

ANNEXURE I

Agreement Template for a Deliverable based Consulting Assignment

CONSULTING SERVICES AGREEMENT

THIS Consulting Service Agreement (“Agreement” or “Contract”) is made on this the <***> day of <***> 20... at <***>, India.

BETWEEN

----- having its office at -----
----- India hereinafter referred to as ‘**Govt. Agency**’ or ‘**Nodal Agency**’ or ‘-----
----’, which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the *Companies Act, 1956*, having its registered office at <***> (hereinafter referred to as ‘**Consultant**’ or ‘**Service Provider**’ 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. <Nodal Agency>is desirous to implement the project of e-Governance for <Insert the type of project>.
2. In furtherance of the same, <Nodal Agency>undertook the selection of a suitable consultant through a competitive bidding process to assist in ----- and in this regard issued Request for Proposal (RFP) dated <***> .
3. The successful bidder has been selected as the Consultant on the basis of the bid response set out as Schedule 9 of this Agreement, to advise on -----.

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

In this Contract, except where the contrary intention is expressed, the following definitions are used:

Agreed Terms	clauses 1 to 30 of the Agreement which set out terms and conditions agreed by the parties.
Auxiliary Material	any Material, other than Contract Material, which is made available by a party for the purpose of this Contract, on or following the Commencement Date, and includes: Third Party Material; any modifications that may be required under clause ii; error corrections or translations to that Material; or derivatives of that Material where such derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.
Business Day	for receiving a notice under clause a.a.i.29, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and for all other purposes, any day that is not a Saturday or Sunday or a national public holiday throughout India promulgated in the official gazette.
Business Hours	from 10.00am to 6.00pm on a Business Day at the place where the Services are to be provided, unless specified otherwise in item 5 of the Contract Details.
Change Order	the form set out in Schedule 6.
Commencement Date	the date on which this Contract commences, as specified in item 6 of the Contract Details.
Confidential Information	information that is by its nature confidential; and is designated by a party as confidential and is described in Schedule 4 of this Contract; or a party knows or ought to know is confidential, but does not include: information which is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation.
Contract	this agreement between the <Nodal Agency>and the Consultant, as amended from time to time in accordance with clause 0, and includes its schedules and any attachments.
Contract Details	the details set out in Schedule 1.
Contract Material	any Material created by the Consultant on or following the Commencement Date, for the purpose of or as a result of performing

		its obligations under this Contract and includes any modifications that may be required under clause ii.
Contract Period		the Initial Contract Period plus any extension in accordance with clause 0.
Consultant		the party specified in item 2 of the Contract Details and includes its subcontractors and Personnel.
Consultant Representative		the person identified in item 4 of the Contract Details.
Companies Act		the Companies Act 1956.
Client		the party specified in item 1 of the Contract Details.
Client Data		all data and information relating to the Client, and its operations, facilities, customers, Personnel, assets and programs (including personal information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Client.
Client Material		any Auxiliary Material provided to the Consultant by the Client, including the Material (if any) specified in item 16 of the Contract Details.
Client Representative		the person identified in item 3 of the Contract Details.
Deliverable		any Contract Material or other item to be supplied by the Consultant under this Contract.
Documentation		the documentation to be provided by the Consultant under clause 7.
Harmful Code		any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any software.
Initial Contract Period		the period of time for which this Contract is intended to continue, as specified in item 7 of the Contract Details.
Intellectual Rights	Property	all intellectual property rights, including but not limited to, the following rights: patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names; any application or right to apply for registration of any of the rights referred to in paragraph (a); and all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in India or elsewhere, whether or not such rights are registered or capable of being registered.
Law		any applicable statute, regulation, by-law, ordinance or subordinate

	legislation in force from time to time in India, whether made by Central Government or the State, Union Territory.
Losses	liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party).
Material	any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
Milestone	any fixed date to be met by the Consultant in performing any of its obligations under this Contract, as specified in the Statement of Work.
Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the Copyright Act.
Nominated Agency	an Agency, listed in item 10 of the Contract Details, which may require the provision of Services under this Contract.
Notice	a notice, demand, consent, approval or communication issued under this Contract.
Performance Criteria	the requirements set out in the Statement of Work for each Service and Deliverable.
Personnel	in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party or, in the case of the Consultant, of a subcontractor.
Project Directors	Project Directors appointed by each Party are authorized personnel who provide the interface between the executive management of the respective Parties.
Schedules	the schedules to this Contract.
Service Charges	the charges payable to the Consultant in accordance with Schedule 3.
Services	the consultancy services to be provided by the Consultant, as specified in the Statement of Work and includes the supply of the Deliverables.
Specified Personnel	the Consultant's subcontractors and Personnel specified in item 15 of the Contract Details.
Statement of Work	the details of the Services to be performed under this Contract, as set

	out in Schedule 2.
Third Party Material	Auxiliary Material in which a third party holds Intellectual Property Rights.
Warranted Materials	the Auxiliary Material provided by the Consultant, the Deliverables and Contract Material

1.2 Interpretation

In this Contract, except where the contrary intention is expressed:

- a) the singular includes the plural and vice versa, and a gender includes other genders;
- b) another grammatical form of a defined word or expression has a corresponding meaning;
- c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure;
- d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- e) a reference to rupee or Indian rupees to the Indian currency;
- f) a reference to time is to the time in the place where the obligation is to be performed;
- g) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- i) if the Consultant is a trustee, the Consultant enters the Contract personally and in its capacity as trustee and warrants that it has the power to perform its obligations under this Contract;
- j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- k) a word or expression defined in the Companies Act has the meaning given to it in the Companies Act;
- l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;

- p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- q) headings are for ease of reference only and do not affect interpretation.

1.3 Completion of Schedules

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, that item will be taken to be 'not applicable' for the purpose of this Contract.

2. Priority of Contract documents

If there is inconsistency between any of the documents forming part of this Contract, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- a) Agreed Terms;
- b) Schedules;
- c) any attachments to the Schedules; and
- d) documents incorporated by reference in this Contract.
- e) RFP document and its corrigendum
- f) Proposal submitted by the bidder

3. Duration of Contract

3.1 Initial Contract Period

This Contract begins on the Commencement Date and continues for the duration of the Initial Contract Period unless terminated in accordance with clause 0 or 28.

3.2 Option to extend Contract Period

- a) The Initial Contract Period may be extended by the Client for further period(s), specified in item 8 of the Contract Details (each an Option Period), on the terms and conditions then in effect, by giving written notice to the Consultant. Such notice must:
 - i. be at least 30 days; or
 - ii. such other period as specified in item 9 of the Contract Details (Option Notice Period), before the end of the current Contract Period.
- b) Any extension exercised in accordance with this clause 0 takes effect from the end of the then current Contract Period.

[The nodal agency may like to “close end” this, so that extensions could be discouraged. However it should not be such that it curbs the flexibility of the Nodal Agency to seek extension for valid reasons]

4. Services to other Agencies

4.1 Obligation to provide Services

The Consultant offers to provide the Services to any Nominated Agency in accordance with the requirements set out in this clause 4.

4.2 Separate contracts

Each Agency Order Form agreed with the Consultant in accordance with this Contract will create a separate contract between the Consultant and the <Nodal Agency>for the supply by the Consultant of the requested Services to the Govt. Agency. For the sake of clarity, the terms and conditions governing each such separate contract will be the same as the provisions of this Contract.

5. General obligations of the parties

The parties will, at all times:

- a. act reasonably in performing their obligations and exercising their rights under this Contract;
- b. diligently perform their respective obligations under this Contract; and
- c. work together in a collaborative manner.

6. Provision of Services

6.1 Service obligations

The Consultant must supply the Services:

- i. with due skill and care and to the best of the Consultant's knowledge and experience;
- ii. in accordance with the Performance Criteria;
- iii. in accordance with relevant Indian industry standards, good industry practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines, including any specified in item 11 of the Contract Details;
- iv. using the Specified Personnel (if any);
- v. in accordance with all applicable Laws;
- vi. in accordance with any reasonable directions in relation to the Services given by the Client from time to time;
- vii. so as to meet the Milestones and other project plan requirements, and where no Milestones or project plan requirements are specified, promptly and without delay; and
- viii. otherwise in accordance with the provisions of this Contract.

6.2 Consultant warranties

The Consultant represents and warrants that:

- i. it has the right to enter into this Contract;
- ii. it has all rights, title, licences, interests and property necessary to lawfully perform the Services;
- iii. it and its subcontractors and Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge and competence to perform the Services;
- iv. the Services will be complete, accurate and free from material faults; and
- v. it will not, nor will it suffer or permit any third party under its direction or control to negligently introduce into the Client's systems or any Deliverables any Harmful Code.

6.3 Access to Client's premises

The Client will cooperate with the Consultant by providing access to its premises and facilities as reasonably necessary to enable the Consultant to provide the Services.

6.4 Conduct at Client's premises

The Consultant must, if using or accessing the Client's premises or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of the Consultant or as might reasonably be inferred from the circumstances.

6.5 Subcontracting

The Consultant will:

- i. not subcontract any aspect of the provision of the Services other than to those entities set out in item 12 of the Contract Details without the prior written approval of the Client, which will not be unreasonably withheld; and
- ii. ensure that any subcontractor approved under this Contract complies with:
 - Clause 20 (Confidentiality and privacy);
 - Clause 21 (Protection of personal information);
 - Clause 22 (Conflict of interest);
 - Clause 23 (Security);
 - Clause 0 (Access by Client); and
 - Clause 0 (Knowledge transfer).

7. Documentation

7.1 Provision of Documentation

The Consultant must give the Client the Documentation specified in the Statement of Work in the format and at the times specified in the Statement of Work.

7.2 Documentation requirements

The Documentation must at the time of delivery:

- i. be current and accurate;
- ii. adequately explain key terms and symbols; and
- iii. unless specified otherwise in item 13 of the Contract Details, be in English.

8. *Varying the Services*

8.1 Variations proposed by Client

If the Client wants to vary the Services:

- a) the Client must request the Consultant in writing setting out the proposed variations;
- b) within 14 days after receiving the Client's request or within another period agreed by the parties, the Consultant must respond in writing to the Client specifying what impact those variations will have on: the Service Charges (see clause 0); the Services or Deliverables, including any particular Deliverable; the Consultant's ability to perform its obligations under this Contract (including its ability to meet Milestones); and this Contract; and
- c) within 14 days after receiving the Consultant's response, or within another period agreed by the parties, the Client must give the Consultant a written notice accepting or rejecting the response.

8.2 Variations proposed by Consultant

If the Consultant wants to vary the Services:

- a) the Consultant must request the Client in writing setting out the proposed variations and specifying what impact those variations will have on: the Service Charges (see clause 0); the Services or Deliverables, including any particular Deliverable; the Consultant's ability to perform its obligations under this Contract (including its ability to meet Milestones); and this Contract; and
- b) within 14 days after receiving the request or within another period agreed by the parties, the Client must give the Consultant a written notice accepting or rejecting the Consultant's request.

8.3 Changes to Service Charges

Changes to Service Charges associated with a variation in the Services must:

- a) not exceed any reasonable additional cost; and
- b) take fully into account any reduction in cost.

8.4 Effective date of variation

Any variation in the Services takes effect from the date on which the parties execute a Change Order. This Contract will be amended to give effect to the Change Order.

9. *Co-operation with Personnel and contractors*

The Consultant must in the performance of the Services under the Contract:

- a. fully co-operate with the Client's Personnel and other contractors; and
- b. use its best efforts to coordinate its activities so as to support and facilitate, in the Client's best interests, the timely and efficient completion of all work and other activities to be performed for the Client by any person.

10. *Monitoring progress*

10.1 Progress meetings

The parties will meet at the times set out in the Statement of Work (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. The Consultant must ensure that the Consultant Representative and the Client must ensure the Client Representative is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

10.2 Reporting

The Consultant must provide the Client with reports in accordance with the Statement of Work.

11. *Performance assessment*

11.1 Assessment of Services

Each element of the Services is subject to assessment by the Client against the relevant Performance Criteria.

11.2 Notice of non-compliant Services

- a. If the Client considers that all or part of the Services do not meet the Performance Criteria, the Client must notify the Consultant within <15> Business Days (or such other period as specified in item 14 of the Contract Details) of assessing the Services against the Performance Criteria.

- b. The Client must include reasons for the Services not meeting the Performance Criteria in the notice given under clause a.

11.3 Rectification of non-compliant Services

If the Client notifies the Consultant that all or part of the Services do not meet the Performance Criteria, the Consultant must:

- i. take all necessary steps to ensure that the Services are promptly corrected;
- ii. give notice to the Client when the Services have been corrected; and
- iii. allow the Client to repeat the assessment of all or part of the Services against the Performance Criteria, within five Business Days after the date of the notice or such other time as agreed between the parties in writing.

11.4 Right to terminate

If any parts of the Services do not meet the Performance Criteria on two or more occasions, the Client may (in addition to its other remedies) terminate the Contract immediately under clause 0 by giving the Consultant written notice.

12. Personnel

12.1 Use of Specified Personnel

The Consultant must:

- i. provide the Services or any part of the Services to which their particular experience relates, with the active involvement of, and using the skill of the Specified Personnel; and
- ii. ensure that each of the Specified Personnel is aware of and complies with the Consultant's obligations in providing the Services.

12.2 If the Specified Personnel are not available

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in providing the Services, the Consultant must notify the Client immediately. The Consultant must:

- i. if requested by the Client, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and
- ii. obtain the Client's written consent prior to appointing any such replacement person. The Client's consent will not be unreasonably withheld.

12.3 Client may request replacement of Personnel

The Client may at any time request the Consultant to remove from work in respect of this Contract any of the Specified Personnel or the Consultant's subcontractors or Personnel. The Consultant must promptly arrange for the removal of such subcontractors or Personnel and their replacement in accordance with the process outlined in clause 0.

13. Intellectual Property Rights

13.1 Auxiliary Material

This clause 13 does not affect the ownership of the Intellectual Property Rights in any Auxiliary Material.

13.2 Third Party Material

The Consultant must obtain all necessary copyright and other Intellectual Property Right permissions before making any Third Party Material available as Auxiliary Material for the purpose of this Contract.

13.3 Selecting an ownership model for Intellectual Property Rights in Contract Material

NOTE TO USERS:

Two models for ownership of Intellectual Property Rights in Contract Material are set out below. Under the first model, the Client owns the Intellectual Property Rights in the Contract Material and provides a licence to the Consultant to use the Contract Material. Under the second model, the Consultant owns the Intellectual Property Rights in the Contract Material and provides a licence to the Client to use the Contract Material.

Users are to select a model through item 16 of the Contract Details. If no model is selected, the first model will apply. The first model is not, however, intended to represent a default position. The Client should, therefore, not rely on the position set out in the first model without considering the appropriateness of both ownership models and whether other ownership and licensing models would be more suitable. Please refer to the User Notes for further guidance.

This note should be deleted prior to execution of the Contract.

- i. The ownership model for Intellectual Property Rights in Contract Material is the model set out in item 16 of the Contract Details.
- ii. If no ownership model is selected in item 16 of the Contract Details, clause 0 applies and clause 0 in its entirety, does not apply to this Contract.
- iii. Each party must, at its own cost, do all things and execute all documents necessary or convenient to give effect to the ownership model.

13.4 Client ownership of Intellectual Property Rights in Contract Material

- i. All Intellectual Property Rights in the Contract Material vest in the Client.
- ii. Unless otherwise specified in item 17 of the Contract Details, to the extent that: the Client needs to use any of the Auxiliary Material provided by the Consultant to receive the full benefit of the Services (including the Contract Material), the Consultant grants to, or must obtain for, the Client for the period specified in item 17 of the Contract Details, a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Auxiliary Material; the Consultant needs to use any of the:
- iii. Client Material; or Contract Material, for the purpose of performing its obligations under this Contract, the Client grants to the Consultant, subject to any conditions or restrictions specified in item 18 of the Contract Details and any direction by the Client, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate such Material solely for the purpose of providing the Services.
- iv. The licence granted to the Client under clause ii does not include a right to exploit the Auxiliary Material for the Client's commercial purposes.

13.5 Consultant ownership of Intellectual Property Rights in Contract Material

- i. If specified in item 16 of the Contract Details, all Intellectual Property Rights in the Contract Material vest in the Consultant.
- ii. Unless otherwise specified in item 19 of the Contract Details, to the extent that: the Client needs to use any of the: Auxiliary Material provided by the Consultant; or
- iii. Contract Material, to receive the full benefit of the Services, the Consultant grants to, or must obtain for, the Client for the period specified in item 19 of the Contract Details a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that Material; or
- iv. the Consultant needs to use any of the Client Material for the purpose of performing its obligations under this Contract, the Client grants to the Consultant, subject to any conditions or restrictions specified in item 18 of the Contract Details and any direction by the Client, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Services.
- v. The licence granted to the Client under clause ii does not include a right to exploit the Auxiliary Material or the Contract Material for the Client's commercial purposes.

13.5 IPR Warranty

The Consultant warrants that:

- i. the Warranted Materials and the Client's use of those Warranted Materials, will not infringe the Intellectual Property Rights of any person; and
- ii. it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in this clause 13.

13.6 Remedy for breach of warranty

If someone claims, or the Client reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights the Consultant must, in addition to the indemnity under clause 17 and to any other rights that the Client may have against it, promptly, at the Consultant's expense:

- i. use its best efforts to secure the rights for the Client to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- ii. replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

14. Moral Rights

14.1 Obtaining consents

To the extent permitted by applicable Laws and for the benefit of the Client, the Consultant must:

- i. give, where the Consultant is an individual; and
- ii. use its best endeavours to ensure that each of the Personnel used by the Consultant in the production or creation of the Contract Material gives, genuine consent in writing, in a form acceptable to the Client, to the use of the Contract Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

14.2 Specified Acts

In this clause, unless otherwise specified in item 20 of the Contract Details, Specified Acts means:

- i. falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the Copyright Act, 1957);
- ii. materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
- iii. reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and

- iv. adding any additional content or information to the Contract Material.

15. Payment

15.1 Obligation to pay charges

Subject to this clause and the Services meeting the Performance Criteria, the Client must pay to the Consultant the Service Charges as set out in Schedule 3.

15.2 Consultant to provide invoice

The Consultant must provide a correctly rendered invoice to the Client for the Service Charges in accordance with the requirements specified in Schedule 3.

15.3 Due date for payment

Unless otherwise specified in Schedule 3, the Client must make payment of a correctly rendered invoice within 30 days after receiving the invoice. If the payment is not made by the Client within 30 days [or any shorter period specified in the Contract] of receipt of a correctly rendered invoice, the Client will pay simple interest <@12%> per annum (or any other higher rate allowed under law) on the undisputed invoice amount.

15.4 Incorrect invoices, under/over payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Consultant, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Client to the Consultant under this Contract.

15.5 Expenses

Unless specified otherwise in Schedule 3, the Consultant must not charge the Client for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges. The Client is under no obligation to pay any amount in excess of the Service Charges.

16. Taxes

16.1 The <Nodal Agency> or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the Consultant wherever applicable. The Consultant shall pay for all other taxes in connection with this Agreement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.

16.2 The <Nodal Agency> or its nominated agencies shall provide Consultant with the original tax receipt of any withholding taxes paid by <Nodal Agency> or its nominated agencies on payments under this Agreement. The Consultant agrees to reimburse and hold the <Nodal Agency> 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 <Nodal Agency> or its nominated agencies, the Consultant and third party subcontractors.

16.3 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 <Nodal Agency> 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 Agency in performing the Services, then the remuneration and reimbursable expense otherwise payable to the <Nodal Agency> under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the contract price specified in the Contract. However, in case of any new or fresh tax or levy imposed after submission of the proposal the Consultant shall be entitled to reimbursement on submission of proof of payment of such tax or levy.

16.4 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.

17. Indemnity

17.1 Subject to Clause 17.2 below, Consultant (the "Indemnifying Party") undertakes to indemnify <Nodal Agency> (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. If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or Indian patents 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. The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.

17.2 The indemnities set out in **Clause 17.1** 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 Article, the Indemnifying Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses;
- (iv) the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
- (v) all settlements of claims subject to indemnification under this Clause will:
 - a. be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and
 - b. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
- (vi) the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
- (vii) the Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;
- (viii) in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and

- (ix) if a Party makes a claim under the indemnity set out under Clause 17.1 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).

18. Liability

18.1 The liability of Consultant (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 fees and expenses received under this. The liability cap given under this Clause 18.1 shall not be applicable to the indemnification obligations set out in Clause 17.

18.2 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) even if it has been advised of their possible existence.

18.3 The allocations of liability in this clause 18 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.

19. Insurance (Optional)

19.1 Obligation to maintain insurance

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

- i. for the Contract Period, valid and enforceable insurance policies for: public liability; either professional indemnity or errors and omissions; workers' compensation as required by law; and any additional types specified in item 21 of the Contract Details

19.2 Certificates of currency

The Consultant must, on request by the Client, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this clause 19.

20. Confidentiality and privacy

20.1 Confidential Information not to be disclosed

- i. Subject to clause 0, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- ii. In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

20.2 Written undertakings

- i. A party may at any time require the other party to arrange for: its Advisers; or any other third party, other than a Client's employee, to whom information may be disclosed pursuant to clause i or v, to give a written undertaking in the form set out in 0 or, where 0 does not include a form of undertaking, in the form of a deed reasonably acceptable to the other party and relating to the use and non-disclosure of the other party's Confidential Information.
- ii. If the other party receives a request under clause i, it must promptly arrange for all such undertakings to be given.

20.3 Exceptions to obligations

The obligations on the parties under this clause 20 will not be taken to have been breached to the extent that Confidential Information:

- i. is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
- ii. is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Contract related activities;
- iii. is disclosed by the Client;
- iv. is disclosed by the Client, in response to a request by a House or a Committee of the Parliament/Assembly;
- v. is shared by the Client within the Client's organisation, or with another Agency, where this serves the country's legitimate interests;
- vi. is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed; or
- vii. is in the public domain otherwise than due to a breach of this clause 20.

20.4 Obligations on disclosure

Where a party discloses Confidential Information to another person:

- i. pursuant to clauses i, ii or v, the disclosing party must: notify the receiving person that the information is Confidential Information; and not provide the information unless the receiving person agrees to keep the information confidential; or
- ii. pursuant to clauses iii and iv, the disclosing party must notify the receiving party that the information is Confidential Information.

20.5 Additional confidential information

- i. The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.
- ii. Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of the Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.

20.6 Period of confidentiality

The obligations under this clause 20 continue, notwithstanding the expiry or termination of this Contract:

- i. in relation to an item of information described in Schedule 4, for the period set out in that Schedule in respect of that item; and
- ii. in relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the parties in writing in respect of that information.

21. *Protection of personal information*

21.1 Application of the clause

This clause applies only where the Consultant deals with personal information when, and for the purpose of, providing Services under this Contract.

21.2 Obligations

The Consultant acknowledges that it will use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract.

21.3 Subcontracts

The Consultant must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Consultant has under this clause 21, including the requirement in relation to subcontracts.

22. *Conflict of interest*

Warranty that there is no conflict of interest

The Consultant warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

- a. An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the “**Conflict of Interest**”). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the <Nodal Agency> shall forfeit and appropriate the EMD, if available, as mutually agreed genuine pre-estimated compensation and damages payable to the <Nodal Agency> for, *inter alia*, the time, cost and effort of the <Nodal Agency> including consideration of such Applicant’s Proposal, without prejudice to any other right or remedy that may be available to the <Nodal Agency> hereunder or otherwise.
- b. The <Nodal Agency> requires that the Consultant provides professional, objective, and impartial advice and at all times hold the <Nodal Agency>’s interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the <Nodal Agency>.
- c. [Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Section 2.4.10]. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
 - i. the Applicant, its consortium member (the “**Member**”) or Associates (or any constituent thereof) and any other Applicant, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; *provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof. For the purposes of this Clause , indirect shareholding held through one or more intermediate persons shall be computed as follows:*
 - where any intermediary s controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to Sub-clause (aa) above, where a person does not exercise control over an intermediary, which has

- shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on
- a proportionate basis; provided, however, that no such shareholding shall be reckoned under this Sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or
 - ii. a constituent of such Applicant is also a constituent of another Applicant; or
 - iii. such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
 - iv. such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - v. such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each others' information about, or to influence the Application of either or each of the other Applicant; or
 - vi. there is a conflict among this and other consulting assignments of the Applicant (including its personnel and other members, if any) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing consultancy services to the <Nodal Agency> for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
 - vii. A firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project;
- d. An Applicant eventually appointed to provide Consultancy for this Project, its Associates, affiliates and the Financial Expert, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of <12 months> from the completion of this assignment; provided further that this restriction shall not apply to consultancy/ advisory services performed for the <Nodal Agency> in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for the <Nodal Agency> in accordance with the rules of the <Nodal Agency>.

Notification of a conflict of interest

- e. In the event that the Consultant, its Associates or affiliates are auditors or financial advisers to any of the bidders for the Project, they shall make a disclosure to the <Nodal Agency> as soon as any potential conflict comes to their notice but in no case later than 7 (seven) days from the

opening of the RFP applications for the Project and any breach of this obligation of disclosure shall be construed as Conflict of Interest. The <Nodal Agency> shall, upon being notified by the Consultant under this Clause, decide whether it wishes to terminate this Consultancy or otherwise, and convey its decision to the Consultant within a period not exceeding 15 (fifteen) days.

23. Security

23.1 Compliance with Client requirements

The Consultant must, and must ensure that its subcontractors and Personnel comply with:

- i. all relevant security and other requirements specified in the Client's Information Security Policy, if the same has been made aware by the Client;
- ii. any additional security requirements specified in item 233 of the Contract Details; and
- iii. any other security procedures or requirements notified, in writing, by the Client to the Consultant. The Consultant must comply with such a security procedure or requirement, from the date specified in the notice, or if none is specified, within five Business Days of receipt of the notice.

23.2 Security clearance

- i. The Client may, from time to time, notify the Consultant of the level of security or access clearance applicable to the Consultant's subcontractors or Personnel, and the date from which, or the period during which, that clearance will be effective and the Consultant must comply with and ensure its subcontractors and Personnel act in accordance with that notice.
- ii. Unless otherwise specified in item 24 of the Contract Details, the Client is responsible for all costs associated with obtaining security clearances.

23.3 Removal of Client Data

The Consultant must not, and must ensure that its subcontractors and Personnel do not:

- i. remove Client Data or allow Client Data to be removed from the Client's premises; or
- ii. take Client Data or allow Client Data to be taken outside of India, without the Client's prior written consent.

24. Books and records

24.1 Consultant to keep books and records

The Consultant must:

- i. keep and require its subcontractors to keep adequate books and records, in accordance with Indian Accounting Standards, in sufficient detail to enable the amounts payable by the Client under this Contract to be determined; and
- ii. retain and require its subcontractors to retain books and records as mandated by law and the same would be made available to the Client and will terminate upon expiry / termination of this Agreement

24.2 Costs

The Consultant must bear its own costs of complying with this clause.

25. *Audit and access*

25.1 Right to conduct audits

The Client or a representative may conduct audits relevant to the performance of the Consultant's obligations under this Contract. Audits may be conducted of:

- i. the Consultant's operational practices and procedures as they relate to this Contract, including security procedures;
- ii. the accuracy of the Consultant's invoices and reports in relation to the provision of the Services under this Contract;
- iii. the Consultant's compliance with its confidentiality, privacy and security obligations under this Contract;
- iv. material (including books and records) in the possession of the Consultant relevant to the Services or Contract; and
- v. any other matters determined by the Client to be relevant to the Services or Contract.

25.2 Access by Client

- i. The Client may, at reasonable times and on giving reasonable notice to the Consultant: access the premises of the Consultant to the extent relevant to the performance of this Contract; require the provision by the Consultant, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Client by use of the Client's existing computer hardware and software; inspect and copy documentation, books and records, however stored, in the custody or under the control of the Consultant, its employees, agents or subcontractors; and require assistance in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Client, and any inquiry conducted by Parliament or any Parliamentary committee.

- ii. The Consultant must provide access to its computer hardware and software to the extent necessary for the Client to exercise its rights under this clause, and provide the Client with any reasonable assistance requested by the Client to use that hardware and software provided that any proprietary information including confidential information like profit margins, overheads and other such confidential information about its employees, sub-contractors, organization would not be made available.

25.3 Conduct of audit and access

The Client must use reasonable endeavours to ensure that:

- i. audits performed pursuant to clause 0; and
- ii. the exercise of the general rights granted by clause 0 by the Client, do not unreasonably delay or disrupt in any material respect the Consultant's performance of its obligations under the Contract.

25.4 Costs

- i. Except as set out in clause ii, each party must bear its own costs of any reviews and/or audits.
- ii. If the Consultant is able to substantiate that it has incurred direct expenses in the Client's exercise of the rights granted under clause 0 or clause 0 which, having regard to the value of this Contract, are substantial, the Client and the Consultant will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

25.5 Comptroller and Auditor-General of India

The rights of the Client under clause i to i apply equally to the Comptroller and Auditor-General of India or a delegate, for the purpose of performing the statutory functions or powers.

25.6 Consultant to comply with Comptroller and Auditor-General of India's requirements

The Consultant must do all things necessary to comply with the Comptroller and Auditor-General of India's or his or her delegate's requirements, notified under clause 0, provided such requirements are legally enforceable and within the power of the Comptroller and Auditor-General of India, or his or her respective delegate.

25.7 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Consultant's responsibility to perform its obligations in accordance with the Contract.

25.8 Subcontractor requirements

The Consultant must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause.

25.9 No restriction

Nothing in this Contract reduces limits or restricts in any way any function, power, right or entitlement of the Comptroller and Auditor-General of India or a delegate. The rights of the Client under this Contract are in addition to any other power, right or entitlement of the Comptroller and Auditor-General of India or a delegate.

25.10 Survival

This clause applies for the Contract Period or till the termination or expiry of this Contract.

26. *Unforeseen events*

26.1 Occurrence of unforeseen event

A party (Affected Party) is excused from performing its obligations under this Contract to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Consultant only), including but not limited to acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation.

26.2 Notice of unforeseen event

When the circumstances described in clause 0 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.

26.3 Termination

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 0 continues for a period of more than 30 consecutive days or other period as specified in item 255 of the Contract Details, the other party may terminate the Contract immediately by giving the Affected Party written notice.

26.4 Consequences of termination

If this Contract is terminated under clause 0:

- i. each party will bear its own costs and neither party will incur further liability to the other; and
- ii. where the Consultant is the Affected Party, it will be entitled to payment for Services Accepted or work performed prior to the date of intervention of the circumstances described in clause 0.

27. *Dispute Resolution*

27.1 Reconciliation Process

If a dispute arises in relation to the conduct of this Contract (Dispute), a party must comply with this clause 27 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 27.

27.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

27.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 27.2 (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 Item 27. 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 Item 27. Any legal dispute will come under the sole jurisdiction specified in Item 27.

27.4 Confidentiality

Any information or documents disclosed by a party under this clause 27:

- i. must be kept confidential; and
- ii. may only be used to attempt to resolve the Dispute.

27.5 Costs

Each party to a Dispute must pay its own costs of complying with this clause 27. The parties to the Dispute must equally pay the costs of the arbitrator.

27.6 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to the other party after it has complied with clauses 0 to **Error! Reference source not found.** Clauses 0 and 0 survive termination of the dispute resolution process.

27.7 Breach of this clause

If a party to a Dispute breaches clauses 0 to 0, the other party does not have to comply with those clauses in relation to the Dispute.

28. Termination

28.1 Termination and reduction for convenience

- i. The Client may, at any time, by a prior written notice of 60 days, terminate this Contract or reduce the scope of the Services, including for a machinery of government change.
- ii. On receipt of a notice of termination or reduction the Consultant must stop work as specified in the notice; take all available steps to minimise loss resulting from that termination and to protect Client Material and Contract Material; and continue work on any part of the Services not affected by the notice.
- iii. If this Contract is terminated under clause 0, the Client is liable only for: payments under clause a.a.i.15 for Services rendered before the effective date of termination; and reasonable costs incurred by the Consultant and directly attributable to the termination.
- iv. If the scope of the Services is reduced, the Client's liability to pay the Service Charges or to provide Client Material abates in accordance with the reduction in the Services.
- v. The Client is not liable to pay compensation under clause iii in an amount which would, in addition to any amounts paid or due, or becoming due, to the Consultant under this Contract, exceed the total Service Charges payable under this Contract.
- vi. The Consultant is not entitled to compensation for loss of prospective profits.

28.2 Termination by the Client for default

- a. Without limiting any other rights or remedies the Client may have against the Consultant arising out of or in connection with this Contract, the Client may terminate this Contract effective immediately by giving written notice to the Consultant if: the Consultant breaches a material provision of this Contract where that breach is not capable of remedy; the Consultant breaches any provision of this Contract and fails to remedy the breach within 30 days after receiving notice requiring it to do so; or an event specified in clause 00 happens to the Consultant.
- b. Without limitation, for the purposes of clause 00, each of the following constitutes a breach of a material provision:
 - breach of warranty under clause 0 (Consultant warranties);
 - a failure to comply with clause 12 (Personnel);
 - a failure to comply with clause 13 (Intellectual Property Rights);
 - a failure to comply with clause 19 (Insurance);

- a failure to comply with clause 20 (Confidentiality and privacy);
- a failure to comply with clause 21 (Protection of personal information); or
- a failure to notify the Client of a conflict of interest under clause 22 (Conflict of interest).

c. The client can terminate the contract under the scenarios mentioned below. The Consultant must notify the Client immediately if any of these situations arise:

- the Consultant being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Consultant;
- the Consultant disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- the Consultant ceases to carry on business;
- the Consultant ceases to be able to pay its debts as they become due;
- the Consultant being a company enters into liquidation or has a controller or liquidator or administrator appointed;
- the Consultant being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
- where the Consultant is a partnership, any step is taken to dissolve that partnership.

In this clause, controller and administrator have the same meanings as in the Companies Act.

28.3 Termination by the Consultant for default

Without limiting any other rights or remedies the Consultant may have against the Client arising out of or in connection with this Contract, the Consultant may terminate this Contract by giving at least <30> Days notice to the Client if the Client:

- i. has not paid a correctly rendered invoice or has not notified the Consultant that it disputes the charges specified under an invoice within 60 days of receipt of that invoice; and
- ii. the Consultant has given the Client: a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Client at least 30 days to pay the invoice; and a second notice 15 days after the first notice, referring to the first notice and giving the Client at least 15 days to pay the invoice.

28.4 After termination

On termination of this Contract the Consultant must:

- i. stop work on the Services;
- ii. deal with Client Material as reasonably directed by the Client; and
- iii. return all the Client's Confidential Information to the Client.

28.5 Survival

The following clauses survive the termination and expiry of this Contract:

- i. Clause 13 (Intellectual Property);
- ii. Clause 17 (Indemnity);
- iii. Clause 19 (Insurance);
- iv. Clause 20 (Confidentiality and privacy);
- v. Clause 21 (Protection of personal information);
- vi. Clause 23 (Security);
- vii. Clause 25 (Audit and access); and
- viii. Clause 0 (Knowledge transfer).

28.6 Termination does not affect accrued rights

Termination of this Contract does not affect any accrued rights or remedies of a party.

28.7 Knowledge transfer

Subject to any qualification or provision to the contrary in the Statement of Work, the Consultant must provide the following assistance to the Client on termination or expiration of this Contract:

- i. transferring or providing access to the Client to all information stored by whatever means held by the Consultant or under the control of the Consultant in connection with this Contract; and
- ii. making Specified Personnel and Consultant Personnel available for discussions with the Client as may be required. The time, length and subject of these discussions will be at the sole discretion of the Client, provided that any matter discussed is not considered to reveal any 'Commercial-in-Confidence' information of the Consultant.

29. *Notices and other communications*

29.1 Service of notices

A Notice must be:

- i. in writing, in English and signed by a person duly authorised by the sender; and
- ii. hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in item 266 of the Contract Details, as varied by any Notice given by the recipient to the sender.

29.2 Effective on receipt

A Notice given in accordance with clause 0 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- i. if hand delivered, on delivery;
- ii. if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside India);

- iii. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice, but if the delivery, receipt or transmission is not on a Business Day or is after 6.00pm on a Business Day, the Notice is taken to be received at 10.00am on the next Business Day.

30. Miscellaneous

30.1 Varying the Contract

This Contract may be varied only in writing signed by each party.

30.2 Approvals and consents

Except where this Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

30.3 Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Contract with the prior written consent of the other party.

30.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this Contract.

30.5 Counterparts

This Contract may be executed in counterparts. All executed counterparts constitute one document.

30.6 No merger

The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

30.7 Entire agreement

This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

30.8 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

30.9 Severability

A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.

30.10 Waiver

Waiver of any provision of or right under this Contract:

- i. must be in writing signed by the party entitled to the benefit of that provision or right; and
- ii. is effective only to the extent set out in any written waiver.

30.11 Relationship

- i. The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- ii. This Contract does not create a relationship of employment, agency or partnership between the parties.

30.12 Announcements

- i. The Consultant must, before making a public announcement in connection with this Contract or any transaction contemplated by it, obtain the Client's agreement to the announcement, except if required by law or a regulatory body (including a relevant stock exchange).
- ii. If the Consultant is required by law or a regulatory body to make a public announcement in connection with this Contract or any transaction contemplated by this Contract the Consultant must, to the extent practicable, first consult with and take into account the reasonable requirements of the Client.
- iii. Where reasonably practicable, the Client must, on or before making a public announcement in connection with this Contract or any transaction contemplated by it, provide notice to the Consultant of the general nature of the announcement. For the avoidance of doubt, the Client does not require the consent of the Consultant to the making of the announcement.

30.13 Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement and the performance of the parties contemplated under this Agreement, to the extent that such convention might otherwise be applicable.

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the jurisdiction specified in Item 27 of the Contract Details.

SIGNED, SEALED AND DELIVERED

For and on behalf of the Consultant by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of the Buyer by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

- 1.
- 2.

Schedule 1 – Contract Details

Item number	Description	Clause Reference	Details
1.	Client details	1.1	<i>[insert name of Client] [insert street address] [insert ABN]</i>
2.	Consultant details	1.1	<i>[insert name of Consultant] [insert street address] [insert ABN]</i>
3.	Client Representative	1.1	<i>[insert position and/or name of the Client's representative]</i>
4.	Consultant Representative	1.1	<i>[insert position and/or name of Consultant's representative]</i>
5.	Business Hours	1.1	<i>[if Business Hours differ from those specified in the definition, specify alternative hours here. Otherwise insert 'not applicable']</i>
6.	Commencement Date	1.1 and 0	<i>[insert date Contract is to commence eg, dd/mm/yy]</i>
7.	Initial Contract Period	1.1 and 0	<i>[insert the initial period of time for which the Contract will continue, eg 2 years]</i>
8.	Option Period	0	<i>[insert Option Period eg, 2 periods each being 1 year in duration. Otherwise insert 'not applicable']</i>
9.	Option Notice Period	0	<i>[if Option Notice Period is to be other than 30 days, insert alternative Option Notice Period (eg, 45 days). Otherwise insert 'not applicable']</i>
10.	Nominated Agency	1.1 and 4	<i>[insert name(s) of any Nominated Agencies. Otherwise insert 'not applicable']</i>
11.	Relevant Industry Standards	iii	<i>[insert relevant Industry Standards, best practice and guidelines (if any). Otherwise insert 'not applicable']</i>
12.	Subcontractors	0	<i>[insert names and ABNs of any subcontractors. Otherwise insert 'not applicable']</i>
13.	Language of Documentation	0	<i>[if the Documentation is to be in a language other than English, specify the required language here. Otherwise insert 'not applicable']</i>

Item number	Description	Clause Reference	Details
			<i>applicable'</i>
14.	Period for notification	0	<i>[if the period for notification is to be a period other than 5 Business Days of assessing the Services against the Performance Criteria, specify the relevant timeframe here. Otherwise insert 'not applicable']</i>
15.	Specified Personnel	12	<i>[insert names and positions of Specified Personnel. Otherwise insert 'not applicable']</i>
16.	Intellectual Property Rights – Ownership of Contract Material	0	<i>[parties are to select one of the following. Refer to the note to users at clause 0 for further information]</i> <input type="checkbox"/> clause 0 (Client Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply <input type="checkbox"/> clause 0 (Consultant Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply
17.	Intellectual Property Rights - licences	ii	Where clause 0 (Client Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply: 1. Period of Govt. Agency's licence is: <i>[Insert the duration of the Govt. Agency's licence to use the Auxiliary Material provided by the Consultant. For example, will the licence be perpetual, for the Contract Period or for some other period]</i> 2. <i>[If the terms of the licence are to differ from that provided in clause ii state the position here]</i>
18.	Client Material	1.1, ii and ii	<i>[insert specific Material to be provided to the Consultant by the Client (if any) and any restrictions on the use of the Material. Otherwise insert 'not applicable']</i>

Item number	Description	Clause Reference	Details
19.	Intellectual Property Rights – licences	ii	Where clause 0 (Consultant ownership of and licence to Intellectual Property Rights in Contract Material) is to apply: 1. Period of Client's licence is: <i>[Insert the duration of the Client's licence to use the Auxiliary Material provided by the Consultant, and Contract Material. For example, will the licence be perpetual, for the Contract Period or for some other period]</i> 2. <i>[If the terms of the licence are to differ from that provided in clause ii state the position here]</i>
20.	Moral Rights – Specified Acts	0	<i>[if the Client wants to perform additional acts with the Contract Material other than those listed in clause 0, these should be set out here. Otherwise insert 'not applicable']</i>
21.	Additional insurance	0	<i>[insert any additional types of insurance the Consultant is required to maintain. Otherwise insert 'not applicable']</i>
22.	Insurance quantum	0	Public liability insurance for an insured amount of <i>[INR insert amount]</i> per occurrence and not less than <i>[INR insert amount]</i> in aggregate Either professional indemnity or errors and omissions insurance for an insured amount of <i>[INR insert amount]</i> per occurrence and not less than <i>[INR insert amount]</i> in aggregate Workers compensation as required by law <i>[insert amount required of any other type of insurance specified at item 21 above]</i>
23.	Security	0	<i>[insert any security requirements additional to those specified in clause 23. Otherwise insert 'not applicable']</i>
24.	Costs of security clearances	0	<i>[if the position as to payment for security</i>

Item number	Description	Clause Reference	Details
			<i>clearances is to differ from that provided in clause i, state the position here. Otherwise insert 'not applicable'</i>
25.	Unforeseen events termination period	0	<i>[if a termination period other than 30 days will apply in the event of an 'unforeseen event,' specify it here. Otherwise insert 'not applicable']</i>
26.	Address for Notices	0	<p>Govt. Agency: <i>[insert name and/or position of person to receive notices]</i> <i>[insert postal address]</i> <i>[insert physical address]</i> <i>[insert facsimile number]</i></p> <p>Consultant: <i>[insert name and/or position of person to receive notices]</i> <i>[insert postal address]</i> <i>[insert physical address]</i> <i>[insert facsimile number]</i></p>
27.	Jurisdiction	0	<i>[insert the place of jurisdiction which is to govern the Contract eg New Delhi, India]</i>

Schedule 2 – Statement of Work

Note: Insert particulars of the Services and Deliverables to be provided under this Contract in this Schedule. The format of this Schedule is provided as an example only and may be amended to address particular Client requirements

1. Purpose (clause 6)

Note: Insert a brief summary of the:

- (a) *business requirements of the Client relevant to provision of the Services; and*
- (b) *purpose of procuring the Services.*

2. Services (clauses 1.1 and 6)

Note: Insert details of Services here

	Description of Services (attach additional pages if required)	Milestone
1.		
2.		
3.		
4.		
5.		

3. Deliverables (clauses 1.1 and 0)

Note: Insert details of Deliverables here, including Milestones

	Deliverables	Milestone
1.		
2.		
3.		
4.		
5.		

4. Documentation (clause 7)

Note: Insert details of Documentation here, including required format and Milestones

	Documentation	Format	Milestone
1.			
2.			
3.			
4.			
5.			

5. Performance Criteria (clauses 1.1 and 11)

Note: Insert details of Performance Criteria against which the Services and Deliverables will be assessed, and the date of assessment

	Service/Deliverable	Performance Criteria	Assessment date
1.			
2.			
3.			
4.			
5.			

6. Progress meetings (clause 0)

Note: Insert details of attendees, frequency (eg. weekly, monthly) and place of meetings

Meeting	Attendees	Frequency	Place

7. Reporting (clause 0)

Note: Insert details of required reports, including content, frequency (eg. weekly, monthly) and dates due

Report type and content	Frequency	Milestone

8. Knowledge Transfer (clause 0)

Note: If requirements for Knowledge Transfer are different to those specified in clause 0, specify the requirements here

Requirement	Milestone

Schedule 3 – Payment

Note: Insert details of all relevant charges, costs or fees for the performance of the Services and provision of Deliverables and when each item is payable. All Service Charges are exclusive of VAT, sales tax, service tax and other similar tax. The format of this Schedule is provided as an example only and may be amended to address particular Client requirements

[This should be as per Appendix II, Form 2 of Model RFP document]

1. Fixed charges (clause a.a.i.15)

Note: Insert fixed charges for Services. If payment is to be made on a time and materials basis, mark this section as 'Not Applicable'

	Charges (exclusive of taxes)	Tax Component	Total (inclusive of Taxes)
Service Charges (fixed)			
Other Charges (if any)			
TOTAL			

2. Hourly rates

Note: Add hourly rates for each person if payment is to be made on a time and materials basis

Personnel	Hourly Rate (exclusive of Tax)	Tax Component	Maximum Work Effort (Days)	Charges (exclusive of Tax)	Tax Component
Sub total					
Add Taxes					
TOTAL					

3. Daily rates

Note: Add daily rates for each person if payment is to be made on a time and materials basis

Personnel	Daily Rate (exclusive of Taxes)	Tax Component	Maximum Work Effort (Days)	Charges (exclusive of Tax)	Tax Component
Sub total					
Add Tax					
TOTAL					

4. Milestone Payments

Note: Insert Milestone payment amounts against the Milestone dates. If Milestone Payments are not applicable, mark as 'Not Applicable'

Milestone date	Milestone/Deliverable	Milestone Payment
TOTAL		

5. Liquidated Damage: Time is the essence of the Agreement and the completion of deliverables within the given timeframe are binding on the Consultant. In the event of delay, for causes attributable to the Consultant, in meeting the deliverables, the <Nodal Agency> shall be entitled at its option to recover from the Consultant as agreed, liquidated damages, a sum of 0.5% of the contract value which suffered delay for each completed week or part thereof by which the deliverable has been delayed subject to a limit of 5% of the contract value.

6. Invoicing requirements (clause 0)

Note: Specify invoicing requirements here

7. Payment period (clause 0)

Note: Specify an alternative payment period if the 30 day period contemplated in clause 0 is not suitable

8. Expenses (clause 0)

- (a) Subject to (b) below, the Client will not pay any travel, accommodation or other expenses unless they have been pre-approved in writing by the Client.
- (b) The Consultant will be reimbursed for the travel and related accommodation at non-SES rates where they are pre-approved in writing by the Client. The Consultant must submit an invoice for those expenses and the Client will reimburse the Consultant in accordance with the invoicing procedures set out in this Schedule.

Schedule 4 – Designated Confidential Information

Note: This Schedule should include each party’s Confidential Information. The period of confidentiality should be specified for each item. If the parties agree that different items of information are to be confidential for different periods of time, the different periods should be recorded next to each item. An assessment will need to be made by the parties on a case-by-case basis about what is to be included in the Schedule.

1. Confidential information of the Client (clause 1.1 and 20)

1.1 Contract provisions / Schedules

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

1.2 Contract-related Material

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

2. Confidential information of the Consultant (clause 1.1 and 20)

2.1 Contract provisions / Schedules

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

2.2 Contract-related Material

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

Schedule 5 – Client Requirements

Note: Client to address particular requirements with which the Consultant must comply, for example, Client specific legislative requirements (including in relation to secrecy and confidentiality), specific Client policies and/or procedures and specific Commonwealth government policies

Schedule 6 – Change Order

Note: If the proposed changes will vary the Specifications, or the Services, the following form must be completed

This Change Order (including its attachments, if any) serves to vary the Contract in accordance with the terms set out below. Unless specifically stated in this Change Order, all terms and conditions of the Contract continue unaffected.

1.	Change Order number	
2.	Raised by	
3.	Details of change (use attachments if required)	
4.	Implementation date of Change Order	
5.	Effect on Services	
6.	Plan for implementing the change	
7.	Effect on Service Charges	
8.	Effect on Performance Criteria	
9.	Effect on Documentation	
10.	Other relevant matters (eg transitional impacts)	

Client

Name (print)

Position

Signature

Date

Consultant

Name (print)

Position

Signature

Date

Schedule 7 – Confidentiality and privacy undertaking

Note: Insert here the terms of the confidentiality and privacy undertaking (if any) which a party may be required, under clause 0, to arrange for its Advisers or other third parties to give

Schedule 8– Consultant’s Bid Response

Schedule 9– Governance Schedule

GOVERNANCE SCHEDULE

10.1 Purpose

The purpose of this Schedule is to (i) establish and maintain the formal and informal processes for managing the relationship between the <Nodal Agency> and the Consultant 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.

10.2 Governance Structure

a. The Program Governance Structure to be put in place by <Nodal Agency> will have the following units:

i. Steering Committee

ii. Program Management Unit

The composition of each of the above units will be in line with the approach described in the RFP or as decided by <Nodal Agency>.

b. Project Directors: The relationship under this Agreement will be operated by the Project Directors appointed by each Party, who will provide the interface between the executive management of the respective Parties.

c. Before the signing of this agreement, the <Nodal Agency> and the Consultant shall each appoint a Project Director. In the event that either Party wishes to substitute its Project Director it will notify the other Party of such substitution as soon as reasonably practicable but at the latest within seven days of the substitution.

d. The Project Directors shall have responsibility for maintaining the interface and communication between the Parties.

e. Steering Committee: <Nodal Agency> will appoint a Steering Committee before the signing of this agreement.

f. The Steering Committee will meet formally on, at least, a monthly basis at a time and location to be agreed within the Committee. These meetings will cover, as a minimum, the following agenda items: (i) consideration of monthly 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 this Schedule; (iv) matters to be brought before the Steering Committee in accordance with this agreement and the Schedules; (v) any matter brought before the Steering Committee by the Consultant under this Article; and (vi) any other issue which either Party wishes to add to the agenda.

g. 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 (Schedule VI of this Agreement), the Parties agree

to discuss in the Steering Committee meeting any appropriate amendment in the MSA or the SLA or Scope of work 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 Process.

4.3 Governance Procedures

- a. The Consultant shall document the agreed structures in a procedures manual.
- b. The agenda for each meeting of the 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 Steering Committee, along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.
- c. All meetings and proceedings will be documented; such documents to be distributed to both Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.
- d. The Parties shall ensure as far as reasonably practicable that the Steering Committee shall resolve the issues and resolve the objectives placed before them and that members representing each Party are empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achieve this.