

Master Service Agreement

For

ICT Logistics Solution

[Volume – 2]

IPR, Force Majeure, Obligations under SLA, Termination and Suspension, Liquidated Damages, Warranty,
Confidentiality, Insurance & Other Legal Terms for GSCSCL

16 February 2019

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SAMPLE MASTER SERVICES AGREEMENT

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

BETWEEN

----- Having its office at -----
----- India hereinafter referred to as ‘**The Gujarat State Civil Supplies Corporation Ltd. / ‘GSCSCL’**, which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the <Act Name >, having its registered office at <***> (hereinafter referred to as ‘**the Implementation Agency (IA)**’ which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

- GSCSCL is desirous for implementation of ICT enabled logistics management solution
- In furtherance of the same, GSCSCL undertook the selection of a suitable Implementation Agency through a competitive bidding process for implementing the Project and in this behalf issued Request for Proposal (RFP) dated <***> .
- The successful bidder has been selected as the Implementation Agency (IA) on the basis of the bid response Including all the documents submitted as part of the bid submission including technical bid, clarifications, and commercial bids received through reverse e-Auction of this Agreement, to undertake the Project of the development and implementation of the solution, its roll out and sustained operations and services.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

Other terms used in this Agreement are defined where they are used and have the meanings there indicated. Unless otherwise specifically defined, those 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.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and Annexures to this Agreement;
- (b) Words denoting singular use the plural and vice-versa and use of any gender includes the other genders;
- (c) references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (f) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight unless otherwise specified;
- (g) References to a '**Business day**' shall be construed as a reference to a day (other than Saturday, Sunday and other gazette holidays) on which GSCSCL or its nominated agencies/ partners is generally open for business at their respective locations.
- (h) references to times are to Indian Standard Time;
- (i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (j) All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- (k) Implementation Agency (IA) has been used for the same entity i.e. bidder selected for the project.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

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

1.5 Priority of documents

- (a) This Agreement, including its Schedules and Annexures, represents the entire agreement between the Parties as noted in this Clause. If in the event of a dispute as to the interpretation or meaning of this Agreement it should be necessary for the Parties to refer to documents forming part of the bidding process leading to this Agreement, then such documents shall be relied upon and interpreted in the following descending order of priority:
- This Agreement along with
 - the SLA agreement,
 - NDA
 - Schedules and Annexures;
 - the RFP along with subsequently issued corrigendum
 - Technical and commercial proposal submitted by the successful bidder, to the extent they along with subsequently issued clarifications furnished by the IA in response to the RFP, to the extent they are not inconsistent with any terms of the RFP
- (b) For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures / Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexures / Schedules and Annexures / Schedules shall prevail over the contents and specifications of the RFP.

2 SCOPE OF THE PROJECT

- a) The Implementation Agency shall be required to design, development, installation, configuration, customization, integration, testing, documentation, training and services for the end-to-end ICT Logistics Solution for the period of 5 Months for Implementation and 3 years for Operations, Maintenance, Support & Services from the date of Go-Live.
- b) The roles and responsibilities of the Parties under this Agreement have been set out in detail as Annexure D of this Agreement and RFP.
- c) For the avoidance of doubt, it is expressly clarified that this Agreement shall govern the provision of the contracted professional services under the SLA to GSCSCL and its nominated agencies. It is anticipated that new or renewal agreements may be undertaken by creating a separate SLA, with schedules and annexures as required, under this Agreement for each additional engagement.

2.1 Scope of work

As per the scope of work defined in volume 1 of the RFP.

3 TERM AND DURATION OF THE AGREEMENT

- (a) This Agreement shall come into effect on <*> (hereinafter the “Effective Date”) and shall, unless terminated earlier in accordance with its terms, expire on the date on which this Agreement expires, which shall be a period of THREE years from ‘Go-Live’ of Project and any extended period as notified by GSCSCL.
- (b) In the case of such extension of contract beyond the stipulated period, the warranties, Performance Bank Guarantee, Exit management protocol, insurance etc. shall be extended for equivalent period.
- (c) The Term, for the purposes of any payments to IA, does not include (a) any extension arising out of breach of any obligations by IA, (b) unless otherwise agreed, time duration for implementation of exit management plan.

4 CONDITIONS PRECEDENT & EFFECTIVE DATE

4.1 Provisions to take effect upon fulfilment of Conditions Precedent

- (a) Subject to express terms to the contrary, the rights and obligations under this Agreement (at any point of time during the course of the Agreement) shall take effect only upon fulfilment of all the Conditions Precedent set out below. However, GSCSCL may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the Implementation Agency. For the avoidance of doubt, it is expressly clarified that the obligations of the Parties (or its nominated agencies) under this Agreement shall commence from the fulfilment of the Conditions Precedent as set forth below.

4.2 Conditions

a. Conditions Precedent of the Implementation Agency

The Implementation Agency shall be required to fulfil the Conditions Precedent which are as follows:

- (i) to provide a Performance Security/Guarantee and other guarantees/ payments as and when required to GSCSCL or its nominated agencies; and
- (ii) to provide GSCSCL 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.

b. Conditions Precedent of GSCSCL

GSCSCL shall be required to fulfil the Conditions Precedent which are as follows:

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

For the avoidance of doubt, it is expressly clarified that the obligations of the Parties except the financial obligations of GSCSCL under this Agreement shall commence from the fulfilment of the Conditions Precedent as set forth above.

4.3 Extension of time for fulfilment of Conditions Precedent

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

4.4 Non-fulfilment of the Implementation Agency's Conditions Precedent

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

5 OBLIGATIONS UNDER THE SLA

- (a) The SLA shall be a separate contract in respect of this Agreement and shall be entered into concurrently with this Agreement between GSCSCL and Implementation Agency;
- (b) In relation to any future SLA entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein.

5.1 Change of Control

- (a) In the event of a change of control of the Implementation Agency during the Term, the Implementation Agency shall promptly notify GSCSCL of the same.
- (b) In the event that the net worth of the surviving entity is less than that of Implementation Agency prior to the change of control, GSCSCL may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the Implementation Agency from a guarantor acceptable to GSCSCL (which shall not be Implementation Agency or any of its associated entities).
- (c) If such a guarantee is not furnished within 30 days of GSCSCL requiring the replacement, GSCSCL may exercise its right to terminate the SLA and/ or this Agreement within a further 30 days by written notice, to become effective as specified in such notice.
- (d) Pursuant to termination, the effects of termination as set out in **Clause 15** of this Agreement shall follow.
- (e) For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Implementation Agency shall not be deemed an event of a change of control for purposes of this Clause unless the surviving entity is of less net worth than the predecessor entity.

5.2 Final testing and certification

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

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

6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and warranties of the Implementation Agency

The Implementation Agency represents and warrants to GSCSCL that:

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- (b) it is a competent provider of a variety of information technology and business process management services;
- (c) it has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (d) from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (e) in providing the Services, it shall use reasonable endeavours not to cause any unnecessary disruption to GSCSCL's normal business operations
- (f) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- (g) the information furnished in the tender documents and as updated on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement;
- (h) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (i) there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (k) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement;
- (l) no representation or warranty by it contained herein or in any other document furnished by it to GSCSCL in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and

- (m) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of GSCSCL in connection therewith.

6.2 Representations and warranties of GSCSCL

GSCSCL represent and warrant to the Implementation Agency that:

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

6.3 OBLIGATIONS OF GSCSCL

Without prejudice to any other undertakings or obligations of GSCSCL under this Agreement, GSCSCL shall perform the following:

- (a) To provide any support through personnel to test the system during the Term;
- (b) To provide any support through personnel and/or test data during development, rollout, steady state operation, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- (c) GSCSCL shall provide the data (including in electronic form wherever applicable/available) to be migrated.
- (d) To authorize the Implementation Agency to interact for implementation of the Project with external entities such as the authorized banks, trademark database etc.
- (e) Provide prompt Deliverable feedback: GSCSCL or its nominated agencies/ partners shall provide sign offs on the deliverable or its comments for changes. In case the GSCSCL or its nominated agencies/ partners fails to respond and provide feedback on above stated submission, the deliverables or SLA and performance reports will be deemed accepted. Any subsequent rework post acceptance/ deemed acceptance would form the subject of a formal change request under the provisions of this Agreement.

6.4 OBLIGATIONS OF THE IMPLEMENTATION AGENCY

- (a) It shall provide to GSCSCL or its nominated agencies/ partners, the Deliverables as set out in Annexure C of this Agreement.
- (b) It shall perform the Services as set out in Volume I of the tender and in a good and workmanlike manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, and so as to comply with the applicable Service Levels set out with this Agreement.
- (c) It shall ensure that the Services are being provided as per the Project Timelines set out in the RFP Volume - 1.

7 APPROVALS AND REQUIRED CONSENTS

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

8 USE OF ASSETS BY THE IMPLEMENTATION AGENCY

During the Term the Implementation Agency shall:

- (a) take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the Implementation Agency exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the “**Assets**”) in proportion to their use and control of such Assets; and
- (b) keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Implementation Agency takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- (c) ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Implementation Agency will be followed by the Implementation Agency and any person who will be responsible for the use of the Assets;
- (d) take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Implementation Agency or as may, in the reasonable opinion of the Implementation Agency, be necessary to use the Assets in a safe manner;
- (e) ensure that the Assets that are under the control of the Implementation Agency, are kept suitably housed and in conformity with Applicable Law;
- (f) procure permission from GSCSCL and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- (g) not, knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.
- (h) use best efforts to ensure that no lien, mortgage, hypothecation or any other charge is created over the Assets. IA agrees that IA will inform GSCSCL immediately if IA 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 GSCSCL, GSCSCL shall have the right to get the charge removed at the risk, cost, expense of the IA and IA shall make good all losses, damages, costs, fees, cess, duties, etc. borne or suffered by GSCSCL due to creation of such charge and/or in removal of such charge and/or in discharging the obligations for removal of such charge.

9 ACCESS TO GSCSCL or It's Nominated Agencies'/ Partners' LOCATIONS

- (a) For so long as the Implementation Agency provides services to GSCSCL location, as the case may be, on a non-permanent basis and to the extent necessary, GSCSCL as the case may be shall, subject to compliance by the Implementation Agency with any safety and security guidelines which may be provided by GSCSCL as the case may be and notified to the Implementation Agency in writing, provide the Implementation Agency with:
- reasonable access with prior approval of GSCSCL, in the same manner granted to GSCSCL employees, to GSCSCL as the case may be location twenty-four hours a day, seven days a week;
 - reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other GSCSCL as the case may be location, if any, as may be reasonably necessary for the Implementation Agency to perform its obligations hereunder and under the SLA.
- (b) Access to locations, office equipment and services shall be made available to the Implementation Agency on an "as is, where is" basis by GSCSCL as the case may be. The Implementation Agency agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in RFP for the following purposes:
- for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
 - 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 MANAGEMENT PHASE

10.1 Governance

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

10.2 Use of Services

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

10.3 Changes

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

10.4 Security and Safety

- (a) The Implementation Agency shall comply with the technical requirements of the relevant security, safety and other requirements specified in the Information Technology Act or Telegraph Act including the regulations issued by dept. of telecom (wherever applicable), IT Security Manual of GSCSCL as specifically stated in the RFP and follow the industry standards related to safety and security (including those as stated in the RFP), insofar as it applies to the provision of the Services/Deliverables under this Agreement.
- (b) Each Party to the SLA/Agreement shall also comply with GSCSCL or the Government of India's security standards and policies in force from time to time at each location of which GSCSCL make the Implementation Agency aware in writing insofar as the same apply to the provision of the Services.
- (c) The Parties to the SLA/Agreement shall use reasonable endeavours to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with GSCSCL as the case may be or any of their nominees data, facilities or Confidential Information.
- (d) The Implementation Agency shall upon reasonable request by GSCSCL as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- (e) As per the provisions of the SLA or this Agreement, the Implementation Agency shall promptly report in writing to GSCSCL, 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 GSCSCL as the case may be.

10.5 Cooperation

Except as otherwise provided elsewhere in this Agreement or the SLA, each Party ("**Providing Party**") to this Agreement or to the SLA undertakes promptly to provide the other Party ("**Receiving Party**") with all such information and co-operation which the Receiving Party reasonably requests, provided that such information and co-operation:

- (a) does not require material expenditure by the Providing Party to provide the same;

- (b) is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement or the SLA;
- (c) cannot be construed to be Confidential Information; and
- (d) is capable of being provided by the Providing Party.

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

11 FINANCIAL MATTERS

11.1 Terms of Payment and Service Credits and Debits

- (a) In consideration of the Services and subject to the provisions of this Agreement and of the SLA, GSCSCL shall pay the Implementation Agency for the Services rendered in pursuance of this Agreement, in accordance with the Terms of Payment Schedule set out as Schedule VI of this Agreement.
- (b) Payments shall be subject to the application of liquidated damages (for period prior to “Go Live”) or SLA penalties and its adjustments/corrections (for post “Go-Live”) as may be provided for in the Agreement and the SLA from the relevant milestone(s).
[Note: GSCSCL (on request from successful bidders) can look at having a separate mechanism for settling penalties/ service credits rather than the set off against the invoice as this could revenue recognition issues. However, the successful bidder has to ensure that such settlement happens within a stipulated timeframe]
- (c) Save and except as otherwise provided for herein or as agreed between the Parties in writing, GSCSCL shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the Implementation Agency performance of any obligations under this Agreement or the SLA) other than those covered in Schedule VI of this Agreement. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.

11.2 Invoicing and Settlement

- (a) Subject to the specific terms of the SLA, the Implementation Agency shall submit its invoices in accordance with the following principles:
 - (i) GSCSCL shall be invoiced by the Implementation Agency for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the Implementation Agency shall raise an invoice as per Schedule VI of this Agreement; and
 - (ii) Any invoice presented in accordance with this clause shall be in a form as agreed with GSCSCL.

- (b) The Implementation Agency alone shall invoice all payments after receiving due approval of completion of payment milestone from the competent authority. Such invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in Schedule VI of this Agreement. The Implementation Agency shall waive any charge for a Service that is not invoiced within six months after the end of the month in which the charge relating to such Service is (i) applicable or (ii) incurred or (iii) approved, whichever is later. IA shall provide details of such waivers on request from competent authority.
- (c) Payment shall be made within 30 working days of the receipt of invoice along with supporting documents by GSCSCL subject to deduction of applicable liquidated damages and/or service credits/debits. The penalties are imposed on the Implementation Agency as per the penalty criteria specified in the SLA.
- (d) GSCSCL shall be entitled to delay or withhold payment of any invoice or part of it delivered by the Implementation Agency under Schedule VI of this Agreement where GSCSCL disputes/withholds such invoice or part of it provided that such dispute is bona fide. The withheld amount shall be limited to that which is in dispute. The disputed / withheld amount shall be settled in accordance with the escalation procedure as set out in Schedule IV of this Agreement. Any exercise by GSCSCL under this Clause shall not entitle the Implementation Agency to delay or withhold provision of the Services.
- (e) The Implementation Agency shall be solely responsible to make payment to its consortium members and sub-contractors.

11.3 Tax

- (a) GSCSCL or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the Implementation Agency wherever applicable. The Implementation Agency shall pay for all other taxes in connection with this Agreement, SLA, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.
- (b) GSCSCL or its nominated agencies shall provide Implementation Agency with the original tax receipt of any withholding taxes paid by GSCSCL or its nominated agencies on payments under this Agreement. The Implementation Agency agrees to reimburse and hold GSCSCL 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 GSCSCL, the Implementation Agency and third party subcontractors.
- (c) If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by GSCSCL for providing the goods and services i.e. GST / service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the Implementation Agency in performing the Services, then the remuneration and reimbursable expense otherwise payable to the IA under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule VI. However, in case of any new or fresh tax or levy imposed after submission of the proposal the IA shall be entitled to reimbursement on submission of proof of payment of such tax or levy.

- (d) The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with the following:
 - (i) any resale certificates;
 - (ii) any relevant information regarding out-of-state or use of materials, equipment or services; and
 - (iii) any direct pay permits, exemption certificates or information reasonably requested by the other Party

12 ACCEPTANCE OF DELIVERABLES AND TESTING

12.1 Acceptance of Deliverables

- (a) The successful completion of the Project requires the acceptance by GSCSCL of all Deliverables prepared and delivered pursuant to the Project. Upon completion of a Deliverable, Implementation Agency will notify GSCSCL in writing that the Deliverable has been completed and, in the case of Deliverables constituted of software, hardware and networking (“Operational Deliverables”), tested and/or certified as being ready for acceptance (“Ready for Acceptance”) by GSCSCL. Promptly after receiving such notice, GSCSCL will evaluate the Deliverable for acceptance in accordance with specific provisions provided in the RFP. The acceptance process outlined below shall not be deemed to extend the Timelines / scheduled completion date for any Deliverable specified in the RFP.

12.2 Acceptance Procedure

Acceptance by GSCSCL (“Acceptance”) requires that the Deliverables be confirmed in writing by GSCSCL to meet applicable acceptance criteria (“Acceptance Criteria”) which, in the case of Operational Deliverables, will include the successful completion of agreed acceptance and performance testing and, in the case of the System as a whole, will include meeting the specifications, performance standards and functional requirements set out in the RFP. In the case of Deliverables that are component parts of the System, in addition to acceptance of the component Deliverables, the System will also be subject to Acceptance in its entirety. Implementation Agency shall prepare and propose the test procedures, which shall be described in the Acceptance Criteria for each Deliverable and shall be subject to agreement by GSCSCL. While designing the acceptance test procedures the requirements as mentioned in volume II of RFP need to be adhered. The Acceptance tests and test procedures shall be sufficiently broad in scope and rigorous so as to verify that the System and all other Deliverables meet all applicable specifications, acceptance criteria and performance requirements, including assurance that the Deliverables and the System meet such tests of operational integrity as may be reasonably required by GSCSCL. In the case of the System, the Acceptance tests shall consist of unit tests, a system test, and/or stress test. Acceptance procedures for written Deliverables (which are all Deliverables other than Operational Deliverables) and Operational Deliverables are as follows:

(a) Written Deliverables:

- i. The Implementation Agency may submit interim drafts of written Deliverables (e.g., system designs and documentation) to GSCSCL for review. GSCSCL agrees to review each interim draft within a reasonable period of time after receiving it from the Implementation Agency. When the Implementation Agency delivers a final written Deliverable to GSCSCL, GSCSCL will have the opportunity to review such written Deliverable for an acceptance period as is stated in the RFP or the agreed Project Plan (the "Acceptance Period"). In all cases, GSCSCL's obligation to review a written Deliverable within the applicable Acceptance Period will be contingent on such written Deliverable being delivered to GSCSCL as scheduled. If and to the extent any written Deliverable is delivered earlier or later than scheduled, the Acceptance Period for such written Deliverable shall be extended as reasonably necessary to accommodate the availability of GSCSCL personnel responsible for reviewing such Deliverable. Similarly, if and to the extent multiple written Deliverables are delivered to GSCSCL within an Acceptance Period, the Acceptance Period for all such written Deliverables shall be extended as reasonably necessary to accommodate the availability of GSCSCL personnel responsible for reviewing them.
- ii. GSCSCL agrees to notify the Implementation Agency in writing by the end of the Acceptance Period either stating that the applicable written Deliverable is accepted / rejected in the form delivered by the Implementation Agency or describing with reasonable particularity any deficiencies that must be corrected prior to acceptance of such written Deliverable. If the Implementation Agency does not receive any such notice from GSCSCL by the end of the Acceptance Period, the Implementation Agency shall promptly notify GSCSCL in writing that no such notice has been received. If the Implementation Agency does not receive the required notice within stipulated time as per the RFP or Project Plan after GSCSCL receives such written notification from the Implementation Agency, such written Deliverable will be deemed to be accepted by GSCSCL.
- iii. If GSCSCL delivers to the Implementation Agency a timely notice of rejection/deficiencies, the Implementation Agency will correct the described deficiencies as quickly as possible and, in any event, within ten (10) days after GSCSCL notifies the Implementation Agency of the rejection/deficiencies (unless otherwise specified in the agreed Project Plan). Upon receipt of a corrected written Deliverable from the Implementation Agency, GSCSCL will have a stipulated timeline to review the corrected written Deliverable.

(b) Operational Deliverables:

- i. To the extent not already specified in the RFP or agreed Project Plan, prior to the date on which the Implementation Agency is scheduled to deliver each Operational Deliverable to GSCSCL, both the Implementation Agency and GSCSCL will agree upon the testing procedures for the Operational Deliverable, including without limitation detailed test cases and expected results (the "Acceptance Tests"). The Acceptance Tests will be designed to determine whether the Operational Deliverable contains any defects. GSCSCL will have the opportunity during the Acceptance Period to evaluate and test each Operational Deliverable in accordance with the following procedures by executing the Acceptance Tests.

- ii. When the Implementation Agency has completed an Operational Deliverable, it will deliver the Operational Deliverable at the Installation Site (if not already there), install such Deliverable (if not already installed), and perform an installation test reasonably acceptable to GSCSCL to verify that the Deliverable has been properly delivered and installed. The Implementation Agency shall notify GSCSCL when the Operational Deliverable is 'Ready for Acceptance', provided that, unless otherwise agreed, such notice shall not occur prior to the successful completion by the Implementation Agency of any installation tests. Such notice will start the Acceptance Period, which will be as is stated in the RFP or agreed Project Plan. As was the case with written Deliverables, GSCSCL's obligation to review any Operational Deliverable within the applicable Acceptance Period will be contingent on such Operational Deliverable being delivered to GSCSCL as scheduled. If and to the extent any Operational Deliverable is delivered earlier or later than scheduled, the Acceptance Period for such Operational Deliverable shall be extended as reasonably necessary to accommodate the availability of the GSCSCL personnel responsible for reviewing such Operational Deliverable. Similarly, if and to the extent multiple Operational Deliverables are delivered to GSCSCL within an Acceptance Period, the Acceptance Period for all Operational Deliverables shall be extended as reasonably necessary to accommodate the availability of the GSCSCL personnel responsible for reviewing them.
- iii. GSCSCL shall notify the Implementation Agency in writing by the end of the Acceptance Period stating that the Operational Deliverable is accepted/rejected in the form delivered by the Implementation Agency or describing the defects. If the Implementation Agency does not receive any notice of defects from GSCSCL by the end of the Acceptance Period, the Implementation Agency shall promptly notify GSCSCL in writing that no such notice was received. If Implementation Agency does not receive a notice of defects within as is stated in the RFP or agreed Project Plan after GSCSCL receives such written notification from the Implementation Agency, such Operational Deliverable will be deemed accepted by GSCSCL.
- iv. If GSCSCL determines during the Acceptance Period that the Operational Deliverable as delivered by the Implementation Agency deviates from its approved specifications or otherwise fails to successfully complete applicable Acceptance Tests (or a defect), GSCSCL will inform the Implementation Agency in writing, describing the defect(s) in sufficient detail to allow the Implementation Agency to recreate/rectify them. The Implementation Agency will correct any defects in an Operational Deliverable as quickly as possible after receiving GSCSCL's notice of the defects and, in any event, within as is stated in the RFP or agreed Project Plan after receiving such notice (unless otherwise specified in the Project Plan/RFP), and provide the corrected Operational Deliverable to GSCSCL for re-testing within time as is stated in the RFP or agreed Project Plan.
- v. GSCSCL will have a reasonable additional period of time after receipt of the corrected Operational Deliverable to re-test it so as to confirm its proper functioning. The Implementation Agency will correct any further defects identified by GSCSCL during the re-test as quickly as possible, but in no event more than ten (10) days after GSCSCL notifies the Implementation Agency of the further defects, unless otherwise specified in the agreed Project Plan or RFP or agreed by GSCSCL.

(c) Correction of Deficiencies in Deliverables:

- i. The Implementation Agency is unable to correct all deficiencies preventing Acceptance of a Deliverable for which it is responsible after a reasonable number of repeated efforts (but not more than three (3), GSCSCL may at its election:
 - allow the Implementation Agency to continue its efforts to make corrections; or

- accept the Deliverable with its Deficiencies and deduct such proportionate amounts from the Implementation Agency's fees as deemed appropriate by GSCSCL; or
- terminate this Agreement for cause in accordance with the procedures set forth in Clause 15 (except that GSCSCL is under no obligation to provide the Implementation Agency any further opportunity to cure) and recover its damages subject to the limitations set forth in this Agreement.

12.3 Acceptance

GSCSCL shall be deemed to have accepted the Deliverables and/or System upon the date of delivery to the Implementation Agency by GSCSCL of a notice (the "Acceptance Notice") to that effect.

13 TERMINATION AND SUSPENSION

13.1 Material Breach

- (a) In the event that either Party believes that the other Party is in Material Breach of its obligations under this Agreement, such aggrieved Party may terminate this Agreement upon giving a one month's notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, GSCSCL or Implementation Agency, as the case may be will have the option to terminate the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events and the termination will become effective:
- (i) If the Implementation Agency is not able to deliver the services as per the SLAs defined in RFP which translates into Material Breach, then GSCSCL may serve a 30 days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, GSCSCL will have the option to terminate this Agreement. Further, GSCSCL may after affording a reasonable opportunity to the Implementation Agency to explain the circumstances leading to such a breach.
 - (ii) If there is a Material Breach by the Purchaser or its nominated agencies which results in not providing support for effecting data migration or not providing the certification of User Acceptance then the Implementation Agency will give a one month's notice for curing the Material Breach to the Purchaser. After the expiry of such notice period, the Implementation Agency will have the option to terminate the Agreement.
- (b) GSCSCL may by giving a one month's written notice, terminate this Agreement if a change of control of the Implementation Agency has taken place. For the purposes of this Clause, in the case of Implementation Agency, change of control shall mean the events stated in Clause 5, and such notice shall become effective at the end of the notice period as set out in Clause 5.1 (c).
- (c) In the event that Implementation Agency undergoes such a change of control, GSCSCL may, as an alternative to termination, require a full Performance Guarantee for the obligations of Implementation Agency by a guarantor acceptable to GSCSCL or its nominated agencies. If such a guarantee is not furnished within 30 days of GSCSCL's demand, GSCSCL may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the Implementation Agency.
- (d) The termination provisions set out in this Clause shall apply mutatis mutandis to the SLA.

13.2 Termination for Convenience

- (a) GSCSCL may at any time terminate the Contract for any reason by giving the Implementation Agency a notice of termination by giving 90 days prior written notice that refers to this clause
- (b) Upon receipt of the notice of termination under this clause, the IA shall either as soon as reasonably practical or upon the date specified in the notice of termination:
- cease all further work, except for such work as GSCSCL may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
 - terminate all subcontracts, except those to be assigned to GSCSCL pursuant to Sub-Clause (d) below;

- (c) remove all IA's Equipment from the site, repatriate the IA's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
- (d) in addition, the IA shall:
 - deliver to GSCSCL the parts of the System executed by the IA up to the date of termination;
 - to the extent legally possible, assign to GSCSCL all right, title, and benefit of the IA to the System, or Subsystem, as at the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the IA and its Subcontractors;
 - deliver to GSCSCL all non-proprietary drawings, specifications, and other documents prepared by the IA or Consortium Members or its Subcontractors as of the date of termination in connection with the System.

13.3 Effects of termination

- (a) In the event that GSCSCL terminates this Agreement pursuant to failure on the part of the Implementation Agency to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by Implementation Agency may be forfeited.
- (b) Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule III of this Agreement.
- (c) In the event that GSCSCL or the Implementation Agency terminates this Agreement, the compensation will be decided in accordance with the Exit Management Schedule set out as Schedule III of this Agreement.
- (d) GSCSCL agrees to pay Implementation Agency for
 - all charges for Services Implementation Agency provides and any Deliverables and/or system (or part thereof) Implementation Agency delivers through termination, and
 - reimbursable expenses Implementation Agency incurs through termination. If GSCSCL terminates without cause, GSCSCL also agrees to pay any applicable adjustment expenses Implementation Agency incurs as a result of such termination (which Implementation Agency will take reasonable steps to mitigate).
- (e) Any and all payments under this clause shall be payable only after the Implementation Agency has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of GSCSCL. In case of expiry of the Agreement, the last due payment shall be payable to the Implementation Agency after it has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of GSCSCL.
- (f) In the event of termination of the Contract under Clause 13.2, GSCSCL shall pay to the IA the following amounts:
 - the Contract Price, properly attributable to the parts of the System executed by the IA as of the date of termination;
 - the costs reasonably incurred by the IA in the removal of the IA's Equipment from the site and in the repatriation of the IA's and its Subcontractors' personnel;

- any amount to be paid by the IA to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
- costs incurred by the IA in protecting the System and leaving the site in a clean and safe condition pursuant to Clause 13.2; and
- the cost of satisfying all other obligations, commitments, and claims that the IA may in good faith have undertaken with third parties in connection with the Contract and that are not covered by Clause 13.3 (d) above.

13.4 Termination of this Agreement due to bankruptcy of Implementation Agency

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

13.5 Suspension

- a) The Implementation Agency shall, if ordered in writing by GSCSCL, temporarily suspend the performance of any services or any part thereof under this Agreement for such specified/ ordered period and time. GSCSCL shall inform the Implementation Agency about such suspension at least 30 days in advance. The Implementation Agency shall not be entitled to claim compensation for any loss or damage sustained by it by reason of such temporary suspension of the work for a continuous period of 30 days. GSCSCL may consider suitable compensation to the Implementation Agency in event of suspension extending beyond a continuous period of 30 days. An extension of time for completion, corresponding with the delay caused by any such suspension of the works as aforesaid shall be granted to the Implementation Agency, if written request for the same is made. In case the suspension of works lasts for a period of more than 3 months, the Implementation Agency shall have the right to request GSCSCL to pay reasonable immobilization and mobilization charges as may be consented to by GSCSCL.
- b) In the event that GSCSCL suspends the progress of work for a period in excess of 30 days in aggregate, rendering the Implementation Agency to extend its performance guarantee then GSCSCL shall bear only the cost of extension of such bank guarantee for such extended period restricted to the normal bank rates as applicable in the banking procedures subject to the Implementation Agency producing the requisite evidence from the bank concerned.
- c) GSCSCL may suspend this Agreement only (i) prior to giving consent to the Implementation Agency for purchase of goods and production licenses; and (ii) after the Go-Live.
- d) Notwithstanding the foregoing in clause 16, Order for Infrastructure items including Hardware, Software licenses and other system software etc. shall be placed by the Implementation Agency only after receipt of written confirmation from GSCSCL in this regard. GSCSCL may request the Implementation Agency for deferment of procurement of such components for maximum period of twelve months. In such case the Implementation Agency will be paid a pre-defined maintenance cost for the application support and the team deployed. In case GSCSCL requests for deferment of procurement of infrastructure the timelines will extend accordingly. Also, the SLA relating to infrastructure will apply from the date when GSCSCL gives intimation to the Implementation Agency to start procurement.

14 INDEMNIFICATION & LIMITATION OF LIABILITY

- a) Implementation Agency (the "Indemnifying Party") undertakes to indemnify GSCSCL (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 wilful default in performance or non-performance under this Agreement.
- b) 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.
- c) Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by
 - Indemnified Party's misuse or modification of the Service;
 - Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party;
 - Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party;
 - 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
 - procure the right for Indemnified Party to continue using it,
 - replace it with a non-infringing equivalent,
 - modify it to make it non-infringing. The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.
- d) The indemnities set out in Clause 14 shall be subject to the following conditions:
 - (i) the Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
 - (ii) the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense;
 - (iii) if the Indemnifying Party does not assume full control over the Defense of a claim as provided in this Article, the Indemnifying Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses;
 - (iv) the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
 - (v) all settlements of claims subject to indemnification under this Clause will:

- a. be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and
 - b. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
 - (vi) the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
 - (vii) the Indemnified Party shall take steps that the Indemnifying Party may reasonably require mitigating or reduce its loss as a result of such a claim or proceedings;
 - (viii) in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defences of the Indemnified Party with respect to the claims to which such indemnification relates; and
 - (ix) if a Party makes a claim under the indemnity set out under Clause 14 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).
- e) The liability of either Party (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 exceed one time the total contract value payable under this Agreement. The liability cap given under this Clause 14.3 shall not be applicable to the indemnification obligations set out in Clause 16 and breach of clause 12 - 'Safety and Security' and clause 18 - 'Confidentiality'.
 - f) 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 14) even if it has been advised of their possible existence.
 - g) The allocations of liability in this Clause 14 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.

15 FORCE MAJEURE

15.1 Definition of Force Majeure

The Implementation Agency or GSCSCL as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by an event of force majeure ("Force Majeure"). "Force Majeure" shall mean any event beyond the reasonable control of GSCSCL or of the IA, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected.

15.2 Force Majeure events

- a) A Force Majeure shall include, without limitation, the following:
 - war, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
 - strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
 - earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
- b) If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.
- c) The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The time for achieving Final Acceptance shall be extended.
- d) The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under Clause 15.
- e) No delay or non-performance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:
 - constitute a default or breach of the Contract;
 - give rise to any claim for damages or additional cost or expense occasioned by the delay or non-performance,if, and to the extent that, such delay or non-performance is caused by the occurrence of an event of Force Majeure.

- f) If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.
- g) In the event of termination pursuant to Clause 15, the rights and obligations of GSCSCL and the IA shall be as specified in the clause titled Termination.
- h) Notwithstanding Clause 15.2 (e), Force Majeure shall not apply to any obligation of GSCSCL to make payments to the IA under this Contract.
- i) For the avoidance of doubt, it is expressly clarified that the failure on the part of the IA under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking aren't the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure". In so far as applicable to the performance of Services, Implementation Agency will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).

16 CONFIDENTIALITY

- a) GSCSCL or its nominated agencies shall allow the Implementation Agency to review and utilize highly confidential public records and the Implementation Agency shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- b) Additionally, the Implementation Agency shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- c) GSCSCL shall retain all rights to prevent, stop and if required take the necessary punitive action against the Implementation Agency regarding any forbidden disclosure.
- d) The Implementation Agency shall execute a corporate non-disclosure agreement with GSCSCL in the format provided by GSCSCL and shall ensure that all its employees, agents and sub-contractors involved in the project execute individual non-disclosure agreements, which have been duly approved by GSCSCL with respect to this Project.
- e) For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:
 - information already available in the public domain;
 - information which has been developed independently by the Implementation Agency;
 - information which has been received from a third party who had the right to disclose the aforesaid information;
 - Information which has been disclosed to the public pursuant to a court order.
- f) To the extent the Implementation Agency shares its confidential or proprietary information with GSCSCL for effective performance of the Services, the provisions of the Clause 15. shall apply mutatis mutandis on GSCSCL.

- g) Notwithstanding anything to the contrary mentioned hereinabove, the IA shall have the right to share the Letter of Intent / work order provided to it by GSCSCL in relation to this Agreement, with its prospective purchasers solely for the purpose of and with the intent to evidence and support its work experience under this Agreement.

17 AUDIT, ACCESS AND REPORTING

- a) The Implementation Agency shall allow access to GSCSCL to all information which is in the possession or control of the Implementation Agency and which relates to the provision of the Services as set out in the Audit, Access and Reporting Schedule and which is reasonably required by GSCSCL to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule III of this Agreement. Such audit rights shall be conducted once in six months.

18 INTELLECTUAL PROPERTY RIGHTS

- a) Products and fixes: All products and related solutions and fixes provided pursuant to this work order shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. Implementation Agency would be responsible for arranging any licenses associated with products. "Product" means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to GSCSCL for license which is published by product owner or its affiliates, or a third party. "Fixes" means product fixes that are either released generally (such as commercial product service packs) or that are provided to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.
- b) Bespoke development: Subject to the provisions of Clause 18 (c) and 18 (d) below, upon payment, the IPR rights for any bespoke development done during the implementation of the project will lie with GSCSCL.
- c) Pre-existing work: All IPR including the source code and materials developed or otherwise obtained independently of the efforts of a party under this Agreement ("pre-existing work") including any enhancement or modification thereto shall remain the sole property of that party. During the performance of the services for this agreement, each party grants to the other party (and their sub-contractors as necessary) a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the Implementation Agency should grant GSCSCL a non-exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to GSCSCL as part of the service or deliverables only for its internal business operations. Under such license, either of parties will have no right to sell the pre-existing work of the other party to a Third Party. GSCSCL's license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that bidder leaves with GSCSCL at the conclusion of performance of the services.

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

19 WARRANTY

19.1 Standard:

- a) The IA warrants that the Project, including all the system(s), materials and goods supplied pursuant to the Agreement, shall be free from any defect or deficiency in the material, design, engineering, and workmanship that prevent the system 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 system and/or any of its sub-system(s). Commercial warranty provisions of products supplied under the Agreement shall apply to the extent they do not conflict with the provisions of this Agreement.
- b) The IA also warrants that the products, materials and other goods supplied under the Agreement are new, unused and incorporate all recent improvements in design that materially affect the system's or subsystem's ability to fulfill the functional and technical requirements specified in the RFP.
- c) In addition, the IA warrants that all Goods components to be incorporated into the System form part of the IA/OEM's and/or Subcontractor's current product lines.
- d) The warranty period shall commence from the date of Final Acceptance of the entire system (From the Date of Go-Live as per Volume 1 of RFP) or on expiry of the products commercial warranty, whichever is earlier and shall extend for as follows:

Component	Period
Hardware	Till the end of Agreement
Packaged / COTS Software	1 year post completion of the agreement
Bespoke Software	1 year post completion of the agreement

- e) If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services provided by the IA, the IA shall promptly, in consultation and agreement with Purchaser, and at the Implementation Agency's sole cost repair, replace, or otherwise make good (as the IA shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the system caused by such default, defect or deficiency. Any defective component, excluding hard disks, that has been replaced by the IA shall remain the property of the IA.
- f) The IA may, with the consent of GSCSCL, remove from the site any product and other goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, GSCSCL may give the IA notice requiring that tests of the defective part be made by the IA immediately upon completion of such remedial work, whereupon the IA shall carry out such tests. If such part fails the tests, the IA shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by GSCSCL and the IA.

- g) If the IA fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within a reasonable time period, GSCSCL may, following notice to the IA, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by GSCSCL in connection with such work shall be paid to GSCSCL by the IA or may be deducted by the GSCSCL from any amount due to the IA.
- h) If the System or any of its sub-systems 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 GSCSCL because of such defect and/or making good of such default, defect or deficiency.
- i) Items substituted for defective parts of the System during the Warranty Period shall be covered by the Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.
- j) The IA shall have no liability in the case of breach of this warranty due to (i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the IA, (ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the IA; (iii) the deliverables having been tampered with, altered or modified by GSCSCL without the written permission of IA, or (iv) use of the deliverables otherwise than in terms of the relevant documentation
- k) 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.
- l) The Implementation Agency shall have no liability in the case of breach of this warranty due to (i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the Implementation Agency, (ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the Implementation Agency; (iii) the deliverables having been tampered with, altered or modified by GSCSCL without the written permission of the Implementation Agency, or (iv) use of the deliverables otherwise than in terms of the relevant documentation.

19.2 LIQUIDATED DAMAGES

- a) Time is the essence of the Agreement and the delivery dates are binding on the IA. In the event of delay or any gross negligence in implementation of the project before Go-Live, for causes solely attributable to the IA, in meeting the deliverables, GSCSCL shall be entitled at its option to recover from the IA as agreed, liquidated damages, as defined in SLA for each completed week or part thereof subject to a limit of 10% of the total contract value.
- b) The Parties agree that SLA penalties defined in the Service Level Agreement are liquidated damages and that the deduction of any Service Credit by GSCSCL shall be it's exclusive monetary remedy for failure of IA to meet the Service Levels and is in full and final settlement of any claim which GSCSCL may have for Losses caused by the failure to meet a Service Level to which a Service Credit applies, provided that this Clause shall not limit the exercise by GSCSCL of its rights to terminate the Agreement for Material Breach and the associated consequences of termination.

19.3 Escrow Agreement

- a) IA shall comply with the escrow provisions below for all Bespoke Development & customized codes as defined within the RFP (including subcontractor-owned materials and other Third Party Material incorporated in IA's Proprietary Material) , except to the extent IA demonstrates to the satisfaction of the GSCSCL that compliance is not permitted by the nature of IA's limited rights in such material.
- b) Within ninety (90) days after GSCSCL'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, configurational 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 Implementation Agency'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. 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").
- c) IA will make its initial deposit of Source Code within fifteen (15) days after the effective date of the Escrow Agreement.
- d) IA 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 GSCSCL shall be entitled to obtain the deposited materials from escrow upon the GSCSCL's making a proper claim for release from escrow in the event that (c) proper written notice is given to the Escrow Agent that release of the copy of the deposited materials is pursuant to applicable GSCSCL bankruptcy, insolvency, reorganization, or liquidation statute; (d) IA files articles of dissolution (but not if IA is consolidated or merged into another entity); (e) the Contract expires or terminates for Material Breach of IA.
- e) The release of deposited materials from escrow shall not confer upon GSCSCL 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 GSCSCL from escrow, GSCSCL shall use the deposited materials solely for the benefit of GSCSCL and its constituents.
- f) The release of materials from escrow, without more, shall not cause any further amounts to accrue as payable to IA by GSCSCL, and the term of the GSCSCL's possessory and usage rights with respect to the released materials shall be perpetual.
- g) 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 GSCSCL and the GSCSCL's subsequent confirmation of compliance with the terms of the Escrow Agreement. IA 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.

20 INSURANCE COVER

20.1 Obligation to maintain insurance

In connection with the provision of the Services, the Implementation Agency must have and maintain

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

20.2 Certificates of currency

The Implementation Agency must, on request by GSCSCL, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 20. The Implementation Agency agrees to replace any coverage prior to the date of expiry/cancellation.

20.3 Non-compliance

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

21 MISCELLANEOUS

21.1 Personnel

- (a) The personnel assigned by Implementation Agency to perform the Services shall be employees of Implementation Agency or its subcontractor(s), and under no circumstances shall such personnel be considered employees of GSCSCL. The Implementation Agency shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.

- (b) The Implementation Agency shall use its best efforts to ensure that sufficient Implementation Agency personnel are assigned to perform the Services and those personnel have appropriate qualifications to perform the Services. After discussion with Implementation Agency, GSCSCL shall have the right to require the removal or replacement of any Implementation Agency personnel performing work under this Agreement based on bonafide reasons. In the event that GSCSCL requests that any Implementation Agency personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.
- (c) In the event that GSCSCL and Implementation Agency identify any personnel of Implementation Agency as “Key Personnel”, then the Implementation Agency shall not remove such personnel from the Project without the prior written consent of GSCSCL unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.
- (d) Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of Implementation Agency to freely assign or reassign its employees; provided that Implementation Agency shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. GSCSCL shall have the right to review and approve Implementation Agency’s plan for any such knowledge transfer. Implementation Agency shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.
- (e) Each Party shall be responsible for the performance of all its obligations under this Agreement or the SLA as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- (f) Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.

21.2 Independent Contractor

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

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

21.3 Sub-contractors

Except the work permitted to be sub-contracted (As per RFP Volume-1), Implementation Agency shall not subcontract any work without GSCSCL's prior written consent. However, the Implementation Agency shall provide the list of all the other services planned to be sub contracted, within 30 days of signing the Agreement. It is clarified that the Implementation Agency shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The Service provider undertakes to indemnify GSCSCL from any claims on the grounds stated hereinabove. Notwithstanding the sub-contracting, the Implementation Agency shall remain solely responsible for and liable for successful delivery of Deliverables and accomplishment of the Project.

21.4 Assignment

- (a) All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of GSCSCL and their respective successors and permitted assigns.
- (b) Subject to Clause 4.4, the Implementation Agency shall not be permitted to assign its rights and obligations under this Agreement to any third party.
- (c) GSCSCL may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Implementation Agency shall be a party to such novation, to any third party contracted to provide outsourced services to GSCSCL or any of its nominees.

21.5 Trademarks, Publicity

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

21.6 Notices

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

MR. XXXXX

<< ADDRESS>>

Email:

With a copy to:

Implementation Agency

Tel:

Fax:

Email:

Contact:

- (c) In relation to a notice given under the MSA / SLA, a Party shall specify the Parties' address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause.
- (d) Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.30 am and 6.00 pm at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter) or if sent by email.
- (e) Either Party to this Agreement or to the SLA may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

21.7 Variations and Further Assurance

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

21.8 Severability and Waiver

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

achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.

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

21.9 Compliance with Applicable Law

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

21.10 Professional Fees

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

Ethics

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

21.11 Entire Agreement

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

21.12 Amendment

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

22 GOVERNING LAW AND DISPUTE RESOLUTION

- (a) This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement and the performance of the parties contemplated under this Agreement, to the extent that such convention might otherwise be applicable.
- (b) Any dispute arising out of or in connection with this Agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as Schedule V of this Agreement.
- (c) In case the escalations do not help in resolution of the problem within 3 weeks of escalation, both the parties should agree on a mediator for communication between the two parties. The process of the mediation would be as follows:
 - Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.
 - The mediator shall use his best endeavors to conclude the mediation within a certain number of days of his appointment.
 - If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to Experts for advising on the issue.
- (d) In case the mediation does not help in resolution and it requires expertise to understand an issue, a neutral panel of 3 experts, agreeable to both parties should be constituted. The process of the expert advisory would be as follows:
 - Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the timeframe and requesting for expert advisory. This is to be sent with a copy to the mediator.
 - Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute
 - The expert panel shall use his best endeavors to provide a neutral position on the issue.
 - If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.
- (e) Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the Arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of New Delhi, India. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such

differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held Delhi, India. Any legal dispute will come under the sole jurisdiction of New Delhi, India

- (f) Compliance with laws: Each party will comply with all applicable export and import laws and regulations.
- (g) Risk of Loss: For each hardware item, Implementation Agency bears the risk of loss or damage up to the time it is delivered to the Implementation Agency/GSCSCL-designated carrier for shipment to GSCSCL or GSCSCL's designated location.
- (h) Third party components: Implementation Agency will provide all third party components solely on a pass-through basis in accordance with the relevant third party terms and conditions.

IN WITNESS WHEREOF the Parties have by duly authorized

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

Written in the presence of:

WITNESSES:

Signed by:

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

(FIRST PARTY)

Signed by:

(Name and designation)

IMPLEMENTATION AGENCY

(SECOND PARTY)

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

Signed by:

23 SCHEDULES

23.1 SCHEDULE I – DEFINITIONS

Term	Definition
“Bidder” or “IA” or “Lead Bidder”	Could be interchangeably used and it essentially Means the Organization who is fully responsible towards TMC for providing turnkey solution for Supply, Installation, Implementation, Maintenance, and Operations of Software system, maintaining third party DR services and provide related services as per the requirements and terms and conditions specified in this tender / contract. The term SI shall be deemed to include the SI's successors, representatives (approved by the Purchaser), heirs, executors, administrators and permitted assigns, as the case may be, unless excluded by the terms of the contract
Adverse Effect	Means material adverse effect on <ol style="list-style-type: none"> 1. the ability of the Implementation Agency to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or 2. the legal validity, binding nature or enforceability of this Agreement;
Agreement	Means this Master Services Agreement, Service Level Agreement and Non-Disclosure Agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP; In the event of a conflict between this Agreement and the Schedules, the terms of the Agreement shall prevail;
Applicable Law(s)	Means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
Assets	Means any data, information, deliverable, solutions, services, products and materials tangible or intangible that are procured, produced, developed, installed, maintained and serviced in due course of delivering the scope of Service provided by the Service Provider / System Integrator as per the requirements of the Volume I, II, III of this RFP
Bidder	Means the Organization(s) on whose behalf the tender response has been submitted. In case of Consortium, it shall mean the Organization responsible for meeting all obligations of the Tender / Contract and shall necessarily be the System Integrator.
Business Day	Means any day that is not a Sunday or a public holiday and starts at 9.30 AM.
Business Hours	Shall mean the working time for GSCSCL users. For Web Server and other components which enable successful usage of web portals of GSCSCL the working time should be considered as 24 hours for all the days of the week. It is desired that IT maintenance, other batch processes (like backup) etc. should be planned so that such backend activities have minimum effect on the performance;
Commercial Off-The-Shelf ('COTS')	refers to software products that are readymade and available for sale, lease, or license to the general public

Confidential Information	Means all information including project 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 (whether a Party to this Agreement or to the SLA) 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 or the SLA);
Contract	Means the Tender and all Annexes thereto, the Agreement entered into between the selected Bidder together with the Purchaser as recorded in the Contract form signed by the Purchaser and the Bidder including all Annexes thereto and the agreed terms as set out in the bid, all documents incorporated by reference therein and amendments and modifications to the above from time to time.
Contract Value	Means the price payable to the bidder under this Contract for the full and proper performance of its contractual obligations. The Contract Value shall be equal to the total Bid Price
Control	Means, in relation to any business entity, the power of a person to secure <ol style="list-style-type: none"> 1. by Means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or 2. by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person's wishes and in relation to a partnership, Means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;
Deliverables	Means the products, infrastructure and services agreed to be delivered by the Implementation Agency in pursuance of the agreement as listed in volumes I, II and III of the RFP and defined more elaborately in the Volumes I and II of the RFP in relation to the Implementation and the Maintenance phases and includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related), inter alia payment and/or process related etc., source code and all its modifications;
Document	Means any embodiment of any text or image however recorded and includes any data, text, images, sound, voice, codes or and databases or microfilm or computer generated micro fiche
Effective Date	Means the date on which this Contract comes into force. This Contract shall come into force and effect on the date (the "Effective Date") of the Purchaser's notice to the IA instructing the IA to begin carrying out the activities.
Final Acceptance Test	Shall be conducted on completion of the following: <ol style="list-style-type: none"> 1. Data Center operational, 2. Deployment & operational hardware and networking at requisite locations, 3. UAT of the overall integrated solution

Go-Live	Means commissioning and integration of all the hardware including Data Center, Disaster Recovery Center, the networks, the client side computing devices and all the software applications, including the COTS product configured, customized and used successfully by all the intended users of GSCSCL for the scope of work as defined in the RFP
Intellectual Property Rights	Means and includes all rights in the Bespoke Software, its improvements, upgrades, enhancements, modified versions that may be made from time to time, database generated, compilations made, source code and object code of the software, the said rights including designs, copyrights, trademarks, patents, trade secrets, moral and other rights therein.
Intellectual Property Rights ('IPR')	Means any patent, copyright, trademark, trade name, service marks, brands, propriety information, Application Software whether arising before or after the execution of this Contract and the right to ownership and registration of these rights.
Material Breach	Means a breach by either Party (GSCSCL or Implementation Agency) of any of its obligations under this Agreement which has or is likely to have an Adverse Effect on the Project which such Party shall have failed to cure;
Original Equipment Manufacturer ('OEM')	Means the owner of the IPR or manufacturer of Goods for any equipment / system / software / product which is providing such goods to the Purchaser under the scope of this Tender / Contract
Parties	Means GSCSCL and Implementation Agency for the purposes of this Agreement and " Party " shall be interpreted accordingly;
Performance Bank Guarantee	"Performance Guarantee" and "Performance Bank Guarantee" shall mean the guarantee provided by a Nationalized / Scheduled Bank to GSCSCL on behalf of the Implementation Agency for the amount specified in -as specified in respective Sections of the Volume I of the RFP
Planned Application Downtime	Means the unavailability of the application services due to maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure wherein prior intimation (at least two working days in advance) of such planned outage shall be given and approval sought from GSCSCL as applicable;
Project	Means entire scope of work as envisaged in the Volumes I, II and III of the RFP including Design, Development, Implementation, Operations, Management and Maintenance across all the locations as envisaged in the RFP and as per the terms and conditions laid down in the RFP and services in conformance to the SLA
Project Data	Means all proprietary data of the project generated out of project operations and transactions, documents and related information including but not restricted to user data which the Implementation Agency obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement and the SLA;
Project Implementation	Means Project Implementation as per the testing standards and acceptance criteria prescribed by GSCSCL or its nominated agencies;

Purchaser	Means Indian Ports Association (GSCSCL)
Replacement Implementation Agency	Means any third party that GSCSCL or its nominated agencies appoint to replace Implementation Agency upon expiry of the Term or termination of this Agreement or the SLA to undertake the Services or part thereof;
Required Consents	Means the consents, waivers, clearances and licenses to use GSCSCL's Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the software and other items that GSCSCL or their nominated agencies are required to make available to Implementation Agency pursuant to this Agreement;
Selected Bidder	Means the Organization(s) selected by Purchaser as a result of the tendering process described in this tender document
Service Level	Means the level of service and other performance criteria which will apply to the Services delivered by the Service provider as set out in the SLA
Services	Means the services delivered to the Stakeholders of GSCSCL or its nominated agencies, employees of GSCSCL or its nominated agencies, and to professionals or stakeholders as defined in Volumes I, II and III of the RFP, using the tangible and intangible assets created, procured, installed, managed and operated by the Implementation Agency including the tools of information and communications technology and includes but is not limited to the list of services specified in Volume I and Volume II of the RFP
SLA	Means the Performance and Maintenance SLA executed by and between Implementation Agency and GSCSCL, in terms of the Service Level Requirements as per the model set out in this Agreement;
Software	Means the software designed, developed / customized, tested and deployed by the Implementation Agency for the purposes of the rendering the Services to the Stakeholders of the Project and includes the source code (in case of Bespoke development) along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products except for the customization components on such products (including the COTS products used for the product), proprietary software components and tools deployed by the Implementation Agency and which, i.e., the bespoke software, shall be solely owned by the GSCSCL.
Third Party Systems	Means systems (or any part thereof) in which the Intellectual Property Rights are not owned by GSCSCL or Implementation Agency and to which Implementation Agency has been granted a license to use and which are used in the provision of Services.
System	Means all of the components under the scope of this contract together as an integrated solution
Goods	Means all of the equipment, sub-systems, hardware, software, products accessories and/or other material / items which the Bidder is required to supply, install and maintain under the contract.

Data	Means all information required for the system operations Or generated out of operations and transactions including but not restricted to user data which the Implementation Agency obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement
Bespoke Software	Means is custom or tailor-made software developed for the Purchaser
Deliverables	Means the products, infrastructure and services agreed to be delivered by the Implementation Agency in pursuance of the agreement as defined more elaborately in the RFP, Implementation and the Maintenance phases and includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related), inter alia payment and/or process related etc., source code and all its modifications;
Software	Means the software designed, developed / customized, tested and deployed by the Implementation Agency for the purposes of the Project and includes the source code (in case of Bespoke development) along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products (including the COTS products used for the product), proprietary software components and tools deployed by the Implementation Agency
Service	Means the services delivered to the Stakeholders of Purchaser or its nominated agencies, employees of Purchaser or its nominated agencies, and to professionals, using the tangible and intangible assets created, procured, installed, managed and operated by the Implementation Agency including the tools of information and communications technology.

23.2 SCHEDULE II – CHANGE CONTROL SCHEDULE

- a) This Schedule describes the procedure to be followed in the event of any proposed change to the Master Service Agreement (“MSA”), Project Implementation Phase, SLA and Scope of Work and Functional Requirement Specifications. Such change shall include, but shall not be limited to, changes in the scope of services provided by the Implementation Agency and changes to the terms of payment as stated in the Terms of Payment Schedule.
- b) GSCSCL and IA recognize that frequent change is an inevitable part of delivering services and that a significant element of this change can be accomplished by re-organizing processes and responsibilities without a material effect on the cost. The IA will endeavor, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and GSCSCL will work with the Implementation Agency to ensure that all changes are discussed and managed in a constructive manner. This Change Control Schedule sets out the provisions which will apply to all the changes to this agreement and other documents except for the changes in SLAs for which a separate process has been laid out in the SLA Agreement.

a. CHANGE CONTROL NOTE ("CCN")

- (i) Change requests in respect of the MSA, the Project Implementation, the operation, the SLA or Scope of work and Functional Requirement specifications will emanate from the Parties' respective Project Manager who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached as Annexure A hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the CCN.
- (ii) The IA and GSCSCL, during the Project Implementation Phase and GSCSCL during the Operations and Management Phase and while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the RFP and is suggested and applicable only after the testing, commissioning and certification of the Pilot Phase and the Project Implementation Phase as set out in this Agreement.
- (iii) It is hereby also clarified here that any change of control suggested beyond 15 % 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 15 % of the value of the Project as stated in herein above is calculated on the basis of bid value submitted by the Implementation Agency and accepted by GSCSCL or its nominated agencies or as decided and approved by GSCSCL or its Nominated Agencies. For arriving at the cost / rate for change up to 15% of the project value, the payment terms and relevant rates as specified in Annexure D shall apply.
- (iv) The SLAs defined in this contract are subject to modifications/amendments in view of the annual review or to meet any other project requirements. Any such change in SLA will not be considered as a change request.

b. Quotation

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

c. Costs

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

d. Obligations

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

23.3 SCHEDULE III - EXIT MANAGEMENT SCHEDULE

1. PURPOSE

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

2. TRANSFER OF ASSETS

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

3. COOPERATION AND PROVISION OF INFORMATION

- 3.1. During the exit management period:

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

4. CONFIDENTIAL INFORMATION, SECURITY AND DATA

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

5. EMPLOYEES

- 5.1. Promptly on reasonable request at any time during the exit management period, the Implementation Agency shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to GSCSCL or its nominated

agency a list of all employees (with job titles) of the Implementation Agency dedicated to providing the services at the commencement of the exit management period.

- 5.2. Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the Implementation Agency to GSCSCL or its nominated agency, or a Replacement Implementation Agency ("Transfer Regulation") applies to any or all of the employees of the Implementation Agency, then the Parties shall comply with their respective obligations under such Transfer Regulations.

6. TRANSFER OF CERTAIN AGREEMENTS

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

7. RIGHTS OF ACCESS TO PREMISES

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

expiry of the MSA as is reasonably necessary to migrate the services to GSCSCL or its nominated agency, or a Replacement Implementation Agency.

8. GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

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

9. EXIT MANAGEMENT PLAN

- 9.1. The Implementation Agency shall provide GSCSCL or its nominated agency with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the MSA as a whole and in relation to the Project Implementation, and the Operation and Management SLA.
 - (i) A detailed program of the transfer process that could be used in conjunction with a Replacement Implementation Agency including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
 - (ii) plans for the communication with such of the Implementation Agency's sub-contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on GSCSCL's operations as a result of undertaking the transfer;
 - (iii) (if applicable) proposed arrangements for the segregation of the Implementation Agency's networks from the networks employed by GSCSCL and identification of specific security tasks necessary at termination;
 - (iv) Plans for provision of OEM support for the hardware and software components and any other contingent support for a period of 9 months after the expiry or termination of the contract period as the case may be.
- 9.2. The Implementation Agency shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- 9.3. Each Exit Management Plan shall be presented by the Implementation Agency to and approved by GSCSCL.
- 9.4. The terms of payment as stated in the Terms of Payment Schedule include the costs of the Implementation Agency complying with its obligations under this Schedule.
- 9.5. In the event of termination or expiry of MSA, and Project Implementation, each Party shall comply with the Exit Management Plan.
- 9.6. During the exit management period, the Implementation Agency shall use its best efforts to deliver the services.

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

23.4 SCHEDULE IV - AUDIT, ACCESS AND REPORTING

1. PURPOSE

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

2. AUDIT NOTICE AND TIMING

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

3. ACCESS

The Implementation Agency shall provide to GSCSCL or its nominated agency reasonable access to employees, subcontractors, suppliers, agents and third party facilities as detailed in the RFP, documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The Chairperson, PIU / Steering Committee shall have the right to copy and retain copies of any relevant records. The Implementation Agency shall make every reasonable effort to co-operate with them.

4. AUDIT RIGHTS

- 4.1. GSCSCL or its nominated agency shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in the RFP), data centres, documents, records, procedures

and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:

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

5. AUDIT RIGHTS OF SUB-CONTRACTORS, SUPPLIERS AND AGENTS

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

6. ACTION AND REVIEW

- 6.1. Any change or amendment to the systems and procedures of the Implementation Agency, or sub-contractors, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- 6.2. Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to GSCSCL or its nominated agency and the Implementation Agency Project Manager

who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the MSA.

7. TERMS OF PAYMENT

The IA shall bear the cost of any audits and inspections as per the scope of work defined in Volume –II of the RFP. The terms of payment are exclusive of any costs of the Implementation Agency and the sub-contractor, for all reasonable assistance and information provided under the MSA, the Project Implementation, Operation and Management SLA by the Implementation Agency pursuant to this Schedule.

8. RECORDS AND INFORMATION

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

23.5 SCHEDULE V - GOVERNANCE SCHEDULE

1. PURPOSE

The purpose of this Schedule is to:

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

2. GOVERNANCE STRUCTURE

- 2.1. Project Managers: The relationship under this Agreement will be managed by the Project Managers appointed by each Party, who will provide the interface between the executive management of the respective Parties.
- 2.2. Project Implementation Unit (PIU): Within 7 days following the Effective Date, GSCSCL, Project Consultant and the Implementation Agency shall each appoint a Project Manager. In the event that either Party wishes to substitute its Project Manager it will do so in manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within 7 days of the substitution.
- 2.3. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
- 2.4. The PIU will meet formally on a fortnightly / monthly / quarterly, as required, basis at a time and location to be agreed between them. These meetings will cover, as a minimum, the following agenda items: (i) consideration of Quarterly Performance Reports; (ii) consideration of matters arising out of the Change Control Schedule; (iii) issues escalated in accordance with the escalation procedure as set out in the Governance Schedule; (iv) matters to be brought before the PIU in accordance with the MSA and the Schedules; (v) any matter brought before the PIU by the Implementation Agency under this Article; and (vi) any other issue which either Party wishes to add to the agenda.
- 2.5. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in the Terms of Payment Schedule, the Parties agree to discuss in the PIU any appropriate amendment to the Agreement or any Service Level Agreements or Statement of Works including any variation to the terms of payment as stated in the Terms of Payment Schedule. Any variation so agreed shall be implemented through the change control procedure as set out in the Change Control Schedule.

3. GOVERNANCE PROCEDURES

- 3.1. The Implementation Agency shall document the agreed structures in a procedures manual.
- 3.2. The agenda for each meeting of the PIU 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 PIU, along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.

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

23.6 SCHEDULE VI - TERMS OF PAYMENT SCHEDULE

As per the payment terms defined in volume 1 of RFP.

24 ANNEXURES

24.1 ANNEXURE A – FORMAT FOR CHANGE CONTROL NOTICE

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

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

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

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

24.2 ANNEXURE B - NON-DISCLOSURE AGREEMENT

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

BETWEEN

----- having its office at -----
----- India hereinafter referred to as '**GSCSCL**' or '-----', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the Companies Act, 1956, having its registered office at <***> (hereinafter referred to as '**the Implementation Agency/IA**' which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

1. GSCSCL is desirous to implement the project of -----.
2. GSCSCL and Implementation Agency have entered into a Master Services Agreement dated <***> (the "MSA") as well as a Service Level Agreement dated <***> (the "SLA") in furtherance of the Project.
3. Whereas in pursuing the Project (the "**Business Purpose**"), a Party ("Disclosing Party") recognizes that they will disclose certain Confidential Information (as defined hereinafter) to the other Party ("Receiving Party").
4. Whereas such Confidential Information (as defined hereinafter) belongs to Receiving Party as the case may be and is being transferred to the Disclosing Party to be used only for the Business Purpose and hence there is a need to protect such information from unauthorized use and disclosure.

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Implementation
Agency by: GSCSCL

SIGNED, SEALED AND DELIVERED

For and on behalf of the Nodal
Agency by:

(Signature)

(Name): Shri.

(Signature)

(Name)

(Designation):

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

In the presence of:

- 1.
- 2.

24.3 ANNEXURE C - DELIVERABLES

Deliverables as defined In RFP Volume – 1

24.4 ANNEXURE D - ROLES AND RESPONSIBILITIES OF THE PARTIES

Roles and Responsibilities of Implementation Agency

- Understand, Design, Development, Installation, Configuration, Integration, Testing, Documentation, standard operating process, Key decision documents and Training for all concerned stakeholders
- Management and tracking of each vehicle movement for first and last mile delivery.
- Reporting of movement, estimated time of arrival and/or delays, breaches, ratings and delivery confirmation.
- Integration with CM Dashboard, ePDS, iPDS, eFPS or any other systems
- Support and Maintenance of entire system environment during the Contract Period for a period of 3 years extendable upto 2 years
- Share Software integration codes such as middleware, API and any other software utility as used by service provide and required by GSCSCL.
- Develop and define key process improvements and cost saving opportunities.
- Any other requirements that could arise during operations for effective governance and to meet any administrative requirement related to project.

Roles and Responsibilities of GSCSCL

- Provide adequate space at the GSCSCL HQ, for Support, Maintenance, Reporting and Movement Monitoring & other activities to be carried out by the IA.
- Coordination between all the govt. authorities / departments for providing necessary information for the study and development / customization of the necessary solution.
- Coordinate with IA for conducting workshops/training for the Stakeholders.
- Provide the data available in the form of physical files or existing databases to the selected IA
- Monitoring of overall timelines, SLAs and calculation of penalties accordingly.
- Issuing the Acceptance Certificate on successful deployment of the software application,
- Any other requirements that could arise during operations for effective governance and to meet any administrative requirement.
- To create internal capacity now for execution of the project after takeover from the bidder.
- Ensuring the staff members and other stakeholders attend the training programs as per the schedule defined by the IA and agreed upon by GSCSCL.
- Provide sign off on the deliverables of the project including SRS, design documents etc.