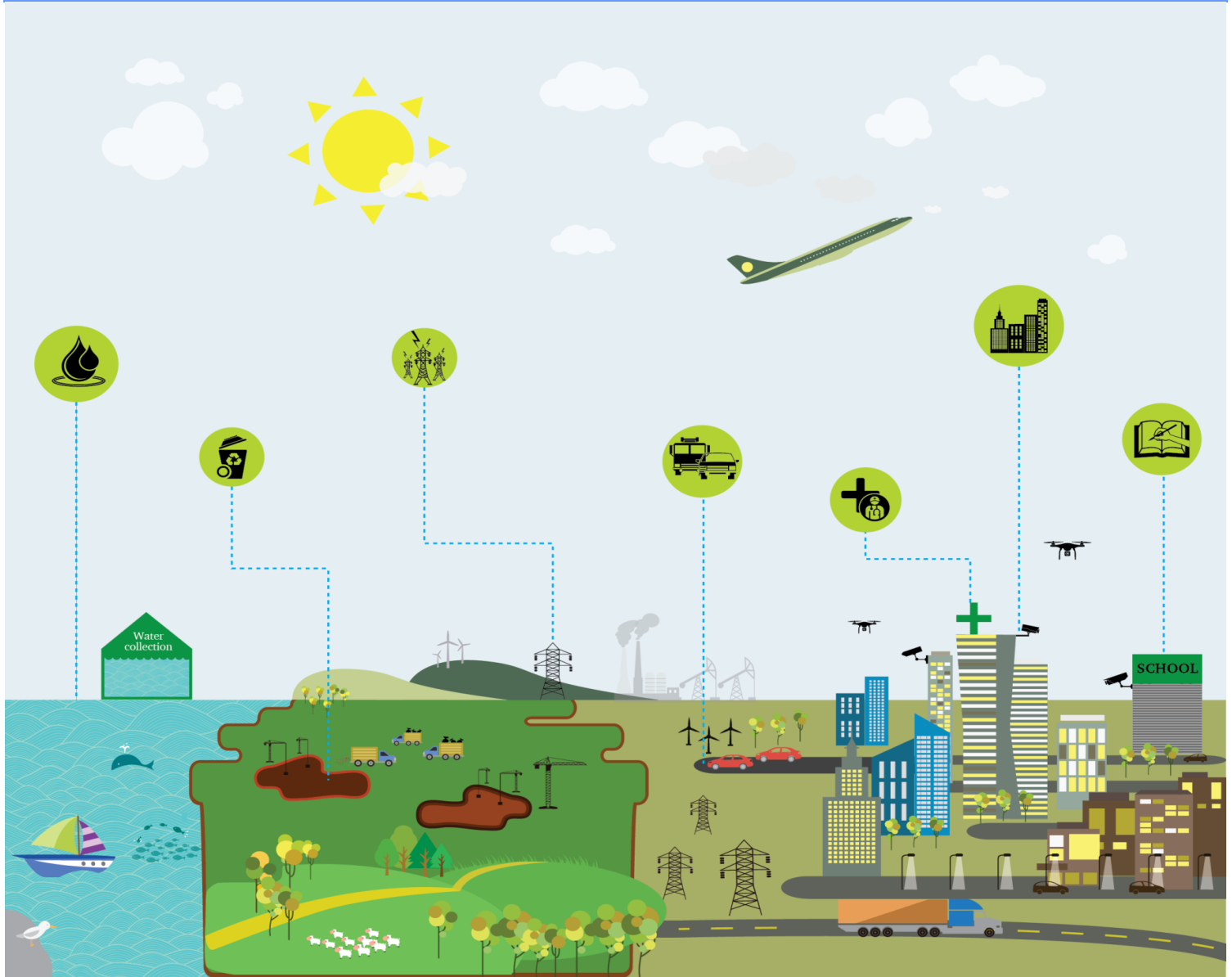


Request for Proposal *for* Selection of Master System Integrator for Naya Raipur Smart City System



Modified RFP

Volume III – Master Service Agreement

RFP No-112/SMARTCITY/CE(E)/NRDA/2016-17, Naya Raipur

Dated: 06-10-2016



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MASTER SERVICES AGREEMENT

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

BETWEEN

Naya Raipur Development Authority, statutory body under _____, having its registered office at _____ (hereinafter called the “NRDA”, which expression shall, unless the context otherwise requires, include its successors and permitted assigns);

AND

<<’Implementing Partner full name’>>, a Company incorporated under the Companies Act, 1956, having its registered office at <<’Regd Location’>> (hereinafter referred to as <<’the Implementation Partner/ Lead Bidder / MSI’>> which expression shall, unless the context otherwise requires, include its successors and permitted assigns).

AND

[Name and details of consortium member]

AND

[Name and details of consortium member]

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

WHEREAS:

1. Naya Raipur Development Authority is desirous of implementing the Naya Raipur Smart City project (hereinafter referred to as the ‘Project’);
2. In furtherance of the same, NRDA undertook the selection of a suitable Implementation Partner through a competitive bidding process for implementing the Project and in this regard issued a Request for Proposal bearing Reference Numberdated <<’Date’>> and subsequent corrigendum/addendum thereto (hereinafter together referred to as the ‘RFP’);
3. The Implementation Partner has been selected as the successful bidder on the basis of the proposal submitted by Implementation Partner in response of the RFP as set out in Annexure (hereinafter referred to as the ‘Proposal’, which term shall include all clarifications and additional documents submitted by Implementation Partner with reference to the Proposal), to undertake the Project of the development and implementation of the Naya Raipur Smart City solutions, its roll out and sustained operations and has been informed about the same vide NRDA letter dated (hereinafter referred to as the ‘Letter of Award’);
4. Parties now wish to enter into this Agreement to govern their mutual rights and obligations with respect to provision of goods and services and implementation of the Project.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties intend to be bound legally by the terms and conditions agreed in this Agreement, for implementation of the Project, NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: :

1. Definitions and Interpretations

1.1. Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out in Schedule I of this Agreement or as defined in other volumes of the RFP. 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:

- I. references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- II. words denoting the singular include the plural and vice versa and use of any gender includes the other genders;
- III. references to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- IV. 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);
- V. 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;
- VI. any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- VII. references to a 'business day' shall be construed as a reference to a day (other than a Sunday) on which banks in Delhi are generally open for business;
- VIII. references to times are to Indian Standard Time;
- IX. 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;
- X. all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement;
- XI. Unless otherwise specified a reference to a clause number is a reference to all its sub-clauses; and
- XII. A reference to the Agreement shall, unless the context otherwise requires, include a reference to its Annexures, Schedules and every other documents forming part of this Agreement. If a term of this Agreement requires things to be done, undertaken or completed under the Agreement, the same, if relevant, shall, unless the context otherwise require, mean to include such things to be done, undertaken or completed under the relevant Schedules, Annexures of this Agreement.

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:

- I. 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;
- II. as between the provisions of the RFP and any corrigendum/addendum issued thereafter, the provisions of corrigendum/addendum shall, to that extent only, prevail over the corresponding earlier provision of RFP;
- III. 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;
- IV. As between the provisions of this Agreement and the RFP and the Proposal, this Agreement shall prevail;
- V. As between the provisions of the RFP and the Proposal, unless otherwise decided by NRDA, the RFP shall prevail; and
- VI. as between any value written in numerals and that in words, the value in words shall prevail.

1.5. Documents forming part of this Agreement

This Agreement, including its Schedules and Annexures, represents the entire agreement between the Parties. The following documents shall be deemed to form and be read and constructed as part of the Agreement viz.:

- I. This Agreement along with the Schedules;
- II. Request for Proposal and corrigendum/addendum to the Request for Proposal (if any)
- III. The Proposal submitted by the Implementation Partner as accepted by NRDA along with any related documentation;
- IV. Letter of Award
- V. The Corporate Non-disclosure agreement, individual Non-disclosure document and any other document to be submitted by the Implementation Partner and appended to this Agreement.

2. Scope of the Project

In consideration of the award of the work under the RFP to the MSI and payments to be made by NRDA to the MSI as hereinafter mentioned, the MSI hereby covenants with the Purchaser to accomplish the Scope of Work (including provision of Goods and Services and to remedy defects therein) as provided in Volume 2 of the RFP and clarifications, annexures, schedules etc. thereof and to perform all obligations mentioned in all volumes of the RFP.

NRDA hereby covenants to pay the MSI in consideration of the accomplishment of Scope of Work and for performance of all obligations mentioned in the RFP, the Total Contract Value or such other sum as may become payable under the provisions of the Agreement at the times and in the manner prescribed under the Agreement.

3. Term and Duration of the Agreement

This Agreement shall come into effect on <<'Date'>> 20--- (insert the same date as "T" in the timelines) (hereinafter the 'Effective Date') and, unless terminated earlier as per the terms of this Agreement, shall continue for a period of 5 years from the date of Final Go-Live ("Term"). The Term may be extended by NRDA at the sole discretion of NRDA for a period of up to 2 (two) years (or part thereof) on mutually agreed terms and conditions.

4. Conditions Precedent & Effective Date

4.1. Payment Obligations to take effect upon fulfilment of Conditions Precedent

Subject to express terms to the contrary, the rights of the Implementation Partner to receive payments, and obligations of NRDA to make payment under this Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out below. Notwithstanding the foregoing, NRDA may at any time at its sole discretion waive fully or partially, in writing, any of the Conditions Precedent for the Implementation Partner provided no such waiver shall affect or impair any right, power or remedy that the Purchaser may otherwise have.

4.2. Conditions Precedent of the Implementation Partner

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

- I. The MSI shall, within 15 days after the receipt of Letter of Award from NRDA, furnish two (2) unconditional, irrevocable and continuing Performance Security/Guarantees to NRDA, each for an amount equal to 5% of the Total Value of Contract, from a nationalized bank in the format provided in Section 7.1 of Annexure 3 of Volume 1 of this RFP. The Performance Security shall be valid for entire Term and expiry of six months thereafter;
- II. The MSI provides an undertaking to NRDA to the effect that it has entered into all relevant back end contracts with OEMs whose products / services it has quoted in the Proposal;
- III. Furnishing of such other documents, including Corporate Non-Disclosure Agreement and any other documents related to this Agreement as NRDA may specify prior to the signing of this Agreement.

5. Obligations under the Service Level Agreements (SLAs)

- 5.1.** The MSI shall commence the performance of its obligations under the Agreement from Effective Date and shall proceed to provide Goods and carry out the Services with diligence and expedition in accordance with any stipulation as to the time, manner, mode, and method of execution contained in this Agreement. The MSI shall be responsible for and shall ensure that all the Goods and Services are performed in accordance with the specifications and that the MSI's team complies with such specifications and all other standards, terms and other stipulations/conditions set out hereunder.
- 5.2.** Any Goods to be supplied under this Agreement shall conform to the standards mentioned in the technical specifications given in the RFP, and, when no applicable standard is mentioned, to the authoritative standards, such standards shall be the latest issued by the concerned institution. Delivery of Goods shall be made by the MSI in accordance with the Agreement and the terms specified by the Purchaser in purchaser order. In case if it is found that the Goods provided by MSI do not meet one/ more criteria, the MSI shall remain liable to provide / deliver a replacement for the same which meets all the required specifications, at no additional cost to the Purchaser.
- 5.3.** The MSI shall keep all back end contracts with all OEMs, subcontractors etc. in force and up to date to ensure provision of goods and services as per the RFP and to meet all the SLAs.
- 5.4.** The Implementation Partner shall accomplish the scope of work under this Agreement as per the Timelines and as per the Service Levels mentioned in the RFP. If the Implementation Partner fails to achieve the Timelines due to reasons attributable to it (including its consortium members, agents, representatives and Implementation Partner's Team), or if it fails to achieve the Service Levels (in the SLAs) due to reasons solely attributable to the Implementation Partner (including its consortium members, agents, representatives and team), the Implementation Partner shall be liable to pay liquidated damages as per Annexure 1 of Volume 2 of the RFP. Payment of liquidated damages shall not be the sole and exclusive remedies available to NRDA and the Implementation Partner shall not be relieved from any obligations by virtue of payment of such liquidated damages. The liquidated damages will be capped as mentioned in Annexure 1 of Volume 2 of RFP. If the liquidated damages cross the cap on liquidated damages mentioned in Annexure 1 of Volume 2 of RFP, NRDA shall have the right to terminate affected work/part of the Agreement for breach and consequences for such termination as provided in this Agreement shall be applicable.

5.5. Final testing and certification

Except as otherwise provided in Section 7 of Volume 2 of the RFP, the Project shall be governed by the mechanism of final acceptance testing and certification to be put into place by NRDA and Implementation Partner as under:

- I. 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 network 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;
- II. 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;

- III. Final testing and certification criteria will consider conducting specific tests on the software, hardware, network, security and all other aspects;
- IV. Final testing and certification criteria will establish appropriate processes for notifying the Implementation Partner of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the Implementation Partner to take corrective action; etc.

6. Representations and Warranties

6.1. Representations and warranties of the Implementation Partner

The Implementation Partner and each consortium member represents and warrants to NRDA

- I. 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;
- II. it is a competent provider of a variety of Smart City Solutions as envisaged under this Agreement;
- III. 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;
- IV. That it has the power and the authority that would be required to enter into this Agreement and the requisite experience, the technical know-how and the financial wherewithal required to successfully execute the terms of this Agreement and to provide services sought by the NRDA under this Agreement;
- V. That it has the professional skills, personnel, infrastructure and resources/ authorizations that are necessary for providing all such services as are necessary to fulfil the scope of work stipulated in the RFP and this Agreement;
- VI. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- VII. 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;
- VIII. the information furnished in the Proposal is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement and no material information related to the requirements of the RFP has been concealed;
- IX. 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;
- X. 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;
- XI. 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;

- XII. 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;
- XIII. no representation or warranty by it contained herein or in any other document furnished by it to NRDA 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
- XIV. 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 NRDA in connection therewith.

6.2. Representations and warranties of NRDA

NRDA represent and warrant to the Implementation Partner that:

- I. 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;
- II. 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;
- III. it has the financial standing and capacity to perform its obligations under the Agreement;
- IV. 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;
- V. 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;
- VI. 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;
- VII. 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 NRDA 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;
- VIII. it has complied with Applicable Laws in all material respects.
- IX. it warrants that all software, information, data, materials, and other assistance (“CUSTOMER Materials”/ NRDA Materials”) provided by it to the MSI will not infringe the intellectual property rights of any third parties. Further, NRDA has the rights and is otherwise authorized to deliver the CUSTOMER Material and to grant the rights and licenses to the MSI and its consortium partners as contemplated in this Agreement

7. Obligations of NRDA

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

- I. To provide any reasonable support through personnel to test the system during the Term;
- II. To provide any reasonable 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, provided that any enhancement/changes etc. to the system shall always be subject to prior written approval of NRDA;
- III. NRDA shall provide the data (including in electronic form wherever available) to be migrated.
- IV. To authorize the Implementation Partner to interact for implementation of the Project with external entities such as the state treasury, authorized banks, etc. to the extent deemed necessary by NRDA.

8. Acceptance of Deliverables and Testing

8.1. Acceptance of Deliverables

The successful completion of the Project requires the acceptance by NRDA of all Deliverables prepared and delivered pursuant to the Project, including the System. The acceptance procedure described in this clause 8 is in addition to, and not in derogation of, the acceptance procedure provided in Volume 2 of the RFP and the two are to be read harmoniously. Upon completion of a Deliverable, Implementation Partner will notify in writing that the Deliverable has been completed and, in the case of Deliverables constituted of software and/or equipment (“Operational Deliverables”), tested and/or certified as being ready for acceptance (“Ready for Acceptance”) by NRDA. Promptly after receiving such notice, NRDA will evaluate the Deliverable for acceptance in accordance with this Clause 8 or 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.

8.2. Acceptance Procedure

Acceptance by NRDA (“Acceptance”) requires that the Deliverables be confirmed in writing by NRDA 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 Partner 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 NRDA. 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 NRDA. 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 Partner may submit interim drafts of written Deliverables (e.g., system designs and documentation) to NRDA for review. NRDA agrees to review each interim draft within a reasonable period of time after receiving it from the Implementation Partner. When the Implementation Partner delivers a final written Deliverable to NRDA, NRDA will have the opportunity to review such written Deliverable for an acceptance period of 15 days or such other period as is stated in the RFP or the agreed Project Plan (the “Acceptance Period”). In all cases, NRDA’s obligation to review a written Deliverable within the applicable Acceptance Period will be contingent on such written Deliverable being delivered to NRDA 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 NRDA personnel responsible for reviewing such Deliverable. Similarly, if and to the extent multiple written Deliverables are delivered to NRDA within an Acceptance Period, the Acceptance Period for all such written Deliverables shall be extended as reasonably necessary to accommodate the availability of NRDA personnel responsible for reviewing them.
 - ii. NRDA agrees to notify the Implementation Partner 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 Partner or describing with reasonable particularity any deficiencies that must be corrected prior to acceptance of such written Deliverable. If the Implementation Partner does not receive any such notice from NRDA by the end of the Acceptance Period, Implementation Partner shall promptly notify NRDA in writing that no such notice has been received. If the Implementation Partner does not receive the required notice within 15 days after NRDA receives such written notification from the Implementation Partner, such written Deliverable will be deemed to be accepted by NRDA.
 - iii. If NRDA delivers to the Implementation Partner a timely notice of rejection/deficiencies, the Implementation Partner will correct the described deficiencies as quickly as possible and, in any event, within ten (10) days after NRDA notifies the Implementation Partner of the rejection/deficiencies (unless otherwise specified in the agreed Project Plan). Upon receipt of a corrected written Deliverable from the Implementation Partner, NRDA will have a period of 15 days 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 Partner is scheduled to deliver each Operational Deliverable to NRDA, both the Implementation Partner and NRDA 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. NRDA 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 Partner 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 NRDA to verify that the Deliverable has been properly delivered and installed. The Implementation Partner shall notify NRDA 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 Partner of any installation tests. Such notice will start the Acceptance Period, which will be 20 days or such other period as is stated in the RFP or agreed Project Plan. As was the case with written Deliverables, NRDA’s obligation to review any Operational Deliverable within the applicable Acceptance Period will be contingent on such Operational Deliverable being delivered to NRDA 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 NRDA personnel responsible for reviewing such Operational Deliverable. Similarly, if and to the extent multiple Operational Deliverables are delivered to NRDA within an Acceptance Period, the Acceptance Period for

all Operational Deliverables shall be extended as reasonably necessary to accommodate the availability of the NRDA personnel responsible for reviewing them.

- iii. NRDA shall notify the Implementation Partner in writing by the end of the Acceptance Period stating that the Operational Deliverable is accepted/rejected in the form delivered by the Implementation Partner or describing the defects as provided in Clause 8.2 (b) (iv) below. If the Implementation Partner does not receive any notice of defects from NRDA by the end of the Acceptance Period, the Implementation Partner shall promptly notify NRDA in writing that no such notice was received. If Implementation Partner does not receive a notice of defects within seven (7) days after NRDA receives such written notification from the Implementation Partner, such Operational Deliverable will be deemed accepted by NRDA.
- iv. If NRDA determines during the Acceptance Period that the Operational Deliverable as delivered by the Implementation Partner deviates from its approved specifications or otherwise fails to successfully complete applicable Acceptance Tests (or a defect), NRDA will inform the Implementation Partner in writing, describing the defect(s) in sufficient detail to allow the Implementation Partner to recreate/rectify them. The Implementation Partner will correct any defects in an Operational Deliverable as quickly as possible after receiving NRDA's notice of the defects and, in any event, within ten (10) days after receiving such notice (unless otherwise specified in the Project Plan/RFP), and provide the corrected Operational Deliverable to NRDA for re-testing within such ten (10) day period.
- v. NRDA 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 Partner will correct any further defects identified by NRDA during the re-test as quickly as possible, but in no event more than ten (10) days after NRDA notifies the Implementation Partner of the further defects, unless otherwise specified in the agreed Project Plan or RFP or agreed by NRDA.

c) Correction of Deficiencies in Deliverables.

If the Implementation Partner 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)), NRDA may at its sole discretion, which shall be final and binding on the Implementation Partner:

- i. allow the Implementation Partner to continue its efforts to make corrections; or
- ii. accept the Deliverable with its Deficiencies and deduct such proportionate amounts from the Implementation Partner's fees as deemed appropriate by NRDA; or
- iii. terminate this Agreement under Event of Default in accordance with the procedures set forth in Clause 13 (except that NRDA is under no obligation to provide the Implementation Partner any further opportunity to cure as provided under the Event of Default and Consequences of Event of Default provisions of this Agreement) and recover its damages subject to the limitations set forth in this Agreement.

8.3. Acceptance

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

9. Use of assets by the Implementation Partner

- I. During the Term the Implementation Partner 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 Partner (for itself or for NRDA or on behalf of NRDA) exclusively in terms of ensuring their usability for the delivery of the Deliverables/System as per this Agreement (hereinafter the “Assets”);
- II. Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Implementation Partner takes control of and/or first uses the Assets and during the entire Term of the Agreement;
 - III. 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 Partner will be followed by the Implementation Partner and any person who will be responsible for the use of the Assets;
 - IV. Take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Implementation Partner or as may, in the reasonable opinion of the Implementation Partner, be necessary to use the Assets in a safe manner;
 - V. Ensure that the Assets that are under the control of the Implementation Partner, are kept suitably housed and in conformity with Applicable Law and terms agreed with NRDA;
 - VI. Procure permission from NRDA 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;
 - VII. 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;
 - VIII. Use best efforts to ensure that no lien, mortgage, hypothecation or any other charge is created over the Assets. Implementation Partner agrees that Implementation Partner will inform NRDA immediately if Implementation Partner 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 NRDA or the ownership of which is required to be transferred to NRDA under this Agreement, NRDA shall have the right to get the charge removed at the risk, cost, expense of the Implementation Partner and Implementation Partner shall make good all losses, damages, costs, fees, cess, duties, etc borne or suffered by NRDA due to creation of such charge and/or in removal of such charge and/or in discharging the obligations for removal of such charge.

10. Access to Implementation Agency to Certain Locations

- 10.1.** For so long as the Implementation Partner provides services to NRDA location, as the case may be, on a non-permanent basis and to the extent necessary, NRDA as the case may be or its nominated agencies shall, subject to compliance by the Implementation Partner with any safety and security guidelines which may be provided by NRDA as the case may be or its nominated agencies and notified to the Implementation Partner in writing, provide the Implementation Partner with:
- a) reasonable access, to the location from where services are to be performed (except such locations like DC, Command Center, Data Recovery site, Implementation Partner’s or its consortium member’s offices etc. over which the Implementation Partner has control), in the same manner granted to NRDA employees, to NRDA as the case may be;
 - b) subject to (a) above, reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other locations of NRDA as the case may be, if any, as may be reasonably necessary for the Implementation Partner to perform its obligations hereunder.
- 10.2.** Access to locations, office equipment and services shall be made available to the Implementation Partner on an “as is, where is” basis by NRDA as the case may be or its nominated agencies.

The Implementation Partner agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in RFP for the following purposes:

- a) For the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
- b) In a manner which constitutes a violation of any law or a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality)

11. Management of the Project

11.1. Governance

The review and management process of this Agreement shall be carried out in accordance with a Governance Schedule that may be mutually agreed between the Parties and shall cover all the management aspects of the Project. MSI shall prepare a Governance Schedule in consultation with NRDA and shall be obliged to get the same approved by NRDA within one month from the Effective Date. The mutually agreed Governance Schedule shall form an integral part of this Agreement.

11.2. Changes

Any changes to the scope of work and consequent impact on the SLAs shall be dealt in accordance with the provisions of the Change Request as specified in Section 6 of Vol 2 of the RFP.

11.3. Security and Safety

- I. The obligations mentioned herein are in addition to (and not in derogation or substitution of) the obligations related to information security (including SLAs) mentioned in the RFP.
- II. The MSI shall comply with the relevant security, safety and other requirements specified in the Information Technology Act and any other Applicable Law applicable on the date of submission of bid. The MSI shall also comply with the IT Security policy and practices of the Purchaser and Government of Chhattisgarh once available. It is acknowledged that NRDA is/will be ISO 27001:2013 compliant and the MSI will at least have to comply with the security policies and practices that are to be followed by MSI as service provider to any organization which is ISO 27001:2013 compliant. In the event of any change in laws (related to security and safety) or IT security policy and practices of NRDA, the compliance to such changed laws and policy / practices by MSI shall be subject to such terms as may be agreed between the Parties except where compliance with change in laws is applicable on MSI in its own right as an IT service provider or irrespective of services being provided by the MSI under this Agreement, in which event, no additional amount shall be payable by NRDA to MSI.
- III. The Parties shall 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 NRDA or any of its nominated agencies, as the case may be, data, facilities or Confidential Information.
- IV. The Implementation Partner shall upon reasonable request by NRDA or its nominated agencies participate in regular meetings when safety and information technology security matters are reviewed.
- V. As per the provisions of this Agreement, the Implementation Partner shall promptly report in writing to NRDA or its nominated agencies, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of NRDA as the case may be.

11.4. Cooperation

Except as otherwise provided elsewhere in this Agreement, each Party (“Providing Party”) to this Agreement 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:

- I. does not require material expenditure by the Providing Party to provide the same;
- II. is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement;
- III. cannot be construed to be Confidential Information; and
- IV. Is capable of being provided by the Providing Party.

Further, Implementation Partner agrees to co-operate with the consultants, stakeholders, and subcontractors of NRDA as reasonably requested in order to accomplish the purposes of this Agreement.

12. Financial Matters

12.1. Terms of Payment

- I. In consideration of the obligations undertaken by the Implementation Partner under this Agreement and subject to the provisions of this Agreement, NRDA shall pay the Implementation Partner for successful delivery of Services/ Deliverables/ Goods and System in pursuance of this Agreement, in accordance with the Terms of Payment Schedule set out in Volume 2 of this RFP. Purchaser shall make payments only to the MSI at the time and in the manner as set out in this Agreement subject always to the fulfilment by the MSI and Consortium Member of their obligations herein.
- II. NRDA shall not be responsible / obligated for making any payments or any other related obligations under this Agreement to the Consortium Partner or Consortium Partner’s subcontractors or MSI’s subcontractor, if any. The MSI shall be fully liable and responsible for meeting all such obligations and all payments to be made to Consortium Member or sub-contractors (if any) and any other third party engaged by the MSI in any way connected with the discharge of the MSI’s obligation under the Agreement and in any manner whatsoever.
- III. All payments agreed to be made by NRDA to MSI in accordance with this Agreement shall be inclusive of all statutory levies, duties, taxes and other charges whenever levied/applicable including costs of maintenance, if any and NRDA shall not be liable to pay any such levies/other charges under or in relation to this Agreement directly to any other party or authority.
- IV. Save and except as otherwise provided for herein or as agreed between the Parties in writing, NRDA shall not be required to make any payments in respect of any services, goods, deliverables other than the Services, Deliverables, Goods, Systems and obligations mentioned in the RFP and this Agreement. It is expressly agreed that the price/fees mentioned in the Proposal by the MSI shall be deemed to include all ancillary and incidental costs and charges that are necessary for accomplishment of the scope of work and obligations mentioned in the RFP and this Agreement. No invoice for extra work/charge order on account of change order shall be submitted by the MSI unless the said extra work /change order has been authorized/approved by NRDA in writing in accordance with the clause on Change Order.

- V. In the event of NRDA noticing at any time that any amount has been disbursed wrongly to MSI or any other amount is due from MSI to NRDA under this Agreement, NRDA may, without prejudice to its rights to recover such amounts by other means, after notifying the MSI, deduct such amount from any payment falling due to the MSI. The details of such recovery, if any, will be intimated to the MSI. The MSI shall receive the payment of undisputed amount under subsequent invoice for any amount that has been omitted in the previous invoice by mistake on the part of the Purchaser or the MSI.
- VI. All payments are subject to deductions of applicable liquidated damages as provided for in the SLA section of the RFP. For the avoidance of doubt, it is expressly clarified that NRDA will calculate a financial sum and debit the same against the terms of payment as set out in this Agreement as a result of the failure of the MSI to meet the Timelines and/or Service Levels.
- VII. Invoicing and Settlement
- I. The Implementation Partner shall submit its invoices in accordance with the following principles:
- A. Generally and unless otherwise agreed in writing between the Parties, the Implementation Partner shall raise an invoice as per Payment Schedule mentioned in Section 5.2 of Volume 2 of the RFP as reproduced in Schedule VI of this Agreement; and
- B. Any invoice presented in accordance with this Clause shall be in a form acceptable to NRDA.
- II. The Implementation Partner alone shall invoice all payments (except in case of bandwidth service provider which invoice shall be raised by the said Implementation Partner in accordance with the agreement to be entered into with such service provider) after receiving due approval/ acceptance of Deliverables/ Services/Goods from NRDA or its nominated agency. Such invoices shall be correct and accurate and shall be raised in a timely manner.
- III. Subject to accomplishment of obligations of Implementation Partner and delivery of Deliverables/ Services / Goods to the satisfaction of NRDA, payment shall be made by NRDA within 30 (thirty) working days of the acceptance of deliverable along with supporting documents. Payment will be subject to deductions of any liquidated damages or penalties levied on the Implementation Partner as per the RFP.
- IV. Notwithstanding anything contained in clause (III) above, NRDA shall be entitled to delay or withhold payment of any invoice or part of it where NRDA disputes such invoice or part of it provided the dispute is bonafide. The withheld amount shall be limited to that which is in dispute. A notice of such withholding shall be provided within 10 (ten) days of receipt of the applicable invoice. The disputed / withheld amount shall be settled firstly in accordance with the escalation procedure as set out in the Governance Schedule within reasonable time after receipt of notice of reference. NRDA shall release the disputed amounts as soon as reasonably possible, upon resolution of dispute. Any exercise by NRDA under this clause shall not entitle the Implementation Partner to delay or withhold performance of its obligations or delivery of Deliverables/ Services/ Goods under this Agreement.

12.2. Tax

- I. The Implementation Partner shall pay for all taxes in connection with this Agreement, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, corporate taxes, property, sales, use, excise, value-added, goods and services,

consumption, Customs duty, Excise duty and all Income Tax levied under and other similar taxes or duties.

The Implementation Partner shall also be responsible for having his sub-contractors under its sub-contract(s) to pay all applicable taxes on account of payment received by the sub-contractors from the MSI for works done under the sub-contracts in relation to this Agreement and NRDA will in no case bear any responsibility for such payment of taxes.

The Implementation Partner agrees to reimburse and hold NRDA or its nominated agencies harmless from and against any claims, losses, expenses (including attorney fees, court fees) etc. arising out of deficiency (including penalties and interest) in payment of taxes that is the responsibility of the Implementation Partner or its Consortium Members and subcontractors / OEMs.

- II. All payments to the MSI shall be subject to the deductions of tax at source under Income Tax Act, and other applicable taxes, and deductions as provided for under any law, rule or regulation. NRDA shall provide the MSI with the original tax receipt of any withholding taxes paid by NRDA or its nominated agencies on payments under this Agreement within reasonable time after payment.
- III. In case of change in indirect taxes due to change in indirect tax laws, including the impending GST law, appropriate parties shall pass the benefit of the same over and above the Total Contract Value to the other party. In case of such change, it shall be binding on the Implementation Partner to submit a formal request with necessary supporting documents to NRDA. NRDA shall verify these documents and if applicable and approved in writing by NRDA, the Implementation Partner shall incorporate such changes into subsequent regular invoice for payment.
- IV. In case the impending Goods & Service Tax Law is enacted, the Implementation Partner shall provide to NRDA the necessary details including, but not limited to, all taxes paid related to sale, import and manufacturing by the Implementation Partner, Original Equipment Manufacturer(s) or any other party involved in sale of goods and services under this Agreement to facilitate necessary adjustment in the contracted prices under this Agreement.

13. Event of Default, Termination and Suspension

13.1. Events of Default by the MSI

- i. The failure on the part of the MSI to perform any of its obligations or comply with any of the terms of this Agreement shall constitute an Event of Default on the part of the MSI. The events of default as mentioned above may include, inter-alia, the following:
 - a) the MSI has failed to perform the obligations under this Agreement; or
 - b) the MSI has exceeded cap on any liquidated damages;
 - c) the MSI has failed to conform with any of the service specifications as set out in the RFP or this Agreement;
 - d) the MSI has failed to demonstrate or sustain any representation or warranty made by it in this Agreement, with respect to any of the terms of its Proposal, the RFP and this Agreement;
 - e) there is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to the MSI or Consortium Member;

- f) the MSI or Consortium Member has failed to comply with or is in breach or contravention of any Applicable Laws;
 - g) there is an undue delay in achieving the agreed timelines for delivering the services under this Agreement due to reasons solely attributable to the MSI or the Consortium Member or subcontractors;
 - h) where it comes to NRDA's attention that the MSI or Consortium Member is in a position of actual conflict of interest with the interests of the Purchaser, in relation to any of terms of the MSP's Proposal, the RFP or this Agreement;
 - i) if it comes to knowledge of NRDA that the MSI or Consortium Member (or any of their personnel or their sub-contractors or such sub-contractor's personnel) have been involved in any fraudulent or corrupt practices or any other practice of similar nature.
- ii. Where there has been an occurrence of such Event of Defaults, inter alia, as stated above, NRDA shall issue a notice of default to the MSI, setting out specific defaults / deviances / omissions and providing a period of up to thirty (30) days to enable the MSI to remedy the default/ deviances / omissions committed.
- iii. Where despite the issuance of a default notice to the MSI by NRDA, the MSI fails to remedy the default to the reasonable satisfaction of NRDA, NRDA may, where it deems fit, issue to the MSI another default notice or proceed to adopt such remedies as may be available to NRDA including but not limited to the remedies provided in clause 13.2 below.

13.2. Consequences of Event of Default

- i. Where an Event of Default subsists or remains uncured even after expiry of 30 days as mentioned in clause 13.1 (ii), NRDA shall be entitled to:
- a) Impose any such reasonable obligations and conditions and issue any clarifications as may be necessary to, inter alia, ensure smooth continuation of the Services and the project which the MSI shall be obliged to comply with. The MSI shall in addition take all available steps to minimize loss resulting from such event of default;
 - b) Suspend all corresponding and relevant payments to the MSI under the Agreement (except for milestones which have been successfully achieved) by written notice of suspension to the MSI provided that such notice of suspension shall (a) specify the nature of failure; and (b) request the MSI to remedy such failure within a specified period from the date of receipt of such notice of suspension by the MSI;
 - c) Terminate this Agreement in full or in part by giving the MSI a prior written notice of up to 30 days indicating its intention to terminate;
 - d) Invoke the Performance Bank Guarantee and other Guarantees furnished hereunder, enforce indemnity provisions, recover such other costs/losses and other amounts from the MSI which may have resulted from such default and pursue such other rights and/or remedies that may be available to the Purchaser under Applicable Law;
- ii. Nothing herein shall effect the continued obligation of the subcontractor / other members of MSI's Team to perform all their obligations and responsibilities under this Agreement in an identical manner as were being performed before the occurrence of the event of default.

13.3. Termination for Default

13.4. NRDA shall have the right to terminate the Agreement as provided in clause 13.2 above. NRDA may, in its sole discretion, afford a further reasonable opportunity to the Implementation Partner to explain the circumstances leading to such a breach and may increase the time limit for curing such breach before terminating the Agreement. Termination for Convenience

NRDA may, by written notice of 90 (ninety) days sent to the MSI, terminate the Agreement, in whole or in part at any time for its convenience. The notice of termination shall specify that termination is for the NRDA's convenience, the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective. NRDA may, at its discretion, relax or absolve the MSI from following the timelines and/or service levels related to the part of the Agreement which is being terminated.

13.5. Effects of Termination

- I. In the event NRDA terminates this Agreement pursuant to an Event of Default, Performance Guarantee furnished by MSI may be forfeited
- II. Upon termination (or prior to expiry/ upon expiry, as the case may be) of this Agreement, the Parties will comply with the Exit Management Schedule/ Plan set out as Schedule III of this Agreement (and as revised from time to time).
- III. NRDA agrees to pay the MSI for all charges for Services / Deliverables / Goods provided by MSI and accepted by NRDA till the effective date of termination.
- IV. If NRDA terminates without cause, NRDA may also pay any applicable adjustment expenses that the Implementation Partner incurs as a result of such termination (which it shall take reasonable steps to mitigate). Such applicable adjustment charges shall be decided by NRDA in consultation with the MSI.
- V. Any and all payments under this clause shall be payable only after the Implementation Partner has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of NRDA. In case of expiry of the Agreement, the last due payment shall be payable to the Implementation Partner after it has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of NRDA.

13.6. The termination provisions set out in this Clause 13 are in addition to any termination rights that the NRDA may have under this Agreement/RFP and are in addition to, and without prejudice to, other rights that NRDA may have under law and this Agreement.

14. Indemnification & Limitation of Liability

14.1. Subject to Clause 14.2 below, Implementation Partner (the "Indemnifying Party") undertakes to indemnify NRDA and its nominated agencies (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 gross negligence, willful default or breach of terms of this Agreement.

14.2. If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Deliverables/ Services/ Goods / Materials provided by the Indemnifying Party infringes a copyright, trade secret or patents of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages that

may be finally awarded against Indemnified Party. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by (a) Indemnified Party's misuse or modification of the Deliverables; (b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party; (c) Indemnified Party's use of the Deliverables in combination with any product or information not owned or developed by Indemnifying Party;. If any Deliverable is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either (i) procure the right for Indemnified Party to continue using it, (ii) replace it with a noninfringing equivalent, (iii) modify it to make it noninfringing. If the Indemnifying Party fails to provide any of the foregoing (i), (ii), (iii) remedies, NRDA shall have the right to claim refund for such infringing product if payment for the same has already been made and shall also have the right to terminate the Agreement, in part or in full, under Event of Default provisions of this Agreement.

14.3. *The Indemnifying Party shall indemnify the Indemnified Party against all direct monetary losses, claims, damages, compensation, charges, finally awarded by a competent lower court or arbitration tribunal or such other body or mutually negotiated and finalized between the Parties, arising out of data loss, data theft, data misuse, data tempering unauthorized use or disclosure of Confidential Information etc. attributable to the Indemnifying Party's negligence, willful default, lack of due care or breach of terms of this Agreement.*

14.4. *The indemnities set out in Clause 14 shall be subject to the following conditions:*

- I. Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings;
- 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;
- IV. in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Clause, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates.

14.5. Risk Purchase

If the Implementation Partner fails to perform its obligations (or any part thereof) under this Agreement and Implementation Partner does not to make good such failure to the satisfaction of NRDA within 30(thirty) days (or such other additional cure period deemed reasonable by NRDA) of receipt of notice from NRDA about such failure or if the Agreement is terminated by NRDA due to breach of any obligations of the Implementation Partner under this Agreement, NRDA reserves the right to procure same or equivalent Services / Goods/Deliverables from alternative sources at the Implementation Partner's risk and responsibility. Any incremental cost borne by NRDA in procuring such services/goods/deliverables shall be borne by the Implementation Partner. Any such incremental cost incurred in the procurement of the material from alternative source will be recovered from the undisputed pending due and payable payments /Security Deposit / Performance Bank Guarantee provided by the Implementation Partner under this Agreement and if the value of the services/materials under risk purchase exceeds the amount of Security Deposit and / or Bank Guarantee, the same may be recovered if necessary by due legal process. The incremental cost that may be recovered by NRDA from Implementation Partner under this clause shall be limited to 100% of the amount that was payable to Implementation Partner for the non-delivered goods/services/deliverables.

14.6. Limitation of liability

- I. The liability of Implementation Partner (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event in the aggregate exceed the Total Value of the Project.
- II. Notwithstanding anything contained in the foregoing, the liability cap and exclusion for the Implementation Partner given under this Clause 14.6 (I) shall not be applicable to the indemnification obligations set out in Clause 14 and breach of Clause 11.3 and 16.
- III. In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) even if it has been advised of their possible existence.
- IV. The allocations of liability in this Clause 14 represent the agreed and bargained-for understanding of the parties and compensation for the Services/Deliverables/Goods 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 Partner or NRDA 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').

15.2. Force Majeure events

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

- I. is beyond the reasonable control of the affected Party;
- II. Such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care;
- III. does not result from the negligence of such Party or the failure of such Party to perform its obligations under this Agreement;
- IV. is of an incapacitating nature and prevents or causes a delay or impediment in performance; and
- V. may be classified as all or any of the following events:
 - A. act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions;
 - B. radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the Implementation Partner's use of radiation or radio-activity or biologically contaminating material;
 - C. industry wide strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances as the case may be not arising on account of the acts or omissions of the Implementation Partner and which affect the timely implementation and continued operation of the Project; or

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

For the avoidance of doubt, it is expressly clarified that the failure on the part of the Implementation Partner and other consortium member under this Agreement to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement 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 Partner 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).

15.3. Notification procedure for Force Majeure

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

15.4. Allocation of costs arising out of Force Majeure

- a) Upon the occurrence of any Force Majeure Event prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- b) Upon occurrence of a Force Majeure Event after the Effective Date, the costs incurred and attributable to such event and directly relating to the Project ('Force Majeure Costs') shall be allocated and paid as follows:
- upon occurrence of an event mentioned in Clause 15.2 (I), (II), (III) and (IV), the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
 - Save and except as expressly provided in this Clause, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof.

15.5. Consultation and duty to mitigate

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

16. Confidentiality

- 16.1.** *NRDA may allow the Implementation Partner to utilize highly Confidential Information including confidential public records and the Implementation Partner shall maintain the highest level of secrecy, confidentiality, integrity and privacy with regard to such Confidential Information. The Implementation Partner shall use reasonable care, but no less care than it uses to protect its own similar confidential information of similar nature, to protect the confidentiality, integrity, secrecy and proprietary of the Confidential Information.*
- 16.2.** *Additionally, the Implementation Partner shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities. The Implementation Partner shall use the information only to execute the Project.*
- 16.3.** *NRDA or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Implementation Partner regarding any forbidden disclosure.*
- 16.4.** *The Implementation Partner may share the confidential information with its employees, agents and consortium members but only on a strict need to know basis. The Implementation Partner and Consortium Members shall execute a corporate non-disclosure agreement with NRDA in the format provided by NRDA and shall ensure that all their employees and agents execute individual non-disclosure agreements, which have been duly approved by NRDA with respect to this Project.*

17. Audit, Access and Reporting

The Implementation Partner shall allow access to NRDA or its nominated agencies to all information which is in the possession or control of the Implementation Partner or its consortium members, agents, suppliers etc. and which relates to the provision of the Services/ Deliverables as set out in the Audit, Access and Reporting Schedule and which is reasonably required by NRDA to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule IV of this Agreement. The MSI shall provide all such reports and documents as may be requested by NRDA for NRDA's internal compliance purposes within 15 days (or such other period allowed by NRDA) of receipt of request from NRDA.

18. Ownership and Intellectual Property Rights

18.1. COTS Products and fixes:

All COTS products and related solutions and fixes provided pursuant to this Agreement shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. Such licenses shall be brought on behalf of and in the name of NRDA or mentioning NRDA as the end user of such licenses. Implementation Partner 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 NRDA 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. Unless otherwise specifically restricted by the Licensing Terms of the COTS products, all intellectual property rights in any development/enhancement/customization etc. done on the COTS products pursuant to this Agreement shall

be owned by NRDA. The MSI undertakes to execute all such agreements/documents and assist NRDA in filing all relevant applications, effect transfers and obtain all permits and approvals that may be necessary in this regard to effectively transfer and conserve the Intellectual Property Rights of NRDA.

18.2. Bespoke development and other material:

NRDA shall own and have a right in perpetuity to use all newly created Intellectual Property Rights which have solely arisen out of or have been developed solely during execution of this Agreement, including but not limited to all processes, products, bespoke development, specifications, reports, drawings and other documents which have been newly created and developed by the MSI solely during the performance of the Services / delivery of Goods and for the purposes of, inter-alia, use or sub-license of such Services under this Agreement. The MSI shall provide source code, object code and all other relevant materials, artefacts etc. of all bespoke development to NRDA and NRDA shall own all IPRs in them. All material related to such bespoke development shall be treated as Confidential Information by the Implementation Partner. The MSI undertakes to disclose all such Intellectual Property Rights arising under this Agreement to the Purchaser and execute all such agreements/documents and assist NRDA in filing all relevant applications, effect transfers and obtain all permits and approvals that may be necessary in this regard to effectively transfer and conserve the Intellectual Property Rights of NRDA.

18.3. Pre-existing work:

All intellectual property rights existing prior to the Effective Date of this Agreement shall belong to the Party that owned such rights immediately prior to the Effective Date. Subject to the foregoing, the Purchaser will have a non-exclusive, transferable, perpetual, fully paid up, royalty-free, worldwide license to all pre-existing intellectual property rights of the MSI, Consortium Partner or subcontractors that are (i) provided or used by the MSI / Consortium / subcontractors in providing services and goods under this Agreement; and/or (ii) incorporated in any deliverables, products, goods or software provided by MSI to NRDA under this Agreement. Third Party Products.

Third Party Products: If license agreements are necessary or appropriate between the Implementation Partner and third parties for purposes of enabling / enforcing/implementing the provisions hereinabove, the Implementation Partner shall enter into such agreements at its own sole cost, expense and risk.

Ownership of Data:

By virtue of this Agreement, the MSI and its consortium members and team may have access to personal information of NRDA and/or a citizens. The Purchaser has the sole ownership of and the right to use or restrict the use of, all such data in perpetuity including any data or other information pertaining to the subscriber that may be in the possession of the MSI in the course of performing the obligations under this Agreement.

19. Transfer of risk and ownership in Goods

- I. Subject to the terms of this Agreement, Implementation Partner shall sell, assign, convey, transfer and deliver to NRDA, and NRDA shall purchase, receive and accept from the Implementation Partner, all right, title and interest in and to the Goods required to be provided by the Implementation Partner as per the RFP. The Implementation Partner shall not make any substitute for the Goods of any other model, capacity, or manufacturer without the prior written consent of NRDA which consent shall not be unreasonably delayed or withheld.

- II. The Implementation Partner shall arrange for delivery of the Goods to the delivery site identified by NRDA (the "Delivery Site") as per the Timelines provided in the RFP unless otherwise notified by NRDA. In addition to paying all transportation charges for the Goods, the Implementation Partner shall insure, and pay all insurance charges for the Goods till the time of transfer of title and ownership of Goods to the Purchaser.
- III. Title to and ownership of the Goods designated as being purchased by NRDA shall remain vested in the Implementation Partner until written Acceptance and Go Live by NRDA under the terms hereof, at which time title to and ownership of such Goods shall transfer to the NRDA. Implementation Partner shall execute such documents as may be required by NRDA for documenting the transfer of title and ownership of Goods. Upon transfer of ownership of the Goods to NRDA, the Implementation Partner shall treat such Goods as Assets as detailed above in this Agreement.

20. Warranty

20.1. General:

The warranties and remedies provided in this clause 20 are in addition to, and not in derogation of, the warranties provided in Volume 2 of the RFP and the two are to be read harmoniously. The Implementation Partner represents, warrants and covenants that: (a) the Implementation Partner is the lawful owner of the Goods (including those Goods and Deliverables that are to be transferred to NRDA as per the RFP) and the lawful owner or licensee of the materials used in the performance of the Services and delivery of Deliverables, (b) the bespoke development and such materials have been lawfully developed or acquired by the Implementation Partner, and (c) the Implementation Partner has the right to sell the Goods to NRDA and to grant NRDA the rights to the bespoke development and such materials, including the rights of access to and use of the bespoke development, which it grants under this Agreement, without the consent of any other person or entity. The Implementation Partner represents, warrants and covenants that during the Warranty Period it will promptly provide NRDA with any and all Maintenance Modifications, Enhancements, and related Documentation which the Implementation Partner or its OEM makes available to any other person or entity.

20.2. Warranty for Goods-

- a) The Implementation Partner warrants and covenants each of the following:
 - i. That NRDA shall acquire good and clear title on the Goods, free and clear of any and all charges and encumbrances and shall have right to uninterrupted use of such Goods;
 - ii. That the Goods and all of its parts and components are new and unused;
 - iii. That the Goods are free from defects in material and workmanship under normal use and that the Goods shall remain in good working order during the Warranty Period.
 - iv. That the Goods are and shall remain throughout the Warranty Period eligible for maintenance under the OEM's standard maintenance agreement.
 - v. That the Goods are fit for the purpose of successfully implementing the Project.
 - vi. That the Goods shall not become end of support / life during the Warranty Period and at least 6 months thereafter.
- b) NRDA shall be entitled to install an attachment, feature or device to the Goods, or make modifications, changes, enhancements, upgrades, or additions to the Software, without affecting the Implementation Partner's representations and warranties hereunder, unless the Implementation Partner, within a reasonable time not to

exceed five (5) days after receipt from NRDA of written notice of its intention to do so, provides written notice to NRDA stating grounds which, in NRDA's sole determination are reasonable, upon which the Implementation Partner concludes such attachment, feature, device, modification, change, enhancement, upgrade or addition shall materially or adversely affect the System, thereby materially increasing Implementation Partner's burden of compliance with certain identified sections of this Agreement (the "Affected Obligations"). If the grounds set forth in the notice are determined by NRDA to be reasonable and NRDA employs such feature, device, modification, change, enhancement, upgrade or addition, the Implementation Partner shall not be liable for the resulting adverse effect on the Affected Obligations to the extent attributable to such action by NRDA. If the grounds set forth in the notice are determined by NRDA to not be reasonable and NRDA employs such feature, device, modification, change, enhancement, upgrade or addition, the Implementation Partner shall be liable for the resulting adverse effect on the Affected Obligations.

20.3. Warranty for Software-

- a) The Implementation Partner represents, warrants and covenants that on the acceptance date and for the Warranty Period, the Software will be free of material programming errors and will operate and conform to the respective Software's Documentation including, inter alia, FRS (Functional Requirement Specification) and SRS (System Requirement Specification) and other manuals. The Implementation Partner also represents, warrants and covenants that the medium on which the Software is contained when delivered to NRDA will be free from defects in material or workmanship and shall be free from any viruses, bugs etc.
- b) The Implementation Partner represents, warrants and covenants that the technical Documentation delivered to NRDA for the System will be sufficient to allow a reasonably knowledgeable information technology professional to maintain and support such Software. The Implementation Partner represents, warrants and covenants that the user Documentation for the System will accurately describe in terms understandable by a typical end user the functions and features of the System and the procedures for exercising such functions and features.

20.4. Warranty for Services

The Implementation Partner represents warrants and covenants that all services under this Agreement will be performed with promptness and diligence and will be executed in a workmanlike and professional manner, in accordance with the practices and high professional standards used in well-managed operations performing services similar to the services under this Agreement. The Implementation Partner represents warrants and covenants that it shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services hereunder.

20.5. Warranty for System

The Implementation Partner represents, warrants and covenants that for the Warranty Period and for as long as there is a maintenance agreement in effect between the Parties, the System shall at all times perform in accordance with the specifications in the Project Documents and meet the performance requirements set out in RFP. The Implementation Partner represents, warrants and covenants (a) that it shall ensure that no computer viruses or similar items are coded or introduced into the System or any systems used to perform the Services, and (b) that it shall not insert into any System any code which would have the effect of disabling or otherwise shutting down all or a portion of the System or damaging any information or functionality.

20.6. *The warranties and covenants provided by the Implementation Partner under this Agreement will not be affected by NRDA's modification of any portion of the System so long as the Implementation Partner can discharge its obligations despite such modifications, or following their removal by NRDA.*

20.7. *If during the Warranty Period of any component mentioned above, any of the warranties are found breached, the Implementation Partner shall promptly (but in no event more than 7 days), in consultation and agreement with NRDA, and at the Implementation Partner's sole cost repair, replace, or otherwise make good such default, defect or deficiency as well as any damage to the Project caused by such default, defect or deficiency. Any component that has been repaired or replaced by the Implementation Partner shall be delivered at the NRDA's designated place without any additional costs to the NRDA. Any component that has been replaced under this clause by the Implementation Partner shall remain the property of the Implementation Partner. The Implementation Partner shall use best efforts to ensure that such repair, replacement etc. shall be accomplished through a "hot" swap without any loss of production time or adverse impact on NRDA's or System's operations. Notwithstanding the foregoing, these are not the sole and exclusive remedies available to NRDA in case of breach of any warranty and are also not the sole and exclusive obligations on the Implementation Partner in case of breach of any warranty.*

21. Insurance Cover

21.1. Obligation to maintain insurance

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

- a) For the Term, valid and enforceable insurance coverage for:
 - i. Public liability;
 - ii. Professional indemnity;
 - iii. Product liability
 - iv. Workers' compensation as required by law; and
- b) The above insurance policies shall be for appropriate values so as to cover risks of Implementation Partner under this Agreement.
- c) Insurance of Goods: NRDA shall take insurance for the Goods and Smart City System after the transfer of title and ownership of the Goods and Smart City System to NRDA. Implementation Partner shall assist in procuring insurance and if requested by NRDA, in assessing, making and settling claims with the insurer.
- d) In the event of any failure by the Implementation Partner to comply with the insurance requirements set out in this Agreement, NRDA may, without in any way compromising or waiving any right or remedy, at law or in equity, upon five (5) days' written notice to the Implementation Partner, purchase such insurance, at the Implementation Partner's expense, provided that NRDA shall have no obligation to do so and if NRDA shall do so, the Implementation Partner shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such reasonable costs incurred by NRDA shall be promptly reimbursed by the Implementation Partner and/or may be withheld from any payment due to Implementation Partner. None of the requirements contained herein as to types, limits or NRDA's approval of insurance coverage to be maintained by the Implementation Partner are intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by the Implementation Partner under this Agreement, or otherwise provided by law.

21.2. Certificates of currency

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

21.3. Non-compliance

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

22. Miscellaneous

22.1. Personnel

- a) The personnel assigned by Implementation Partner to perform the Services shall be employees of Implementation Partner or its consortium members, and under no circumstances shall such personnel be considered employees of NRDA or its nominated agencies. The Implementation Partner 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 Partner shall use its best efforts to ensure that sufficient Implementation Partner personnel (but in no event, less than the personnel specified in the RFP) are assigned to successfully and timely perform the obligations under this Agreement and the RFP and that such personnel have appropriate qualifications to perform the obligations. After discussion with Implementation Partner, NRDA or its nominated agencies shall have the right to require the removal or replacement of any Implementation Partner personnel performing work under this Agreement based on bonafide reasons. In the event that NRDA or its nominated agencies requests that any Implementation Partner personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.
- c) For the personnel of the Implementation Partner identified as "Key Personnel", the Implementation Partner shall not remove such personnel from the Project without the prior written consent of NRDA or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, death, medical physical incapacity, etc.
- d) Each Party shall be responsible for the performance of all its obligations under this Agreement as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- e) During the Term and 12(twelve) months thereafter, 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

22.2. Independent Contractor

Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the Parties to this Agreement and, except as expressly stated in this Agreement, nothing in this Agreement 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.

22.3. Sub-contractors

Except as otherwise provided in the RFP, Implementation Partner cannot sub contract any work under the RFP to any third party.

22.4. Assignment

- a) Except for consortium and subcontracting specifically permitted under the RFP, the MSI and Consortium Partners shall not assign / novate any of their rights / obligations under this Agreement to any third party. NRDA may assign or novate all or any part of this Agreement and Schedules/Annexures, and the MSI and Consortium Partners shall be a party to such novation.
- b) Subject to the foregoing, the MSI and Consortium Partners shall have the right to undergo corporate change of ownership through mergers, demergers, slump sale etc., as allowed under Applicable Laws, after seeking prior written consent from NRDA, which consent shall be provided forthwith by NRDA subject to MSI or Consortium Partner executing/ furnishing such documents, agreements, undertakings (including, without limitation, enhanced performance security from new entity, novation agreements etc.) as may be deemed necessary by NRDA.

22.5. Trademarks, Publicity

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

22.6. Notices

- a) Any notice or other document which may be given by either Party under this Agreement shall be given in writing in person or by pre-paid recorded delivery post and email.
- 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:
 - Address
 - Tel:
 - Fax:

- Email:
- Contact:
- With a copy to:
- Implementation Partner
- Tel:
- Fax:
- Email:
- Contact:

In relation to a notice given under the MSA, 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

- a) Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter).
- b) Either Party to this Agreement 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.

22.7. Variations and Further Assurance

- a) No amendment, variation or other change to this Agreement shall be valid unless authorized in accordance with the change control procedure as set out in the Section 6 of Vol 2. Such amendment shall be made in writing and signed by the duly Authorised representatives of the Parties to this Agreement.
- b) Each Party to this Agreement 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.

22.8. Severability and Waiver

- a) If any provision of this Agreement, 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 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 of any right, remedy or provision of this Agreement 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.

22.9. Compliance with Applicable Law

The Implementation Partner accepts that its individual conduct (to the extent applicable to its business like the Implementation Partner as an information technology service provider) shall 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 Request as specified in Section 5 of Vol 2.

22.10. Professional Fees

All expenses incurred by or on behalf of each Party to this Agreement, 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 shall be borne solely by the Party which incurred them

22.11. Ethics

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

22.12. Entire Agreement

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

22.13. Amendment

Any amendment to this Agreement shall be made in accordance with the Change Request as mentioned in Vol 2 of the RFP by mutual written consent of all the Parties.

22.14. Conflict of Interest

The Implementation Partner shall disclose to NRDA in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the Implementation Partner, Consortium Partner, subcontractors or their employees) in the course of performing the Services as soon as practical after it becomes aware of that conflict.

23. Bank Guarantees

23.1. Performance bank guarantee

- IV. the MSI shall, within 15 days after the receipt of Letter of Award from NRDA, furnish two (2) unconditional, irrevocable and continuing Performance Security/Guarantees to NRDA, each for an amount equal to 5% of the Total Value of Contract, from a nationalized bank in the format provided in Annexure 3 of Volume 1. The Performance Security shall be valid for entire Term and expiry of six months thereafter. The Purchaser may, at its sole discretion, return one of the two Performance Security/Guarantees mentioned above to the Vendor after 6 months of completion of the Final Go

Live. If the Performance Security is liquidated /encashed, in whole or in part, during the currency of the Performance Security, the Vendor shall top up the Performance Security with the same amount as has been encashed within 15 days of such encashment without demur;

- i. In case the Project is delayed beyond the Timelines as mentioned in RFP due to reasons attributable to Implementation Partner, its consortium members, the Performance Bank Guarantee (any one or both, if not returned) shall be accordingly extended by the Implementation Partner till completion of scope of work as mentioned in RFP.

24. Constitution of consortium

- i. For the purposes of fulfilment of its obligations as laid down under the Agreement, unless the context requires otherwise, Implementation Partner shall be the sole point of interface between NRDA and the Implementation Partner and would be absolutely accountable for the performance of its own, the other members of Consortium and / or Implementation Partner's Team functions and obligations.
- ii. The Consortium Members agree that the Implementation Partner shall be the prime point of contact between the Consortium Members and NRDA and shall be primarily responsible for the discharge and administration of all the obligations contained herein and, NRDA, unless it deems necessary shall deal only with the Implementation Partner.
- iii. Lead Bidder and Consortium Members shall be jointly and severally liable for performance of all obligations under this Agreement. Notwithstanding the foregoing and subject to clause 14.6 of the Agreement, the liability for direct damages of each Consortium Member under this Agreement shall be limited to the total amount corresponding to / commensurate with the scope of work related to the Consortium Member and the liability for direct damaged of the Lead Bidder shall be limited to the Total Contract Value. The Lead Bidder shall ensure that at all times during the Term of this Agreement, each member of the Consortium and the Implementation Partner's Team complies with all the terms and conditions of this Agreement. Provided that NRDA may, if it deems necessary, deal with only the Lead Bidder or any member of the Consortium, individually or as a group.
- iv. The Implementation Partner and each of the Consortium Members shall be bound by all undertakings and representations made by their authorized representative and any covenants stipulated hereunder with respect to this Agreement, for and their behalf.
- v. A notice of at least 6 months in advance is required to be given by the Implementation Partner to NRDA if during the Term of this Agreement the Implementation Partner desires to terminate any contract/arrangement relating to the performance of Services hereunder with any member of the Consortium. Where, during the Term of this Agreement, the Implementation Partner terminates any contract/arrangement or agreement relating to the performance of the Services hereunder with any consortium member (subject to approval by NRDA), the Implementation Partner shall be liable for any consequences resulting from such termination. The Implementation Partner shall in such case ensure the smooth continuation of Services by providing a suitable replacement subject to approval and to the satisfaction of NRDA at no additional charge and at the earliest opportunity

25. Governing Law and Dispute Resolution

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

25.2. Parties shall use all reasonable efforts to amicably resolve and settle any dispute arising out of or in relation to or in connection with this Agreement by referring the dispute to a committee constituted under the Governance Schedule.

25.3 In the case of dispute arising out of or in relation to or in connection with the Agreement between the Parties, which has not been settled in accordance with Clause 25.2 above within 30 days from date of reference of the dispute, any Party can submit the dispute for arbitration to a sole Arbitrator to be appointed by mutual consent of both the Parties. 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 Chhattisgarh, India. The provisions of the Arbitration and Conciliation Act, 1996 (or any re-enactment or modification thereof) 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. The Arbitration proceedings will be held at Raipur, India. The language of the arbitration proceedings and that of all documents and communications between the Parties shall be English. All arbitration awards shall be in writing and shall state the reasons for the award.

25.4 Subject to Arbitration clause above, the courts at Raipur, India shall have sole and exclusive jurisdiction related to any matter pertaining to this Agreement.

25.3. *Compliance with laws: Each party will comply with all applicable export and import laws and regulations.*

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:

<<'NRDA'>> (FIRST PARTY)

(Name and designation)

For and on behalf of <<'NRDA'>>

Implementation Partner (SECOND PARTY)

(Name and designation)

For and on behalf of Implementation Partner

Signed by:

26. Schedules**26.1. SCHEDULE – I – DEFINITIONS**

Agreement	means this Master Services Agreement together with all Annexures, Schedules, reference documents and all amendments, corrigendum/addendum and changes thereto;
Applicable Law(s)	means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;
Assets	shall have the same meaning ascribed to it in Clause 9 (I) (a)
Software/ Application	means the software/application designed, developed / configured /customized, tested and deployed by the Implementation Partner 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, proprietary software components and tools deployed by the Implementation Partner;
Confidential Information	means all information including NRDA Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how, plans, budgets and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement);
Consortium	means the consortium constituting of the following: <ol style="list-style-type: none"> 1. 2. 3.
COTS	means Commercial off-the-shelf product(s)
Deliverables	means the Goods, Services, Software applications and all other products, infrastructure and services etc. to be delivered by the Implementation Partner in pursuance of the Agreement as defined more elaborately in the RFP and includes all Service, Deliverables 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;
Downtime	means the total time for all the instances where services prepared by the Implementation Partner are not available except for the time when the system is down because of scheduled maintenance
Effective Date	Shall have the same meaning as ascribed to it in Clause 3
Force Majeure	shall have the same meaning as described to it in Clause 15.1;

Force Majeure Costs	shall have the same meaning ascribed to it in Clause 15.4 (b);
Provisional Go Live	Provisional Go-Live means that the Smart City System has been developed as per the requirements of the RFP and any change approved by NRDA and all documents, deliverables of the implementation phase have been delivered by the MSI and the Smart City System is ready to be used by its users.
Final Go Live	Final Go-Live means that the Smart City System has been operational for 1 month after Provisional Go-Live
Goods	Goods means to include all hardware, equipment, instruments, machinery, material, electronic items, networking equipment, switches, routers, cables and other tangible goods/items etc., and includes their user manuals, technical manuals, operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related) and all its modifications, provided or to be provided by Implementation Partner to NRDA under this Agreement
Indemnifying Party	shall have the same meaning ascribed to it in Clause 14.1;
Implementation Partner's Team	Implementation Partner along with all of its Consortium Members, who have to provide Goods and Services to NRDA under the scope of this Agreement. This definition shall also include any and/or all of the employees of the Implementation Partner, Consortium Members, authorized partners/agents and representatives or other personnel employed or engaged either directly or indirectly by the Implementation Partner for the purposes of this Agreement.
Intellectual Property Rights	means all rights in written designs and copyrights, moral rights, rights in databases and Bespoke Software / Pre-existing work including its up-gradation systems and compilation rights (whether or not any of these are registered and including application for registration);
Network	in NRDA users refers to all the IT assets installed by the Implementation Partner as part of the Project for networking;
Original Equipment Manufacturer (OEM)	Means the Manufacturer of Goods and COTS
Parties	means NRDA and Implementation Partner and[other consortium members]for the purposes of this Agreement and "Party" shall be interpreted accordingly;
Performance Guarantee	Means the Bank guarantee provided by any Nationalized bank in favour of the Implementation Partner ;
Project	means Pilot, Project Implementation (roll out) and Maintenance in terms of the Agreement;
Project Implementation	means Project Implementation as per the testing standards and acceptance criteria prescribed by NRDA;
Project Implementation Phase	shall be from the Effective Date of the Agreement to the date of final acceptance testing & certification as set out in Clause 5.3 of this Agreement;
Providing Party	shall have the same meaning ascribed to it in Clause 11.4;
Replacement Implementation Partner	means any third party that NRDA or its nominated agencies appoint to replace Implementation Partner upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
Services	means the services delivered to the Stakeholders of NRDA or its nominated agencies, employees of NRDA or its nominated agencies, and to professionals, under this Agreement using the tangible and intangible assets created, procured, installed, managed and operated by the Implementation Partner including the tools of information and communications technology and includes but is not limited to the list of services specified Vol 2 of the RFP;
Service Level	means the level of service and other performance criteria which will apply to the Services delivered by the Implementation Partner and as described in Volume 2 of the RFP;
SLA	means the Performance and Maintenance SLA mentioned in Volume 2 of the RFP;
System	Means the Smart City System as described in the RFP;

Stakeholders	Stakeholders means NRDA or its nominated agencies, NRDA, employees and the Departments of State Government as agreed
Term	Shall have the same meaning as ascribed to it in Clause 3
Timelines	Means the timelines of the scope of work as described in Vol 2 of the RFP
Total Value of the Project/ Total Project Value / Total Contract Value	means [] i.e. the amount quoted by the Implementation Partner (inclusive of taxes) in its commercial bid. For each increase in the Total Value of the Project due to change requests (individual or cumulative) in accordance with the terms of this Agreement, the Total Contract Value shall be deemed to increase to such applicable extent and NRDA shall have the right to seek additional Performance Guarantee to such increased extent of Total Value of the Project and the penalties/liquidated damages etc. getting affected by such increase would be calculated based on such increase from the effective date of such increased Total Value of the Project.
Uptime	As defined in Volume 2 of the RFP
Warranty period	Shall remain for period of 5 years from the date of Go Live. In case any additional warranty/AMC is required to achieve above, the same shall be included in the quote.

26.2. SCHEDULE – II – Change Request Schedule

This Schedule describes the procedure to be followed in the event of any proposed change to the 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 Partner.

The detail procedure is specified in Section 6 of Vol 2 of RFP.

26.3. SCHEDULE – III - EXIT MANAGEMENT SCHEDULE

[As per the exit management plan submitted by the successful bidder.] To be revised periodically in case of change requests etc.

26.4. SCHEDULE – IV - AUDIT, ACCESS AND REPORTING

1. PURPOSE

This Schedule details the audit, access and reporting rights and obligations of NRDA or its nominated agency and the Implementation Partner

2. AUDIT NOTICE AND TIMING

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

3. ACCESS

The Implementation Partner shall provide to NRDA or its nominated agency reasonable access to employees, consortium members, 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 Partner shall make every reasonable effort to co-operate with them.

4. AUDIT RIGHTS

NRDA 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:

- 4.1. The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of NRDA and documentation related thereto;
- 4.2. That the actual level of performance of the services is the same as specified in the SLA;

- 4.3. That the Implementation Partner has complied with the relevant technical standards, and has adequate internal controls in place; and
- 4.4. The compliance of the Implementation Partner with any other obligation under the MSA and SLA.
- 4.5. Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the Implementation Partner.
- 4.6. For the avoidance of doubt the audit rights under this Schedule shall not include access to the Implementation Partner's profit margins or overheads, any confidential information relating to the Implementation Partner'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 SUPPLIERS AND AGENTS

The Implementation Partner shall use reasonable endeavours to achieve the same audit and access provisions as defined in this Schedule with suppliers and agents who supply Labour, services, equipment or materials in respect of the services. The Implementation Partner shall inform NRDA prior to concluding any supply agreement of any failure to achieve the same rights of audit or access.

REPORTING: The Implementation Partner 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 NRDA or its nominated agency.

6. ACTION AND REVIEW

- 6.1. Any change or amendment to the systems and procedures of the Implementation Partner, 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 NRDA or its nominated agency and the Implementation Partner Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the Agreement.

7. TERMS OF PAYMENT

NRDA shall bear the cost of any audits and inspections. The terms of payment are exclusive of any costs of the Implementation Partner, for all reasonable assistance and information provided under the MSA, the Project Implementation, Operation and Maintenance SLA by the Bidder pursuant to this Schedule.

8. RECORDS AND INFORMATION

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

SCHEDULE – V – GOVERNANCE SCHEDULE

To be mutually agreed.

26.5. Schedule – VI – Payment Schedule and Project Timelines

End of Volume III