- m. Implementation support tasks
- n. Handing over of Project related documents including Source Code with documentation for the software developed, Software executables, Project plans, Project status reports,

- Test Plans, Test Specifications and results, User Manuals, Training Materials, technical manual etc.
- o. Final signoff
 - p. Change Management/Change Request.
 - q. Annual Maintenance and Operational support Contract, if required. etc.

In addition to the above-mentioned scope of work components. The Department, Board, Corporation or Society shall determine scope of work at the time of placement of order for a specific engagement. Such services shall be need based and/or project driven.

C. General Terms & Conditions:

- a. Agencies empanelled for Providing Software Development & Implementation services are allowed only for providing the prescribed services. Further, this empanelment will not be used for any kind of PPP models like BOOT, BOO etc.
- b. The services and deliverables by the selected Agency must ensure compliance to relevant e-Governance Policy Accessibility guidelines and all other relevant e-Governance standards and guidelines published by Govt. of India or Govt. of Punjab as may be applicable from time to time. For this kindly refer to M/o Information Technology, Govt. of India, website for the applicable guidelines.
- c. The empanelled companies/Agencies working on e-Governance Project for Punjab State must sign the Non-Disclosure Agreement (NDA) (Annexure-'A') with the concerned department.
- d. Outsourcing/ Sub-contracting of work whether full or partial is not allowed.

D. Confidentiality:

- a. The agency will ensure that no information about the software, hardware, and database, the policies of the client organization are taken out in any form including electronic form or otherwise from the client site by the manpower Posted by them.
- b. The company or its deployed personnel, by virtue of working on PSeGS /Client will have absolute rights on the work assigned and performed by them. Neither any claims of the agency or its deployed professionals will be entertained on the deliverables.

E. Governing Law

This empanelment is to be interpreted in accordance with and governed by the substantive and procedural Laws of India and the parties hereby consent to the exclusive jurisdiction of Courts and/or Forums situated at S.A.S. Nagar (Mohali), India only.

F. Dispute Resolution

If any difference or dispute arises between the Department and the company in connection with the validity, interpretation, implementation or alleged breach of any provision of this Empanelment, any such dispute shall be referred to the Administrative Secretary, Department of Governance Reforms and Public Grievances, Government of Punjab.

- a. The arbitration proceedings shall be conducted in accordance with the (Indian) Arbitration & Conciliation Act, 1996 & amendments thereof.
- b. The place of arbitration shall be Chandigarh/S.A.S. Nagar (Mohali).
- c. The arbitrator's award shall be substantiated in writing and binding on the parties.
- d. The proceedings of arbitration shall be conducted in English language.
- e. The arbitration proceedings shall be completed within a period of 180 days from the date of reference of the dispute to arbitration.

Non-Disclosure Agreement

This Non-Disclosure Agreement ("Non-Disc") is made and entered into _____ day of _____ month _____ Year (effective date) by and between _____ ("Department") and _____ ("Company"). Whereas, Department and Company have entered into an Agreement ("Agreement") _____ effective _____ for _____; and

Whereas, Each party desires to disclose to the other party certain information in oral or written form which is proprietary and confidential to the disclosing party, ("CONFIDENTIAL INFORMATION").

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements contained herein, the parties agree as follows:

1. Definitions. As used herein:

- (a) The term "Confidential Information" shall include, without limitation, all information and materials, furnished by either Party to the other in connection with citizen / users / persons / customers data, products and/ or services, including information transmitted in writing, orally, visually, (e.g. video terminal display) or on magnetic or optical media, and including all proprietary information, customer & prospect lists, trade secrets, trade names or proposed trade names, methods and procedures of operation, commercial or marketing plans, licensed document know-how, ideas, concepts, designs, drawings, flow charts, diagrams, quality manuals, checklists, guidelines, processes, formulae, source code materials, specifications, programs, software packages, codes and other intellectual property relating to the disclosing party's data, computer database, products and/or services. Results of any tests, sample surveys, analytics, data mining exercises or usages etc. carried out by the receiving party in connection with the Department's Information including citizen /users /persons /customers personal or sensitive personal information as defined under any law for the time being in force shall also be considered Confidential Information
- (b) The term, "Department" shall include the officers, employees, agents, consultants, contractors and representatives of Department
- (c) The term, "Company" shall include the directors, officers, employees, agents, and representatives of Company, including its applicable affiliates and subsidiary companies.

2. Protection of Confidential Information. With respect to any Confidential Information disclosed to it or to which it has access, Company affirms that it shall:

- (a) Use the confidential Information as necessary only in connection with Project and in accordance with the terms and conditions contained herein;
- (b) Maintain the Confidential Information in strict confidence and take all reasonable steps to enforce the confidentiality obligations imposed here under, but in no event take less care with the Confidential information that the parties take to protect the confidentiality of its own proprietary and confidential information and that of its clients;
- (c) Not to make or retain copy of any commercial or marketing plans, Citizen / users /persons /customers database, Proposals developed by or originating from Department or any of the prospective clients of Department except as necessary, under prior written intimation from Department, in connection with the Project, and ensure that any such copy is immediately returned to Department even without express demand from Department to do so;
- (d) Not to disclose or in any way assist or permit the disclosure of any Confidential Information to any other person or entity without the express written consent of the other party; and
- (e) Return to the other party, or destroy, at Department's discretion, any and all Confidential Information disclosed in a printed form or other permanent Record or in any other tangible form (including without [imitation, all copies, notes, extracts, analyses, studies, summaries, records and reproductions thereof) immediately upon the earlier to occur of (i) expiration or termination of either party's engagement in the Project, or (ii) the request of the other party therefore.
- (f) Not to discuss with any member of public, media, press, or any other person about the nature of arrangement entered between Department and Company or the nature of services to be provided by the Company to the Department

3. **Onus.** Company shall have the burden of proving that any disclosure or use inconsistent with the terms and conditions hereof falls within any of the foregoing exceptions
4. **Exceptions.** These restrictions as enumerated in section 1 of this Agreement shall not apply to any Confidential Information:
 - (a) Which is independently developed by Company or lawfully received from another source free of restriction and without breach of this Agreement; or
 - (b) After it has become generally available to the public without breach of this Agreement by Company; or
 - (c) Which at the time of disclosure to Company was known to such party free of restriction and evidenced by documentation in such party's possession; or
 - (d) Which Department agrees in writing is free of such restrictions.
 - (e) Which is received from a third party not subject to the obligation of Confidentiality with respect to such Information;
5. **Remedies.** Company acknowledges that (a) any actual or threatened disclosure or use of the Confidential Information by Company would be a breach of this agreement and may cause immediate and irreparable harm to Department; (b) Company affirms that damages from such disclosure or use by it may be impossible to measure accurately; and (c) injury sustained by Department may be impossible to calculate and remedy fully. Therefore, Company acknowledges that in the event of such a breach, Department shall be entitled to specific performance by Company of Company's obligations contained in this Agreement. In addition Company shall indemnify Department of the actual and liquidated damages which may be demanded by Department. Moreover, Department shall be entitled to recover all costs (including reasonable attorneys' fees) which it or they may incur in connection with defending its interests and enforcement of legal rights arising due to a breach of this agreement by Company.
6. **Need to Know.** Company shall restrict disclosure of such confidential Information to its employees and/or consultants with a need to know (and advise such employees of the obligations assumed herein), shall use the confidential Information only for the purposes set forth in the Agreement, and shall not disclose such confidential Information to any affiliates, subsidiaries, associates and/or third party without prior written approval of the disclosing party.
7. **Intellectual Property Rights Protection.** No license to a party, under any trademark, patent, copyright, design right, mask work protection right, or any other intellectual property right is either granted or implied by the conveying of confidential Information to such Party.
8. **No Conflict.** The parties represent and warrant that the performance of its obligations hereunder do not and shall not conflict with any other agreement or obligation of the respective parties to which they are party or by which the respective parties are bound.
9. **Authority.** The parties represent and warrant that they have all necessary authority and power to enter into this Agreement and perform their obligations hereunder
10. **Dispute Resolution.** If any difference or dispute arises between the Department And the company in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement, any such dispute shall be referred to the Administrative Secretary, Department of Governance Reforms and Public Grievances, Government of Punjab.
 - f. The arbitration proceedings shall be conducted in accordance with the (Indian) Arbitration & Conciliation Act, 1996 & amendments thereof.
 - g. The place of arbitration shall be Chandigarh/Mohali.
 - h. The arbitrator's award shall be substantiated in writing and binding on the parties.
 - i. The proceedings of arbitration shall be conducted in English language.
 - j. The arbitration proceedings shall be completed within a period of 180 days from the date of reference of the dispute to arbitration.

- 11. Governing Law.** This Agreement shall be interpreted in accordance with and governed by the substantive and procedural Laws of India and the parties hereby consent to the exclusive jurisdiction of Courts and/or Forums situated at Chandigarh/Mohali, India only.
- 12. Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties, and supersedes all previous or contemporaneous agreement or communications, both oral and written, representations and under standings among the parties with respect to the subject matter hereof.
- 13. Amendments.** No amendment, modification and/or discharge of this Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each of the parties by their respective duly authorized officers or representatives.
- 14. Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 15. Severability.** It is the Intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such provision shall be modified to the extent necessary to render it, as modified, valid and enforceable under applicable laws, and such invalidity or unenforceability shall not affect the other provisions of this Agreement.
- 16. Waiver.** If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other Provision hereof.
- 17. Survival.** Both parties agree that all of their obligations undertaken herein with respect to Confidential Information received pursuant to this Agreement shall survive for a period of 3 years after expiration or termination of this Agreement.
- 18. Non-solicitation.** During the term of this Agreement and thereafter for a further period of two (2) years Company shall not solicit or attempt to solicit Department's employees and/or consultants, for the purpose of hiring/contract or to proceed to conduct operations / business similar to Department with any employee and/or consultant of the Department Who has knowledge of the confidential Information, without the prior written consent of Department. This section will survive irrespective of the fact whether there exists a commercial relationship between Company and Department.
- 19. Term.** Subject to aforesaid section 17, this Agreement shall remain valid up to _____ years from the "effective date".

IN WITNESS HEREOF, and intending to be legally bound, the parties have executed this Agreement to make it effective from the date and year first written above.

I. For Department,

For Company

Name: _____

Name: _____

Title:

Title:

WITNESS:

1.

2.