

DRAFT CONTRACT AGREEMENT CONSISTING
OF
MASTER SERVICE, NON DISCLOSURE AGREEMENTS
FOR
SKILL DELIVERY PLATFORM KERALA
GOVERNMENT OF KERALA

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DRAFT

MASTER SERVICES AGREEMENT

THIS MASTER SERVICE AGREEMENT ("**Agreement**") is made on this the <***> day of <***> 20... at <***>, India.

BETWEEN

----- having its office at TC No.: 14/196/2, 3rd Floor, Chandrasekharan Nair Stadium, Palayam, Trivandrum – 695033, hereinafter referred to as "**Kerala State Infrastructure Limited / 'KSITIL'**", 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 '**Implementation Agency/System Integrator/SI**') 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. KSITIL is desirous to implement the project of Skill Development Platform Kerala "**SDPK**".
2. In furtherance of the same, KSITIL undertook the selection of a suitable Implementation Agency through a competitive bidding process for implementing the Project and in this behalf issued Request for Proposal (RFP) dated <***> .
3. The successful SI has been selected as the Implementation Agency on the basis of the bid response set out as Annexure D of this Agreement, to undertake the Project of the development and implementation of the solution, its roll out and sustained operation **NOW THEREFORE**, in consideration of the mutual covenants, promises, assurances, representations and provisions set forth herein, the Parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

1.2 Interpretation

In this Agreement, unless otherwise specified:

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

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

- a) as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- b) as between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures; and

- c) as between any value written in numerals and that in words, the value in words shall prevail.

1.5 Priority of documents

This Agreement, including its Schedules and Annexures, represents the entire agreement between the Parties as noted in this Clause. If in the event of a dispute as to the interpretation or meaning of this Agreement it should be necessary for the Parties to refer to documents forming part of the bidding process leading to this Agreement, then such documents shall be relied upon and interpreted in the following descending order of priority:

- a) This Agreement along with the SLA agreement, NDA agreement, Schedules and Annexures;
- b) Request for Proposal and Addendum / Corrigendum to the Request for Proposal (if any). For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures / Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexures / Schedules and Annexures / Schedules shall prevail over the contents and specifications of the RFP.

2. SCOPE OF THE PROJECT

The selected SI has to supply, install, commission, maintain and support the operations of the virtual class room infrastructure with Learning Management System including all related accessories at various Engineering Colleges & KSITIL identified Studio locations for five years, which should enable highly interactive video, voice communication and content sharing, through which an instructor sitting at a remote studio can teach / train / instruct students sitting in 150 Engineering Colleges. Following are the major activities to be performed by the SI for implementing virtual class rooms as part of this project.

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

2.1 Scope of work

- a) *To Supply, commission, install, configure and maintain a immersive virtual classroom classroom solution along with Learning Management System to create virtual Class Room Infrastructure at various Engineering colleges identified by the Govt. The list of colleges and studio locations where immersive virtual classroom classroom equipment and related accessories is to be installed is enclosed in this RFP.*
- b) *The vendor has to install the Central Control Unit at SDC and install video conference equipment, camera, mic, displays and audio devices at all engineering colleges and studio locations.*
- c) *The Vendor should supply, install, support and maintain the Learning Management System on regular basis.*
- d) *Provide perpetual licenses by which user can directly login to Virtual Classroom sessions using their desktop/ laptop/ mobile and third party Endpoints (with H323/SIP protocols or WebRTC) to connect to the SDPK system , with pre-defined session credentials.*
- e) *The SI shall offer training to the on-site staff for operation of the equipment, and on-going management and maintenance of the proposed solution and all the training contents should be available through LMS module as well.*

- f) *Technical guidance and support to KSITIL for making class room interior (Civil & Electrical Works) ready for the installation of virtual class room infrastructure.*

3. TERM AND DURATION OF THE AGREEMENT

*This Agreement shall come into effect on <***> 20--- (hereinafter the ‘Effective Date’) and shall continue till operation and maintenance completion date which shall be the date of the completion of the operation and maintenance to the KSITIL or its nominated agencies.*

4. CONDITIONS PRECEDENT & EFFECTIVE DATE

4.1 Provisions to take effect upon fulfillment of Conditions Precedent

Subject to express terms to the contrary, the rights and obligations under this Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out below. However, KSITIL or its nominated agencies may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the Implementation Agency.

4.1.1 Conditions Precedent of the Implementing Partner

The Implementation Agency shall be required to fulfill the Conditions Precedent in which is as follows:

- (i). To provide a Performance Security/Guarantee and other guarantees/ payments as and when required to the KSITIL or its nominated agencies; and
- (ii). To provide the KSITIL or its nominated agencies certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Implementation Agency.

4.1.2 Conditions Precedent of the KSITIL

The KSITIL shall be required to fulfill the Conditions Precedent in which is as follows:

- (i). Handing over of site
- (ii). Necessary clearances
- (iii). Approval of the Project by a Competent Authority, etc

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

4.2 Extension of time for fulfillment of Conditions Precedent

The Parties may, by mutual agreement extend the time for fulfilling the Conditions Precedent and the

Term of this Agreement.

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

4.3 Non-fulfillment of the Implementation Agency's Conditions Precedent

- (a) In the event that any of the Conditions Precedent of the Implementation Agency have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by Nodal Agency or its nominated agencies, this Agreement shall cease to exist;
- (b) In the event that the Agreement fails to come into effect on account of nonfulfillment of the Implementation Agency's Conditions Precedent, the Nodal Agency or its nominated agencies shall not be liable in any manner whatsoever to the Implementation Agency and the KSITIL shall forthwith forfeit the Performance Guarantee.
- (c) In the event that possession of any of the KSITIL or its nominated agencies facilities has been delivered to the Implementation Agency prior to the fulfillment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to Nodal Agency or its nominated agencies, free and clear from any encumbrances or claims.

5. OBLIGATIONS UNDER THE SLA

- 1. The SLA shall be a separate contract in respect of this Agreement and shall be entered into concurrently with this Agreement between KSITIL and Implementation Agency;
- 2. In relation to any future SLA entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein.
- 3. **Change of Control**
 - a) In the event of a change of control of the Implementation Agency during the Term, the Implementation Agency shall promptly notify KSITIL and/or its nominate agencies of the same in the format set out as Annexure A of this Agreement.
 - b) In the event that the net worth of the surviving entity is less than that of Implementation Agency prior to the change of control, the Nodal Agency or its nominated agencies may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the Implementation Agency from a guarantor acceptable to the KSITIL or its nominated agencies (which shall not be Implementation Agency or any of its associated entities).
 - c) If such a guarantee is not furnished within 30 days of the KSITIL or its nominated agencies requiring the replacement, the KSITIL may exercise its right to terminate the SLA and/ or this Agreement within a further 30 days by written notice, to become effective as specified in such notice.
 - d) Pursuant to termination, the effects of termination as set out in Clause 14.2 of this Agreement shall follow.
 - e) For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Implementation Agency shall not be deemed an event of a change of control for purposes of this Clause unless the surviving entity is of less net worth than the predecessor entity.
- 4. **Final testing and certification**

The Project shall be governed by the mechanism of final acceptance testing and certification to be put into place by the KSITIL and Implementation Agency as under:

- a) Final testing and certification criteria will lay down a set of guidelines following internationally accepted norms and standards for testing and certification for all aspects of project development and implementation covering software, hardware and networking including the processes relating to the design of solution architecture, design of systems and sub- systems, coding, testing, business process description, documentation, version control, change management, security, service oriented architecture, performance in relation to compliance with SLA metrics, interoperability, scalability, availability and compliance with all the technical and functional requirements of the RFP and this Agreement;
- b) Final testing and certification criteria will be finalized from the development stage to ensure that the guidelines are being followed and to avoid large scale modifications pursuant to testing done after the application is fully developed;
- c) Final testing and certification criteria will consider conducting specific tests on the software, hardware, networking, security and all other aspects
- d) Final testing and certification criteria will establish appropriate processes for notifying the Implementation Agency of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the Implementation Agency to take corrective action; etc.
- e) The Parties shall each ensure that the range of the Services under the SLA shall not be varied, reduced or increased except with the prior written agreement between the KSITIL and Implementation Agency in accordance with the Change Control Schedule set out in Schedule II of this Agreement. Save for the express terms of the Terms of Payment Schedule set out as Schedule VI of this Agreement, KSITIL or its nominated agencies and its users may purchase any particular category of Services that may become necessary as per the Change Control Schedule set out in Schedule II of this Agreement, without the need to go for a separate procurement process.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and warranties of the Implementation Agency

The Implementation Agency represents and warrants to the KSITIL or its nominated agencies that:

- a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- b) it is a competent provider of a variety of information technology and business process management services;
- c) it has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- d) from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- e) in providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to KSITIL's normal business operations
- f) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;

- g) the information furnished in the tender documents and as updated on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement;
- h) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- i) there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- k) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement;
- l) no representation or warranty by it contained herein or in any other document furnished by it to KSITIL or its nominated agencies in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
- m) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of KSITIL or its nominated agencies in connection therewith.

6.2 Representations and warranties of the KSITIL or its nominated agencies

KSITIL or its nominated agencies represent and warrant to the Implementation Agency that:

- a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;

- b) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c) it has the financial standing and capacity to perform its obligations under the Agreement;
- d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- e) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;
- f) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- g) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;
- h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on the Nodal Agency or its nominated agencies ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- i) it has complied with Applicable Laws in all material respects;
- j) all information provided by it in the RFP in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- k) upon the Implementation Agency performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Implementation Agency, in accordance with this Agreement.

7. OBLIGATIONS OF THE KSITIL OR ITS NOMINATED AGENCIES

Without prejudice to any other undertakings or obligations of the Nodal Agency or its nominated agencies under this Agreement, the KSITIL or its nominated agencies shall perform the following:

- a) To provide any support through personnel to test the system during the Term;

- b) To provide any support through personnel and/or test data during development, rollout, steady state operation, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- c) KSITIL shall provide the data (including in electronic form wherever available) to be migrated.
- d) To authorize the Implementation Agency to interact for implementation of the Project with external entities such as the state treasury, authorized banks, trademark database etc.

8. OBLIGATIONS OF THE IMPLEMENTATION PARTNER

- a) It shall provide to the KSITIL or its nominated agencies, the Deliverables as set out in Annexure C of this Agreement.
- b) It shall perform the Services as set out in Section 2 of this Agreement and in a good and Workman like manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, and so as to comply with the applicable Service Levels set out with this Agreement.
- c) It shall ensure that the Services are being provided as per the Project Timelines set out as Annexure C to this Agreement.

9. APPROVALS AND REQUIRED CONSENTS

- a) The Parties shall cooperate to procure, maintain and observe all relevant and regulatory and governmental licenses, clearances and applicable approvals (hereinafter the “**Required Consents**”) necessary for the Implementation Agency to provide the Services. The costs of such Approvals shall be borne by the Party normally responsible for such costs according to local custom and practice in the locations where the Services are to be provided
- b) The KSITIL or its nominated agencies shall use reasonable endeavors to assist Implementation Agency to obtain the Required Consents. In the event that any Required Consent is not obtained, the Implementation Agency and the KSITIL or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the KSITIL or its nominated agencies to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Required Consent is obtained, provided that the Implementation Agency shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the Required Consents are obtained if and to the extent that the Implementation Agency’s obligations are not dependent upon such Required Consents.

10. USE OF ASSETS BY THE IMPLEMENTATION AGENCY

10.1 During the Term the Implementation Agency shall:

- a) take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the Implementation Agency exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the “**Assets**”) in proportion to their use and control of such Assets; and
- b) keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Implementation Agency takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- c) ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Implementation Agency will be followed by the Implementation Agency and any person who will be responsible for the use of the Assets;
- d) take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Implementation Agency or as may, in the reasonable opinion of the Implementation Agency, be necessary to use the Assets in a safe manner;
- e) ensure that the Assets that are under the control of the Implementation Agency, are kept suitably housed and in conformity with Applicable Law;
- f) procure permission from the KSITIL or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- g) not, knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.

11. ACCESS TO THE KSITIL OR ITS NOMINATED AGENCIES LOCATIONS

- I. For so long as the Implementation Agency provides services to the Nodal Agency or its nominated agencies location, as the case may be, on a non-permanent basis and to the extent necessary, the KSITIL as the case may be or its nominated agencies shall, subject to compliance by the Implementation Agency with any safety and security guidelines which may be provided by the KSITIL as the case may be or its nominated agencies and notified to the Implementation Agency in writing, provide the Implementation Agency with:
 - a) reasonable access, in the same manner granted to the KSITIL or its nominated agencies employees, to the KSITIL as the case may be location twenty-four hours a day, seven days a week;
 - b) reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other the KSITIL as the case may be location, if any, as may be reasonably necessary for the Implementation Agency to perform its obligations hereunder and under the SLA.

- II. Access to locations, office equipments and services shall be made available to the Implementation Agency on an “as is, where is” basis by the KSITIL as the case may be or its nominated agencies. The Implementation Agency agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in RFP for the following purposes:
- a) for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
 - b) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality).

12. MANAGEMENT PHASE

12.1 Governance

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

12.2 Use of Services

- a) The KSITIL as the case may be or its nominated agencies, will undertake and use the Services in accordance with any instructions or procedures as per the acceptance criteria as set out in the SLA or this Agreement or any agreement that may be entered into between the Parties from time to time;
- b) The KSITIL as the case may be or its nominated agencies shall be responsible for the operation and use of the Deliverables resulting from the Services.

12.3 Changes

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

12.4 Security and Safety

- a) The Implementation Agency shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act or Telegraph Act including the regulations issued by dept. of telecom (wherever applicable), IT Security Manual of the KSITIL as specifically stated in the RFP and follow the industry standards related to safety and security (including those as stated in the RFP), insofar as it applies to the provision of the Services.©
- b) Each Party to the SLA/Agreement shall also comply with Nodal Agency or the Government of Kerala, and the respective State’s security standards and policies in force from time to time at each location of which KSITIL or its nominated agencies

make the Implementation Agency aware in writing insofar as the same apply to the provision of the Services.

- c) The Parties to the SLA/Agreement shall use reasonable endeavours to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the KSITIL as the case may be or any of their nominees data, facilities or Confidential Information.
- d) The Implementation Agency shall upon reasonable request by the KSITIL as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- e) As per the provisions of the SLA or this Agreement, the Implementation Agency shall promptly report in writing to the KSITIL or its nominated agencies, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of KSITIL as the case may be.

12.5 Cooperation

Except as otherwise provided elsewhere in this Agreement or the SLA, each Party ("**Providing Party**") to this Agreement or to the SLA undertakes promptly to provide the other Party ("**Receiving Party**") with all such information and co-operation which the Receiving Party reasonably requests, provided that such information and co-operation: does not require material expenditure by the Providing Party to provide the same;

- 1. is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement or the SLA;
- 2. cannot be construed to be Confidential Information; and
- 3. is capable of being provided by the Providing Party.
- 4. Further, each Party agrees to co-operate with the contractors and subcontractors of the other
- 5. Party as reasonably requested in order to accomplish the purposes of this Agreement.

13. FINANCIAL MATTERS

13.1 Terms of Payment and Service Credits and Debits

- a) In consideration of the Services and subject to the provisions of this Agreement and of the SLA, the Nodal Agency shall pay the Implementation Agency for the Services rendered in pursuance of this agreement, in accordance with the Terms of Payment Schedule set out as Schedule VI of this Agreement.
- b) All payments are subject to the application of service credits and debits as may be provided for in the SLA. For the avoidance of doubt, it is expressly clarified that the KSITIL will pay the service credits as stated in accordance with the Schedule VI of this Agreement and the KSITIL may also calculate a financial sum and debit the same against

the terms of payment as set out in Schedule VI of this Agreement as a result of the failure of the Implementation Agency to meet the Service Level as defined in SLA.

- c) Save and except as otherwise provided for herein or as agreed between the Parties in writing, the KSITIL shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the Implementation Agency performance of any obligations under this Agreement or the SLA) other than those covered in Schedule VI of this Agreement. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.

13.2 Invoicing and Settlement

- (a) Subject to the specific terms of the SLA, the Implementation Agency shall submit its invoices in accordance with the following principles:
- (i) The KSITIL shall be invoiced by the Implementation Agency for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the Implementation Agency shall raise an invoice as per Schedule VI of this Agreement; and
 - (ii) Any invoice presented in accordance with this Article shall be in a form agreed with the KSITIL.
- (b) The Implementation Agency alone shall invoice all payments after receiving due approval from the competent authority. Such invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in Schedule VI of this Agreement. The Implementation Agency shall waive any charge for a Service that is not invoiced within six months after the end of the month in which the change relating to such Service is (i) authorized or (ii) incurred, whichever is later.
- (c) Payment shall be made within *30 working days* of the receipt of invoice along with supporting documents by the KSITIL subject to penalties. The penalties are imposed on the vendor as per the SLA criteria specified in the SLA. In the event of delay in payment of undisputed amount beyond 30 working days, Implementation Agency shall be entitled to a late payment interest <@12%> p.a. from the date of submission of invoice.
- (d) The KSITIL shall be entitled to delay or withhold payment of any invoice or part of it delivered by the Implementation Agency under Schedule VI of this Agreement where the KSITIL disputes/withholds such invoice or part of it provided that such dispute is bona fide. The withheld amount shall be limited to that which is in dispute. The disputed / withheld amount shall be settled in accordance with the escalation procedure as set out in Schedule V of this Agreement. Any exercise by the

KSITIL under this Clause shall not entitle the Implementation Agency to delay or withhold provision of the Services.

- (e) The KSITIL shall be entitled to delay or withhold part of the payment of any invoice which is under a dispute. The withheld amount shall be limited to that which is the disputed amount. The disputed amount shall be referred to the escalation procedure as set out in Schedule V of this Agreement. Any exercise by the KSITIL under this Clause shall not entitle the Implementation Agency to delay or withhold provision of the Services.
- (f) The Implementation Agency shall be solely responsible to make payment its sub-contractors.

13.3 Tax

- (a) The KSITIL or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the Implementation Agency wherever applicable. The Implementation Agency shall pay for all other taxes in connection with this Agreement, SLA, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.
- (b) The KSITIL or its nominated agencies shall provide Implementation Agency with the original tax receipt of any withholding taxes paid by KSITIL or its nominated agencies on payments under this Agreement. The Implementation Agency agrees to reimburse and hold the KSITIL 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 KSITIL or its nominated agencies, the Implementation Agency and third party subcontractors.
- (c) 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 KSITIL 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 IA in performing the Services, then the remuneration and reimbursable expense otherwise payable to the KSITIL under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule VI. However, in case of any new or fresh tax or levy imposed after submission of the proposal the Implementation Agency shall be entitled to reimbursement on submission of proof of payment of such tax or levy.
- (d) The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with the following:
 - (i) any resale certificates

- (ii) any relevant information regarding out-of-state or use of materials, equipment or services; and
- (iii) any direct pay permits, exemption certificates or information reasonably requested by the other Party.

14. TERMINATION

14.1 Material Breach

- (a) In the event that either Party believes that the other Party is in Material Breach of its obligations under this Agreement, such aggrieved Party may terminate this Agreement upon giving a one month's notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, the KSITIL or Implementation Agency, as the case may be will have the option to terminate the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events and the termination will become effective:
 - (i) If the Implementation Agency is not able to deliver the services as per the SLAs defined in RFP which translates into Material Breach, then the KSITIL may serve a 30 days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the KSITIL will have the option to terminate this Agreement. Further, the KSITIL may after affording a reasonable opportunity to the Implementation Agency to explain the circumstances leading to such a breach.
 - (ii) If there is a Material Breach by the KSITIL or its nominated agencies which results in not providing support for effecting data migration or not providing the certification of User Acceptance, and / or failing to make payment of undisputed amount within 30 from date of submission of invoice, then the Implementation Agency will give a one month's notice for curing the Material Breach to the KSITIL. After the expiry of such notice period, the Implementation Agency will have the option to terminate the Agreement
- (b) The Nodal Agency may by giving a one month's written notice, terminate this Agreement if a change of control of the Implementation Agency has taken place. For the purposes of this Clause, in the case of Implementation Agency, change of control shall mean the events stated in Clause 5.3, and such notice shall become effective at the end of the notice period as set out in Clause 5.3 (c).
- (c) In the event that Implementation Agency undergoes such a change of control, Nodal Agency may, as an alternative to termination, require a full Performance Guarantee for the obligations of Implementation Agency by a guarantor acceptable to KSITIL or its nominated agencies. If such a guarantee is not furnished within 30 days of KSITIL's demand, the KSITIL may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the Implementation Agency.

- (d) The termination provisions set out in this Clause shall apply *mutatis mutandis* to the SLA

14.2 Effects of termination

- (a) In the event that KSITIL terminates this Agreement pursuant to failure on the part of the Implementation Agency to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by Implementation Agency may be forfeited.
- (b) Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule III of this Agreement.
- (c) In the event that Nodal Agency or the Implementation Agency terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as Schedule VI of this Agreement.
- (d) Nodal Agency agrees to pay Implementation Agency for
 - i) all charges for Services Implementation Agency provides and any Deliverables and/or system (or part thereof) Implementation Agency delivers through termination, and
 - ii) reimbursable expenses Implementation Agency incurs through termination. If KSITIL terminates without cause, Nodal Agency also agrees to pay any applicable adjustment expenses Implementation Agency incurs as a result of such termination (which Implementation Agency will take reasonable steps to mitigate).

14.3 Termination of this agreement due to bankruptcy of Implementation Agency

The KSITIL may serve written notice on Implementation Agency at any time to terminate this Agreement with immediate effect in the event that the Implementation Agency reporting an apprehension of bankruptcy to the KSITIL or its nominated agencies

15. INDEMNIFICATION & LIMITATION OF LIABILITY

15.1 Subject to Clause 15.2 below, Implementation Agency (the "Indemnifying Party") undertakes to indemnify **KSITIL** (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 patents incorporated in India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally 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 non infringing equivalent, (iii) modify it to make it non infringing. The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.

15.2 The indemnities set out in **Clause 15.1** shall be subject to the following conditions:

- (i) the Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
- (ii) the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense;
- (iii) if the Indemnifying Party does not assume full control over the Defense of a claim as provided in this 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 15.1 above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).

15.3 The liability of Implementation Agency (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 two (2) times average annual fees payable under this Agreement calculated over a reasonable period of months before the cause of action arose with respect to the work involved under the applicable Schedule/Annexure. The liability cap given under this Clause 15.3 shall not be applicable to the indemnification obligations set out in Clause 15.1 and breach of Clause 12.4 and 17.

15.4 In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) nor for any third party claims (other than those set-forth in Clause 15.1) even if it has been advised of their possible existence.

15.5 The allocations of liability in this Section 15 represent the agreed and bargained-for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

16. FORCE MAJEURE

16.1 Definition of Force Majeure

The Implementation Agency or the KSITIL as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by an event of force majeure ('Force Majeure').

16.2 Force Majeure events

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

- (a) is beyond the reasonable control of the affected Party;
- (b) such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care;
- (c) does not result from the negligence of such Party or the failure of such Party to perform its obligations under this Agreement;
- (d) is of an incapacitating nature and prevents or causes a delay or impediment in performance; and
- (e) may be classified as all or any of the following events:

Such events include:

Non-Political Events

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

Political Events

- (E) Change in Law, other than any Change in Law for which relief is provided under this Agreement;
- (F) expropriation or compulsory acquisition by the Nodal Agency or any of their nominated agencies of any material assets or rights of the Implementing Partner;
- (G) unlawful or unauthorised revocation of, or refusal by KSITIL or any of their nominated agencies, GoI or any of its agencies to renew or grant any clearance or Required Consents required by the Implementation Agency to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Implementation Agency's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- (H) any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Implementation Agency in any proceedings for reasons other than failure of the Implementation Agency to comply with Applicable Laws or Required Consents or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement;
- (I) expropriation or compulsory acquisition by the Nodal Agency or any of their nominated agencies of any material assets or rights of the Implementation Agency;
- (J) unlawful or unauthorized revocation of, or refusal by any authority other than the KSITIL or any of their nominated agencies to renew or grant any Required Consents required by the Implementation Agency to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Implementation Agency's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;

- (K) any requisition of the Project by any other authority; or
- (L) any requisition of the Project by the Nodal Agency or any of their nominated agencies.
- (M) For the avoidance of doubt, suspension of the Project in accordance with the provisions of this Agreement shall not be considered a requisition for the purposes of Force Majeure event.

Other Events

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

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

16.3 Notification procedure for Force Majeure

- (a) The affected Party shall notify the other Party of a Force Majeure event within seven (7) days of occurrence of such event. If the other Party disputes the claim for relief under Force Majeure it shall give the claiming Party written notice of such dispute within thirty (30) days of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in accordance with Clause
- (b) Upon cessation of the situation which led the Party claiming Force Majeure, the claiming Party shall within seven (7) days hereof notify the other Party in writing of the cessation and the Parties shall as soon as practicable thereafter continue performance of all obligations under this Agreement.

16.4 Allocation of costs arising out of Force Majeure

- (a) Upon the occurrence of any Force Majeure Event prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- (b) Upon occurrence of a Force Majeure Event after the Effective Date, the costs incurred and attributable to such event and directly relating to the Project (**'Force Majeure Costs'**) shall be allocated and paid as follows:
 - (i) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
 - (ii) upon occurrence of an Other Event of Force Majeure, all Force Majeure Costs attributable to such Other Event, and not exceeding the Insurance Cover for such Other Event, shall be borne by the Implementing Partner and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by Nodal Agency to the Implementing Partner (optional clause – to be used, if relevant.)
 - (iii) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by KSITIL to the Implementing Partner.
 - (iv) For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, operation and maintenance expenses, any increase in the cost of the Services on account of inflation and all other costs directly attributable to the Force Majeure Event.
 - (v) Save and except as expressly provided in this Clause, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof.

16.5 Consultation and duty to mitigate

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

17. CONFIDENTIALITY

- 17.1** The KSITIL or its nominated agencies shall allow the Implementation Agency to review and utilize highly confidential public records and the Implementation Agency shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- 17.2** Additionally, the Implementation Agency shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- 17.3** The Nodal Agency or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Implementation Agency regarding any forbidden disclosure.
- 17.4** The Implementation Agency shall ensure that all its employees, agents and sub-contractors execute individual non disclosure agreements, which have been duly approved by the KSITIL with respect to this Project.(Optional)
For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:
- (a) information already available in the public domain;
 - (b) information which has been developed independently by the Implementation Agency;
 - (c) information which has been received from a third party who had the right to disclose the aforesaid information;
 - (d) information which has been disclosed to the public pursuant to a court order.
- 17.5** To the extent the Implementation Agency shares its confidential or proprietary information with the KSITIL for effective performance of the Services, the provisions of the Clause 17.1 to 17.3 shall apply mutatis mutandis on the KSITIL or its nominated agencies.

18. AUDIT, ACCESS AND REPORTING

The Implementation Agency shall allow access to the KSITIL or its nominated agencies to all information which is in the possession or control of the Implementation Agency and which relates to the provision of the Services as set out in the Audit, Access and Reporting Schedule and which is reasonably required by the KSITIL to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule IV of this Agreement.

19. INTELLECTUAL PROPERTY RIGHTS

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

performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.

19.2 Bespoke development: Subject to the provisions of Clause 19.3 and 19.4 below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie with KSITIL. Implementation Agency shall be entitled to a broad license back in the bespoke development for its internal usage and other e-governance projects.

19.3 Pre-existing work: All IPR including the source code and materials developed or otherwise obtained independently of the efforts of a party under this Agreement (“**pre-existing work**”) including any enhancement or modification thereto shall remain the sole property of that party. During the performance of the services for this agreement, each party grants to the other party (and their sub-contractors as necessary) a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the Implementation Agency should grant KSITIL a non-exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to KSITIL as part of the service or deliverables only for its internal business operations. Under such license, either of parties will have no right to sell the pre-existing work of the other party to a Third Party. KSITIL’s license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that SI leaves with KSITIL at the conclusion of performance of the services.

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

20. WARRANTY

20.1 Standard:

The Implementation Agency warrants that the Project, including all the system(s) and other Services provided, shall be free from any defect or deficiency in the material, design, engineering, and performance/workmanship that prevent the Project and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the Project and/or any of its system(s) as per the performance guarantee / warranty period defined in the Schedule. If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services provided by the Implementation Agency, the Implementation Agency shall promptly, in consultation and agreement with KSITIL, and at the Implementation Agency’s sole cost repair, replace, or otherwise make good (as the Implementation Agency shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the Project caused by such default, defect or deficiency. Any defective system that has been replaced by the

Implementation Agency shall remain the property of the Implementation Agency. If the Project or any of its System cannot be used by reason of such default, defect or deficiency and/or making good of such default, defect or deficiency, the warranty period for the Project shall be extended by a period equal to the period during which the Project or any of its system could not be used by the KSITIL because of such defect and/or making good of such default, defect or deficiency.

20.2 Implied Warranty:

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

- 20.3** The Implementing Agency shall have no liability in the case of breach of this warranty due to (i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the Implementing Agency, (ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the Implementing Agency; (iii) the deliverables having been tampered with, altered or modified by KSITIL without the written permission of the Implementing Agency, or (iv) use of the deliverables otherwise than in terms of the relevant documentation.

21. LIQUIDATED DAMAGES

Time is the essence of the Agreement and the delivery dates are binding on the Implementation Agency. In the event of delay or any gross negligence, for causes attributable to the Implementation Agency, in meeting the deliverables, the KSITIL shall be entitled at its option to recover from the Implementation Agency as agreed, liquidated damages, a sum of 0.5% of the value of the deliverable which suffered delay or gross negligence for each completed week or part thereof subject to a limit of 5% of the relevant deliverable value.

22. INSURANCE COVER

22.1 Obligation to maintain insurance

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

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

22.2 Certificates of currency

The Implementation Agency must, on request by the KSITIL, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 22. The Service Provider agrees to replace any coverage prior to the date of expiry/cancellation.

22.3 Non-compliance

KSITIL or its nominated agencies may, at its election, terminate this Agreement upon the failure of Implementation Agency, or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve Implementation Agency of its obligations under this Agreement.

23. MISCELLANEOUS

23.1 Personnel

- (a) The personnel assigned by Implementation Agency to perform the Services shall be employees of Implementation Agency or its subcontractor(s), and under no circumstances shall such personnel be considered employees of KSITIL or its nominated agencies. The Implementation Agency shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.*
- (b) The Implementation Agency shall use its best efforts to ensure that sufficient Implementation Agency personnel are assigned to perform the Services and that such personnel have appropriate qualifications to perform the Services. After discussion with Implementation Agency, KSITIL or its nominated agencies shall have the right to require the removal or replacement of any Implementation Agency personnel performing work under this Agreement based on bonafide reasons.*
- (c) In the event that Nodal Agency or its nominated agencies requests that any Implementation Agency personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.*
- (d) In the event that the KSITIL and Implementation Agency identify any personnel of Implementation Agency as "Key Personnel", then the Implementation Agency shall not remove such personnel from the Project without the prior written consent of KSITIL or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.*
- (e) Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of Implementation Agency to freely assign or reassign its employees; provided that Implementation Agency shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. KSITIL or its nominated agencies shall have the right to review and approve Implementation Agency's plan for any such knowledge transfer.*

Implementation Agency shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.

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

23.2 Independent Contractor

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

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

23.2 Sub-contractors

Implementation Agency shall not subcontract any work related to the SDPK project without KSITIL's prior written consent. However the Implementation Agency shall provide the list of all the other services planned to be sub contracted, within 15 days of signing the Agreement. It is clarified that the Implementation Agency shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The Implementation Agency undertakes to indemnify the KSITIL or its nominated agencies from any claims on the grounds stated hereinabove.

23.3

Assignment

- (a) All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the KSITIL and their respective successors and permitted assigns.*
- (b) Subject to Clause 5.3, the Implementation Agency shall not be permitted to assign its rights and obligations under this Agreement to any third party.*
- (c) The Nodal Agency may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Implementation Agency shall be a party to such novation, to any third party contracted to provide outsourced services to KSITIL or any of its nominees.*

23.4 Trademarks, Publicity

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

23.5 Notices

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

<Insert Address> Tel:

Fax: Email: Contact:

With a copy to:

Implementation Agency

Tel: Fax: Email: Contact:

In relation to a notice given under the MSA / SLA, a Party shall specify the Parties' address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause.

- (c) Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter).
- (d) Either Party to this Agreement or to the SLA may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

23.6 Variations and Further Assurance

(a) No amendment, variation or other change to this Agreement or the SLA shall be valid unless authorised in accordance with the change control procedure as set out in the Change Control Schedule set out in Schedule II of this Agreement. Such amendment shall be made in writing and signed by the duly authorised representatives of the Parties to this Agreement or the SLA.

(b) Each Party to this Agreement or the SLA agrees to enter into or execute, without limitation, whatever other agreement, document, consent and waiver and to do all other things which shall or may be reasonably required to complete and deliver the obligations set out in this Agreement or the SLA.

23.7 Severability and Waiver

(a) If any provision of this Agreement or the SLA, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this Agreement or the SLA or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.

(b) No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the SLA of any right, remedy or provision of this Agreement or the SLA shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision.

23.8 Compliance with Applicable Law

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

Schedule set out in Schedule II of this Agreement.

23.9 Professional Fees

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

23.10 Ethics

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

23.11 Entire Agreement

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

23.12**Amendment**

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

24. GOVERNING LAW AND DISPUTE RESOLUTION

24.1 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.

24.2 Any dispute arising out of or in connection with this Agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as Schedule V of this Agreement

24.3 In case the escalations do not help in resolution of the problem within 3 weeks of escalation, both the parties should agree on a mediator for communication between the two parties. The process of the mediation would be as follows :

- a. Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.
- b. The mediator shall use his best endeavours to conclude the mediation within a certain number of days of his appointment.
- c. If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to Experts for advising on the issue.

- 24.4 In case the mediation does not help in resolution and it requires expertise to understand an issue, a neutral panel of 3 experts, agreeable to both parties should be constituted. The process of the expert advisory would be as follows:
- a) Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the timeframe and requesting for expert advisory. This is to be sent with a copy to the mediator.
 - b) Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute
 - c) The expert panel shall use his best endeavors to provide a neutral position on the issue.
 - d) If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.
- 24.5 Any 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 Court of Thiruvananthapuram/ High Court of Kerala, India. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at Court of Thiruvananthapuram/ High Court of Kerala, India. Any legal dispute will come under the sole jurisdiction of Kerala state jurisdiction of Thiruvananthapuram, India.
- 25.5 Compliance with laws: Each party will comply with all applicable export and import laws and regulations.
- 25.6 Risk of Loss: For each hardware item, Implementation Agency bears the risk of loss or damage up to the time it is delivered to the Implementation/Nodal Agency-designated carrier for shipment to KSITIL or KSITIL's designated location.
- 25.7 Third party components: Implementation Agency will provide all third party components solely on a pass-through basis in accordance with the relevant third party terms and conditions.

IN WITNESS WHEREOF the Parties have by duly authorized

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

WITNESSES

: Signed by:

(Name and designation) **For and on behalf of KSITIL**

(FIRST PARTY)

Signed by:

(Name and designation)

IMPLEMENTATION

AGENCY (SECOND PARTY)

(Name and designation) For and on behalf of Implementation Agency

Signed by:

DRAFT

25. SCHEDULES

SCHEDULE – I – DEFINITIONS

Adverse Effect	means material adverse effect on (a) the ability of the Implementation Agency to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legal validity, binding nature or enforceability of this Agreement;
Agreement	means this Master Services Agreement, Service Level Agreement and Non-Disclosure Agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP;
Applicable Law(s)	means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
Assets	shall have the same meaning ascribed to it in Clause 10.1 (a)
Software	means the software designed, developed / customized, tested and deployed by the Implementation Agency for the purposes of the Project and includes the source code (in case of Bespoke development) along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products (including the COTS products used for the product), proprietary software components and tools deployed by the Implementation Agency;
Business Hours	shall mean the working time for KSITIL users which is 9:30 AM to 6:30 PM. Again for Web Server and other components which enable successful usage of web portals of KSITIL the working time should be considered as 24 hours for all the days of the week. It is desired that IT maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance;

Certificate(s) of Compliance	shall have the same meaning ascribed to it in Clause 5.4.;
Confidential Information	means all information including KSITIL Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how, plans, budgets and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement);
Control	means, in relation to any business entity, the power of a person to secure (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person's wishes and in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;
Deliverables	means the products, infrastructure and services agreed to be delivered by the Implementation Agency in pursuance of the agreement as defined more elaborately in the RFP, Implementation and the Maintenance phases and includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related), inter alia payment and/or process related etc., source code and all its modifications;
Proprietary Information	shall have the same meaning ascribed to it in Clause 19.1
Effective Date	shall have the same meaning ascribed to it in Clause 3.2;

KSITIL Data	means all proprietary data of the department or its nominated agencies generated out of operations and transactions, documents all taxpayers data and related information including but not restricted to user data which the Implementation Agency obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement;
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Final Acceptance Test	shall be conducted on completion of the following: 1) KSITIL Data Center operational, 2) Deployment & operational hardware and networking at requisite locations, 3) UAT of the overall integrated solution and portal.
Final Testing and Certification Agency	shall have the same meaning ascribed to it in Clause 5.4;
Force Majeure	shall have the same meaning ascribed to it in Clause 16.1;
Force Majeure Costs	shall have the same meaning ascribed to it in Clause 16.4 (b);
Gol	means the Government of India;
Indemnifying Party	shall have the same meaning ascribed to it in Clause 15.1;
Indemnified Party	shall have the same meaning ascribed to it in Clause 15.1;
Intellectual Property Rights	means all rights in written designs and copyrights, moral rights, rights in databases and Bespoke Software / Pre-existing work including its up-gradation systems and compilation rights (whether or not any of these are registered and including application for registration);

Insurance Cover	<ul style="list-style-type: none"> - Public liability insurance for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than [INR <i>insert amount</i>] in aggregate - Either professional indemnity or errors and omissions insurance for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than [INR <i>insert amount</i>] in aggregate. - Product liability for an insured amount of [INR <i>insert amount</i>] per occurrence and not less than [INR <i>insert amount</i>] in aggregate. - Workers compensation as required by law <p><i>[insert amount required of any other type of insurance specified at “additional insurance” definition above]</i></p>
Additional Insurance	<i>[insert any additional types of insurance the Service Provider is required to maintain. Otherwise insert ‘not applicable’]</i>
Material Breach	means a breach by either Party (KSITIL or Implementation Agency) of any of its obligations under this Agreement which has or is likely to have an Adverse Effect on the Project which such Party shall have failed to cure;
Required Deliverables	shall have the same meaning ascribed to it in Annexure C of this Agreement;
Parties	means KSITIL and Implementation Agency for the purposes of this Agreement and “ Party ” shall be interpreted accordingly;
Performance Guarantee	Means the guarantee provided by a Nationalized Bank in favour of the Implementation Agency. The amount of Performance Security shall be 10% of the overall cost of the project. This performance security shall be valid till six months after the completion of the project i.e. ---- years from the date of signing of contract or for such time as is required under this Agreement;
Planned Application Downtime	means the unavailability of the application services due to maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure wherein prior intimation (at least two working days in advance) of such planned outage shall be given and approval sought from the KSITIL as applicable;

Planned network Outage	means the unavailability of the network services due to infrastructure maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure. Prior intimation of such planned outage shall be given and approval sought from the KSITIL as applicable and shall be notified at least two working days;
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Project	means Pilot, Project Implementation (roll out) and Maintenance in terms of the Agreement;
Project Implementation	means Project Implementation as per the testing standards and acceptance criteria prescribed by KSITIL or its nominated agencies;
Project Implementation Phase	shall be from the Effective Date of the Agreement to the date of final acceptance testing & certification as set out in Clause 5.4 of this Agreement;
Project Implementation Unit (PMU)	shall be constituted by KSITIL to monitor the activities, deliverables and progress of the Project. PMU will comprise of the staff members of the KSITIL, other officials from concerned department and external experts (as defined in the RFP);
Project Timelines	shall have the same meaning ascribed to in Annexure C;
Providing Party	shall have the same meaning ascribed to it in Clause 12.5;
Receiving Party	shall have the same meaning ascribed to it in Clause 12.5;
Replacement Implementation Agency	means any third party that KSITIL or its nominated agencies appoint to replace Implementation Agency upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
Required Consents	means the consents, waivers, clearances and licenses to use Nodal Agency's Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the software and other items that KSITIL or their nominated agencies are required to make available to Implementation Agency pursuant to this Agreement;
Services	means the services delivered to the Stakeholders of KSITIL or its nominated agencies, employees of KSITIL or its nominated agencies, and to professionals, using the tangible and intangible assets created, procured, installed, managed and operated by the Implementation Agency including the tools of information and communications technology and includes but is not limited to the list of services specified in Annexure B;
Service Level	means the level of service and other performance criteria which will apply to the Services delivered by the Implementation Agency;
SLA	means the Performance and Maintenance SLA executed as part of this Master Service Agreement;

Stakeholders	means the students, Franchisee's, Investors, Citizens, KSITIL or its nominated agencies, KSITIL, employees and the Departments of State Government;
Term	shall have the same meaning ascribed to it in Clause 3.1;
Third Party Systems	means systems (or any part thereof) in which the Intellectual Property Rights are not owned by the KSITIL or Implementation Agency and to which Implementation Agency has been granted a license to use and which are used in the provision of Services;
Unplanned Application Downtime	means the total time for all the instances where services in the software requirement specification document prepared by the Implementation Agency are not available for more than 5 consecutive minutes;
Network	in KSITIL users refers to all the IT assets installed by the Implementation Agency as part of the Project for networking;
Unplanned network outage	means the total time for all the instances where services in the software requirement specification document prepared by the Implementation Agency are not available for more than 5 consecutive minutes;
Application	means the software application developed as a part of scope of work set out in Clause 2.1(a)
Application Downtime	means the time for which user/s is not able to access the application. However, in calculating downtime, scheduled downtime (for example, backup time, batch processing time, routine maintenance time) would not be considered;
Network Uptime	Uptime refers to network availability between KSITIL's Head Quarters to Data center. "%Uptime" means ratio of 'up time' (in minutes) in a month to Total time in the month (in minutes) multiplied by 100;
Warranty / AMC Period	<i>shall be 5 years from the date of successful completion /Go-live.</i>
Safety and Security	<i>[insert any safety and security requirements additional to those specified in clause 12.4.</i>

SCHEDULE – II – CHANGE CONTROL SCHEDULE

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

The KSITIL and IA recognize that frequent change is an inevitable part of delivering services and that a significant element of this change can be accomplished by re-organizing processes and responsibilities without a material effect on the cost. The IA will endeavour, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and KSITIL or its nominated agencies will work with the Implementation Agency to ensure that all changes are discussed and managed in a constructive manner. This Change Control Schedule sets out the provisions which will apply to all the changes to this agreement and other documents except for the changes in SLAs for which a separate process has been laid out in Clause 11 of the SLA.

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

CHANGE MANAGEMENT PROCESS

- a. CHANGE CONTROL NOTE ("CCN")**
 - i. Change requests in respect of the MSA, the Project Implementation, the operation, the SLA or Scope of work and Functional Requirement specifications will emanate from the Parties' respective Project Manager who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached as Annexure A hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
 - ii. The IA and the KSITIL or its nominated agencies, during the Project Implementation Phase and the KSITIL or its nominated agencies during the Operations and Management Phase and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the RFP and is suggested and applicable only after the testing, commissioning and certification of the Pilot Phase and the Project Implementation Phase as set out in this Agreement.
 - iii. It is hereby also clarified here that any change of control suggested beyond 25 % of the value of this Project will be beyond the scope of the change control process and will be considered as the subject matter for a separate bid process and a separate contract. It is hereby clarified that the 25% of the value of the Project as stated in herein above is calculated on the basis of bid value submitted by the Implementation Agency and

accepted by the Nodal Agency or its nominated agencies or as decided and approved by KSITIL or its Nominated Agencies. For arriving at the cost / rate for change upto 25% of the project value, the payment terms and relevant rates as specified in Annexure D shall apply.

b. Quotation

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

c. Costs

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the IA meets the obligations as set in the CCN. In the event the IA is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party will be borne by the IA.

d. Obligations

The IA shall be obliged to implement any proposed changes once approval in accordance with above provisions has been given, with effect from the date agreed for implementation and within an agreed timeframe. IA will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact.

SCHEDULE – III - EXIT MANAGEMENT SCHEDULE

1 PURPOSE

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

2 TRANSFER OF ASSETS

- 2.1 KSITIL shall be entitled to serve notice in writing on the IA at any time during the exit management period as detailed hereinabove requiring the IA and/or its sub contractors to provide the KSITIL with a complete and up to date list of the Assets within 30 days of such notice. KSITIL shall then be entitled to serve notice in writing on the IA at any time prior to the date that is 30 days prior to the end of the exit management period requiring the IA to sell the Assets, if any, to be transferred to KSITIL or its nominated agencies at book value as determined as of the date of such notice in accordance with the provisions of relevant laws.
- 2.2 In case of contract being terminated by KSITIL, KSITIL reserves the right to ask IA to continue running the project operations for a period of 6 months after termination orders are issued.
- 2.3 Upon service of a notice under this Article the following provisions shall apply:
 - (i) in the event, if the Assets to be transferred are mortgaged to any financial institutions by the IA, the IA shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to the KSITIL.
 - (ii) All risk in and title to the Assets to be transferred / to be purchased by the KSITIL pursuant to this Article shall be transferred to KSITIL, on the last day of the exit management period.
 - (iii) KSITIL shall pay to the IA on the last day of the exit management period such sum representing the Net Block (procurement price less depreciation as per provisions of Companies Act) of the Assets to be transferred as stated in the Terms of Payment Schedule.
 - (iv) Payment to the outgoing IA shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements.
 - (v) The outgoing IA will pass on to Nodal Agency and/or to the Replacement IA, the subsisting rights in any leased properties/ licensed products on terms not less favorable to KSITIL/ Replacement IA, than that enjoyed by the outgoing IA.

3 COOPERATION AND PROVISION OF INFORMATION

- 3.1 During the exit management period:

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

4 CONFIDENTIAL INFORMATION, SECURITY AND DATA

- 4.1 The Implementation Agency will promptly on the commencement of the exit management period supply to the KSITIL or its nominated agency the following:
- (i) information relating to the current services rendered and customer and performance data relating to the performance of sub contractors in relation to the services;
 - (ii) documentation relating to Computerization Project's Intellectual Property Rights;
 - (iii) documentation relating to sub-contractors;
 - (iv) all current and updated data as is reasonably required for purposes of KSITIL or its nominated agencies transitioning the services to its Replacement Implementation Agency in a readily available format nominated by the KSITIL, its nominated agency;
 - (v) all other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable KSITIL or its nominated agencies, or its Replacement Implementation Agency to carry out due diligence in order to transition the provision of the Services to KSITIL or its nominated agencies, or its Replacement Implementation Agency (as the case may be).
- 4.2 Before the expiry of the exit management period, the Implementation Agency shall deliver to the KSITIL or its nominated agency all new or up-dated materials from the categories set out in Schedule above and shall not retain any copies thereof, except that the Implementation Agency shall be permitted to retain one copy of such materials for archival purposes only.
- 4.3 Before the expiry of the exit management period, unless otherwise provided under the MSA, the KSITIL or its nominated agency shall deliver to the Implementation Agency all forms of Implementation Agency confidential information, which is in the possession or control of Chairperson, PMU or its users.

5 EMPLOYEES

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

6 TRANSFER OF CERTAIN AGREEMENTS

On request by the KSITIL or its nominated agency the Implementation Agency shall effect such assignments, transfers, licences and sub-licences as the Chairperson, PMU may require in favour of the Chairperson, PMU, or its Replacement Implementation Agency in relation to any equipment lease, maintenance or service provision agreement between Implementation Agency and third party lessors, vendors, and which are related to the services and reasonably necessary for the carrying out of replacement services by the KSITIL or its nominated agency or its Replacement Implementation Agency.

7 RIGHTS OF ACCESS TO PREMISES

- 7.1 At any time during the exit management period, where Assets are located at the Implementation Agency's premises, the Implementation Agency will be obliged to give reasonable rights of access to (or, in the case of Assets located on a third party's premises, procure reasonable rights of access to) the KSITIL or its nominated agency and/or any Replacement Implementation Agency in order to make an inventory of the Assets.
- 7.2 The Implementation Agency shall also give the KSITIL or its nominated agency or its nominated agencies, or any Replacement Implementation Agency right of reasonable access to the Implementation Partner's premises and shall procure the KSITIL or its nominated agency or its nominated agencies and any Replacement Implementation Agency rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to the KSITIL or its nominated agency, or a Replacement Implementation Agency.

8 GENERAL OBLIGATIONS OF THE IMPLEMENTATION AGENCY

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

9 EXIT MANAGEMENT PLAN

- 9.1 The Implementation Agency shall provide the KSITIL or its nominated agency with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the MSA as a whole and in relation to the Project Implementation, and the Operation and Management SLA.
- (i) A detailed program of the transfer process that could be used in conjunction with a Replacement Implementation Agency including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
 - (ii) plans for the communication with such of the Implementation Agency's sub contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the KSITIL's operations as a result of undertaking the transfer;
 - (iii) (if applicable) proposed arrangements for the segregation of the Implementation Agency's networks from the networks employed by KSITIL and identification of specific security tasks necessary at termination;
 - (iv) Plans for provision of contingent support to Nodal Agency, and Replacement Implementation Agency for a reasonable period after transfer.
- 9.2 The Implementation Agency shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- 9.3 Each Exit Management Plan shall be presented by the Implementation Agency to and approved by the KSITIL or its nominated agencies.
- 9.4 The terms of payment as stated in the Terms of Payment Schedule include the costs of the Implementation Agency complying with its obligations under this Schedule.
- 9.5 In the event of termination or expiry of MSA, and Project Implementation, each Party shall comply with the Exit Management Plan.
- 9.6 During the exit management period, the Implementation Agency shall use its best efforts to deliver the services.

- 9.7 Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.
- 9.8 This Exit Management plan shall be furnished in writing to the KSITIL or its nominated agencies within 90 days from the Effective Date of this Agreement.

SCHEDULE – IV - AUDIT, ACCESS AND REPORTING

1 PURPOSE

This Schedule details the audit, access and reporting rights and obligations of the KSITIL or its nominated agency and the Implementation Agency.

2 AUDIT NOTICE AND TIMING

- 2.1 As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavours to agree to a timetable for routine audits during the Project Implementation Phase and the Operation and Management Phase. Such timetable during the Implementation Phase, the KSITIL or its nominated agency and thereafter during the operation Phase, the KSITIL or its nominated agency shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Implementation Agency any further notice of carrying out such audits.
- 2.2 KSITIL or its nominated agency may conduct non-timetabled audits at his/ her own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Implementation Agency, a security violation, or breach of confidentiality obligations by the Implementation Agency, provided that the requirement for such an audit is notified in writing to the Implementation Agency a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the Implementation Agency considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Governance Schedule.
- 2.3 The frequency of audits shall be a (maximum) half yearly, provided always that the KSITIL or its nominated agency shall endeavour to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Implementation Agency. Any such audit shall be conducted by with adequate notice of 2 weeks to the Implementation Agency.
- 2.4 KSITIL will ensure that any 3rd party agencies (except CAG) appointed to conduct the audit will not be the competitor of Implementation Agency and will be bound by confidentiality obligations.

3 ACCESS

The Implementation Agency shall provide to the KSITIL or its nominated agency reasonable access to employees, subcontractors, suppliers, agents and third party facilities as detailed in the RFP, documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The Chairperson,

PMU / Steering Committee shall have the right to copy and retain copies of any relevant records. The Implementation Agency shall make every reasonable effort to co-operate with them.

4 AUDIT RIGHTS

- 4.1 The KSITIL or its nominated agency shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in the RFP), data centres, documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:
- (i) The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of KSITIL and documentation related thereto;
 - (ii) That the actual level of performance of the services is the same as specified in the SLA;
 - (iii) That the Implementation Agency has complied with the relevant technical standards, and has adequate internal controls in place; and
 - (iv) The compliance of the Implementation Agency with any other obligation under the MSA and SLA.
 - (v) Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the Implementation Agency.
 - (vi) For the avoidance of doubt the audit rights under this Schedule shall not include access to the Implementation Agency's profit margins or overheads, any confidential information relating to the Implementation Agency's employees, or (iii) minutes of its internal Board or Board committee meetings including internal audit, or (iv) such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the MSA.

5 AUDIT RIGHTS OF SUB-CONTRACTORS, SUPPLIERS AND AGENTS

- 5.1 The Implementation Agency shall use reasonable endeavours to achieve the same audit and access provisions as defined in this Schedule with sub-contractors, suppliers and agents who supply labour, services, equipment or materials in respect of the services. The Implementation Agency shall inform the KSITIL or its nominated agency prior to concluding any sub- contract or supply agreement of any failure to achieve the same rights of audit or access.
- 5.2 **REPORTING:** The Implementation Agency will provide quarterly reports to the Chairperson, PMU Steering committee regarding any specific aspects of the Project and in context of the audit and access information as required by the KSITIL or its nominated agency.

6 ACTION AND REVIEW

- 6.1 Any change or amendment to the systems and procedures of the Implementation Agency, or sub-contractors, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- 6.2 Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the KSITIL or its nominated agency and the Implementation Agency Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the MSA.

7 TERMS OF PAYMENT

The KSITIL shall bear the cost of any audits and inspections. The terms of payment are exclusive of any costs of the Implementation Agency and the sub-contractor, for all reasonable assistance and information provided under the MSA, the Project Implementation, Operation and Management SLA by the Implementation Agency pursuant to this Schedule.

8 RECORDS AND INFORMATION

For the purposes of audit in accordance with this Schedule, the Implementation Agency shall maintain true and accurate records in connection with the provision of the services and the Implementation Agency shall handover all the relevant records and documents upon the termination or expiry of the MSA.

SCHEDULE – V - GOVERNANCE SCHEDULE**1 PURPOSE**

The purpose of this Schedule is to:

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

2 GOVERNANCE STRUCTURE

1. Project Managers: The relationship under this Agreement will be managed by the Project Managers appointed by each Party, who will provide the interface between the executive management of the respective Parties.
2. Project Implementation Unit (PMU): Within 7 days following the Effective Date, KSITIL or its nominated agencies and the Implementation Agency shall each appoint a Project Manager. In the event that either Party wishes to substitute its Project Manager it will do so in manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within 7 days of the substitution.
3. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
4. The PMU will meet formally on a fortnightly / monthly / quarterly, as required, basis at a time and location to be agreed between them. These meetings will cover, as a minimum,

the following agenda items: (i) consideration of Quarterly Performance Reports; (ii) consideration of matters arising out of the Change Control Schedule; (iii) issues escalated in accordance with the escalation procedure as set out in the Governance Schedule; (iv) matters to be brought before the PMU in accordance with the MSA and the Schedules; (v) any matter brought before the PMU by the Implementation Agency under this Article; and (vi) any other issue which either Party wishes to add to the agenda.

5. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in the Terms of Payment Schedule, the Parties agree to discuss in the PMU any appropriate amendment to the Agreement or any Service Level Agreements or Statement of Works including any variation to the terms of payment as stated in the Terms of Payment Schedule. Any variation so agreed shall be implemented through the change control procedure as set out in the Change Control Schedule.

3 GOVERNANCE PROCEDURES

- 3.1 The Implementation Agency shall document the agreed structures in a procedures manual.
- 3.2 The agenda for each meeting of the PMU 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 PMU, along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.
- 3.3 All meetings and proceedings will be documented such documents to be distributed to the Parties and copies shall be kept as a record.
- 3.4 All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed. The Parties shall ensure as far as reasonably practicable that the PMU shall resolve the issues and resolve the objectives placed before them and that members representing that Party are empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achieve this.
- 3.5 In order formally to submit a Disputed Matter to the aforesaid for a, one Party ("Claimant") shall give a written notice ("Dispute Notice") to the other Party. The Dispute Notice shall be accompanied by (a) a statement by the Claimant describing the Disputed Matter in reasonable detail and (b) documentation, if any, supporting the Claimant's position on the Disputed Matter.
- 3.6 The other Party ("Respondent") shall have the right to respond to the Dispute Notice within 7 days after receipt of the Dispute Notice. In the event that the parties are unable to resolve the Disputed Matter within a further period of 7 days, it shall refer the Disputed Matter to next level of the dispute resolution for action as per the process mentioned in article 9.1
- 3.7 All negotiations, statements and / or documentation pursuant to these Articles shall be without prejudice and confidential (unless mutually agreed otherwise).
- 3.8 If the Disputed Matter is having a material effect on the operation of the Services (or any of them or part of them) the Parties will use all their respective reasonable endeavours to reduce the elapsed time in reaching a resolution of the Disputed Matter.

SCHEDULE – VI - TERMS OF PAYMENT SCHEDULE

The following schedule would be followed for payment during the Project implementation:

S.No.	Milestone	Billable Fee (as % of Contract Value)
1.	Supply of the Hardware and Software	25% Of the contract /value
2.	Successful Deployment of Solution	25% Of the contract /value
3.	UAT and Go Live	25 % of the Contract value
4.	Yearly payment for the 5 years	5% x 5 years = 25 % of the Contract

Key note:

26. ANNEXURE

ANNEXURE – A – FORMAT FOR CHANGE COTROL NOTICE

Change Control Note		CCN Number:
Part A: Initiation		
Title:		
Originator:		
Sponsor:		
Date of Initiation:		
Details of Proposed Change		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)		
Authorised by KSITIL	Date:	
Name:		
Signature:	Date:	
Received by the IA		
Name:		
Signature:		
Change Control Note		CCN Number:
Part B : Evaluation		
(Identify any attachments as B1, B2, and B3 etc.)		
Changes to Services, charging structure, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue.		
Brief Description of Solution:		
Impact:		
Deliverables:		

Timetable:	
Charges for Implementation: (including a schedule of payments)	
Other Relevant Information: (including value-added and acceptance criteria)	
Authorised by the Implementation	Date:
Agency	
Name:	
Signature:	

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

Rejected	
Requires Further Information (as follows, or as Attachment 1 etc.)	
For KSITIL and its nominated agencies	For the Implementation Agency
Signature	Signature
Name	Name
Title	Title
Date	Date

ANNEXURE – B - LIST OF SERVICES PROVIDED BY THE IMPLEMENTATION AGENCY

Various services to be offered by the Implementation Agency will consist of:

- i.
- .ii.
- .iii.
- .iv.
- . v.

Note:

- KSITIL will sign the end user license agreement for the software brought from any 3rd party for the purpose of this Project however Implementation Agency shall be solely responsible to make payment for the cost of software to such third party software vendor.

ANNEXURE – C –REQUIRED DELIVERABLE AND ASSOCIATED TIMELINES

Deliverable	Description of deliverable	Timelines (from signing of contract)
Project Initiation & Solution Design		

ANNEXURE – D - BID**1. TECHNICAL BID RESPONSE****2. FINANCIAL BID RESPONSE:****2a. Summary of Cost Components**

S. No.	Item	Total Price	Taxes (wherever applicable)	Total cost (total price + taxes)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
Total Cost				
Total cost in figures:				

3. Details of Cost Component

S. No.	Category	Component	No of Components / Units of Service (X)	Rate (per unit) (Y)	Total Cost (= X*Y)
1.					
2.					

1.					
				
2.					

ANNEXURE – E – BILL OF MATERIAL

S. No.	Item Description	Quantity	Unit Price	Total Units Price	Tax Component	Total Price
1	Cetnral Unit – CU	1				
2	Studio End Point	3				
2.1	Full high definition end-point					
2.2	Speaker Tracker Camera					
2.3	Document Camera					
2.4	Ceiling microphone					
2.5	DSP-based mixer					
2.6	LED Display with minimum 55" size					
2.7	65" or above Interactive touch enabled LED Display					
2.8	Wall-mounted powered speakers					
3	Class Room End Point	150				
3.1	Full high definition end-point					
3.2	Active Speaker Detection Camera					
3.3	Ceiling microphone					
3.	DSP-based mixer					
3.5	Minimum of 80" Interactive touch enabled LED Display					
3.6	Wall-mounted powered speakers					
4.	Learning Management System – (LMS)- Supply, configure, Installation, commissioning support and maintain	1				
	Total cost in figures:					

ANNEXURE – F – ROLES AND RESPONSIBILITIES OF THE PARTIES Roles and Responsibilities of Implementation Agency

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

21. Meet the defined Technical Specifications for the IT Infrastructure including Hardware and networking equipments keeping in mind the application and future requirements of the Corporation.

Roles and Responsibilities of KSITIL

1. Provide adequate space at the Nodal Agency's HQ for setting up of infrastructure, software development and other activities to be carried out by the SI.
2. Coordination between all the divisions for providing necessary information for the study and development / customization of the necessary solution.
3. Co-ordination with external operator and other state agencies to assist the selected SI in execution of the project.
4. Coordinate with SI for conducting workshops for the Stakeholder departments.
5. Provide the data available in the form of physical files or existing databases to the selected SI for digitization purposes.
6. Deployment of staff members of the Corporation for verification of the digitized data within the defined timelines.
7. Ensure that Data Backups are being taken regularly by SI as per the schedule agreed upon.
8. Ensure that the hardware and other infrastructure deployed at HQ, DC etc. meets the specifications as mentioned in RFP and is maintained properly to meet the SLAs as defined in RFP.
9. Monitoring of overall timelines, SLAs and calculation of penalties accordingly.
10. Conducting UAT for the application solution deployed.
11. Issuing the Acceptance Certificate on successful deployment of the software application, hardware deployed, digitized data and for other components of the Scope of Work (wherever required).
12. Any other requirements that could arise during operations for effective governance and to meet any administrative requirement.
13. To create internal capacity now for execution of the project after takeover from the SI.
14. Ensuring the staff members and other stakeholders attend the training programs as per the schedule defined by the SI and agreed upon by KSITIL.
15. Provide sign off on the deliverables of the project including SRS, design documents etc.

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on this the <***> day of <***> 20--- at <***>, India.

BETWEEN

----- having its office at TC No.: 14/196/2, 3rd Floor, Chandrasekharan Nair Stadium, Palayam, Trivandrum – 695033, hereinafter referred to as **“Kerala State Infrastructure Limited / ‘KSITIL’**, 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 **‘Implementation Agency/System Integrator/SI’** 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. KSITIL is desirous to implement the project of **“Skill Development Platform Kerala” SDPK**
2. The Nodal Agency and Implementation Agency have entered into a Master Services Agreement dated <***> (the **“MSA”**) as well as a Service Level Agreement dated <***> (the **“SLA”**) in furtherance of the Project.
3. Whereas in pursuing the Project (the **“Business Purpose”**), a Party (“Disclosing Party”) recognizes that they will disclose certain Confidential Information (*as defined hereinafter*) to the other Party (“Receiving Party”).
4. Whereas such Confidential Information (*as defined hereinafter*) belongs to Receiving Party as the case may be and is being transferred to the Disclosing Party to be used only for the Business Purpose and hence there is a need to protect such information from unauthorized use and disclosure.

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

DEFINITIONS AND INTERPRETATION

1.6 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the same meanings set out in Schedule I of MSA.

1.7 Interpretation

In this Agreement, unless otherwise specified:

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

1.8 Measurements and Arithmetic Conventions

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

1.9 Ambiguities within Agreement

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

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

1.10 Priority of agreements

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

2. TERM

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

3. SCOPE OF THE AGREEMENT

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

4. OBLIGATIONS OF THE RECEIVING PARTY

The Receiving Party shall:

- (a) use the Confidential Information only for the Business Purpose and shall hold the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, taking into account the nature of the Confidential Information, and
- (b) grant access to Confidential Information only to its employees on a 'need to know basis' and restrict such access as and when not necessary to carry out the Business Purpose.
- (c) cause its employees to comply with the provisions of this Agreement;
- (d) reproduce Confidential Information only to the extent essential to fulfilling the Business Purpose, and
- (e) prevent disclosure of Confidential Information to third parties;
- (f) disclose the Confidential Information to its consultants/contractors on a need to know basis; provided that by doing so, the Receiving Party agrees to bind such consultants/contractors to terms at least as restrictive as those stated herein. The Receiving Party upon making a disclosure under this Clause shall:
 - (i) advise the consultants/contractors of the confidentiality obligations imposed on them by this Clause.
- (g) upon the Disclosing Party's request, the Receiving Party shall either return to the disclosing party all Confidential Information or shall certify to the disclosing party that all media containing Confidential Information have been destroyed. Provided, however, that an archival copy of the Confidential Information may be retained in the files of the Receiving Party's counsel, solely for the purpose of proving the contents of the Confidential Information.
- (h) not to remove any of the other Party's Confidential Information from the premises of the Disclosing Party without prior written approval.
- (i) exercise extreme care in protecting the confidentiality of any Confidential Information which is removed, only with the Disclosing Party's prior written approval, from the Disclosing Party's premises. Each Party agrees to comply with any and all terms and conditions the disclosing party may impose upon any such approved removal, such as conditions that the removed Confidential Information and all copies must be returned by a certain date, and that no copies are to be made off of the premises.
- (j) Upon the Disclosing Party's request, the Receiving Party shall promptly return to the Disclosing Party all tangible items containing or consisting of the disclosing party's Confidential Information all copies thereof.

5. EXCEPTIONS TO CONFIDENTIAL INFORMATION

The foregoing restrictions on each party's use or disclosure of Confidential Information shall not apply to the Confidential Information that the Receiving Party can demonstrate that such Confidential Information:

- (a) was independently developed by or for the Receiving Party without reference to the Information, or was received without restrictions; or

- (b) has become generally available to the public without breach of confidentiality obligations of the Receiving Party; or
- (c) was in the Receiving Party's possession without restriction or was known by the Receiving Party without restriction at the time of disclosure; or
- (d) is the subject of a subpoena or other legal or administrative demand for disclosure; provided, however, that the Receiving Party has given the disclosing party prompt notice of such demand for disclosure and the Receiving Party reasonably cooperates with the disclosing party's efforts to secure an appropriate protective order; or
- (e) is disclosed with the prior consent of the disclosing party; or
- (f) was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing party and was not previously acquired by the Receiving Party from the disclosing party under an obligation of confidence; or
- (g) the Receiving Party obtains or has available from a source other than the disclosing party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the disclosing party.

6. OWNERSHIP OF THE CONFIDENTIAL INFORMATION

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

7. DISPUTE RESOLUTION

- (a) If a dispute arises in relation to the conduct of this Contract (Dispute), a party must comply with this clause 7 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 7.
- (b) A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.
- (c) During the 14 days after a notice is given under clause 7(b) (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of the jurisdiction specified in this agreement. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at the jurisdiction specified in Item 27. Any legal dispute will come under the sole jurisdiction specified in Item 27.
- (b) The Receiving Party agrees that the Disclosing Party shall have the right to obtain an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

8. VARIATION

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

9. WAIVER

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

- (a) shall be in writing
- (b) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (c) shall be executed by a duly authorized representative of the Party; and
- (d) shall not affect the validity or enforceability of this Agreement in any manner.

10. EXCLUSION OF IMPLIED WARRANTIES

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

11. ENTIRE AGREEMENT

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

12. SEVERABILITY

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

13. NO PARTNERSHIP

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

14. THIRD PARTIES

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

15. SUCCESSORS AND ASSIGNS

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

16. NOTICES

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

If to KSITIL: Attn:

*<***>*

Tel: Fax:

Email:

Contact:

With a copy to:

If to the Implementation Agency:

*Attn. <***>*

*Phone: <***>*

*Fax No. <***>*

17. LANGUAGE

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

18. COUNTERPARTS

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

19. MITIGATION

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

20. REMOVAL OF DIFFICULTIES

The Parties acknowledge that it is conceivable that the Parties may encounter difficulties or problems in the course of implementation of the Project and the transactions envisaged under this Agreement. The Parties agree and covenant that they shall mutually discuss such difficulties and problems in good faith and take all reasonable steps necessary for removal or resolution of such difficulties or problems. **IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED

For and on behalf of the Implementation
Agency by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of the KSITIL by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

- 1.
- 2