

Request for Proposal (RFP)

For

Conducting Property Tax Survey

For

**Department of Urban Local Bodies,
Haryana**

**Volume III: MASTER SERVICE AGREEMENT
(Structure of Proposal & Bid Process Specifications)**

RFP No.:- IT/DGULB/2018/11



Released by:

**Directorate of Urban Local Bodies,
Haryana**

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Disclaimer

1. This Request for Proposal ("RFP") is issued by Directorate of Urban Local Bodies, Haryana (DULB).
2. The information contained in this RFP or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of DULB or any of its employees or advisors, is provided to Bidders on the terms and conditions set out in this RFP and all other terms and conditions subject to which such information is provided.
3. This RFP is not a contract and is neither an offer nor invitation by DULB to the prospective Bidders or any other person. Whilst the information in this RFP has been prepared in good faith, it is not and does not purport to be comprehensive or to have been independently verified. Neither DULB, nor any of its officers or employees, nor any of their advisors nor consultants accept any liability or responsibility for the accuracy, reasonableness or completeness of, or for any errors, omissions or misstatements in the information or makes any representation or warranty, express or implied, with respect to the information contained in this RFP or on which this RFP is based or with respect to any written or oral information made or to be made available to any of the recipients or their professional advisors and, so far as permitted by law and liability therefore is hereby expressly disclaimed.
4. The purpose of this RFP is to provide the Bidder(s) with information that may be useful to them in the formulation of their Proposals in pursuant to this RFP. The information contained in this RFP is selective and is subject to updating, expansion, revision and amendment at the sole discretion of DULB. This RFP document is not exhaustive and does not purport to contain all the information that a Bidder may require for the purpose of making a decision for participation in this bidding process. Neither DULB nor any of its officers, employees nor any of its advisors nor consultants undertakes to provide any Bidder with access to any additional information or to update the information in this RFP or to correct any inaccuracies therein which may become apparent. Each Bidder should conduct its own analysis of the information contained in this RFP, to correct any inaccuracies therein and is advised to carry out its own investigations in the project, the regulatory regime which applies thereto and by and all matters pertinent to DULB and to seek its own professional advice on the legal, financial and regulatory consequences of entering into an agreement or arrangement relating to the project.
5. DULB accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Bidder upon the statements contained in this RFP.

MASTER SERVICE AGREEMENT

This MASTER SERVICE AGREEMENT (herein after “MSA”) is made on this day of _____ 2018 (“**Effective Date**”) by and between:

Directorate of Urban Local Bodies, Haryana, having its registered office at Bays No. 11-14, Sector-4, Panchkula (hereinafter referred to as the ‘**DULB**’/ ‘**Purchaser**’ which expression shall, unless excluded by, or repugnant to the context shall mean and include its successors-in office and assigns) of the FIRST PART;

AND

_____, a company incorporated under the Indian Companies Act, 1956 having its registered office at _____(hereinafter referred to as “**System Integrator**”/ “**SI**”/ “**Service Provider**”, which term or expression shall, unless excluded by or repugnant to the subject or context shall mean and include its successors-in-office and assigns), of the SECOND PART. Each of the parties mentioned above are collectively referred to as the ‘**Parties**’ and individually as a ‘**Party**’.

WHEREAS:

- A. The **Directorate of Urban Local Bodies, Haryana** issued the RFP (as defined below) inviting bids for the purpose of selecting an agency to implement the “Integrated Web based state Geo-portal Solution” across urban local bodies in Haryana;
- B. The SI, being desirous of executing the works contained under the RFP (as defined below), submitted its technical and commercial bids on _____ to the Directorate of Urban Local Bodies, Haryana;
- C. Purchaser has pursuant to the submission of technical and commercial bids of the SI awarded the works under the RFP to the Service Provider vide the Lol;
- D. The Purchaser has further issued the work order dated _____ bearing reference number _____ in favour of the SI;
- E. The SI has for the purpose of carrying out the works envisaged in this Agreement, furnished performance bank guarantee to the DULB _____
- F. The Parties, superseding the remaining conditions precedent to the execution of this

Agreement, now wish to enter into this Agreement (as defined below) to govern the manner and terms under which the Service Provider shall conduct Property Tax Survey / License Survey including Issuance of Notice & Bills, with Technical handholding support in updating of property tax demand, collection, registers etc. for different Municipal Corporations / Councils / Committees of Gurugram Cluster for the next 4 years after completion of survey work and deliver related services to the DULB specified under this Agreement in accordance with the roles and responsibilities of the SI, DULB or their nominated agencies.

NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

- a. The Purchaser has accepted the tender of SI for the provision and execution of the said works for the sum of INR _____, including all taxes and levies upon the terms laid out in this RFP.
- b. SI hereby agrees to provide Services to Purchaser, conforming to the specified Service Levels and conditions set out hereunder.
- c. The following documents attached hereto shall be deemed to form an integral part of this Contract:

Complete Request for Proposal (RFP) Document	
The Purchaser's Letter of Intent dated _____	
The Purchaser's Work order dated	
The System Integrator Technical & Financial Proposal	

- d. The mutual rights and obligations of the "Purchaser" and SI shall be as set forth in the Contract, in particular:
 - SI shall carry out and complete the Services in accordance with the provisions of the Contract; and
 - The "Purchaser" shall make payments to SI in accordance with the provisions of the Contract.

A. General Conditions of Contract (GCC)

1. Definitions and Interpretation

1.1. Definitions

Unless otherwise specifically defined, terms, acronyms and phrases in this Agreement that are utilized in the information technology services industry or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context. Terms and expressions used in this Agreement shall have the meanings set out in herein below:

- 1.1.1.** “Adverse Effect” shall mean material impact -on:
- (a) the ability of the SI 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;
- 1.1.2.** “Agreement” / “MSA” means this master service agreement and the SLA (as defined below), including its Schedules, entered into by and between the Parties. In the event of a conflict between the body of the Agreement and the Schedules, the terms inscribed in the body of the Agreement shall prevail;
- 1.1.3.** “Applicable Law(s)” shall mean 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 Execution Date of this Agreement and during the subsistence thereof, applicable to the Project (as defined below);
- 1.1.4.** “Bid(s)” means the technical and commercial bids dated _____, submitted by the Service Provider to the DULB;
- 1.1.5.** “Confidential Information” means all information of the Parties including DULB and their nominated agencies’ data and SI’s 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);

- 1.1.6.** “COTS” means software products that are ready-made and available for sale, lease, or license to the general public;
- 1.1.7.** “Deliverable(s)” means the products, infrastructure and services agreed to be delivered by the SI in pursuance of this Agreement, 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 (wherever applicable) and all its modifications;
- 1.1.8.** “Go Live”- means successfully implemented and all the desired technical, functional and non-functional requirements stated in the RFP have been met by System Integrator which includes integration, configuration, customization, extension and third party audit by STQC or other designated agency of Purchaser Application Software, , data migration and digitization of historical data, Change management & Capacity Building, Handholding support and Project Plan for O&M Phase
- 1.1.9.** “Go-live Date” means the due date of issuance of Go-live Certificate;
- 1.1.10.** “Intellectual Property Rights” means all rights in written designs and copyrights, moral rights, rights in databases and bespoke software and compilation rights (whether or not any of these are registered and including application for registration);
- 1.1.11.** “Letter of Intent ” or ”Lol” means the formal letter notifying award of tender by DULB in favour of the SI
- 1.1.12.** “OEM” means the original equipment manufacturer of COTS;
- 1.1.13.** “Person” includes a natural person, company, society, a partnership firm, trust or any other entity or organization or other body whatsoever;
- 1.1.14.** “Project” means project for design, development, implementation, operation and maintenance of integrated web based solution across urban local bodies in Haryana and the services in relation thereto to be provided to the DULB as inscribed in the RFP & as covered by this MSA (as defined below);
- 1.1.15.** “Project Implementation Phase” shall mean the period commencing from the Effective Date of the Agreement to the date of final acceptance testing & certification as set out in this Agreement;

- 1.1.16.** "RFP" means request for proposal bearing reference no: _____ dated _____ issued by the DULB ,
- 1.1.17.** "Services" means the services to be delivered to DULB in relation to the Project, as specified in the scope of work in volume 2 of RFP, using the tangible and intangible assets procured, installed, managed and operated by the Service Provider;
- 1.1.18.** "Service Level" means the level of Services and other performance criteria which shall apply to the Services and as set out in the SLA (as defined below);
- 1.1.19.** "SLA" or "Service Level Agreement" means service level agreement as per this Agreement;
- 1.1.20.** "Software" shall mean the customized software designed, developed, tested and deployed by the Service Provider for the purposes of the Project (as defined below) & 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 (as defined below) and the improvements and enhancements effected during the term of the Project (as defined below), but does not include the third party software products (including the COTS products used for the Project), proprietary software which is customized for the Project, components thereto and tools owned / deployed by SI;
- 1.1.21.** "Survey" shall mean the field survey conducted for carrying out door-to-door property survey as per the scope defined in the Vol 2 of the RFP. The data collected from conducting survey will be the sole property of DULB and respective urban local bodies.
- 1.1.22.** "Stakeholders" shall include the Persons as inscribed in the RFP Volume 3 in clause 1.2 ;
- 1.1.23.** "Total Contract Value" means the value specified in the Lol, subject to such addition thereto or deduction there from as may be made under the provisions hereinafter contained;

1. 2. Interpretation

In this Agreement, unless otherwise specified:

- 1.2.1** Where the context so requires, words importing the singular shall also mean the plural and *vice versa*.

- 1.2.2** Words importing the masculine gender shall also include the feminine gender.
- 1.2.3** References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it.
- 1.2.4** Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Clause or Schedule. The words "include" and "including" shall not be construed as terms of limitation. The word "day" mean "regular working days of Government" unless otherwise stated. The words "writing" and "written" mean "in documented form", whether electronic or physical copy, unless otherwise stated.
- 1.2.5** The headings and use of bold type in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement.
- 1.2.6** In case of any ambiguity in the interpretation of any of the Clauses/Schedules in this Agreement, the interpretation shall be done as per Dispute Resolution procedure outlined in this Agreement
- 1.2.7** any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight
- 1.2.8** references to a 'business day' shall be construed as a reference to a day (other than a Sunday) on which DULB is generally open for business
- 1.2.9** 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
- 1.2.10** all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- 1.2.11** System integrator (SI), Bidder or Implementation Agency (IA) has been used for the same entity i.e. bidder selected for the project.

1.3. Structure

- 1.3.1.** This Agreement shall operate as a legally binding master services agreement specifying the master terms which apply to the Parties under this Agreement and to the provision of the Services by the SI to the Project under the terms of this

Agreement.

- 1.3. 2.** In case of any conflict between the RFP and this Agreement, the terms of this Agreement shall prevail over the terms of the RFP. The terms of the RFP shall be read in consonance with this MSA so as to give full force and effect to the intention of the terms of this MSA.

1. 4. Ambiguities within Agreement

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

- 1.4. 1.** 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;
- 1.4. 2.** as between the provisions of RFP and any corrigenda issued thereafter, the provisions of corrigenda shall, to that extent only, prevail over the corresponding earlier provision of RFP;
- 1.4. 3.** 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.

1. 5. Priority of documents

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

- a) This Agreement along with the Schedules;
- b) The work order;
- c) The Lol;
- d) The Technical & Commercial Bids submitted by SI;
- e) 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. Conditions Precedent & Effective Date

2.1 Provisions to take effect upon fulfilment of Conditions Precedent

Subject to express terms to the contrary, the rights and obligations under this Agreement shall take effect only upon fulfilment of all the Conditions Precedent set out below. However, Purchaser 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.

2.2 Conditions Precedent of the System Integrator

The System Integrator shall be required to fulfil the Conditions Precedent in which is as follows:

- a) To provide an unconditional, irrevocable and continuing Performance Security/Guarantee for an amount equal to 10% of the contract value of the Project from any Nationalised /Scheduled bank in the format prescribed by Purchaser within 15 days of receipt of Letter of Award/Letter of Intent by the System Integrator; and
- b) To provide the Purchaser 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.

2.3 Non-fulfilment of the System Integrator'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 Purchaser or its nominated agencies, this Agreement shall cease to exist.
- b) In the event that this Agreement fails to come into effect on account of non-fulfilment of the SI's Conditions Precedent, Purchaser or its nominated agencies shall not be liable in any manner whatsoever to the SI and the DULB shall forthwith forfeit the Performance Guarantee.
- c) In the event that possession of any of the Purchaser or its nominated agencies facilities has been delivered to the System Integrator prior to the fulfilment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to Purchaser or its nominated agencies, free and clear from any encumbrances or claims.

3. Scope of Work and Provision of the Services & Deliverables

- 3.1** The SI shall provide Services in relation to the Conducting Property Tax Survey / License Survey including Issuance of Notice & Bills, with Technical handholding support in updating of property tax demand, collection, registers etc. for different Municipal Corporations / Councils / Committees of Gurugram Cluster for the next 4 years after completion of survey work and other related services within the scope mentioned in the Volume 2 – Scope of Work including Functional & Technical Specification of the RFP.
- 3.2** DULB shall use the Services and Deliverables 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.
- 3.3** The Parties hereby agree that any change in the Scope of Work or Deliverables in relation to which Services are to be provided by the SI and or SLA shall only be as per the process agreed upon under Schedule V of this Agreement. Where DULB decides to increase the Scope of Work or deliverables specified in this Agreement as Annexure____, in such case, DULB, as the case may be, shall offer first right to Service Provider to provide such services and / or components at mutually agreed prices. In case the Service Provider refuses to accept such offer, DULB, as the case may be, shall have the right to approach a third party for the same, without any commercial implication to Service Provider.
- 3.4** During the subsistence of this MSA, DULB shall not appoint any other Person for providing Services in relation to Scope of Work and Deliverables which Service Provider is obligated to perform under this MSA.
- 3.5** Save for the express terms of the Payment Terms set out as Schedule I under this Agreement, DULB and its users may purchase any particular category of services from Service Provider that may become necessary as per the Change Control Schedule set out in Schedule II under this Agreement, without the need to go for a separate procurement process.
- 3.6** The Service Provider shall provide Services as per the timelines set out in the RFP or as are extended by mutual agreement.
- 3.7** Bidder shall also provide complete maintenance support for all the proposed integrated solution as outlined in this RFP for a period of Forty Eight months from the date of phase I go-live i.e. “Go-Live” + 48 months. “Go-live” is the date on which the proposed solution is completely operational as per the requirements provided in this RFP and all the acceptance tests are successfully concluded to the satisfaction of Purchaser

4. Management Phase

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

5. Approvals and Required Consents

5.1 The Parties shall co-operate to procure, maintain and observe all relevant regulatory / government licenses, clearances, internal clearances, applicable approvals (hereinafter the “Approvals”) necessary for the Service Provider to provide the Services.

5.2 Parties shall give each other all co-operation and information reasonably required to meet their respective obligations under this Agreement.

5.3 In the event that any approval other than delivery sign-off / completion certificate is not obtained from the concerned Government department, then the Service Provider and the DULB or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the DULB or its nominated agencies to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such approval is obtained, provided that the Service Provider shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the approvals are obtained if and to the extent that the Service Provider’s obligations are not dependent upon such approvals.

5.4 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:

5.4.1 Does not require material expenditure by the Providing Party to provide the same;

5.4.2 Is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement or the SLA;

5.4.3 Cannot be construed to be Confidential Information; and is capable of being provided by the Providing Party.

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

6. Service Level Agreement:

- 6.1** The SLA shall govern the Service Levels for the entire Project. The SLA shall commence from the Effective Date or any other mutually agreed date, as the case may be, and shall, unless terminated earlier in accordance with the terms of the MSA, expire on the date on which the MSA expires. The envisaged in Schedule V to this Agreement,
- 6.2** The SLA's shall form a part of this Agreement and shall be guided by the terms of this Agreement. In case of any conflict between the terms of the SLA's and this Agreement, the terms of this Agreement shall be effective with overriding effect.
- 6.3** The Parties shall each ensure that the range of the Services under the SLA shall not be increased except with the prior written agreement between the Parties in accordance with the change management procedure set out in Schedule II of this Agreement.

7. Term and Duration of the Agreement

This Agreement shall come into effect on the Effective Date and shall continue for a period of 4 years from the date of Go-Live of Phase 1 & successful system stabilization period & parallel run ("Term") which Term may be extended for a period of up to two years on terms and conditions mutually agreed upon by the DULB and the SI. The Term, for the purposes of any payments to SI, does not include:

- (a) Any extension arising out of breach of any obligations solely attributable to SI; or
- (b) Unless the implementation of exit management is delayed due to reasons not solely attributable to the SI, time duration for implementation of exit management plan.

8. Change Management Process

- 8.1** Change requests in respect of the MSA, the Project Implementation Plan, the operation, the SLA, Services, Scope of Work, Deliverables and functional requirement specifications shall be upon mutual agreement.
- 8.2** The change management shall be as per Schedule II to this Agreement.

9. Final SLA, Testing & Certification

- 9.1** The Project shall be governed by the mechanism of final acceptance of SLA, testing and certification to be put into place by the DULB and the SI. The final SLA, testing and certification criteria will lay down a set of guidelines to be followed by all Project stakeholders during the Project period:

- 9.1.1** Industry accepted norms and standards for SLA, testing and certification for all aspects of project development / customization and implementation covering software, the processes relating to the design of solution architecture, design of systems and sub-systems, coding, customization, 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 or Agreement;
- 9.1.2** Final SLA, testing and certification criteria will be finalized during requirement gathering / SRS preparation as per the project requirement to ensure that the same are enforceable and being followed and to avoid large scale modifications pursuant to testing done after the software/ application is fully customised;
- 9.1.3** Final SLA, testing and certification criteria will consider conducting specific tests on the Software, security and all other aspects;
- 9.1.4** Final SLA, testing and certification criteria will establish appropriate processes for notifying the SI of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the SI to take corrective action; etc.

9.2 Final acceptance test shall be conducted on completion of the following:

- 1) Surveyed data available in portal on the base map provided by HARSAC
- 2) Data Centre operational,
- 3) UAT of the overall integrated solution and portal.

10. Obligations

10.1 Obligations of DULB

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

- 10.1.1** To provide support required by SI through their personnel to conduct Property Tax Survey / License Survey including Issuance of Notice & Bills, with Technical handholding support in updating of property tax demand, collection, registers etc. for different

Municipal Corporations / Councils / Committees of Gurugram Cluster for the next 4 years after completion of survey work during the Term of this Agreement;

- 10.1.2** 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 change in Scope of Work that may arise due to business, delivery or statutory/regulatory reasons;
- 10.1.3** To authorize the SI to interact for implementation of the Project with external entities such as the HARSAC, Municipal corporations/ councils, police etc.;
- 10.1.4** To promptly provide all the data, information, approvals, documents, details, personnel and to ensure the prompt delivery of data, information, approvals, documents, details etc. from other Stakeholders of the Project as and when required by the Service Provider for performance of its Services.
- 10.1.5** To make available the details of all the municipal corporation and municipal councils from DULB for the smooth functioning of the project
- 10.1.6** To coordinate amongst each other and between all the divisions of their own offices for providing necessary information for the study and development of Software and other related services.
- 10.1.7** To hold meetings of the steering committee and the project monitoring committee;
- 10.1.8** To ensure sign-offs and timely responses from the Stakeholders and urban local bodies;
- 10.1.9** Coordinate with SI for conducting workshops for the Stakeholders.
- 10.1.10** Issuing the necessary certification including Go-live Certificate on successful deployment of the Software, cloud hosting, digitized data, Survey and for other components of the Scope of Work (wherever required).
- 10.1.11** To create internal capacity for execution of the Project after takeover from the Service Provider after the termination of this Agreement.
- 10.1.12** Ensuring the staff members and other Stakeholders attend the training programs as per the schedule defined by the Service Provider and agreed upon by DULB
- 10.1.13** Ensuring the staff members and other Stakeholders (DULB / Municipal Corporations / Municipal Councils) provide data, information, replies etc. in a timely manner.

- 10.1.14** Performing its obligations under the RFP within the stipulated time and in case of there being no stipulated time, within reasonable time and without any unnecessary delay;
- 10.1.15** Promptly provide sign off on the deliverables of the Project including SRS, design documents etc.
- 10.1.16** SI will, on completion of a milestone or Track, furnish a document informing PURCHASER of the milestone and/ or Track completion. The PURCHASER shall provide its acceptance and/or objection and/or rejection and/or seek clarifications on non-compliance part of such delivery as per the checklist provided by SI within 15 working days after the milestone completion letter submitted by SI.
- 10.1.17** Release of timely payment to SI on submission of invoices after approval from PMC
- 10.1.18** Purchaser shall provide to SI only sitting space and basic infrastructure not including, stationery and other consumables at the Purchaser's office locations.
- 10.1.19** Purchaser shall provide Mobile application for data entry for property tax survey and hosting facility.

10.2 Obligations of the Service Provider

- 10.2.1** SI's obligations shall include all the activities as specified by the Purchaser in the Scope of Work and other sections of the RFP and Contract and changes thereof to enable Purchaser to meet the objectives and operational requirements. It shall be SI's responsibility to ensure the proper and successful implementation, performance and continued operation of the proposed solution in accordance with and in strict adherence to the terms of his Bid, the Tender and this Contract.
- 10.2.2** It shall provide to DULB or its nominated agencies, the Deliverables as agreed between the Parties.
- 10.2.3** It shall perform the Services as set out in Volume 2 – Scope of Work of RFP in a good and workmanlike manner commensurate with industry and technical standards which are generally in effect for such 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.
- 10.2.4** It shall ensure that the Services are being provided as per the Project Timelines as set out this Agreement.
- 10.2.5** It shall migrate the existing data to the new developed application database.

- 10.2.6** The Service Provider shall be responsible for and shall ensure that all activities /services are performed in accordance with this Agreement, Scope of Work and that the Service Provider's team complies with such specifications and all other standards, terms and other stipulations/conditions set out hereunder.
- 10.2.7** Purchaser reserves the right to interview the personnel proposed that shall be deployed as part of the project team. If found unsuitable, the Purchaser may reject the deployment of the personnel. But ultimate responsibility of the project implementation shall lie with SI.
- 10.2.8** The Service Provider shall perform the activities /services and carry out its obligations under this Agreement with due diligence, efficiency and economy, in accordance with generally accepted techniques and practices used in the industry and with professional engineering and consulting standards recognized by international professional bodies and shall observe sound management, engineering and security practices. It shall employ appropriate advanced technology and engineering practices and safe and effective equipment, machinery, material and methods. The Service Provider shall always act, in respect of any matter relating to this Agreement, as faithful advisors to the DULB and shall, at all times, support and safeguard the DULB's legitimate interests in any dealings with third parties

10.3 Access to the DULB's Location

- 10.3.1** For so long as the Service Provider provides services to the DULB or its nominated agencies from their location, as the case may be, on a non-permanent basis and to the extent necessary, the DULB as the case may be or its nominated agencies shall, subject to compliance by the Service Provider with any safety and security guidelines which may be provided by the DULB as the case may be or its nominated agencies and notified to the Service Provider in writing, provide the Service Provider with:
- a) Reasonable access, in the same manner granted to DULB or its nominated agencies employees, to DULB, as the case may be;
 - b) Reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other the DULB as the case may be location, if any, as may be reasonably necessary for the Service Provider to perform its obligations hereunder and under the SLA.
- 10.3.2** Access to locations, office equipment and services shall be made available to the Service Provider on an "as is, where is" basis by DULB as the case may be or its nominated agencies. The Service Provider 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 and 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).

10.4 Start of Installation

- 10.4.1** SI shall co-ordinate with the Purchaser and ULB's for the complete setup of sites before commencement of installation of other areas as mentioned in RFP Volume II document. SI shall also co-ordinate regarding preparation of the installation plan and detailed design / architectural design documents.
- 10.4.2** The plan and design documents thus developed shall be submitted by SI for approval by the Purchaser.
- 10.4.3** After obtaining the approval from the Purchaser, SI shall commence the installation of the systems.

10.5 Reporting Progress

- 10.5.1** SI shall monitor progress of all the activities related to the execution of this contract and shall submit to the Purchaser, progress reports with reference to all related work, milestones and their progress during the implementation phase.
- 10.5.2** Formats for all above mentioned reports and their dissemination mechanism shall be discussed and finalized along with project plan. The Purchaser on mutual agreement between both parties may change the formats, periodicity and dissemination mechanism for such reports.
- 10.5.3** Periodic meetings shall be held between the representatives of the Purchaser and SI once in every 15 days during the implementation phase to discuss the progress of implementation. After the implementation phase is over, the meeting shall be held as an ongoing basis, as desired by Purchaser, to discuss the performance of the contract
- 10.5.4** SI shall ensure that the respective solution teams involved in the execution of work are part of such meetings.
- 10.5.5** PMC shall be formed as defined in Schedule II – Government Process. This PMC shall meet at intervals, as decided by the Purchaser later, to oversee the progress of the project
- 10.5.6** The Purchaser reserves the right to inspect and monitor/ assess the progress/ performance of the work / services at any time during the course of the Contract. The Purchaser may demand and upon such demand being made, SI shall provide documents,

data, material or any other information which the Purchaser may require, to enable it to assess the progress/ performance of the work / service.

- 10.5.7** At any time during the course of the Contract, the Purchaser shall also have the right to conduct, either itself or through another agency as it may deem fit, an audit to monitor the performance by SI of its obligations/ functions in accordance with the standards committed to or required by the Purchaser and SI undertakes to cooperate with and provide to the Purchaser/ any other agency appointed by the Purchaser, all Documents and other details as may be required by them for this purpose. Such audit shall not include SI's books of accounts.
- 10.5.8** The submission seeking approval by the Purchaser or Purchaser's representative of such plan shall not relieve SI of any of his duties or responsibilities under the Contract.
- 10.5.9** In case during execution of works, the progress falls behind schedule or does not meet the Tender requirements, SI shall deploy extra manpower/ resources to make up the progress or to meet the RFP requirements. Plan for deployment of extra man power/ resources shall be submitted to the Purchaser for its review and approval. All time and cost effect in this respect shall be borne, by SI within the contract value.

10.6 Project Plan

- 10.6.1** Within 15 calendar days of effective date of the Kick-off meeting, SI shall submit to the Purchaser for its approval a detailed Project Plan (WBS) as per format provided with details of the project showing the sequence, procedure and method in which SI proposes to carry out the works. The Plan so submitted by SI shall conform to the requirements and timelines specified in the Contract. The Purchaser and SI shall discuss and agree upon the work procedures to be followed for effective execution of the works, which SI intends to deploy and shall be clearly specified. The Project Plan shall include but not limited to project organization, communication structure, proposed staffing, roles and responsibilities, processes and tool sets to be used for quality assurance, security and confidentiality practices in accordance with industry best practices, project plan and delivery schedule in accordance with the Contract, Risk and Mitigation plan. Approval by the Purchaser's Representative of the Project Plan shall not relieve SI of any of his duties or responsibilities under this Contract.
- 10.6.2** If SI's work plans necessitate a disruption/ shutdown in Purchaser's operation, the plan shall be mutually discussed and developed so as to keep such disruption/shutdown to the barest unavoidable minimum. Any time and cost arising due to failure of SI to develop/adhere such a work plan shall be to SI's account.
- 10.6.3** On submission of the project plan by SI, the Steering Committee/PMU will reply/accept the plan within 15 days of submission date,
- 10.6.4** Any change in requirement/ process / expectations of PMC / DULB or any of ULB under this Project that may require change in SI's Process / development work, then in such case, the earlier approved Project Plan shall be updated time to time by SI and will submit it to Steering committee for approval

- 10.6.5** In case, the Steering committee does not issue the Acceptance or do not give a list of compliances to be achieved by SI within fifteen (15) days from the date of SI's intimation, then in such case, the deliverable done by SI will be treated as the "Completed deliverable as per the agreed scope of work"
- 10.6.6** In the event of deemed completion of a milestone, SI will proceed with the steps for achieving next milestone till completion of the project

11. Payments

- 11.1.** Purchaser shall make payments to SI at the times and in the manner set out in the Payment schedule as specified in Payment Milestones in RFP Volume I and related corrigendum, if any. Purchaser shall make all efforts to make payments to SI within 45 days of receipt of invoice(s) and all necessary supporting documents.
- 11.2.** All payments agreed to be made by Purchaser to SI in accordance with the Bid shall be inclusive of all statutory levies, duties, taxes and other charges whenever levied/applicable, if any, and Purchaser shall not be liable to pay any such levies/ other charges under or in relation to this Contract and/or the Services.
- 11.3.** No invoice for extra work/change order on account of change order shall be submitted by SI unless the said extra work /change order has been authorized/approved by the Purchaser in writing in accordance with Change Control Note.
- 11.4.** In the event of Purchaser noticing at any time that any amount has been disbursed wrongly to SI or any other amount is due from SI to the Purchaser, the Purchaser may without prejudice to its rights recover such amounts by other means after notifying SI or deduct such amount from any payment falling due to SI. The details of such recovery, if any, shall be intimated to SI. SI shall receive the payment of undisputed amount under subsequent invoice for any amount that has been omitted in previous invoice by mistake on the part of the Purchaser or SI.
- 11.5.** All payments to SI shall be subject to the deductions of tax at source under Income Tax Act, and other taxes and deductions as provided for under any law, rules or regulation. All costs, damages or expenses which Purchaser may have paid or incurred, for which under the provisions of the Contract, SI is liable, the same shall be deducted by Purchaser from any dues to SI. All payments to SI shall be made after making necessary deductions as per terms of the Contract and recoveries towards facilities, if any, provided by the Purchaser to SI on chargeable basis.

12. Taxes

- 12.1.** SI shall bear all personnel taxes levied or imposed on its personnel, or any other member of SI's Team, etc. on account of payment received under this Contract. SI shall bear all corporate taxes, levied or imposed on SI on account of payments received by it from the Purchaser for the work done under this Contract.
- 12.2.** SI shall bear all taxes and duties etc. levied or imposed on SI under the Contract including but not limited to Sales Tax, Customs duty, Excise duty, Octroi, Service Tax, VAT, Works Contracts Tax and all Income Tax levied under Indian Income Tax Act – 1961 or any amendment thereof during the entire contract period, i.e., on account of material supplied and services rendered and payments received by him from the Purchaser under the Contract. It shall be the responsibility of SI to submit to the concerned Indian authorities the returns and all other connected documents required

for this purpose. SI shall also provide the Purchaser such information, as it may be required in regard to SI's details of payment made by the Purchaser under the Contract for proper assessment of taxes and duties. The amount of tax withheld by the Purchaser shall at all times be in accordance with Indian Tax Law and the Purchaser shall promptly furnish to SI original certificates for tax deduction at source and paid to the Tax Authorities.

- 12.3.** SI agrees that he shall comply with the Indian Income Tax Act in force from time to time and pay Indian Income Tax, as may be imposed/ levied on them by the Indian Income Tax Authorities, for the payments received by them for the works under the Contract
- 12.4.** SI shall fully familiarize themselves about the applicable domestic taxes (such as value added or sales tax, service tax, income taxes, duties, fees, levies, etc.) on amounts payable by the Purchaser under the Contract. All such taxes must be included by SI in the financial proposal. (SI to find out applicable taxes for the components being proposed.)
- 12.5.** Should SI fail to submit returns/pay taxes in times as stipulated under applicable Indian/State Tax Laws and consequently any interest or penalty is imposed by the concerned authority, SI shall pay the same. SI shall indemnify Purchaser against any and all liabilities or claims arising out of this Contract for such taxes including interest and penalty by any such Tax Authority may assess or levy against the Purchaser/SI.
- 12.6.** In case of introduction of Goods and Service Tax (GST) during the scheduled or extended tenure of the contact, any decision on compensation to SI in this regard would be taken by the High Powered Committee (HPC), Government of Haryana. The SI shall submit detailed computation of the incremental tax payable on account of GST (tax payable as per GST minus tax payable as per existing rules) as applicable in the state of Haryana to the purchaser. The decision of the HPC in this regard would be final and binding on the SI.
- 12.7.** Supplies of materials from abroad are exempted from levy of Sales Tax/VAT on works/works Contract tax (Central or state). However, the Sales Tax/VAT on works (central or state) if levied on supplies made from indigenous vendors for the works shall be borne by SI within the Contract Price. Service Tax/ Terminal Sales Tax/ Works Contract Tax, etc., if any applicable, shall be payable extra, at actuals by the Purchaser in accordance with the conditions of the Contract and upon submission of proof of payment of such taxes.
- 12.8.** The Purchaser shall if so required by applicable laws in force, at the time of payment, deduct income tax payable by SI at the rates in force, from the amount due to SI and pay to the concerned tax authority directly.
- 12.9.** DULB shall be responsible for withholding taxes from the amounts due and payable to the Service Provider wherever applicable.
- 12.10.** DULB shall provide Service Provider with the original tax receipt of any withholding taxes paid by DULB or its nominated agencies on payments under this Agreement. Service Provider agrees to reimburse and hold DULB 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 DULB or its nominated agencies, the Service Provider.

13. Intellectual Property Rights (IPR)

13.1 Products and fixes

13.1.1 All COTS products and related solutions and fixes provided pursuant to this Agreement shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. Such licenses shall be brought on behalf of and in the name of DULB or mentioning DULB as the end user of such licenses. The Service Provider would be responsible for arranging any licenses associated with products. DULB shall not be responsible for payment of any of the licenses cost.

13.1.2 "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 DULB for license which is published by product owner or its affiliates, or a third party.

13.1.3 "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.

13.1.4 All intellectual property rights in any development/enhancement/customization etc. done on the COTS products pursuant to this Agreement shall be owned by DULB.

13.2 Bespoke development

13.2.1 Upon acceptance of Software as per this Agreement and subject to full payment of consideration, the ownership of all Intellectual Property Rights in any and all bespoke Software developed during the Term for implementation of the Project under this Agreement shall lie with DULB.

13.2.2 The Service Provider shall provide source code, object code and all other relevant materials, artefacts etc. of bespoke Software to DULB and DULB shall own all IPRs of such bespoke software for them upon payment of full consideration.

13.3 Pre-existing work

13.3.1 For the purpose of this Agreement, 'pre-existing work' shall mean such pre-existing work of Service Provider and that of its subcontractors, OEMS, agents, representatives:

- a) that can be identified by the Service Provider as pre-existing
- b) for which SI can provide sufficient documentary proof to establish that such work belongs solely to Service Provider (or its subcontractors, OEMS, agents, representatives)

13.3.2 To the extent Service Provider uses any of pre-existing work of the Service Provider (or its subcontractors, OEMS, agents, representatives) in provision of services/ Deliverables under this Agreement, the IPR of such pre-existing work of Service Provider (or its subcontractors, OEMS, agents, representatives) all rights, title and interest shall fully rest with service provider (or its subcontractors, OEMS, agents, representatives) and shall not be given to DULB under any circumstances.

13.4 Training and Other material

The ownership of all IPR rights in any and all documents, artefacts, etc. (including all training material) made during the Term (excluding pre-existing documents / manuals / training materials for pre-existing work / software / COTS) for implementation of the Project under this Agreement will lie with DULB subject to payment of full consideration thereof.

14. Warranty

14.1. Standard

14.1.1. The Service Provider warrants that the Project, including all the system(s) and other Services provided, shall be free from any material defect or material 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 RFP.

14.1.2. If during the warranty period any material defect or material deficiency is found in the material, design and performance/ workmanship of the Software and other Services provided by the Service Provider, the Service Provider shall promptly, in consultation and agreement with DULB, and at the Service Provider's sole cost repair, replace, or otherwise make good (as the Service Provider shall, at its discretion, determine) such default, defect or deficiency as well as any damage to

the Project caused by such material default, defect or deficiency.

14.1.3. Any defective system that has been replaced by the Service Provider shall remain the property of the Service Provider. 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 DULB because of such defect and/or making good of such default, defect or deficiency.

14.2. 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. Service Provider shall have no liability in the case of breach of this warranty due to:

- a) use of the Deliverables on any environment (hardware or software) other than the environment recommended or approved by the Service Provider.
- b) the defects and deficiencies which could be reasonable known to DULB which shall occur due to decisions taken by the DULB, or any of the committees formed hereunder.
- c) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the Service Provider.
- d) the deliverables having been tampered with, altered or modified by DULB, or any other person not under control of the Service Provider without the written permission of the Service Provider, or
- e) Use of the deliverables otherwise than in terms of the relevant documentation.

15. Dispute Resolution

15.1. If any dispute arises between the Parties hereto during the subsistence of this Agreement or thereafter, 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 IV of this Agreement.

15.2. In case the escalations do not result in resolution of the dispute within time stipulated for escalation, then the same shall be referred to the arbitral tribunal comprising of three arbitrators in accordance to the Arbitration and Conciliation Act, 1996 as amended on the date of the reference. Each Party shall nominate one arbitrator and such nominated arbitrators shall nominate the third arbitrator.

15.3. The venue of arbitration shall be Mumbai and the language of the arbitral tribunal shall be English.

- 15.4.** During the term of escalation or arbitration no punitive steps, including but not limited to termination of this Agreement, shall be taken by the DULB against the SI.

16. Conflict of interest

SI shall disclose to the Purchaser in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for SI or SI's Team) in the course of performing the Services as soon as practical after it becomes aware of that conflict.

17. Force Majeure

17.1. Definition of Force Majeure

Any of the Parties, 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').

17.2. 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 may be classified as all or any of the following events:

- 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

17.3. Non-Political Events

- a) act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions.
- b) radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the Service Provider's use of radiation or radio- activity or biologically contaminating material.
- c) strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances as the case may be not arising on account of the acts or omissions of the Service

Provider 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.

17.4. Political Events

- a) change in Applicable Laws, other than any change in law for which relief is provided under this Agreement.
- b) expropriation or compulsory acquisition by the DULB or any of their nominated agencies of any material assets or rights of the Service Provider.
- c) unlawful or unauthorized revocation of, or refusal by DULB or any of their nominated agencies, Government of India, Stakeholders or any of its agencies to renew or grant any clearance or Approval, information, data required by the Service Provider to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider'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.
- d) any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Service Provider in any proceedings for reasons other than failure of the Service Provider to comply with Applicable Laws or Approvals 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;
- e) expropriation or compulsory acquisition by the DULB or any of their nominated agencies of any material assets or rights of the Service Provider.
- f) unlawful or unauthorized revocation of, or refusal by any authority other than the DULB or any of their nominated agencies to renew or grant any Required Consents required by the Service Provider to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider'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.
- g) any requisition of the Project by any other authority; or
- h) Any requisition of the Project by DULB or any of their nominated agencies.
- i) 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.

17.5. Other Events

- a) 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.
- b) For the avoidance of doubt, it is expressly clarified that the failure on the part of the Service Provider under this Agreement or the SLA to implement any agreed 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).

17.6. Notification procedure for Force Majeure

17.6.1. 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 specified in this Agreement.

17.6.2. 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.

17.7. Consultation and duty to mitigate

Except as otherwise provided in this Clause, the affected Party shall 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.

18. Escrow Agreement

- 18.1.** System Integrator shall comply with the escrow provisions below for all Public Material and Proprietary Vendor Material (including Third Party Material incorporated in System Integrator's Proprietary Material), except to the extent System Integrator demonstrates to the satisfaction of Purchaser that compliance is not permitted by the nature of System Integrator's limited rights in such material.
- 18.2.** Within ninety (90) days after the Purchaser's acceptance of the Solution, the Parties shall enter into a software escrow agreement ("Escrow Agreement") with a reputable, independent, third party that provides software escrow services among its principal business offerings ("Escrow Agent"). The Escrow Agreement shall provide for the regular deposit into escrow of all source code (including without limitation all make files, configurationally files, data tables upon which execution is dependent, and the like, collectively the "Source Code"), object code, and documentation with respect to all Public Material and System Integrator's Proprietary Material (and cumulative updates thereof), together with
- a. continually updated instructions as to the compilation, installation, configuration, deployment, and use of the Source Code, and
 - b. a list of all non-deposited third party software used in conjunction with the Source Code to provide the full functionality of the deposited materials.
- 18.3.** In the event of the termination or expiration of the initial Escrow Agreement or any successor agreement, with minimal delay the Parties shall enter into a substantially equivalent agreement with a successor provider of software escrow services (who shall then be known as the "Escrow Agent").
- 18.4.** System Integrator will make its initial deposit of Source Code within fifteen (15) days after the effective date of the Escrow Agreement.
- 18.5.** System Integrator shall periodically update the escrow deposit as the Parties shall agree in the Escrow Agreement. In addition to other usual and customary terms, the Escrow Agreement shall provide that the Purchaser shall be entitled to obtain the deposited materials from escrow upon the Purchaser's making a proper (what is proper) claim for release from (a) and (b) is not defined escrow in the event that
- a. proper written notice is given to the Escrow Agent that release of the copy of the deposited materials is pursuant to applicable Central or Not clear, Purchaser bankruptcy, insolvency, reorganization, or liquidation statute;
 - b. System Integrator files articles of dissolution (but not if System Integrator is consolidated or merged into another entity);
 - c. The Contract expires or terminates for Material Breach of System Integrator.
- 18.6.** The release of deposited materials from escrow shall not confer upon the

Purchaser any right of ownership in the deposited materials or the underlying intellectual property embodied therein. In the event of the release of deposited materials to the Purchaser from escrow, the Purchaser shall use the deposited materials solely for the benefit of the Purchaser and its constituents.

- 18.7.** The release of materials from escrow, without more, shall not cause any further amounts to accrue as payable to System Integrator by Purchaser and the term of the Purchaser's possessory and usage rights with respect to the released materials shall be perpetual.
- 18.8.** The Escrow Agreement shall provide for its automatic termination upon the earlier of five (5) years after the expiration or termination of this Contract, or, release of all Source Code to Purchaser and Purchaser's subsequent confirmation of compliance with the terms of the Escrow Agreement.
- 18.9.** System Integrator shall pay the escrow costs, as well as all costs associated with causing its subcontractors and other third parties to abide by the Escrow Agreement.

19. Insurance Cover

19.1. Obligation to maintain insurance

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

- a) for this Agreement Period, valid and enforceable insurance coverage for:
- public liability;
 - either professional indemnity or errors and omissions;
 - product liability;
 - workers' compensation as required by law;

19.2. Certificates of currency

The System Integrator must, on request by Purchaser, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 19. The System Integrator agrees to replace any coverage prior to the date of expiry/cancellation.

19.3. Non-compliance

Purchaser may, at its election, terminate this Agreement upon the failure of System Integrator, or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve System Integrator of its obligations under this Agreement.

20. Transfer of Ownership

- 20.1.** SI must transfer all titles to the assets and goods procured for the purpose of the project to the Purchaser at the time of Acceptance of System, subject to release of approved payment as per RFP payment terms. This includes all licenses, titles, source code, certificates, hardware, devices, equipment's, data etc. related to the system designed, developed, installed and maintained by SI for this project. SI is expected to provide source code, transfer IPR and ownership right of only those solutions which would be customized by SI for the use of purchaser.
- 20.2.** Forthwith upon expiry or earlier termination of the Contract and at any other time on demand by the Purchaser, SI shall deliver to the Purchaser all Documents provided by or originating from the Purchaser and all Documents produced by or from or for SI in the course of performing the Services, unless otherwise directed in writing by the Purchaser at no additional cost. SI shall not, without the prior written consent of the Purchaser store, copy, distribute or retain any such Documents.

21 Exit Management

The Parties shall finalize the exit plan as per the Schedule VI to this MSA.

B. Special Conditions of Contract (SCC)

22 Performance Bank Guarantee (PBG)

SI has at his own expense, should deposit with Purchaser, prior to signing of the MSA, the Performance bank guarantees ('PBG') for the performance of the obligations contained herein

- 22.1.** The PBG shall be discharged/ returned by PURCHASER, after the completion of period as specified above, upon being satisfied that there has been due performance of the obligations of SI under the MSA.
- 22.2.** In the event of SI being unable to perform the Service under the MSA for reasons solely attributable to SI, Purchaser may revoke the PBG. The proceeds of the PBG shall be payable to Purchaser as compensation for direct loss resulting from SI's failure to complete its obligations under the MSA. Purchaser shall notify SI and seek its reply in writing for the exercise of Purchaser's right to receive such compensation within 30 working days, indicating the contractual obligation(s) for which SI is in default.
- 22.3.** Nothing in this MSA shall prevent SI from seeking adequate reliefs in accordance with Dispute Resolution Clause of this MSA including injunction in case of revocation of PBG by Purchaser.

23 Liquidated Damages

- 23.1.** If the System Integrator fails to develop and install any or all of the projects as per the contract, within the time period(s) specified in the Contract, Purchaser without prejudice to its other rights and remedies under the Contract, deduct from the Contract price, as liquidated damages, a sum equivalent to 0.5% per week or part thereof of contract value for the particular delayed milestone. The liquidated damages will come into effect once the notification of Award has been issued by Purchaser. It would be mainly applicable on the implementation phase of the project. The deduction shall not in any case exceed 10% of contract value.
- 23.2.** DULB may without prejudice to its right to effect recovery by any other method, deduct the amount of liquidated damages from any money belonging to the System Integrator in its hands (which includes the Purchaser's right to claim such amount against the System Integrator's Bank Guarantee) or which may become due to the System Integrator. Any such recovery or liquidated damages shall not in any way relieve the System Integrator from any of its obligations to complete the work or from any other obligations and liabilities under the Contract.

24. Events of Default

24.1. Defaults by Service Provider

- 24.1.1.** The failure on the part of the Service Provider to perform any of its obligations or comply with any of the terms of this Agreement or the SLA which is solely attributable to the Service Provider shall constitute an Event of Default on the part of the Service Provider
- 24.1.1.1.** The SI/ SI's Team has failed to perform any instructions or directives issued by the DULB which it deems proper and necessary to execute the scope of work or provide services under the Contract, or
- 24.1.1.2.** The SI/ SI's Team has failed to adhere to any amended direction, instruction, modification or clarification as issued by the Purchaser during the term of this Contract and which the Purchaser deems proper and necessary for the execution of the scope of work under this Contract
- 24.1.1.3.** The SI/ SI's Team has failed to demonstrate or sustain any representation or warranty made by it in this Contract, with respect to any of the terms of its Bid, the RFP and this Contract
- 24.1.1.4.** There is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to the SI.
- 24.1.1.5.** The SI/SI's Team has failed to comply with or is in breach or

contravention of any applicable laws.

24.1.2. Where there has been an occurrence of such Event of Default, the DULB shall issue a notice of default to the Service Provider, setting out specific defaults / deviances / omissions / non-compliances / non-performances and provide a notice of Sixty (60) days to enable such defaulting party to remedy the default committed.

24.1.3. Where despite the service of a default notice to the Service Provider by the DULB, due to the reasons solely attributable to the Service Provider, the Service Provider fails to remedy the such Event of Default, the DULB may, where it deems fit, issue to the defaulting party another default notice or proceed to adopt such remedies as may be available to the DULB.

24.2. Default By DULB

24.2.1. DULB repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement

24.2.2. DULB fails to make any payments due to the Service Provider as per the Payment Terms in this Agreement without any valid or bona fide reason

24.2.3. If DULB fails to fulfill its obligations under this Agreement.

25. Consequences of Event of Default

Where an Event of Default subsists or remains uncured the DULB shall be entitled to:

25.1 Impose any such obligations and conditions and issue any clarifications as may be necessary to inter alia ensure smooth continuation of Project and the Services which the Service Provider shall be obliged to comply with which may include re-determination of the consideration payable to the Service Provider as agreed mutually by DULB and Service Provider or through a third party acceptable to both Parties. The Service Provider shall in addition take all available steps to minimize loss resulting from such event of default.

25.2 Suspend payments to be made to the Service Provider in relation to the Deliverable, SLA or milestone regarding which Event of Default has occurred under this Agreement by a prior [30] days written notice of suspension to the Service Provider, provided that such notice of suspension:

- a. shall specify the nature of the failure; and
- b. shall request the Service Provider to remedy such failure within a reasonable period from the date of receipt of such notice of suspension by the Service Provider.

- 25.3** Request replacement of any of the SI's Team member(s) on a reasonable ground with another suitable member(s) where the Purchaser deems necessary. The SI shall in such case find suitable replacement for such outgoing member(s) with another member(s) to the satisfaction of the Purchaser. Failure on the part of the SI to find a suitable replacement for such member(s), shall be dealt as per Schedule V - SLA defined in this agreement.

26. Termination

- 26.1.** This Agreement shall not be terminated except in accordance of the terms of this Termination Clause. It is expressly agreed between the Parties that the first intention of the Parties shall not be termination of this Agreement in case alternate remedies under this Agreement or RFP are available to the Parties.

- 26.2.** DULB may, terminate this Agreement in whole or in part by giving Service Provider a prior written notice of at least 3 months in advance indicating its intention to terminate this Agreement under the following circumstances:

26.2.1. Where there has been such Event of Default solely attributable to the Service Provider and the where such defect is not cured within the time stipulated in this Agreement which would make it proper and necessary to terminate this Service Provider and may include failure on the part of Service Provider to respect any of its commitments with regard to any part of its obligation under this Agreement, which failure is solely attributable to the Service Provider.

26.2.2. Where it comes to the DULB attention that Service Provider is in a position of actual conflict of interest with the interests of the DULB.

26.2.3. Where Service Provider's ability to survive as an independent corporate entity is threatened or is lost owing to any reason whatsoever, including inter-alia the filing of any bankruptcy proceedings against Service Provider or the order of winding up is passed against Service Provider or the happening of any such events that are adverse to the commercial viability of the Service Provider. In the event of the happening of any of any events of the above nature, DULB shall reserve the right to take any steps as are necessary, to ensure the business continuity.

26.3. Termination for insolvency

DULB may at any time terminate this Agreement by giving prior written notice of thirty [30] days to Service Provider, if Service Provider becomes bankrupt or otherwise insolvent, provided that such termination shall not prejudice or affect any right of action or remedy which has accrued or shall accrue thereafter to DULB.

- 26.4.** Service Provider subject to approval by Purchaser, may terminate this

Agreement before the expiry of the Term by giving DULB a prior and written notice, at least 3 month in advance indicating its intention to terminate this Agreement

27. Consequence of Termination

27.1. In the event of termination of this Agreement prior to Term, due to any cause whatsoever, DULB shall be entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective business continuity of the Project which Service Provider shall be obliged to comply with and take all available steps to minimise loss resulting from that termination/ breach, and further allow and provide all such assistance to DULB and/ or the successor service provider, as may be required, to take over the obligations of the Service Provider in relation to the execution/ continued execution of the requirements of this Agreement.

27.2. Where the termination of the contract is prior to its Term on account of the default on part of Service Provider or due to the fact that the survival of Service Provider as an independent corporate entity has ceased, DULB, through mutual redetermination of the consideration payable to Service Provider, shall pay Service Provider for that part of the services which have been authorized by DULB and satisfactorily performed by Service Provider up to the date of termination. Without prejudice to any other rights, DULB may retain such amount from the payment due and payable by DULB to Service Provider as may be required to offset any losses caused to DULB as a sole, direct and unpreventable result of any act/ omissions of Service Provider. In case of any loss or damage due to default attributable solely on the part of Service Provider in performing any of its obligations with regard to executing the Scope of Work under this Agreement, Service Provider shall compensate DULB for any such direct and unpreventable loss, damages or other costs, incurred by DULB. Additionally, members of its team shall all its obligations and responsibilities under the contract in an identical manner as were being performed before the collapse of SI as described above in order to execute an effective transition and to maintain business continuity.

All third parties shall continue to perform all/ any functions as stipulated by Purchaser and as may be proper and necessary to execute the Scope of Work under the contract in terms of SI's bid, the bid document and the contract

27.3. Nothing herein shall restrict the right of DULB to invoke the relevant bank guarantee and other guarantees furnished hereunder in the manner and conditions prescribed under this Agreement and perceived such other rights and/ or remedies that may be available to DULB under law.

- 27.4.** The termination hereof shall not affect any accrued right or liability of either party nor affect the operation of the provisions of the contract that are expressly or by implication intended to come into or continue in force on or after such termination.

28. Representation & Warranties

28.1. Representations and warranties of the SI

The Service Provider represents and warrants to the DULB that:

- 28.1.1.** 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;
- 28.1.2.** it is a competent provider of a variety of information technology and business process management services
- 28.1.3.** 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;
- 28.1.4.** from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- 28.1.5.** in providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to DULB normal business operations;
- 28.1.6.** 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;
- 28.1.7.** the information furnished in the RFP 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;
- 28.1.8.** the execution, delivery and performance of this Agreement shall not conflict with result;

28.1.9. 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;

28.1.10. 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;

28.1.11. 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;

28.1.12. no representation or warranty by it contained herein or in any other document furnished by it to DULB or its nominated agencies in relation to the Approval (as defined in this Agreement) 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 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 DULB or its nominated agencies in connection therewith.

28.2. Representations and warranties of the DULB or its nominated agencies

DULB represent and warrant to Service Provider that:

28.2.1. They have 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; they have taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise their rights and perform their obligations under this Agreement;

- 28.2.2.** They have the financial, structural and technical standing and capacity to perform their obligations under this Agreement; 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; this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against them 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;
- 28.2.3.** 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 they or any of their properties or assets is bound or affected;
- 28.2.4.** There are no actions, suits or proceedings pending or, to their knowledge, threatened against them 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;
- 28.2.5.** They are not in 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 their ability to perform their 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;
- 28.2.6.** They have complied with Applicable Laws in all material respects; all information provided by them in the RFP in connection with the Project is, to the best of their knowledge and belief, true and accurate in all material respects; and upon the Service Provider performing the covenants herein, they shall not at any-time during the Term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Service Provider, in accordance with this Agreement.

29. Use of Assets By The Service Provider

During the Term the Service Provider shall:

- 29.1.** 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 Service Provider 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;
- 29.2.** Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Service Provider takes control of and/or first uses the Assets and during the entire Term of this Agreement;
- 29.3.** Ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Service Provider will be followed by the Service Provider and any Person who is made responsible for the use of the Assets by the Service Provider.
- 29.4.** Take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Service Provider or as may, in the reasonable opinion of the Service Provider, be necessary to use the Assets in a safe manner;
- 29.5.** Ensure that the Assets that are under the control of the Service Provider, are kept suitably housed and in conformity with Applicable Law;
- 29.6.** Procure permission from the DULB 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;
- 29.7.** 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;
- 29.8.** Use best efforts to ensure that no lien, mortgage, hypothecation or any other charge is created over the Assets. Service Provider agrees that they will inform DULB immediately if Service Provider feels or comes to know that a charge may be / has been created over any Asset(s). In the event a charge is created over any of the Assets /

goods which are owned by DULB by the Service Provider, DULB shall have the right to get the charge removed at the risk, cost, expense of the Service Provider and Service Provider shall make good all losses, damages, costs, fees, cess, duties, etc. borne or suffered by DULB or its nominated agencies due to creation of such charge and/or in removal of such charge and/or in discharging the obligations for removal of such charge.

30. Security & Safety

- 30.1.** The Service Provider shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act 2008 including the regulations issued by dept. of telecom (wherever applicable).
- 30.2.** Each Party to the SLA/ Agreement shall also comply with the rules laid down by the Government of India, and the respective State's security standards and policies in force from time to time at each location of which DULB or its nominated agencies make the Service Provider aware in writing insofar as the same apply to the provision of the Services.
- 30.3.** 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 a Party's data, facilities or Confidential Information.
- 30.4.** The each party shall upon reasonable request by the other party as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- 30.5.** As per the provisions of the SLA or this Agreement, the Service Provider shall promptly report in writing to DULB 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 DULB as the case may be.

31. Indemnification & Limitation of Liability

- 31.1.** Subject to Clause 31.2 below, Each Party (the 'Indemnifying Party') undertakes to indemnify the other Party (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 awarded against Indemnified Party. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by:

31.1.1. Indemnified Party's misuse or modification of the Service;

31.1.2. Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party;

31.1.3. Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party;

31.1.4. Indemnified Party's distribution, marketing or use for the benefit of third parties of the Service; or 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

- a) procure the right for Indemnified Party to continue using it, or
- b) replace it with a non-fringing equivalent, or
- c) Modify it to make it non-fringing. The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.

31.2. The Indemnifying Party shall indemnify the Indemnified Party against all losses (including loss of business, reputation, profits, revenue etc.), claims, damages, compensation, charges (including attorney fees) etc. arising out of data loss, data theft, data misuse, data tempering, unauthorized use or disclosure of Confidential Information etc. attributable to the Indemnifying Party's negligence, willful default, lack of due care or breach of terms of this Agreement.

31.3. The indemnities set out in Clause 31.2 shall be subject to the following conditions:

31.3.1. 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; 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;

31.3.2. 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;

31.3.3. 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;

31.3.4. All settlements of claims subject to indemnification under this Clause will 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 include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;

31.3.5. 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; 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 ;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 defences of the Indemnified Party with respect to the claims to which such indemnification relates; and if a Party makes a claim under the indemnity set out 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).

31.4. The liability of SI (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of

direct damages only which shall in no event in the aggregate exceed the consideration payable to the SI for services.

31.5. 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 17.2) even if it has been advised of their possible existence.

31.6. The allocations of liability in this Clause 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.

32. Confidentiality

32.1. DULB or its nominated agencies shall allow the Service Provider to review and utilize any confidential public records and the Service Provider shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.

32.2. Additionally, the Service Provider shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.

32.3. DULB or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Service Provider regarding any forbidden disclosure.

32.4. Service Provider shall endeavor that all its employees, agents and execute individual non-disclosure agreements, which have been duly approved by DULB with respect to this Project. For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:

- i. Information already available in the public domain;
- ii. Information which has been developed independently by the Service Provider;
- iii. Information which has been received from a third party who had the right to disclose the aforesaid information;
- iv. Information which has been disclosed to the public pursuant to a court order.

- 32.5.** To the extent the Service Provider shares its confidential or proprietary information with DULB for effective performance of the Services, the provisions of this Clause shall apply mutatis mutandis on DULB or its nominated agencies.

33. Audit, Access & Reporting

The Service Provider shall allow access to the DULB or its nominated agencies to all information which is in the possession or control of the Service Provider 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 DULB to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule III of this Agreement.

34. Governing Laws & Jurisdiction

This Agreement and all matters regarding the interpretation and/or enforcement hereof, will be governed exclusively by the laws of India. The courts of Mumbai alone and no other courts shall be entitled to entertain and try any dispute or matter relating to or arising out of this Agreement.

35. Miscellaneous

35.1. Personnel

35.1.1. The personnel assigned by SI to perform the Services shall be employees or agents of SI and under no circumstances shall such personnel be considered employees of DULB or its nominated agencies. The SI 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.

35.1.2. The SI shall use its best efforts to ensure that sufficient SI personnel are assigned to perform the Services and that, such personnel have appropriate qualifications to perform the Services. After discussion with SI, DULB or its nominated agencies shall have the right to require the removal or replacement of any SI personnel performing work under this Agreement based on bonafide reasons. In the event that DULB or its nominated agencies requests that any SI personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon decisions.

35.1.3. In the event that the DULB and SI identify any personnel of SI as “Key Personnel”, then the SI shall not remove such personnel from the Project without the prior written consent of DULB or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, death etc.

35.1.4. Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of SI to freely assign or reassign its employees; provided that SI shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. DULB or its nominated agencies shall have the right to review and approve SI’s plan for any such knowledge transfer. SI shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.

35.1.5. 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.

35.1.6. 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.

35.2. Sub-Contractors

SI shall not subcontract any work related to this Project without consent of the DULB.

35.3. Assignment

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

35.3.2. The SI shall not be permitted to assign its rights and obligations under this Agreement to any third party under whatsoever conditions.

35.3.3. The DULB may assign or novate all or any part of this Agreement and Schedules/ Annexures, and the SI shall be a party to such novation, to any third party contracted to provide outsourced services to DULB or any of its nominees.

35.4. Trademarks & Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that SI 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 SI may include DULB or its client lists for reference to third parties subject to the prior written consent of DULB not to be unreasonably withheld or delayed. Such approval shall apply to each specific case and relate only to that case.

35.5. Notices

35.5.1. Any notices or other document, which may be given by either Party under this Agreement, shall be given in writing in person or by pre-paid recorded delivery arrangements, post, by facsimile transmission or by email.

35.5.2. 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:

In case of DULB	In case of Service Provider
Name:	Name:
Designation: Director General	Designation:
Address: Bays No. 11-14, Sector-4, Panchkula	Address:
Phone/ Fax: 0172-2570020,	Phone/ Fax:
Email: dulbhry@hry.nic.in	Email:

35.5.3. Either Party to this Agreement may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable written notice of the new information and its effective date.

35.6. Amendment

No amendment, variation or other change to this Master Service Agreement (MSA) or the SLA shall be valid unless made in writing and signed by the duly authorized representatives of the Parties to this Agreement or the SLA.

35.7. Severability & Waiver

35.7.1. 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 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.

35.7.2. 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.

35.8. Compliance With Applicable Law

Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to its business like the Service Provider 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.

35.9. Entire Agreement

35.9.1. This Agreement and the SLA with all Schedules & Annexures appended thereto, Lol, work order, Bid 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.

35.9.2. This Agreement shall consist of this Contract Form and the following documents and the exhibits, drawings, specifications and other documents referred to therein (hereinafter the 'Contract Documents'), all of which by this reference are incorporated herein and made part hereof:

- 1) Work order

- 2) Lol
- 3) RFP Form
- 4) Conditions of Contract as given in the RFP Document.
- 5) Scope of Work as given in the RFP Document.
- 6) Bid submitted by SI

35.9.3. This Agreement sets forth the entire contract and agreement between the Parties pertaining to “Selection of System Integrator for Conducting Property Tax Survey / License Survey including Issuance of Notice & Bills, with Technical handholding support in updating of property tax demand, collection, registers etc. for different Municipal Corporations / Councils / Committees of Gurugram Cluster for the next 4 years after completion of survey work” and supersedes any and all earlier verbal or written agreements. This Agreement shall prevail over all other Contract Documents. In the event of any discrepancy or inconsistency within the contract documents, then the documents shall prevail in the order listed above.

35.10. No Claim Certificate

Neither Party shall be entitled to make any claim, whatsoever against the other Party, under or by virtue of or arising out of, this Agreement, if made by the other Party after it has signed a “No claim” certificate in favour of the other Party in such forms as shall be required by such Party after the works are finally accepted.

35.11. Conflict of Interest

The SI shall disclose to the DULB in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the SI or the SI’s Team) in the course of performing the Services as soon as practical after it becomes aware of that conflict.

35.12. Place of Service

The SI shall provide Services from Panchkula, Haryana. SI’s representatives may have to travel outside Panchkula, within Haryana in relation to the services to be performed under this Agreement.

IN WITNESS WHEREOF the Parties have by duly authorized representatives set their respective hands and seal on the date herein mentioned below:

For and on behalf of	For and on behalf of
Directorate of Urban Local Bodies, Haryana	
Signature and Official Seal	Signature and Official Seal
	Shri.
Designation: Director General, Urban Local Bodies, Haryana	Designation :
Office: Bays No. 11-14, Sector-4, Panchkula Phone No: 0172-2570020, Office Phone No: 0172-2560075, 0172-2560082, Fax : 2570021 E-mail: dulbhry@hry.nic.in	
Witness	Witness
1)	1)
2)	2)

36. Schedule – I: Project Cost & Payment Terms

36.1. Total Cost of Project

The total payment to be made to SI by DULB under this Project is INR_____

The project cost summary is reproduced herein:

(Detailed payment break-up table can be incorporated)

The detailed cost breakup of the above consideration shall be as per the Bid of the SI.

- 36.2.** The payments terms will be in accordance with the payment terms mentioned RFP volume 1 payment milestone
- 36.3.** The amount of consideration payable under this Contract shall become due immediately on completion of the milestones as specified in this Agreement. There shall be no adjustment or deduction to the consideration payable under this contract, on account of non – usage of the Software or Services by DULB or any of Urban Local body (ULB) under this project

1.1. Payment Schedule**1.1.1. Payment Milestones:**

S. No.	Deliverable	Payment
BOQ 1.1		
1.	Complete survey of 25% of BOQ 1.1 including TS1 Register and distribution of notices as per scope of work	25 % of total work order amount of BOQ 1.1
2.	Complete survey of 25% of BOQ 1.1 including TS1 Register and distribution of notices as per scope of work	25 % of total work order amount of BOQ 1.1
3.	Complete survey of 25% of BOQ 1.1 including TS1 Register and distribution of notices as per scope of work	25 % of total work order amount of BOQ 1.1
4.	Complete survey of 25% of BOQ 1.1 including TS1 Register and distribution of notices as per scope of work	25 % of total work order amount of BOQ 1.1
BOQ 1.2*		
7.	Integration of survey Data with Base map(on availability from the department during contract period)	75 % of total work order amount of BOQ 1.2
8.	Validation of Integrated Data by the purchaser	25 % of total work order amount of BOQ 1.2
BOQ 2		
9.	BOQ 2	Equal Quarterly payment for 4 years*

- The payment for the Integration of survey Data with Base map shall depend on map availability by the department during contract period or else payment for the same shall be removed from the payable total of the BOQ 1 and BOQ 2.
- In no condition the total payment to the Selected Bidder (L1) shall exceed the prices quoted by L2 bidder

1.2. Process of release of payment to SI:

1.2.1. On completion of a payment milestone or quarter, as the case may be, SI will inform the Project Monitoring committee about completion of a payment milestone and submit the respective invoice to DULB.

1.2.2. On receipt of such intimation mentioning completion of a payment milestone by SI, the Project Monitoring committee will verify the claim made by SI and issue the

necessary sign-off / completion certificate to SI within 15 days from SI's such intimation. The approval given by project Monitoring committee members will be considered as sign-off issued for respective milestone.

- 1.2.3.** It is very important that SI deliver the project as per the scope mentioned in this agreement. Hence SI will prepare the checklist mentioning achievement of a particular milestone as per the scope of work mentioned in this agreement and the same will be made available to the Project Monitoring committee by SI.
- 1.2.4.** In case, the Project Monitoring committee find deliverable not completed by SI as per the agreed scope of work within 15 days, then the project Monitoring committee will inform SI the non-completion part of such delivery & will mention the one single & complete list of compliance to be achieved by SI which will be based on the checklist prepared by SI.
- 1.2.5.** SI will then complete the milestone based on this list of compliance given by the project Monitoring committee only, without re-visiting checklist parameters that complied earlier and then SI will intimate The Project Monitoring Committee the compliances of the same in writing, then the process of completion of milestone within seven (07) days by the project Monitoring committee will become applicable as mentioned above.
- 1.2.6.** The Project Monitoring committee will then either issue the requisite sign-off / completion certificate or inform SI the list of compliance to be achieved within (07) days from the date of SI's intimation.
- 1.2.7.** Based on this sign-off certificate, DULB will release the payment to SI within 45 days from the date of sign off certificate in a centralized manner.

1.3. Financial Matters

1.3.1. Terms of Payment and Service Credits and Debits

- 1.3.1.1.** In consideration of the Services and subject to the provisions of this Agreement and of the SLA, DULB shall pay the Service Provider for the Services rendered in pursuance of this Agreement, in accordance with the Terms of Payment Schedule set out in Volume 1 of the RFP and subsequent Corrigendum subject always to the fulfilment by the SI of the obligations herein.
- 1.3.1.2.** All payments are subject to deductions of applicable liquidated damages as provided for in the SLA section of the RFP. For the avoidance of doubt, it is expressly clarified that DULB will calculate a financial sum as a result of the failure of the Service Provider to meet the Timelines and/or Service Level Requirements if any, and debit the same against the terms of payment as set out in Payment Schedule in Volume 1 of the RFP and subsequent Corrigendum.
- 1.3.1.3.** Save and except as otherwise provided for herein or as agreed between the Parties in writing, DULB shall not be required to make any payments in

respect of the Services (or without limitation to the foregoing, in respect of the Service Provider performance of any obligations under this Agreement or the SLA) other than those covered in Payment Schedule in Volume 1 of the RFP and subsequent Corrigendum.

- 1.3.1.4. All payments agreed to be made by DULB to the Service Provider in accordance with the Project shall be inclusive of all statutory levies, duties, taxes and other charges whenever levied/applicable including costs of maintenance, if any and DULB shall not be liable to pay any such levies/other charges under or in relation to this Agreement and/or the Services.
- 1.3.1.5. Payment shall be paid at the times and in the manner set out in the Payment schedule as specified under to Clause 6 of the volume 1 of the RFP and respective corrigendum, against value of contract. However, Service Tax shall be reimbursed against submission of payment proofs. Works contract taxes, if any applicable, shall be reimbursed against actual and against submission of payment proofs.
- 1.3.1.6. No invoice for extra work/change order on account of change order will be submitted by the Service Provider unless the said extra work /change order has been authorized/approved by the DULB in writing in accordance with Clause on Change order.
- 1.3.1.7. In the event of Purchaser noticing at any time that any amount has been disbursed wrongly to the SI or any other amount is due from the SI to the Purchaser, the Purchaser may without prejudice to its rights recover such amounts by other means after notifying the SI or deduct such amount from any payment falling due to the SI. The details of such recovery, if any, will be intimated to the SI. The SI shall receive the payment of undisputed amount under subsequent invoice for any amount that has been omitted in previous invoice by mistake on the part of the Purchaser or the SI

1.4. Invoicing and Settlement

Subject to the specific terms of the SLA, the Service Provider shall submit its invoices in accordance with the following principles:

- 1.4.1.1. DULB shall be invoiced by the Service Provider for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the SI shall raise an invoice as per Payment Schedule in Volume 1 of the RFP and respective corrigendum.
- 1.4.1.2. Any invoice presented in accordance with this Clause shall be in a form agreed with DULB.
- 1.4.1.3. SI shall be solely responsible to make payment to personnel, OEMs, third parties, etc.
- 1.4.1.4. Payment shall be made within 45 working days of the receipt of invoice

along with supporting documents by DULB subject to penalties. The penalties are imposed on the vendor as per the SLA criteria specified in the RFP. DULB shall not be liable for any additional payment as late charges/ delay charges/ penalty charges etc. for any delayed payments under any conditions whatsoever.

- 1.4.1.5. Purchaser shall be entitled to delay or withhold payment of any invoice or part of it delivered by the System Integrator where Purchaser 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. Any exercise by Purchaser under this Clause shall not entitle the System Integrator to delay or withhold provision of the Services.

1.5. 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.

37. 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, SLAs, 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 SI and changes to the terms of payment as stated in the Terms of Payment Schedule. The DULB and SI recognize that occasional and reasonable 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 SI will endeavour, wherever reasonably practical, to effect change without an increase in the terms of payment as stated in the Terms of Payment schedule. DULB or its nominated agencies will work together to ensure that such changes are discussed and managed in a constructive manner. However, in case such changes are of a nature that the SI has to bear significant additional costs, then the SI shall be compensated for such costs. This Change Control Schedule sets out the provisions which will apply to all the changes to this MSA.

37.1. Change Orders/Alteration/Variation

- 37.1.1. The SI agrees that the requirements/ quantities/ licenses/ specifications and Service requirements given in the RFP documents are minimum requirements and are in no way exhaustive and guaranteed by the DULB.

- 37.1.2.** The DULB may at any time, by a written change order given to the SI, make changes within the general scope of the Contract.
- 37.1.3.** The written advice to any change shall be issued by the DULB to the SI up to 4 (four) weeks prior to the due date of commencement of services.
- 37.1.4.** In case of increase in Quantities/ Licenses / Specifications or Service requirements or in case of additional requirement, the SI agrees to carry out / provision for such additional requirement at the rate and terms and conditions as provided in this Agreement. In case of decrease in Quantities or Specifications of goods/ equipment or Service requirements, the SI shall give a reduction in price at the rate given in this Agreement corresponding to the said decrease.
- 37.1.5.** In case applicable rates for the increase/decrease in question are not available in this Agreement then the rates as may be mutually agreed shall apply. The SI shall not be entitled to any claim by way of change of price, damages, losses, etc.

37.2. Conditions for Change Order

- 37.2.1.** The change order will be initiated only in case
- a. The DULB directs, in writing, the SI to incorporate changes to the deliverables or design requirements already covered in this Agreement.
 - b. The DULB directs, in writing, the SI to include any addition to the scope of work or services covered under this Agreement or delete any part thereof,
 - c. SI requests to delete any part of the work which will not adversely affect the operational capabilities and functioning of the system and if the deletions proposed are agreed to by the DULB and for which cost and time benefits shall be passed on to the DULB.
- 37.2.2.** Any change order comprising an alteration which involves change in the cost of the services (which sort of alteration is hereinafter called a "Variation") shall be the Subject of an amendment to this Agreement by way of an increase or decrease in the Contract Value and adjustment of the implementation schedule if any.
- 37.2.3.** If there is a difference of opinion between the SI and DULB's Representative on whether a particular item, work or part of the work constitutes a change order or not, the matter shall be handled in accordance with the procedures set forth in the section 37.3.

37.3. Procedures for Change Order

37.3.1. Upon receiving any revised requirement/ advice, in writing, from the DULB, the SI would verbally discuss the matter with DULB's Representative.

37.3.2. In case such requirement arises from the side of the SI, he would also verbally discuss the matter with DULB's Representative giving reasons thereof.

In either of the cases as explained in Clauses above, the representatives of both the parties will discuss on the revised requirement for better understanding and to mutually decide whether such requirement constitutes a change order or not. Such representation will also be discussed and validated by Project Monitoring Committee (PMC).

37.3.3. If it is mutually agreed that such Requirement constitutes a "Change Order" then a joint memorandum will be prepared and signed by the SI and DULB to confirm a "Change Order" and basic ideas of necessary agreed arrangement.

37.3.4. SI will study the revised requirement in accordance with the joint memorandum and assess subsequent schedule and cost effect, if any.

37.3.5. Upon completion of the study referred to above, the results of this study along with all relevant details including the estimated time and cost effect thereof with supporting documents would be submitted to the DULB to enable the DULB to give a final decision. Such decision will be provided with due approval of the steering committee whether SI should proceed with the change order or not in the best interest of the works.

37.3.6. The estimated cost and time impact indicated by SI shall be considered as a ceiling limit and shall be provisionally considered for taking a decision to implement change order. The costs can be further negotiated by DULB.

37.3.7. A Change Control Note (CCN) would be required to be prepared.

37.3.8. The time impact applicable to the Contract shall be mutually agreed, subsequently, on the basis of the detailed calculations supported with all relevant back up documents.

37.3.9. In case SI fails to submit all necessary substantiation/ calculations and back up documents, the decision of the DULB regarding time and cost impact shall be final and binding on the SI.

37.3.10. If DULB accepts the implementation of the change order in writing, which would

be considered as change order, then SI shall commence to proceed with the enforcement of the change order pending final agreement between the parties with regard to adjustment of the Contract Value and the schedule.

- 37.3.11.** In case, mutual agreement, i.e. whether new requirement constitutes the change order or not, is not reached, then SI in the interest of the works, shall take up the enforcement of the change order, if advised in writing to do so by DULB's Representative pending settlement between the two parties to the effect whether such requirement constitutes a change order or not as per the terms and conditions of Contract documents. The time and cost effects in such a case shall be mutually verified and recorded. Should it establish that the said work constitutes a change order, the same shall be compensated taking into account the records kept in accordance with the Contract.
- 37.3.12.** The SI shall submit necessary back up documents for the change order showing the break- up of the various elements constituting the change order for the DULB's review. If no agreement is reached between the DULB and SI within 60 days after DULB's instruction in writing to carry out the change concerning the increase or decrease in the Contract Value and all other matters described above, either party may refer the dispute to arbitration.

37.4. Change Control Note ("CCN")

- 37.4.1.** Change requests in respect of the MSA, the Project Implementation, the operation, the SLA, 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 CCN as attached in Volume 1 of RFP. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- 37.4.2.** The SI and the DULB or its nominated agencies, during the Project Implementation Phase and the DULB 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.
- 37.4.3.** 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 SI and accepted by the DULB or its nominated agencies or as decided and approved by DULB or its Nominated Agencies. For arriving at the cost / rate for change up to 25% of the project value, the payment terms specified in the Volume 1 shall apply.

37.5. Conditions for revised work / change order

The provisions of the Contract shall apply to revised work / change order as if the revised work / Change order has been included in the original Scope of work. However, the Contract Value shall increase / decrease and the schedule shall be adjusted on account of the revised work / Change orders as may be mutually agreed in terms of provisions set forth in Clause 37 of this section. The SI's obligations with respect to such revised work / change order shall remain in accordance with the Contract.

37.6. Proposed Categories of Change

The change categories will be as per clause no. 3.3 of Volume 2 of the RFP.

37.7. Quotation

37.7.1. The SI shall provide as part of CCN a minimum:

- a description of the change
- a list of deliverables required for implementing the change;
- a time table for implementation;
- an estimate of any proposed change
- any relevant acceptance criteria
- an assessment of the value of the proposed change;
- material evidence to prove that the proposed change is not already covered within this Agreement and the scope of work.

37.7.2. Prior to submission of the completed CCN to DULB, or its nominated agencies, the SI will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the SI 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.

37.8. Obligations

The SI 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. SI will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact.

38. Schedule – III: Audit, Access and Reporting

38.1. Purpose

This Schedule details the audit, access and reporting rights and obligations of the DULB or its nominated agency and the SI.

38.2. Audit Notice and Timing

- a) As soon as reasonably practicable after the Effective Date of signing of this Agreement, the Parties shall use their best endeavours to agree to a timetable for routine audits during the Project Implementation Phase and the Operation and Maintenance Phase. Such timetable during the Implementation Phase, DULB or its nominated agency and thereafter during the operation Phase, DULB or its nominated agency shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the SI any further notice of carrying out such audits.
- b) The DULB 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 SI, a security violation, or breach of confidentiality obligations by the SI, provided that the requirement for such an audit is notified in writing to the SI 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 SI 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.
- c) The frequency of audits shall be a (maximum) half yearly, provided always that the DULB or its nominated agency shall endeavour to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the SI. Any such audit shall be conducted by with adequate notice of 2 weeks to the SI.
- d) DULB will ensure that any 3rd party agencies (except CAG) appointed to conduct the audit will not be the competitor of SI and will be bound by confidentiality obligations.

38.3. Access

The SI shall provide to the DULB or its nominated agency reasonable access to employees, 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 Steering Committee/ Project Management unit shall have the right to copy and retain copies of any relevant records. The SI shall make every reasonable effort to co-operate with them.

38.4. Audit Rights

The DULB 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:

- a) The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of DULB and documentation related thereto;
- b) That the actual level of performance of the services is the same as specified in the SLA.
- c) That the SI has complied with the relevant technical standards, and has adequate internal controls in place; and
- d) The compliance of the SI with any other obligation under the MSA and SLA.
- e) Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the SI.
- f) For the avoidance of doubt the audit rights under this Schedule shall not include access to the SI's profit margins or overheads, any confidential information relating to the SI' employees, or minutes of its internal Board or Board committee meetings including internal audit, or such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the MSA.

38.5. Action and Review

- a) Any change or amendment to the systems and procedures of the SI, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- b) Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the DULB or its nominated agency and the SI Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the MSA.
- c) REPORTING: The SI will provide quarterly reports to the PMU or Steering Committee regarding any specific aspects of the Project and in context of the audit and access information as required by the DULB or its nominated agency.

38.6. Records and Information

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

39. Schedule IV: Governance Schedule

39.1. Purpose

The purpose of this Schedule is to:

- a) Establish and maintain the formal and informal processes for managing the relationship between the DULB and the SI (including the outputs from other Schedules to this Agreement;
- b) define the principles that both Parties wish to follow to ensure the delivery of the Services
- c) Ensure the continued alignment of the interests of the Parties;
- d) Ensure that the relationship is maintained at the correct level within each Party;
- e) Create the flexibility to revise and maintain the relationship and this Agreement during the Term;
- f) Set out the procedure for escalating disagreements; amenable contract administration and performance management.

39.2. Governance Structure

39.2.1. Project Monitoring Committee (PMC)

39.2.1.1. The Parties shall, in addition to the purposes mentioned in the Clause 3.3, form a committee to be called as the project Monitoring committee for the purpose of day to day decision making and representation to complete the Project within fifteen (15) days of contract signing

39.2.1.2. The above referred project Monitoring committee shall hold project review meetings chaired by Director of DULB. The Monitoring committee shall comprise of following members, and would meet formally on a fortnightly / monthly / quarterly, as required, basis at a time and location to be agreed between them.

39.2.1.3. Roles & Responsibilities of Project Monitoring Committee shall be as follows:

- 1) Review & Validate SI milestone / deliverables signoff report and provide recommendation in consultation with DULB /, with a copy to steering committee
- 2) Resolve and provide directions on the operational matters
- 3) Monitor the project work schedule / plan as per the format provided in the Annexure VII to be submitted by SI on a regular basis to ensure its implementation as agreed between SI and DULB. Ensure progress on training and capacity building activities to ULB's, and concerned stakeholders as per the agreed scheduled
- 4) Conducting regular meetings with key project stake holders for issue resolution
- 5) Coordination between different stake holders as per the guidance of steering

committee

- 6) Any other issues to be discussed pertaining to the project
- 7) To issue acceptance / Sign – off certificate to SI as per their request during the Project period. The approval given by PMC shall be treated as sign-off issued by the Purchaser for the respective milestone to SI during the Project period
- 8) To approve the release of payment to SI during the Project period

The PMC will comprise of the following members

Composition	
Director, DULB	Chairman
Project Director – DULB	Member Secretary
Chief officer of one municipal council from each category (A,B, & C)	Member
Commissioner / Dy. Commissioner of one Municipal corporation	Member
Representatives of Urban Development Dept.	Member
Project Manager – SI	Member
Project Manager, PMU	Member
Other invitees, as per approval of Chairman	Member

- a) 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.
- b) Within 7 days following the Effective Date, DULB or its nominated agencies and the SI 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.
- c) The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
- d) In the event that there is any material factor which affects the delivery of Services or the terms of payment as stated in the Terms of Payment Schedule, the Parties agree to discuss with the PMC, any appropriate amendment to this Agreement or any SLAs 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, and should be put up to steering committee for approval

39.2.2. Steering Committee

A Steering Committee under the chairmanship of Hon'ble Chairman, DULB will be formed and will govern the project till the Go-live and would consist of following members:

#	Designation	Position
1.	ACS, DULB	Chairman
2.	Director of Information Technology,	Member secretary
4.	Representative from UDD	Member
5.	Project Manager, DULB	Member
6.	Financial Advisor, DULB nominated agency	Member
7.	Project Manager, SI	Member
8.	Project Consultant	Member

The Steering committee members will meet at least once a month or as required based on the time and location agreed between them. These meetings will cover as a minimum agenda:

- 1) Hold the kick-off meeting on the project with all stakeholders within 7 days of contract sign-off
- 2) Provide overall leadership, vision, and direction for the implementation of the project
- 3) Overall planning, co-ordination, monitoring and progress review of the project
- 4) Overall strategic control and take decision on regulatory matters and provide guidance for successful execution of the project
- 5) Approval of the detailed project work plan (including gant chart representation) initially, as well as approvals to any subsequent changes necessary to be made in the plan. Post Steering Committee's approvals, the plan's adherence monitoring will be the responsibility of the PMC.
- 6) Approval of SRS
- 7) Creating a supporting environment for the success of the project
- 8) Consideration of matters arising out of the change control note and approval of the same
- 9) Resolution of disputes if any between SI and PMC
- 10) Review of budgetary requirements and financial monitoring of the allocated funds

39.3. Governance Procedures

- a) The SI shall document the agreed structures in a procedures manual.
- b) The agenda for each meeting of the PMC 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 PMC, along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.

- c) All meetings and proceedings will be documented such documents to be distributed to the Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.
- d) The Parties shall ensure as far as reasonably practicable that the PMC 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.
- e) 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
 - f) A statement by the Claimant describing the Disputed Matter in reasonable detail and
 - g) Documentation, if any, supporting the Claimant's position on the Disputed Matter.
- h) 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.
- i) All negotiations, statements and / or documentation shall be without prejudice and confidential (unless mutually agreed otherwise).
- j) 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.

39.4. Escalation Procedure for Issue Resolution

- a) If any issue arises between the parties hereto during the subsistence of this Agreement of thereafter, in connection with the validity Interpretation implementation or alleged breach of any provision of this Agreement or the SLA shall in the first instance be dealt in the PMC meetings. This would be the first level of escalation.
- b) In the event that the PMC is unable to resolve the issue within 15 days of it being referred to it, then either Party may refer the dispute for resolution to the Steering Committee. This would be the second level of escalation.
- c) However, if the issue/s still remains unsolved, they would be further escalated as per the procedure listed in Dispute Resolution Clause of this agreement.

40. Schedule – V: Service Level Agreement

40.1. Purpose of the SLA

- a) The purpose of this Service Level Agreement (hereinafter referred to as SLA) is to clearly define the Service Levels which shall be provided by the SI to DULB for the duration of this contract. The benefits of this SLA are to:
 - Make DULB's expectations from the SI explicit with respect to performance and outcomes.
 - Help DULB monitor the levels of performance of the SI during the duration of the contract.
 - Trigger a process that applies to DULB and SI's attention to any aspect of performance when that aspect drops below an agreed upon threshold or target.
- b) The SI and DULB shall maintain monthly/ Quarterly contact to monitor the performance of the services being provided by the SI and effectiveness of this SLA.
- c) During the contract period, under normal circumstances, any changes to the SLA will be discouraged. However, under exceptional/ contingent circumstances, on representation made by the SI, there may be changes to the SLA. The decision of DULB in this regard shall be final and binding on the SI.
- d) This SLA document provides for minimum level of services required as per contractual obligations based on performance indicators and measurements thereof, which will be reviewed on quarterly basis before releasing payments to the SI.
- e) The SI shall ensure provisioning of all required services while monitoring the performance of the same to effectively comply with the performance levels. The liquidated damages recoverable from the SI will be in addition to the penalty on the SLAs. It is expressly agreed that in case some Service Level is not achieved by the SI and such non-achievement is not solely attributable to the SI then no penalty shall be imposed upon on SI.
- f) The SI and the DULB may expressly or impliedly agree not to levy any penalty upon SI for nonperformance.
- g) The SLA shall be entered into concurrently with this Agreement between DULB and SI.

40.2. Definitions

- a) For purposes of this Service Level Agreement, the definitions and terms as specified in the contract along with the following terms shall have the meanings set forth below:
 - "**Availability**" shall mean the time for which the services and facilities offered by the SI are available for conducting operations from the implemented solution.
 - "**Downtime**" is the time the services and facilities are not available to DULB and ULBs and excludes the scheduled outages planned in advance for the implemented solution.
 - "**Helpdesk Support**" shall mean the SI's 24x7x365 centre which shall handle Fault

reporting, Trouble Ticketing and related enquiries during this contract.

- **“Incident”** refers to any event / abnormalities in the functioning of the solution / Services that may lead to disruption in normal operations.
- **Severity for Problem Requests/Defect Fixes:** The severity of a problem request or defects fixes would be based on the business impact of the problem.

b) Severity is defined as follows:

Severity	Definition
Critical	<u>For Live Operations:</u> Showstoppers involving major functional failure in the system / solution. There are no usable workarounds available to troubleshoot the problem. <u>For UAT:</u> Fatal Errors like General Protection Fault, system hangs and testing cannot proceed till error is fixed.
High	<u>For Live Operations:</u> Users face severe functional restrictions in the system / solution irrespective of the cause. Workarounds are time consuming. <u>For UAT:</u> Serious Program behavior inconsistent to functional requirements, or data rendered inconsistent and testing cannot proceed in that area till error is fixed.
Medium	<u>For Live Operations:</u> Moderate functional restrictions in the system / solution irrespective of the cause. Has a convenient and readily available workaround. Affects a few users. <u>For UAT:</u> Minor errors to be corrected, but testing can proceed with work around solutions.
Low	<u>For Live Operations:</u> Requiring cosmetic functional changes. Does not require any workaround. It may include user query / suggestions but has no business impact. <u>For UAT:</u> Suggestions/ Comments. Improves user-interface or functionality. General remarks not necessarily meant for improvement.

40.3. Description of Services Provided

The required scope and boundaries of solution and services provided as part of this Agreement are detailed in Volume 2 – Scope of Work of this RFP document

40.4. Breach Clause

- a) This SLA document provides for minimum level of system characteristics and services required as per contractual obligations based on performance indicators and measurements thereof. The SI shall ensure provisioning of all required services while monitoring the performance of the same to effectively comply with performance levels.

- b) SLA parameters shall be monitored on a monthly/quarterly basis (or as specified below) as per the individual SLA parameter requirements. In case the service levels cannot be achieved at service levels defined in the tables below, it shall result in a breach of contract and shall invoke penalty.
- c) A Service Level breach will occur if the SI fails to meet Minimum Service Levels on a monthly basis (or periodicity defined) for a particular Service Level.
- d) However, penalty would be levied every quarter or as specified below. The percentage of SLA violation would be the average of monthly SLA measurements for the months in that respective quarter.
- e) Overall Availability and Performance Measurements will be on a quarterly basis for the purpose of Service Level reporting. Month wise “Availability and Performance Report” will be provided by the SI every quarter and a review shall be conducted based on this report. Availability and performance report provided to the DULB shall contain the summary of all incidents reported and associated performance measurement for that period.

- f) Before Centralized System Operations and Maintenance Phase and during the Centralized System Implementation/ Development Phase, the maximum penalty shall be capped at 10% of the total Project Value. If the penalty during these phases exceeds 10% of the Total project value, then DULB reserves the right to terminate the contract.
- g) During Centralized System Operations and Maintenance Phase, penalty per quarter are capped at 10% of that quarter's payment.
- h) If penalty calculations exceed 10% of the quarterly payment for two consecutive quarters, then DULB can take appropriate action including termination of the contract and forfeiting of Performance Bank Guarantee.
- i) In case there are successive breaches of SLA's for two quarters, DULB can issue show cause notice to the SI to explain their non-performance. Also Steering Committee meeting may be called wherein SI needs to explain the action taken to prevent such recurrences in future. This is without prejudice to other rights of DULB.
- j) The services provided by the SI shall be reviewed by DULB in terms of, but not limited to, the following:
- Check Performance of the SI against this SLA every quarter and consider any key issues of the past period's performance statistics including major incidents
 - Discuss escalated problems, new issues and matters still outstanding for resolution
 - Increase SLA penalties if SI is found to be defaulting on certain parameters repeatedly
 - Review of statistics related to rectification of outstanding faults and agreed changes
 - Obtain suggestions for change to improve the services levels
 - Penalties shall be imposed either quarterly or on immediate next payment milestone etc.
- k) In case desired, DULB may initiate an interim review to check the performance and the obligation of the SI. The SLA may be reviewed and revised in accordance to the procedures detailed in Schedule 2, Change Control Schedule.
- l) For the purpose of recovery of penalty imposed, the penalty amount will be adjusted against payment made to the SI by DULB for the respective quarter. In case the penalty amount exceeds the payment being made to SI by DULB for that quarter, it may be adjusted against performance bank guarantee.

- m) DULB shall not make any payments for Production support requests/ tickets during the lifecycle of the project.
- n) It is expressly agreed that in case some Service Level is not achieved by the SI and such non-achievement is not solely attributable to the SI then no penalty shall be imposed upon on SI.
- o) The SI and the DULB may expressly or impliedly agree not to levy any penalty upon SI for non-performance.

40.5. SLA Monitoring

- a) SLA monitoring will be carried out by DULB based on SLA compliance report and SLA monitoring tool. SLA monitoring tool will be put in place by the SI which will collate information as per defined SLA parameters. Reports of SLA compliance in the tool will be updated as per agreed updated frequency and available for review by DULB designated authority.
- b) Every bill raised by the SI needs to be accompanied with a compliance report against applicable SLA depending on the phase and should also include self-declaration of compliance / non-compliance by the SI. Bills need to include any other documents required by DULB

Sr. No	Service Level	Penalty
1.	For submitted property survey data of any property, if there is up to 5% of error identified by the Audit Agencies	No penalty imposed. The Successful Bidder(s) is required to perform re-survey of the identified properties and correct the erroneous data entries. No additional payment would be made for re-survey.
2.	For submitted property survey data of any land/ asset property, if there is up to 10 % of error identified by the Audit Agencies	2* 'X' Where X= Price Quoted by the Bidder for property survey. The bidder will be penalized 2 times the rate quoted for the number of properties in which errors were identified by the audit agencies. The Successful Bidder(s) shall be required to perform re-survey of the identified properties and correct the erroneous data entries.

Sr. No	Service Level	Penalty
		No additional payment would be made for re-survey.
3.	For submitted property survey data of any land/ asset property, if there is more than 10 % and upto 15% of error identified by the Audit Agencies	4* 'X' Where X= Price Quoted by the Bidder for property survey. The bidder will be penalized 4 times the rate quoted for the number of properties in which errors were identified by the audit agencies. The Successful Bidder(s) shall be required to perform re-survey of the identified properties and correct the erroneous data entries. No additional payment would be made for re-survey.
4.	For submitted property survey data of any land/ asset property, if there is more than 15 % and upto 20% of error identified by the Audit Agencies	8 * 'X' Where X= Price Quoted by the Bidder for property survey. The bidder will be penalized 8 times the rate quoted for the number of properties in which errors were identified by the audit agencies. The Successful Bidder(s) shall be required to perform re-survey of the identified properties and correct the erroneous data entries. No additional payment would be made for re-survey.
5.	For submitted property survey data of any land/ asset property, if there is more than 20 % of error identified by the Audit Agencies	Termination of Contract without clearing any of the pending invoices
6.	For completion of survey in the defined timelines as per the time schedule given in RFP	In case the survey is not completed in the defined timelines as specified in the RFP the bidder will be charged 1% per month penalty on the balance amount to be paid for survey maximum upto 10%, beyond which the contract will be terminated without clearing any of the pending invoices

40.5.1. Error Definitions:

In the above table error shall mean any one of the following:

- a) Errors in capturing internal measurements such as carpet area and Plot area etc. This shall be validated against the data captured by validation/audit agencies. Differences in the measurements upto 10% can be ignored. But for more than 10% it shall be considered as an error.
- b) Data Captured for all mandatory fields shall be validated by the audit agencies for all the fields other than those mentioned in (a).
- c) Discrepancies between the data captured by survey agencies and audit agencies shall be analysed and accordingly errors will be calculated.

Maximum Penalty applicable to the bidder shall not exceed 10% of the Total Work Order value till the completion of property survey. If the total Penalty exceeds beyond 10%, it would be considered as non-conformance to the Quality of Services and may lead to termination of the Contract and DULB may on their sole discretion cancel the order and go afresh with the entire property survey exercise without clearing any of the pending payment of the bidder and forfeiting the performance bank guarantee submitted by the bidder after receiving the order.

40.6. Issue Management Procedures

40.6.1. General

- a) Issue Management process provides for an appropriate management structure towards orderly consideration and resolution of business and operational issues in the event of a quick consensus not reached between DULB and SI.
- b) Implementing such a process at the commencement of services shall significantly improve the probability of successful issue resolution. It is expected that this pre-defined process will only be used on an exception basis if issues are not resolved at operational levels.

40.6.2. Issue Management Procedures

- a. Either DULB or SI may raise an issue by documenting the business or technical problem, which presents a reasonably objective summary of both points of view and identifies specific points of disagreement with possible solutions.
- b. DULB and the SI will determine which committee or executive level should logically be involved in resolution.
- c. A meeting or conference call will be conducted to resolve the issue in a timely manner. The documented issues will be distributed to the participants at least 24 hours prior to the discussion if the issue is not an emergency requiring immediate attention.
- d. The DULB and the SI shall develop an interim solution, if required, and subsequently the permanent solution for the problem at hand. The SI will then communicate the resolution to all interested parties.
- e. In case the issue is still unresolved, the arbitration procedures described in the Contract will be applicable.

40.7. SLA Change Control

40.7.1. General

1. It is acknowledged that this SLA may change as DULB's business needs evolve over the course of the contract period. This document also defines the following management procedures:
 - A process for negotiating changes to the SLA.
 - An issue management process for documenting and resolving difficult issues.

- DULB and SI management escalation process to be used in the event that an issue is not being resolved in a timely manner by the lowest possible level of management.
2. Any changes to the levels of service provided during the term of this Agreement will be requested, documented and negotiated in good faith by both parties. Either party can request a change. Changes will be documented as an addendum to this SLA and subsequently to the contract.
 3. If there is any confusion or conflict between this document and the contract, the RFP and its addenda, the Contract will supersede.

40.7.2. SLA Change Process

1. The parties may amend this SLA by mutual agreement in accordance with terms of this contract.
2. Changes can be proposed by either party. The SI can initiate an SLA review with the DULB. Normally, the forum for negotiating SLA changes will be DULB's monthly meetings. Unresolved issues will be addressed using the issue management process in this document.
3. The SI shall maintain and distribute current copies of the SLA document as directed by DULB. Additional copies of the current SLA will be made available at all times to authorized parties.

40.7.3. Version Control

All negotiated SLA changes will require changing the version control number. As appropriate, minor changes may be accumulated for periodic release (e.g. every quarter) or for release when a critical threshold of change has occurred.

40.8. Responsibilities of the Parties with respect to SLA

40.8.1. System Integrator

1. SI is responsible for executing this contract and delivering the services, while maintaining the specified performance targets.
2. Additionally the SI is responsible for:
 - Reporting problems to DULB as soon as possible
 - Assisting DULB in management of the SLA
 - Providing early warning of any organizational, functional or technical changes that might affect SI's ability to deliver the services.
 - Assisting DULB to address and resolve issues from time to time.

3. SI shall take immediate action to identify problems and follow up with appropriate action to fix them as quickly as possible

40.8.2. DULB

DULB is responsible for:

1. Reporting defects and problems to the SI as soon as possible
2. Assisting SI in management of the SLA
3. Providing early warning of any organizational, functional/ technical changes that might affect SI's ability to deliver services described in SLA.
4. Assisting SI to address and resolve issues from time to time

40.9. Penalties

1. The total quarterly deduction should not exceed 25% of the applicable fee.
2. Two consecutive quarterly deductions of more than 20 % of the applicable fee on account of any reasons will be deemed to be an event of default and termination.

40.10. Management Escalation Procedures & Contact Map

The purpose of this escalation process is to provide a quick and orderly method of notifying both parties that an issue is not being successfully resolved at the lowest possible management level. Implementing this procedure would mean that DULB and SI management are communicating at appropriate levels.

40.11. Escalation Procedure

Escalation should take place on an exception basis and only if successful issue resolution cannot be achieved in a reasonable time frame.

- Either DULB or SI can initiate the procedure
- The "moving party" should promptly notify the other party that management escalation will be initiated
- Management escalation will be defined as shown in the contact map below
- Escalation will be one level at a time and concurrently

40.12. Contact Map

Escalation Level	Department Representative with contact Details	SI* Representative with contact Details
Level 1: Project Manager		
Level 2: Project Director		
Level 3: Steering Committee		

****SI shall provide information for the following:***

- a) *Chief Executive Officer*
- b) *Project Manager*
- c) *Team Members/ Engineers*

40.13. Notes

- a. Annual review SLA will be done by DULB or by a Third Party Auditor appointed by DULB and appropriate modifications/amendments to the SLAs shall be carried out.
- b. Cascading effect (effect on multiple SLA criterions) of failure or non-performance of a particular project component on SLAs shall be avoided.
- c. "Additional Day" shall mean Calendar Day.
- d. "Scheduled operation time" means the scheduled operating hours of the System for the month.
- e. Maintenance schedule will be published by SI before the quarter starts for DULB approval. Downtime based on this schedule will be considered as "Maintenance downtime". All other downtime will be considered for penalty calculation unless specific approval is taken by DULB. DULB decision regarding all clauses will be final and binding on the SI.
- f. "System or application downtime" subject to the SLA, means accumulated time during which the System/ application is not available to the DULB's users or customers due to in-scope application failure, and measured from the time DULB and/or its customers/ vendors log a call with the SI help desk of the failure or the failure is known to the SI from the availability measurement tools to the time when

the System is returned to proper operation.

- g. The business hours are 9 AM to 6 PM (of same day) on any calendar day the DULB is operational. The SI however recognizes the fact that the offices will require to work beyond the business hours and holidays on need basis
- h. 24 * 7 shall mean round the clock on all days of the year.
- i. SLA will be monitored on a quarterly basis as per individual parameter requirements. However, if the performance of the system/services is degraded significantly at any given point during the tenure of the contract and if immediate measures are not implemented and issues are not rectified to the satisfaction of DULB, then DULB has the rights to take disciplinary action including termination of contract.
- j. Uptime will be computed based on availability of the applications to the DULB's users irrespective of availability of servers either individual servers/clusters.
- k. Response may be telephonic or onsite. In case the issue cannot be resolved telephonically, the SI will need to provide onsite assistance within response resolution window.
- l. However, if any additional hardware, software etc. is required for maintaining the SLA's & uptimes, then the same will be the responsibility of the SI.
- m. Service Levels should be complied with irrespective of the customizations that the applications would undergo during the tenure of the Contract
- n. Helpdesk support shall mean the 9*6 basis support centre which shall handle fault reporting, trouble ticketing and other related enquiries during the contract.
- o. Incident refers to any event/abnormalities in the functioning of data centre equipment/ services that may lead to disruption in normal operations of the data centre, system or application services.

41. Schedule – VI: Exit Management Schedule

41.1. Purpose

- 1. This Schedule sets out the provisions, which will apply on expiry or termination of the MSA, the Project Implementation, Implementation and Operations & Maintenance SLA.
- 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.
- 3. The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Schedule.

41.2. Transfer of Assets

1. DULB shall be entitled to serve notice in writing on the SI at any time during the exit management period as detailed hereinabove requiring the SI to provide the DULB with a complete and up to date list of the Assets within 30 days of such notice. DULB shall then be entitled to serve notice in writing on the SI at any time prior to the date, that is 30 days prior to the end of the exit management period requiring the SI to sell the Assets, if any, to be transferred to DULB 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. In case of contract being terminated by DULB, DULB reserves the right to ask SI to continue running the project operations for a period of 6 months after termination orders are issued.
3. Upon service of a notice under this Article the following provisions shall apply:
 - In the event, if the Assets to be transferred are mortgaged to any financial institutions by the SI ,the SI 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 DULB.
 - All risk and title to the Assets to be transferred / to be purchased by the DULB pursuant to this Article shall be transferred to DULB, on the last day of the exit management period.
 - DULB shall pay to the SI 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.
4. Payment to the outgoing SI shall be made to the tune of last set of completed services /deliverables, subject to SLA requirements.
5. The outgoing SI will pass on to DULB and/ or to the Replacement SI, the subsisting rights in any leased properties/ licensed products on terms not less favorable to DULB/ Replacement SI , than that enjoyed by the outgoing SI.

41.3. Cooperation and Provision of Information

During Exit Management period:

- a) The SI will allow the DULB 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 DULB to assess the existing services being delivered;
- b) Promptly on reasonable request by the DULB, the SI 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 (provided by the SI). The DULB shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. SI shall permit the DULB or its nominated

agencies to have reasonable access to its employees and facilities as reasonably required by the Chairman or DULB project management Unit to understand the methods of delivery of the services employed by the SI and to assist appropriate knowledge transfer.

41.4. Confidential Information, Security and Data

SI will promptly on the commencement of the exit management period supply to the DULB or its nominated agency the following:

- a) Information relating to the current services rendered and customer and performance data relating to the performance of SI in relation to the services;
- b) documentation relating to Project's Intellectual Property Rights;
- c) All current and updated data as is reasonably required for purposes of DULB or its nominated agencies transitioning the services to its Replacement SI.
- d) All required data and information in a readily available format nominated by the DULB or its nominated agency
- e) All other information (including but not limited to documents, records and agreements)
- f) Related to the services reasonably necessary to enable DULB or its nominated agencies, or its Replacement SI to carry out due diligence in order to transition the provision of the Services to DULB or its nominated agencies, or its Replacement SI (as the case maybe).
- g) Before the expiry of the exit management period, the SI shall deliver to the DULB or its nominated agency all new or up-dated materials as required by DULB and mentioned in the schedule and shall not retain any copies thereof, except that the SI shall be permitted to retain one copy of such materials for archival purposes only.
- h) Before the expiry of the exit management period, unless otherwise provided under the MSA, the DULB or its nominated agency shall deliver to the SI all forms of SI confidential information, which is in the possession or control of DULB, or its users.

41.5. Employees

- a) Promptly on reasonable request at any time during the exit management period, the SI shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the DULB or its nominated agency a list of all employees (with job titles) of the SI dedicated to providing the services at the commencement of the exit management period.
- b) Where any national, regional law or regulation relating to the mandatory or automatic

transfer of the contracts of employment from the SI to the DULB or its nominated agency, or a Replacement SI ("Transfer Regulation") applies to any or all of the employees of the SI, then the Parties shall comply with their respective obligations under such Transfer Regulations.

41.6. Transfer of Certain Agreements

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

41.7. Rights of Access to Premises

- a) At any time during the exit management period, where Assets are located at the SI's premises, the SI 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 DULB or its nominated agency and/or any Replacement SI in order to make an inventory of the Assets.
- b) The SI shall also give the DULB or its nominated agency or its nominated agencies, or any Replacement SI right of reasonable access to the SI's premises and shall procure the DULB or its nominated agency or its nominated agencies and any Replacement SI 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 DULB or its nominated agency, or a Replacement SI.

41.8. General Obligations of the Implementation Agency/ System Integrator/ SI

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

41.9. Exit Management Plan

- a) The SI shall provide the DULB 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 Implementation and Operations & Maintenance SLA.
 - A detailed program of the transfer process that could be used in conjunction with a Replacement SI 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.
 - Plans for the communication with such of the SI's staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the DULB's operations as a result of undertaking the transfer;
 - (if applicable) proposed arrangements for the segregation of the SI's networks from the networks employed by DULB and identification of specific security tasks necessary at termination;
 - Plans for provision of contingent support to DULB and Replacement SI for a reasonable period after transfer.
- b) The SI shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- c) Each Exit Management Plan shall be presented by the SI and shall be approved by the DULB or its nominated agencies.
- d) The terms of payment as stated in the Terms of Payment mentioned in the volume 1 of this RFP include the costs of the SI complying with its obligations under this Schedule.
- e) In the event of termination or expiry of MSA, and Project Implementation, each Party shall comply with the Exit Management Plan.
- f) During the exit management period, the SI shall use its best efforts to deliver the services.
- g) Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.
- h) This Exit Management plan shall be furnished in writing to the DULB or its nominated agencies within 90 days from the Effective Date of this Agreement.