

VOLUME-III of RFP

Master Service Agreement

Agreement Between
Department of Transport, Government of Punjab

And

For

**PHASE-2 of Implementation of e-governance in Transport Department,
Punjab on a PPP basis for a period of five years**



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Note: This is a draft agreement and may be altered with the consent of parties mentioned below.

THIS AGREEMENT is made on this _____ day of ____ May/June _____ 2019

BETWEEN:

Department of Transport Government of Punjab having its administrative office at, State Transport Commissioner Office, SCO 177-178, Sector 17 C, Chandigarh (hereinafter referred to as 'Client' or 'Department of Transport', which expression shall, unless the context otherwise requires, include his successors in office, assignees and delegates) of the FIRST PART;

AND

[Name of the Operator/successful Bidder] a company incorporated under the Companies Act, 1956/ Companies Act, 2013 having its office at [*insert the address*]/ a joint venture between [*name of Lead Partner*] and [*name of Consortium Member*] (hereinafter referred to as "Operator" or "Service Provider", which expression shall, unless the context otherwise requires, include its successors, and permitted assigns of the second part)

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

AND WHEREAS the Client with a view to leverage state-of-art technologies and to streamline the administration of Department of Transport, to provide a responsive and effective administration for an efficient, speedy, simple and cost effective service to the citizens. To achieve this objective, the state government has decided to implement 'Phase 2 of E-governance in Transport Department, Punjab (2019)' on a PPP basis for a period of five years from takeover of project(the "**Project**");

AND WHEREAS the Department of Transport, Punjab intends to grant to the Operator the right to undertake and implement the Project on the terms and conditions mentioned in this Agreement;

AND WHEREAS the Operator in pursuance of its Bid undertakes to implement the Project during the Term;

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES, ASSURANCES, REPRESENTATIONS AND PROVISIONS SET FORTH HEREIN, the STC, Punjab on behalf of Department of Transport, Punjab and the Operator have agreed to enter into this Master Services Agreement ("**MSA**") to govern the execution of the Project in accordance with roles and responsibilities of the Parties as defined in the RFP.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. DEFINITIONS & GLOSSARY

1.1 Key Definitions

- **"Agreement / MSA"** means this Agreement signed between the Parties, inclusive of but not limited to all the annexure, appendix the RFP, the Proposal/ Bid with all clarifications and undertakings submitted by the Service Provider, the acceptance and all related correspondences;
- **"Bid/ Proposal"** means the pre-qualification bid, technical bid, commercial bid, undertakings, clarifications, acceptance letters and all related correspondences submitted by the Service Provider for the Project in response to the RFP;
- **"Client/Department"** means Department of Transport, Government of Punjab;
- **"Client Data"** means all proprietary data of the Client which an Operator obtains, possesses or processes in the context of providing the services to the users pursuant to this Agreement;
- **"Take Over"** means the date by which citizen services are started from at least 90% of the total office locations i.e. site preparation, hardware installation, software installation, networking, etc. is completed and the services are started from the offices and the same is confirmed by the transport department .
- **"Material Breach"** means a breach by either Party (Client or Operator) of any of its obligations under this Agreement which has or is likely to have an adverse effect on the Project which such defaulting Party shall have failed to cure;
- **"Operations and Maintenance"** means the day to day activity that is carried out on regular/periodic basis for keeping the project up and running;
- **"Parties"** mean Client and the Service Provider for the purposes of this Agreement and **"Party"** shall be interpreted accordingly;
- **"Project"** means 'Phase 2 Of E-Governance in Transport Department Punjab(2018)' (Non Commercial Wing), Punjab on a PPP basis for a period of five years, an initiative of

Department of Transport, Government of Punjab to be implemented in the State of Punjab as per this Agreement;

- **"Service Level"** means the level of service and other performance criteria which will apply to the services as set out in the SLA parameters effective during the term of Agreement;
- **"Transfer"** means the exchange of possession and ownership of the equipment and services used by the Service Provider in this Project;
- **"RFP"** means the Request for Proposal dated [25-09-2018] that was released by Department of Transport, Government of Punjab, for the Selection of Service Provider for Phase 2 Of E-Governance in Transport Department Punjab(2018)' (Non Commercial Wing), Punjab on a PPP basis for a period of five years.
- **Corrigendum** means the corrigendum that was released subsequent to the RFP titled "Corrigendum to RFP for Selection of Service Provider for Introduction of e-Governance in Transport Department (Non-commercial Wing), Punjab, on PPP basis for 5 years.

1.2 Interpretation

- All references to **time** are to the Indian Standard Time;
- A **'day'** (including within the phrase 'business day', 'working day') shall mean a period of 24 hours running from midnight to midnight;
- References to a **'business day, working day'** shall be construed as a reference to a day on which Government offices in the State of Punjab are generally open.
- In case of any ambiguity in the interpretation of any of the clauses in the tender document, the decision of the Client shall be final and binding on all the Parties in relation to the said interpretation.

1.3 Glossary

- “DEO” means Data Entry Operators
- “IPR” means Intellectual Property Rights
- “MRZ” means Machine Readable Zone
- “NIC” means National Informatics Centre
- “OEM” means Original Equipment Manufacturer
- “SLA” means Service Level Agreement
- “DL” means the driving license
- “LL” means the learners license
- “MSA” means Master Service Agreement
- “PBG” means Performance Bank Guarantee
- “STC” means State Transport Commissioner
- “DTO” means District Transport Office
- “RTA” means Regional Transport Authority
- “SDM” means Sub Divisional Magistrate
- “O&M” means Operations and Maintenance

1.4 Documents comprising the Agreement

1.4 Priority of documents

This Agreement including its Annexure, Appendix, represents the entire agreement between the Parties. If in the event of a dispute regarding the interpretation or meaning of this Agreement, it should be necessary for the Parties to refer to documents forming part of the bidding process leading to this Agreement (each of which forms an integral part of this Agreement), then such documents shall be relied upon and interpreted in the following descending order of priority:

- (a) This Agreement comprising of Master Service Agreement, Non-Disclosure Agreement. Service Level Agreement;
- (b) Request for Proposal for the Selection of Service Provider for **"Phase 2 of Implementation of e-governance in Transport Department Punjab"** on a PPP basis for a period of five years and Corrigendum thereof; and
- (c) Proposal/ Bid submitted by the Service Provider to the Department of Transport, Government of Punjab in response to the above mentioned RFP.

For the avoidance of doubt, it is expressly clarified that in the event of a conflict among (a), (b) and (c) as mentioned above, (a) shall prevail over (b) and (c); further (b) shall prevail over (c). Further, the corrigendum will prevail over the RFP.

2. SCOPE OF SERVICES

The scope of the Project shall mean and include, during the Term of this Agreement such services as referred to in Schedule-I to this Agreement. The Service Provider shall observe and perform all the services as set out in the Schedule-I of this Agreement and in case of non-compliance of the services, the Service Provider shall be liable for payment of liquidated damages in addition to other consequences as mentioned in this Agreement, or as otherwise available to the Client under applicable law.

2.1 Adherence to SLAs

The Operator will be required to adhere to the Service Level Agreement, regarding the required uptime for maintaining the quality of service expected from the Operator.

The Operator will be solely responsible for arranging all the tools/ software applications, including, but not limited to, network monitoring system and application performance management tool, required for monitoring the service levels of the system.

2.2Pre-Takeover Tests

The Client reserves the right to conduct pre-takeover tests on all the hardware, software and infrastructure deployed at each department office by deploying a team of experts. The Operator must ensure that all the sites prepared must conform to the standards as defined in the RFP and corrigendum and are to the best of industry standards to qualify the pre-takeover test.

It will be the responsibility of the department to conduct pre-takeover tests (as desired by the transport department) within 30 days from receiving the intimation from the Operator. However, in absence of pre-takeover tests being conducted beyond 30 days of takeover of the site, Operator would be allowed to execute the service transactions and accordingly claim its payment.

2.3Emergency Services

The Operator is expected to provide any or all of its services to cater to any emergency requirements that may arise during holidays or beyond working hours as and when requested by the department at no additional cost to the department.

2.4 Contract Time Period

The overall time period for the project is 5 years from the date of takeover of Project ("Term"). After completion of 5 years, fresh tender maybe floated by the Client for the scope of services laid down in Schedule I. The Term of the Agreement may be extended up to one year or upon selection of the new service provider and takeover of the Project by such new service provider, whichever is earlier. However, in no case shall the Service Operator be entitled to an extension of the term beyond the aforesaid one year extension.

The process of new tender for the subsequent operator is expected to be completed before the expiry of the Term of this Agreement.

In extraordinary situation which may disrupt the delivery of services to people or revenue loss to Client, Client reserves right to extend further period for one more year, beyond the aforesaid Term and extension. The Service Provider shall install the IT Infrastructure at all the sites during the Term. After the end of the Term, the Service Provider shall take back the IT Infrastructure deployed for the Project.

However, the fixed infrastructure hardware components like counters etc. shall not be taken back by the Service Provider.

2.5 Change Request

Change request in respect of this Agreement, will emanate from the Parties' respective project manager who will be responsible for obtaining approval for the change. A written request explicitly defining the change required along with the reasons shall be sent by the project manager initiating the change to the other party. The Operator shall while making the change request, or upon receipt of such a request from the Client prepare a change request note and duly consider the change in the context of the following parameters, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as per this Agreement, in addition to its impact on the Project, the Service Level Agreement, and time and financial impact thereof.

It is explicitly stated that any additional hardware or additional manpower required during the O&M phase of the Project (or otherwise during the Term) to achieve the SLAs (as a part of this Agreement) will have to be provisioned by the operator at no additional cost to the department and will not be considered as Change Request.

2.5.1 Obligation

The Change Request Note will be reviewed and approved by the client. The Operator shall be obliged to implement any proposed changes once approval in accordance with above provisions has been given by the Client, with effect from the date agreed for implementation and within an agreed timeframe. Provided that any such implementation shall be without prejudice to the right of the Operator to dispute the same in accordance with the provisions of this Agreement (including Clause 5.2).

3. ROLES & RESPONSIBILITIES OF THE SERVICE PROVIDER

3.1 Setting up IT and Non -IT infrastructure

Service provider shall install new IT and Non IT infrastructure. However additional requirements for infrastructure, Manpower, operations and Maintenance services related to E-governance project, IT infrastructure, smart card provisioning and related equipment to meet the delivery timelines as per SLAs is to be completed by the Service Provider.

During the Term of the Agreement, the Operator shall execute the processes related with the defined scope of services as per RFP and MSA for registration certificates and driving licenses and their allied matters with full responsibility and shall ensure that best industry practices are adopted to provide the citizen centric services.

3.2 Operations and Maintenance

The Operator shall handover the operations and management of the RTAs, SDM Offices and STC Office to the Client as per the terms of this Agreement after the expiry of the Term. It is explicitly mentioned hereby that the Service Provider shall handover all the processes, operations and software applications (and irrevocable licenses for all associated intellectual property) including the data to the Client including the IT Infrastructure equipment at the end of the currency period of the Project.

- The Service Provider shall have to provide replacement of the non-IT equipment at few sites which includes air conditioner and UPS (minimum 240 minute backup) for a period of five years.

The Service Provider shall maintain the IT and Non- IT infrastructure during the Term of the Agreement. However the service provider shall not take back the IT and

Non IT infrastructure setup/ installed by them during the project implementation after the completion of the Project which is five years.

4 TAKE OVER DATE

This Agreement shall be effective from the date when 90 percent of the total locations under the Project become 'operational' (i.e takeover is being achieved). For the avoidance of doubt, it is clarified that 'operational' means the stage when the sites start providing the deliverables like DL, RC, Permits, and LL etc. after successfully processing the applications.

The Service Provider shall have to start operations within 30 days of allotment of the Project, and takeover would need to be achieved within such time frame. This means that at least 90 percent of the total locations under the Project become 'operational'.

4.1 Project Management Committee& Joint Working Group

- (a) The Project Management Committee (“**PMC**”) shall be formed by the Client within one month of the signing of the Agreement. Its primary objective would be to monitor the implementation of the Project by the Service Provider. The PMC shall be empowered to intervene at the necessary instances where the Service Provider defaults in accordance with the terms and conditions of the RFP and MSA.

The PMC constituted for this Project shall have the following members:

- (i) State Transport Commissioner , Punjab – Chairman
- (ii) Project Manager from the Client- Member Secretary
- (iii) Manager MIS
- (iv) Project Coordinators
- (v) 2 Members from the Service Provider nominated by Authorized signatory

It is clarified that the Transport Secretary, Punjab shall be the appellate authority to hear appeals to the decisions taken by the PMC, in case of difference of opinion amongst the officials of the Client and Service Provider.

- (b) A Joint Working Group (“JWG”) will be formed by the Client in which a representative of the Service Provider shall also be taken. The primary key responsibility area of this group would be to ensure the compliance to the agreed terms and conditions as per the agreement. It shall also handle the issues related to calculations of liquidated damages, reports from the software application and other critical parameters essential for the implementation of the project.

The JWG shall comprise of the following members:-

- (i) Manager MIS
- (ii) Project Coordinators
- (iii) Nodal Officer from the Service Provider

- (c) Performance Review

The Client and Operator shall meet [fortnightly, monthly or quarterly] to discuss priorities, service levels and system performance. Additional meetings may also be held at the demand of Client. The agenda for these meetings will be:

- (i) Service performance review;
- (ii) Review of specific problems/exceptions and priorities; and
- (iii) Review operations and determine corrective action to overcome deficiencies.

- (d) Escalation Procedure Costs: The Parties shall first submit any dispute or disagreement between the Parties arising out of or relating to and/or in connection with this agreement or any service level agreement or scope work to the State Transport commissioner, Punjab (“**Disputed Matter**”). In case the Disputed Matter remains unresolved, then the Disputed Matter will be referred to Project Management Committee. If the Project Management Committee also fails to resolve the Disputed Matter, the issue may be referred to as per clause "Resolution of Disputes". The process of the referral of the disputed matter is stated herein below:

- (i) In order formally to submit a disputed matter to the aforesaid for, one Party (Claimant') shall give in written notice ("Dispute notice") to the other Party. The dispute notice shall be accompanied by (a) a statement by the claimant

describing the disputed matter in reasonable detail and (b) documentation, if any, supporting the claimant's position on disputed matter.

- (ii) The other Party ("Respondent") shall have the right to respond to the Dispute Notice within 7 days after receipt of the Dispute Notice. In the event that the committee is unable to resolve the Disputed Matter within a further period of days, it shall refer the Disputed Matter to next level for the dispute resolution.
 - (iii) All negotiations, statements and/or documentation pursuant to these point 8 (a) and (b) shall be without prejudice and shall be confidential.
 - (iv) If the Disputed Matter is having a material effect on the operation of the services (or any of them or part of them) the Parties will use all their respective reasonable endeavors to reduce the elapsed time in reaching a resolution of the disputed matter.
1. If the committee also cannot resolve the disputed matter within 40 days (or such longer period as the Parties may agree to in writing) from the date of being informed by the Project Management Committee regarding such Disputed Matter, the Disputed Matter may be referred by either of the Parties to arbitration in accordance with Clause Resolution of Disputes.

4.2 Timelines

Procurement of IT and Smart card hardware & system software, OS & Database licenses and development at deployment of necessary software applications for the Department of Transport: The operator shall supply, install the hardware & necessary system software, OS, database licenses and software applications as required for the project as per the implementation project plan agreed with the Client. The equipments supplied under this category should carry five years onsite comprehensive OEM guarantee / warranty. This five year period shall commence from the takeover of the Project. For any office takeover after the taking over of the Project, the Operator would provide five year onsite comprehensive OEM guarantee / warranty from the takeover of those offices.

Operations and Management of Transport Department Field Offices: As part of the Agreement the Operator will be given a maximum of 30 days from the date of signing of the Agreement by setting up the entire infrastructure and other requirements necessary for commencement of issuance of citizen services from the Department of Transport including but not limited to issuance of smart card based registration certificates & permanent driving licenses etc. Any delay in setting up of infrastructure as per the guidelines will lead to payment of liquidated damages as per SLAs for which operator shall be solely responsible.

4.3 Payment Terms

The Operator would raise invoice from Punjab state on a monthly basis on the basis of MIS reports which are generated from the software applications application hosted in the Data Centre in compliance to this Agreement. Punjab State Transport Society on behalf of Department of Transport Punjab would reconcile the reports on a quarterly basis. In case of discrepancies, the settlement of claims will be made in subsequent payment to the Operator.

The below mentioned points to be taken into consideration for making payments to the Operator;

- a The payments will be done to the operator on monthly basis for the whole State.
- b The payment shall be based on per transaction charges as proposed by the operator (as per financial proposal of operator).
- c The payment per transaction shall be made to the operator as per quotes mentioned in the financial bid presented here under:

Type of Transaction	Rates per Transaction (INR)*
Learner's License	
Driving License (DL)	
Registration Certificate (RC)	
Scanning of DL Document	
Scanning Of RC Document	
Scanning Of Permit Document	
Permit	
Fitness	

Note: This is not a work contract, prices quoted are exclusive of GST and other taxes as applicable from time to time.

- d The monthly invoice will be submitted by the operator to State Transport Commissioner (STC), Department of Transport. Government of Punjab
- f The monthly payment on per transaction basis will be started, for any site only after successful takeover of the project in the state.
- g Any liquidated damages imposed on the operator for non-performance will be deducted from the subsequent payments as decided by the Project Management Committee.

h No payment will be made for any regular data entry activities carried out for updating records, data entry work for tax collection and penalties etc. during the course of takeover.

The TDS, as applicable, will be deducted at source as per the prevalent rules and regulations at the time of making payments to the operator during the billing cycles. All payments will be made to the designated bank account as informed by the operator. The bank account details have to be confirmed by both the consortium members of the Operator on their respective company letterhead signed by the authorized signatory. Any payment accruing from this agreement shall be payable by the Client to the designated bank account. Any disbursement of the payments to consortium partner shall be an internal matter of the consortium members and client shall in no instance be held liable or responsible for the same.

Any increase / decrease in direct taxes (i.e. goods and services tax, service tax or any other direct tax imposed by govt. in future) will be accordingly adjusted by the department.

In case the operator fails to meet the SLAs as mentioned in the contract, the liquidated damages mentioned thereof would be levied.

Department will make the payment within 30 days from the receipt of invoices and satisfactory reports. It would be responsibility of operator to provide all documents to process the payment. While no interest whatsoever will be paid to operator.

4.4 Work Policy

The work policies that are supposed to be adhered to by the operator or by the people engaged by the Operator for this project have been listed below:

- a. That the operator agrees to employ its best efforts to meet the project timelines and standards as applicable.
- b. That the Department of Transport will provide the premises from where departmental services will be provided/ carried out. Any individual assigned for the performance of the services under this agreement, shall observe the rules and regulations of Department of Transport office; provided however, the adherence to such working hours of the Department of Transport office shall not constitute justification for non accomplishment of agreed schedules.

- c. That the Operator shall not, knowingly engage any person with criminal record/conviction or any person who participates in a pre-trial diversion program and any such person shall be barred from participating directly or indirectly in providing the services under this Agreement.
- d. That the Operator shall make sure that proper working atmosphere is maintained in the working area. No staff member is allowed for any sort of misbehavior in the premises of Department of Transport or other departments. In case of any such incidence Operator will be solely responsible and shall immediately discontinue the services of the person involved.
- e. That the Operator and any individual assigned for the performance of the services under this Agreement agree to comply with the entire Department of Transport standard/special physical security procedures of Department of Transport in place at the locations where operator is performing work.

4.4 Independence

The terms of independence that are supposed to be followed by the Operator or by the people engaged by the Operator are detailed as follows:

- a. That the Operator and/or its employees, agents and representatives shall perform all services hereunder as an independent operator and nothing contained herein shall be deemed to create any association, partnership, joint venture or relationship of principal and agent or master and servant or employer and employee between the parties hereto or any affiliates or subsidiaries thereof or to provide either party with the right, power or authority, whether express or implied to create any such duty or obligation on behalf of the other party. Operator acknowledges that its rendering of services is solely within its own control subject to the terms and conditions agreed upon and agrees not to hold itself out to be an employee, agent or servant of Department of Transport, Punjab or any department or affiliate thereof.
- b. Operator's personnel, employees etc. have no authority/right to bind Department of Transport in any manner. It is also clarified that the personnel or employees being provided by Operator shall be employed by operator only and governed by terms of Operator's employment and operator shall be solely responsible and liable in the event of any adverse claims of whatsoever nature made on Department of Transport by any employees of Operator.

4.5 Compliance with Laws

It is expected of the Parties:

- a. That the Operator hereto agrees that it shall comply with all applicable union, state and local laws, ordinances, regulations and codes in performing its obligations hereunder, including the procurement of licenses, permits and certificates and payment of taxes where required.
- b. That the Operator shall establish and maintain all proper records (particularly, but without limitation, accounting records) required by any law, code/practice of corporate policy applicable to it from time to time including records and returns as applicable under labor legislation.
- c.

4.6 Security and Safety

It is expected of the Parties that:

- a. The Operator will comply with the Department of Transport or its nominated agencies standards as stated in the RFP Volume I, and further in corrigendum, clarifications, undertaking and letter of intent, insofar as it applies to the provision of the services.
- b. Each Party to the Agreement shall also comply with Government of Punjab's information technology security and standards policies in force from time to time at each location of which Department of Transport or its nominated agencies makes the operator aware in writing so far as the same apply to the provision of the services.
- c. The Parties to the Agreement shall use reasonable endeavors to report 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 Department of Transport or any of its nominees data, facilities or Confidential Information.
- d. The Operator shall upon reasonable request by Department of Transport or its nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.

- e. The Parties under the Agreement shall promptly report in writing to each other 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 Department of Transport facilities.

4.7 Confidentiality and Secrecy

It is expected of the Parties that:

- a. That the Operator acknowledges and agrees that all tangible and intangible information including all documents, data, papers, statements, business/customer information, trade secrets and processes of Department of Transport relating to its business provided to, obtained by or developed by the Operator for purposes of or pursuant to the performance of services under this Agreement or otherwise constitutes confidential and proprietary information of Department of Transport ("Confidential Information"). The operator shall maintain due confidentiality at all times and shall not disclose any Confidential Information to any person or entity at any time whether during the currency of this agreement or expiry or earlier discharge or termination thereof.
- b. The Operator shall take all necessary action to protect the Confidential Information against misuse, loss, destruction, alteration or deletion as per the Non-Disclosure Agreement signed with the Client in the manner set out in Schedule-III.

4.8 Termination

4.8.1 Termination for default

The Client without prejudice to any other remedy for breach of contract, by written notice in case of default of the Operator:

- a. If the Operator fails to deliver any or all contracted services as per service levels and standards specified in the Agreement (including the Service Level Agreements), or
-
- b. If the Operator fails to perform any other obligation(s) under the Agreement,
- c. if the Operator in view of STC, Punjab, has engaged in corrupt or fraudulent practices in competing for or in executing the Agreement;
-
- d. if the Operator becomes bankrupt or otherwise insolvent, or proceedings for liquidation or winding up are initiated against the Operator

For (a) and (b) above, the Operator will be given a period of 30 days, from the date of issuance of such notice for termination, for curing such default. No cure period is applicable for defaults in Clause (c) and (d). In case the Operator fails to cure the issue then the Client shall have the right to terminate the Agreement for default.

4.8.2 Termination for Convenience

The Client by a written notice of 15 working days (in case of Fraudulent practices) Otherwise 30 days to the Operator may terminate the Agreement at any time for its convenience. The notice of termination shall specify that termination is for its convenience. In case of termination for convenience, the Client would pay to the Service Provider the cost of services (as per scope of work & payment plan) carried out at the time of the termination of convenience and depreciated cost of the equipment takeover. Deprecation would be calculated on the basis of a straight line method assuming the useful life as 5 years from the date of the takeover.

4.9 Indemnification

- 1 Subject to Clause 4.9 (2) below, the Operator (the "Indemnifying Party") undertakes to indemnify the Client (the "Indemnified Party") from and against all losses on account of bodily injury, death or damage to tangible personal property arising in favor of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's performance or non-performance under this Agreement or the SLA to the extent of the Indemnifying Party's comparative fault in causing such losses.
- 2 The indemnities set out in sub-clause (1) above shall be subject to the following conditions:
 - (I) the Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
 - (II) the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense;
 - (III) if the Indemnifying Party does not assume full control over the defense of a claim as provided in this Clause, the Indemnifying Party may participate in

such defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses;

- (IV) the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
- (V) all settlements of claims subject to indemnification under this Clause will:
 - a. be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and
 - b. includes any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
- (VI) the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favor of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
- (VII) the Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;
- (VIII) in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and
- (IX) If a Party makes a claim under the indemnity set out under Article in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).

4.9.1 Limitation of Liability

- (I) The total cumulative liability of Operator or Client arising from or relating to this Agreement including any special, direct or indirect, incidental consequential (including loss of profit or revenue), exemplary or punitive damages whether in contract, tort or other theories of law, shall not exceed the total amount to be paid by the Client for the Project. Provided that the foregoing shall not with respect to the Client include liability to pay any amounts on termination, or payments to be made to the Operator as per Clause 4.3.

- (II) Neither this Agreement nor the SLA grants or creates any rights, benefits, claims, obligations or causes of action in, to or on behalf of any person or entity (including any third party) other than between the respective Parties to this Agreement or the SLA, as the case may be.
- (III) Any claim or series of claims arising out or in connection with this Agreement or the SLA shall be time barred and invalid if legal proceedings are not commenced by the relevant Party against the other Party within a period of 3 years from the date when the cause of action first arose or within such longer period as may be permitted by applicable law without the possibility of contractual waiver or limitation.
- (IV) The Client or its nominated agencies shall be entitled to claim the remedy of specific performance under this Agreement.
- (V) In the interest of citizens and the Government of Punjab, all services as mentioned in the Agreement must remain uninterrupted. Therefore, to ensure continuation of all/ any service under the Agreement. Transport Department, Government of Punjab State has absolute right & authority to terminate services of any Operator and make other operator discharge all services as desired under this Agreement.

5. FORCE MAJEURE

The Operator shall not be liable for forfeiture of its PBG, liquidated damages, or termination for default if and to the extent that delays in performance or other failure to perform its obligations under the Agreement is due to an event of Force Majeure.

For purposes of this clause, "Force Majeure" means any of the following events, to the extent that the same are beyond the control of the operator and not involving the operator's fault or negligence, not foreseeable or preventable by reasonable due diligence:.

5.1 Non-Political Events

- (I) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion not attributable to the Operator);
- (II) strikes or boycotts (other than those involving the Operator, its sub-contractor, vendors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting for the continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being a Political Event set forth in this Agreement;

- (III) any failure or delay of a Operator but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Operator;
- (IV) any judgment or order of any court of competent jurisdiction or statutory authority made against the Operator in any proceedings for reasons other than (i) failure of the Operator to comply with any applicable Law or applicable permits, or (ii) on account of breach of any applicable law or applicable permits or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Client;
- (V) the discovery of geological conditions, toxic contamination or archaeological remains on the site that could not reasonably have been expected to be discovered through a site inspection; or
- (VI) Any event or circumstance of a nature analogous to any of the foregoing.

5.2 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any government instrumentality:

- (I) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, revolution, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (II) expropriation or compulsory acquisition by the Client or any of their nominated agencies of any material assets or rights of the Service Provider;
- (III) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any applicable permits required by the Service Provider to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider's inability or failure to comply with any condition relating to grant, maintenance or renewal of such applicable permits;
- (IV) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in a year;
- (V) any civil commotion, boycott or political agitation which prevents rendering of services by the Service Provider for an aggregate period exceeding 7 (seven) days in an accounting year;
- (VI) any requisition of the Project by any other authority; and

- (VII) Any requisition of the Project by the Client or any of the nominated agencies. For the avoidance of doubt, suspension of the Project in accordance with the provisions of this Agreement shall not be considered a requisition for the purposes of Force Majeure event; and

If a force majeure situation arises, the Operator shall promptly notify the Client in writing (by fax or email) of such condition and the cause thereof. Unless otherwise directed by the Client in writing (by fax or email), the Operator shall continue to perform its obligations under the Agreement as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure Event.

5.3 Successors

This Agreement shall bind successors and permitted assigns and liquidator or administrator of the Operator with respect to all covenants herein, and cannot be changed except by prior written agreement signed by both Parties.

5.4 Resolution of disputes

The Client and the Operator shall make every effort to resolve amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Agreement.

If, after forty (40) days from the commencement of such informal negotiations, the Client and the Service Provider have been unable to amicably resolve the dispute, then the issue will be referred to the arbitration.

In case the dispute arises, it shall be referred to the a single arbitrator appointed by the Parties, and where such arbitrator is not appointed within 30 days of such matter being referred by either party to arbitration, either party may procure the appointment of an arbitrator as per the provisions of the Arbitration & Conciliation Act, 1996. The venue of the arbitral proceedings shall be Chandigarh, and the language of arbitral proceedings shall be English.

6 EXIT MANAGEMENT

6.1 Purpose

- (i) This Clause sets out the provisions which will apply on expiry or termination of this Agreement.
- (ii) In the case of expiry or termination of the Agreement, the Parties shall agree at that time whether, and if so during what period, the provisions of this Clause shall apply ("**Exit**

Management Period”). In no event the exit management period shall exceed 6 months from the notice acceptance date.

- (iii) The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Clause.

6.2 Exit Plan Time Period

The Client shall be entitled to serve notice in writing to the Service Provider at anytime during the Exit Management Period as detailed hereinabove requiring the Service Provider and/or its sub-contractors to provide the Client with a complete and up to date list of the assets within 30 days of such notice. The Client shall then be entitled to serve notice in writing on the Service Provider at any time prior to the date that is 30 days prior to the end of the Exit Management Period requiring the Service Provider to sell the assets, to be transferred to the Client at such sum representing the depreciated value of the assets if any as defined under the clause on termination for convenience. Notwithstanding anything contrary provided in this Agreement, transfer of all assets (which are in the possession or control of the Service Provider) which were present in the site at the time possession of the relevant site was provided to the Service Provider, shall only be returned to the Client, and no amounts shall be payable in respect thereof. In addition, before the expiry of the Exit Management Period, the Operator shall handover all confidential information and all other related materials in its possession, including all the hardware & software applications of the Client.

Any software application or information delivered to the Client during the Term or on expiry of the Agreement shall not be sold or re-used or copied or transferred by the Operator to other locations without prior written notice and approval of the Client. Further, any software application or information procured, developed or deployed under the Agreement by the Operator shall be the legal properties of the Client after the exit.

6.2. 1 Cooperation and Provision of Information

- (i) During the exit management period:
 - a. The Operator shall allow the Client or its nominated agencies access to information required to define the then current mode of operation associated with the provision of the services to enable the Client to assess the existing services being delivered.
 - b. The Operator shall promptly on demand by the Client or its nominated agencies, provide access to and copies of all information held or controlled by it which it have prepared or maintained in accordance with this Agreement or scope of work relating to any material aspect of the services (whether provided

by the Operator or sub-contractors appointed by the Operator). The Client or its nominated agencies shall be entitled to copy all such information. Such information shall include details pertaining to the services rendered and other performance data. The Operator shall permit the Client or its nominated agencies and/or any replacement operator to have reasonable access to its employees and facilities as reasonable required by the Client to understand the methods of delivery of the services employed by the Operator and to assist appropriate knowledge transfer.

6.3 Confidential Information, Security and data.

- (i) The Operator will promptly on the commencement of the exit management period supply to the Client or its nominated agencies the following:
 - a. Information relating to the current services rendered and customer satisfaction surveys and performance data relating to the performance in relation to the services;
 - b. Documentation relating to intellectual property rights;
 - c. Department of Transport data and confidential information;
 - d. All current and updated departmental data as is reasonable required for purposes of the department or its nominated agencies transitioning the services to its replacement operator in a readily available format;
 - e. All other information (including but not limited to documents, records and agreements) relating to the services reasonable necessary to enable the Client or its nominated agencies, or its replacement operator to carry out due diligence in order to transition the provision of the services to the Client or its nominated agencies, or its replacement operator (as the case may be);
 - F. Documentation relating to sub-contractors.
- (ii) Before the expiry of the Exit Management Period, the Operator shall deliver to the Client or its nominated agencies all new or up-dated materials from the categories set out in this Clause and shall not retain any copies thereof, except that the Operator shall be permitted to retain one copy of such materials for archival purposes only.
- (iii) Save as otherwise provided in this Agreement, before the expiry of the Exit Management Period, the Service Provider shall deliver/transfer to the Client, all information, data, documents, records, etc., which is in the possession or control of the Service Provider, pertaining to the citizens/users/persons to whom it has provided services during the Term, and further shall ensure that the it does not retain the copy of such information/documents/data/ records.

6.4 Employees

During the Term of the Agreement, the following shall be binding on the Parties:

- (i) Promptly on receipt of request at any time during the Exit Management Period, the Operator shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the Client or its nominated agencies a list of all employees (with job titles) of the Operator dedicated to providing the services at the commencement of the Exit Management Period.
- (ii) Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the Operator to the Client or its nominees, or a replacement operator ("**Transfer Regulation**") applies to any or all the employees of the Operator, then the Parties shall comply with their respective obligations under such Transfer Regulations.
- (iii) To the extent that any Transfer Regulation does not apply to any employee of the Operator, the Client or its nominated agencies, or its replacement operator may make an offer of employment or contract for services to such employee of the Operator and the Operator shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the Client or its nominated agencies or any replacement operator.

6.5 Transfer of certain agreements

On demand by the Client or its nominated agencies, the Operator shall effect such assignments, transfers, innovations, licenses and sub-licenses as the Client may require in favor of Client or its nominated agencies, or there placement operator in relation to any equipment lease, maintenance or services provision agreement between Service Provider and third party lessors, vendors, and which are related to the services and reasonable necessary for the carrying out of replacement services by the Client or the replacement service provider.

6.6 Right of Access to Premises

For access to the premises of the operator, the following points shall apply.

- (i) At any time during the Exit Management Period, where assets are located at the Operator's premises, the Operator will be obliged to give reasonable rights of access to (or, in the case of assets, located on a third party's premises , procure reasonable rights of access to) Client or its nominated agencies, and/or any replacement operator.
- (ii) The Operator shall also give the Client or its nominated agencies, or any replacement operator right of reasonable access to the Operator's premises and shall procure the Client or its nominated agencies and any replacement

operator rights of access to relevant third party premises during the Exit Management Period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to Client or its nominated agencies, or a replacement operator.

6.7 General obligations of the operator

- (i) The operator shall provide all such information as may reasonably be necessary to effect a seamless handover as practicable in the circumstances to the Client or its nominated agencies or its replacement operator and which the Operator has in its possession or control at any time during the Exit Management Period.
- (ii) For the purpose of this Clause, anything in the possession or control of any Service Provider, associated entity, or sub-contractor is deemed to be in the possession of the Service Provider.
- (iii) The Operator shall commit adequate resources to comply with its obligations under this Exit Management Clause.

7. EXIT MANAGEMENT PLAN

- (i) The Operator shall provide the Client or its nominated agencies with a recommended exit management plan ("**Exit Management Plan**") which shall deal with all the provisions set out in Clause 6 above and including but not limited to the following aspects of exit management in relation to the Agreement:
 - a. A detailed plan of the transfer process that could be used in conjunction with a replacement operator including details of the means to be used to ensure containing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
 - b. Plans for the communication with such of the Operator's staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on Client's operations as a result of undertaking the transfer;
 - c. Proposed arrangements for the segregation of the Operator's networks from the networks employed by the Client or its nominated agencies and identification of specific tasks necessary at termination; and
 - d. Plans for provision of contingent support to the Client or its nominated agencies, and replacement operators for a reasonable period after transfer for the purpose of providing service for replacing the services.

- (ii) The Service Provider shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- (iii) Each Exit Management Plan shall be presented by the Service Provider to and approved by the Client.
- (iv) In the event of termination or expiry of contract, each Party shall comply with the Exit Management Plan.
- (v) During the Exit Management Period, the Operator shall deliver the services as per the requirements of the Project.
- (vi) Payments during the Exit Management Period shall be made in accordance with the terms of payment Clause.
- (vii) This Exit Management Plan shall be furnished in writing to the Client or its nominated agencies within 90 days from the date of signing of this Agreement.

7.1 Notices

Any notice given by one party to the other pursuant to this contract shall be sent to the other party in writing by fax, email or any other reasonable mode of communication. A notice shall be effective from the date when delivered, emailed or faxed whichever is earlier.

For Client

[To be inserted]

For Service Provider

[To be inserted]

7.2 Software Licenses

The licenses of all software to be deployed as part of the subject would be in the name of the Department of Transport- Government of Punjab and the original copy of the same shall be deposited by the Operator at State Transport Commissioner's office after signing of this Agreement and before the installation of the software at any of the sites.

7.3 Audit, Access and Reporting

The Operators shall on request allow access to Department of Transport or its nominated agencies and its nominees to all information which is in the possession or control of the operator which relates to the provision of the services as set out in the Audit, Access and reporting requirements and is reasonably required to comply with the terms & conditions.

7.4 Audit, Access and reporting Schedule

- (i) Purpose
 - a. This Clause details the audit, access and reporting rights and obligations of Client or its nominated agencies and the Operator under the Agreement.

(ii) Audit Notice and Timing

- a. As soon as reasonably practicable after the signing of the Agreement, the Parties shall use their best endeavors to agree to a timetable for routine audits during the Project. Such time table may be reviewed every month. During the currency of the project, the Client or its nominated agency shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the operator any further notice of carrying out such audits.
- b. The Client or its nominated agencies during the Project may conduct non-timetable audits of records related to the Project at their own discretion if they reasonably believe that such non-timetable audits are necessary as a result of an act of fraud by the Operator a security violation or breach of confidentiality obligations by the Operator provided that the requirement for such an 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 Operator considers that the non-timetable audit was not appropriate, the matter shall be referred to the [PMC].
- c. The frequency of audits which shall be monthly, provided always that the Client or its nominated agencies shall endeavor to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Operator
- d. The audit and access rights contained in this Clause shall survive the termination or expiration of this Agreement for a period of twenty-four (24) months. For the avoidance of doubt, this right of audit shall not apply to data and records returned to the Client or its nominated agencies or a user or destroyed in accordance with Exit Management Plan.

(iv) Access

- a. The Operator shall during the Project provide to the Client or its nominated agencies, or its or their authorized representatives reasonable access to employees, suppliers, agents, third party facilities including leased premises used for physical front offices as detailed in volume-1 of the RFP, data recovery centers, documents, records and systems reasonable required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The Client or its nominated agencies during the Term of the Agreement shall have the right to copy and retain copies of any relevant records. The Operator shall make every reasonable effort to co-operate with the Client or its nominated agencies in effecting the audits.

(v) Audit Rights

- a. Department of Transport or its nominated agencies during the currency of Project shall have the right to audit and inspect suppliers, agents, facilities, 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 including but not limited to:
 - (i) The security, integrity and availability of all Department of Transport or its nominated agencies data processed, held or conveyed by the Operator on behalf of the Client or its nominated agencies and its users and documentation related thereto;
 - (ii) That the actual level of performance of the services is the same as specified in the Agreement;
 - (iii) That the Operator has complied with the relevant technical standards, and otherwise has adequate internal controls in place;
 - (iv) The compliance of the Operator with any other obligation under the Agreement; and
 - (v) Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the Operator.
- b. For the avoidance of doubt the audit rights under this Clause shall not include access to the Operator's profit margins or overheads, any confidential information relating to the Operator's employees, or such other information of commercial-in-confidence nature which are not relevant to the services associated with any obligation under the agreement.

7.5 Audit Rights of Sub-Contractors, Suppliers and Agents

- a. The Operator shall use reasonable endeavors to achieve the same audit and access provisions as defined in this Clause with sub-contractors, suppliers and agents who supply labour, services, equipment or materials in respect of the services. The Operator shall inform the Client or its nominated agencies prior to concluding any sub-contract or supply agreement of any failure to achieve the same rights of audit or access.
- b. Reporting: The Operator will provide quarterly reports to the Department of Transport or its nominated agencies regarding any specific aspects of the Project and in context of the audit and access information as required by Department of Transport and its nominated agencies.

7.6 Action and review

- a. Any change or amendments to the systems and procedures of the Operator, or sub-contractor, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- b. Any discrepancies identified by any audit pursuant to this Clause shall be immediately notified to Department of Transport or its nominated agencies and

the Operator who shall determine the necessary actions required to rectify such discrepancies in accordance with the terms of this Agreement. Failure on part of the Operator to rectify the discrepancies within 30 days of being informed of the actions required to be undertaken in order to rectify the discrepancies shall be deemed to be a material breach of this Agreement and the Client shall be entitled to exercise its termination rights under Clause 4.8 of the Agreement.

7.7 Terms of payment

Department of Transport or its nominated agencies and the operator shall bear their own costs of any audits and inspections. The terms of payment are exclusive of any cost of the Operator for all reasonable assistance and information provided under the Agreement by the operator pursuant to this Clause.

7.8 Records and information

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

7.7 Intellectual Property Rights

During the term of the Agreement, the responsibility to maintain the valid IPR would lie with the Operator and the IPRs will be transferred to the Client or its nominated agency during the transfer stage. Following conditions shall apply:

- (i) **Ownership and Title:** Title to the software applications developed exclusively for this Project, any enhancements, point updates and documentation, including ownership rights to patents, copyrights, trademarks and trade secrets therein shall be the exclusive property of Department of Transport.
- (ii) **Reverse Engineering:** The Operator shall not reverse engineer any software application provide during the Project.
- (iii) **Confidentiality:** The Operator hereby acknowledges that all the developments, enhancements, point updates, and documentation may contain information that may be trade secret and proprietary to the Client. The Operator hereby agrees not to disclose such information except to persons and organizations expressly authorized by the Client to receive such information. The Operator shall not remove or alter any copyright notices or proprietary legends affixed by the department to such enhancements, point's updates or documentations.

The IPR for bespoke and Pre- existing work has been defined as follows:

- Bespoke development: The IPR rights for any bespoke development done during the implementation of the Project will lie with the Department of Transport.
- Pre- existing work: All IPR including the source code and materials (other than products or fixes) developed or otherwise obtained independently of the efforts of a party under this Agreement ("pre-existing work") shall remain the sole property of that part. During the performance of the services for this Agreement, each Party grants to the other Party a non- exclusive license to use, reproduce and modify any of its pre- existing work provide to the other Party solely for the performance of such services. Except as may be otherwise explicitly agreed to in statement of services, upon payment in full, the Service Provider should grant to the Client, a non – exclusive , perpetual , fully paid up license to use, reproduce and modify(if applicable) the pre-existing work in form delivered to the Client as part of the service deliverables only for its internal business operations. Under such license either of the Parties will have no right to sell the pre-existing work of the other party to a third party.

The Client's license to pre- existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that Service Provider leaves with the Client at the conclusion of performance of the services.

7.8 Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of India and shall be (subject to Clause 5.2) subject to the exclusive jurisdiction of the courts of Chandigarh only. The terms and provisions of this Agreement which by their nature and content are intended to survive the performance hereof by any or all Parties hereto shall so survive the completion and termination of this Agreement. All rights and remedies conferred under this Agreement or by law shall be cumulative and may be exercised singularly or concurrently.

7.9 Corporate Authority/ Further Assurances

The Operator represents that it has taken all necessary corporate action to authorize the execution and consummation of this agreement and will furnish satisfactory evidence of same upon request. An authenticated list of the officers of the Operator who are authorized to sign and/or execute this Agreement and/or other related documents in writing should be provided to the Client.

7.10 Insurance Cover

The Operator shall effect and maintain at its own cost, during the term of this Agreement,

such insurances for such maximum sums as may be required under the applicable laws, and such insurances as may be necessary or prudent in accordance with industry practice to protect the interests of the Operator and the Client. The Operator shall also effect and maintain such insurances as may be necessary from litigating the risks that may devolve on the Client as a consequence of any actor omission of the Operator during the Term of the Agreement.

8. PERFORMANCE BANK GUARANTEE

The Operators shall at his own expense deposit with the Client, within ten (10) working days of the date of date of the LoA or prior to signing of this Agreement whichever is earlier, an unconditional and irrevocable Performance Bank Guarantee (PBG) from a Nationalized bank acceptable to Department of Transport, payable on demand, for the due performance and fulfillment of the conditions stipulated in the Agreement by the Operator. The performance bank guarantee can be encashed in Chandigarh, Punjab, on the demand of the department.

The performance guarantee shall be denominated in Indian Rupees and shall be in the form of bank guarantee

The PBG will be for an amount of Rs. 5 Crores (Indian Rupees Five Crores only). All charges whatsoever such as premium; commission etc. with the respect to the PBG shall be borne by the Operator.

The Performance Bank Guarantee shall be valid until the expiry of six months from the date of termination or expiry of the Term of the Agreement.

In the event of the Operator being unable to service the Agreement for whatsoever reason, the Client would be entitled to invoke the PBG. Notwithstanding and without prejudice to any rights whatsoever of the Client under the Agreement in the matter, the proceeds of the PBG payable to the Department of Transport in case of Operator's failures to complete its obligations under the Agreement are in addition to any other rights of the Client under law or the Agreement.

In case of default by the Operator, the Client will notify the operator in writing (by fax or email) of the exercise of its right 7 days in advance, indicating the contractual obligation(s) for which the Operator is in default.

The Client shall also be entitled to make recoveries from the Operator's bills, performance bank guarantee, or from any other amount due to him, the equivalent value of any payment made to him due to inadvertence, error, collusion, misconstruction or misstatement.

8.1 Obligations of the operator

The following are the obligations of the Operator in addition to any other obligations as laid down under the Agreement:

1. The Operator shall be obliged to work closely with the Department of Transport, act within its own authority and abide by directives issued by the authorities of the Client.
2. The Operator shall abide by the job safety measures prevalent in India and will free Department of Transport from all demands or responsibilities arising from accidents or loss of life the cause of which is the Operator's negligence. The Operator will pay all indemnities arising from such incidents and will not hold the Client responsible or obliged.
3. The Operator will treat as confidential all data and information, obtained in the execution of his responsibilities, in strict confidence and will not reveal such information to any other party without the prior written approval of the Client or any official designated by the Client.
4. The Operator shall install and use only the proposed and approved software and hardware in specified quantities during the Term of the Agreement.
5. The set up and the manpower deployed shall be dedicated for the use of Client only. It shall not be used for any other purpose during or after office hours or on holidays.
6. Operator shall be responsible for the maintenance, up keep and up gradation of all the hardware devices, software applications, antivirus etc. installed by during the Term of the Agreement for the fulfillment of service level as agreed.
7. The Operator must handle carefully all the requirements and work. It should not affect the normal working of government office. Right time attendance and work are important. Failure to comply with this requirement shall be treated as non-cooperation to the Client and the Client may exercise its right for termination of the Agreement.
8. The Operator shall comply with all rules, regulation, byelaws and directions given from time to time formulated or issued by any local or public authority in connection with the Project and shall pay fees or charges that are levied on him without any extra cost to the Client.

8.2 Inspection & Test

The following are the rights of the Client:

- The Client and/or its representative reserve the right of inspection and testing of the goods prior to delivery and after delivery at the site, or at any time during the Term of the Agreement.
- Department of Transport reserves the right to inspect, test and, wherever, reject the goods after the good's arrival at project site. This shall in no way be limited or waived by reason of the goods having previously been inspected, tested and passed by Department of Transport or its representative.

10. LIQUIDATED DAMAGES

Time is the essence of the Agreement and the performance and services

Under this Agreement are binding on the Service Provider. In the event of delay or any gross negligence for causes attributable to the Operator in meeting the deliverables ,services and meeting its obligations, the Client shall be entitled at its option to recover from the Operator, the liquidated damages.

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:

For Department Signature

_____ Name

Designation _____

Date _____

In PRESENCE OF:

for Operators

Signature _____

Name _____

Designation _____

Date _____

WITNESSES 1

Signature _____

Name _____

Designation _____

Date _____

WITNESSES 2

Signature _____

Name _____

Designation _____

Date _____

SCHEDULE I

(SCOPE OF SERVICES- TO BE INSERTED BY THE CLIENT)

SCHEDULE II

SERVICE LEVEL AGREEMENT

This SLA shall operate as a legally binding services agreement specifying terms which apply to the Parties and to the provision of the services by the Operator to Client under this SLA.

Sr. no	Service Parameter	Service Level	Measurement Metrics	Slab/Period	Liquidated Damages	Example
1(i)	Time taken to print & dispatch/deliver a DL, RC, LL, Permit or any other document	Within 3 working day(excluding holidays)	Software to monitor the time taken between receipt of application (Service Level Agreement SLA Monitoring Tool) to be developed by the Operator. Formula: T1= Date of Approval T2= Date of Delivery of the Printed License Delay Time (DT) = (T2-T1)-3) Days	Slab 1: If DT <= 4 days	Slab 1: 10% of the Rate of that particular service for each day of delay	Rate for that Particular Service Let Rate of DL = 50 and DT is 1 day, Damages Calculation: = (10/100)*50 INR 5 Per Transaction In case DT is 3 days, then (30/100)*50= 15 INR per Transaction
				Slab 2: If DT > 4 days	Slab 2: No payment	
1(ii)			T1= Date of Printing T2= Date of dispatch/delivery of the Printed card. Delay Time (DT) = (T2-T1)-3) Days	Slab 1: If DT <= 4 days -Slab 2: If DT > 4 days	Slab 1:- 10% of the Rate of that particular service for each day of delay Slab2-- No payment	
2	Development/customization of software applications like Service Level Monitoring Tool, Network Management System, IT Cell & Printing Application (Excluding Vahan&Sarathi which will be provided by NIC)	Completion including acceptance testing should be finished within five months of the contract signing date	Total number of months taken for completion	Slab1: Within 4 months from the contract signing date	Slab 1: NIL	
				Slab2: After 4th but before 6th month from the contract signing date	Slab 2: 50,000 for Each Software Application .	
				Slab3: Completion after 6th month to 8 months	Slab3: 1 50 000 for each software	

				from the contract signing date	application	
				Slab 4: Beyond 8 Months	Slab 4: Termination of the Contract	
3	Downtime of service availability to the front end counters, IT Cell Team (established by operator) and Department of Transport in terms of the availability of applications and databases developed by The Bidder.	<p>Downtime of Service availability should not be more than 4 hour per month at each site. Service Provider shall develop/deploy a monitoring tool for calculating downtime.</p> <p>However, downtime due to NIC Online application shall not be considered for the delay of Service Provider services.</p>	<p>Downtime will be monitored, by the staff of department and department shall record the non availability of application and database related services in a month during the office hours each office</p> <p>Software to monitor the downtime has to be developed by the SERVICE PROVIDER</p>		<p>Out of one month, maximum 4 hours downtime is in tolerance, Anything above this, would result in penalizing operator as per the following formula: $\{(\text{Downtime in Hours} - 4) / (\text{Total Number of working hours in that month})\} \times (\text{Total Billing of Service Provider for that month of that site})$</p> <p>Let the downtime in hours in Month of May 2018 be = 6 hrs Let the total number of working days in May 2018 be = 22 ($22 \times 8 = 176$ hrs) Let Monthly Billing be = 500000 Now the tolerance limit is = 4 hrs Hours to be penalized for May 2018 shall be = $6 - 4 = 2$ hrs Now Calculation of damages for downtime will be done = $(2/176) \times (\text{Total Billed Cost for the month of May 2018})$ = $(2/176) \times (500000)$</p>	<p>Let the downtime in hours in Month of May 2018 be = 6 hrs Let the total number of working days in May 2018 be = 22 ($22 \times 8 = 176$ hrs) Let Monthly Billing be = 500000 Now the tolerance limit is = 4 hrs Hours to be penalized for May 2018 shall be = $6 - 4 = 2$ hrs Now Calculation of damages for downtime will be done = $(2/176) \times (\text{Total Billed Cost for the month of May 2018})$ = $(2/176) \times (500000)$</p>
	Data back up and uploading (Scanning Data)	<p>Daily back up and uploading to the state application to be hosted at the next working day.</p>	Instances of backup and data upload not		<p>Defaults refer to the instances of failures in activities like Scanning of Results and MIS reports on the state</p>	<p>Let there be 3 Sites defaulting thrice for 5 days</p>
	Vol-3 RFP		MSA		Transport Deptt. Punjab	

				application / IT Cell, Uploading of Video graphy. Such instances shall be monitored through the SLA and NMS tool to be developed by the Service Provider	
				Slab1: number of default less than or equal to 3 times per location per month	Slab1: Rs 4000 per location per month
				Slab2: number of default more than 3 per location per month	Slab2: Rs 6000 per location per month
5	<p>Security and incident Management SLA</p> <p>Explanation: These SLAs would be calculated for each of the following types of incidences:</p> <ul style="list-style-type: none"> • Virus Attack <p>Any virus infection and passing of malicious code shall be monitored at all levels and also user complains of virus infection shall be logged and collated every quarter.</p> <ul style="list-style-type: none"> • Denial of Service Attack <p>Non availability of any services shall be analyzed and forensic evidence shall be examined to check whether it was due to external DoS attack.</p> <ul style="list-style-type: none"> • Intrusion <p>Compromise of any kind of data hosted by DC</p> <ul style="list-style-type: none"> • SPAM statistics on 	No Software/Virus/IT Fatal attacks	SLA/ NMS Tools	<p>Slab 1 : For every Virus attack reported and not resolved within 36 hours from the time of patch or virus removal tool/process is available:</p> <p>Slab 2 : For every incidence of Denial of service attack</p> <p>Slab 3 : For every incidence of Data Theft Further DCO is subject to damages and /or punishment applicable under the IT act or any other prevailing laws of the State/Country at that point in time, which shall be over and above the said damages</p>	<p>Slab 1 : Rs.50,000/-</p> <p>Slab 2 : Rs.50,000/-</p> <p>Slab 3 : Rs 1,00,000 /-</p>

	monthly basis shall be monitored through reports generated by Anti SPAM software.					
				Slab 4 : Per Intrusion	Slab 4 : Rs.1,00,000 /-	
6.	Quality of Printing of deliverables i.e. Smart cards, LL, Permits, IDP and any other service on smart card or paper print.	100% visibility, no lines/scratch or miss print.	Observation/scrutiny made by issuing authority.	Reprint at no cost to the applicant and this cost shall be borne by the service provider	Clear reprint of the deliverable to the provided up to the satisfaction level of issuing authority.	N/A
7	Takeover of 90 percent locations by service Provider	Completion of 90 percent location in all respect specified in the document	Report from the concerned authority	Slab 1: If delay 1 to 15 days Slab 2: Up to 30 days Slab 3: more than 30 days	Slab 1: 500000/- Slab 2: 1000000/- Slab 3: Cancellation of contract	

Scope of the Agreement

This SLA encompasses the outsourcing portion for the "PHASE 2 of Implementation of e-governance in Transport Department Punjab" between the parties. The purpose of this SLA is to:

- Establish mutual responsibilities and accountability;
- Define each party's expectations in terms of services provided;
- Establish performance measurement criteria;
- Define availability expectations;
- Define escalation process;
- Establish trouble reporting single point of contact;

- Establish framework for SLA change management;
- Define the parties covered by this SLA;

The following parties are obliged to follow the procedures as specified by this Service Level Agreement:

Client, Operator, Agreement Owners

The following personnel must be notified to discuss service level agreement considerations

	Title	Telephone 0172-	Email.....
Client	Department of		
	Transport, Punjab		
Name	State Transport		
Operator	Commissioner	2702575	
		
Name		

Contact details of authorized people

Contact List

Any changes to the listed contacts must be communicated and updated prior to the change occurring. The Single Point of Contact (POC) for all outsourced services is -----.
This phone number is monitored 24 hours per day, 7 days per week.

Name..... Title..... Telephone.....

Client

Operator

NameTitle.....

Telephone.....

SDM Office/Secretary RTA Office/STC Office

Details of single point of contact

Principal Contacts

The Client and the Operator will nominate a senior staff member to be the principal contact regarding operation of this service Level agreement (SLA).At the start date of this SLA the nominated principal contacts are.

Client principal contact: Name..... Designation..... Phone.....

**Operator principal contact: Name..... Designation
.....
Phone**

Commencement and Duration of this SLA

This SLA shall commence from the takeover of Project and shall unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties, expire on the date which shall be five years from the date of takeover of Project.

Scope of Services

Project Performance Standards

The Operator service will be available to offices of Department of Transport (SDM Office/Secretary RTA Office/STC Office) on all working days during business hours and to the citizens on all working days from 1000hrs to 1400 hrs.

However, the Operator shall be required to work on the holidays or after office hours in case there is a special task assigned to the Operator by the Client or its representatives in order to prepare reports etc. or any other task to be accomplished by the Client.

In addition to the aforementioned service availability, the Operator will also provide support for rectification of problems identified/ observed in the system during the business hours and after hours through a single point of contact who should be available (24/7) as defined in SLA.

Response time has been split into two segments:

- Business Hours: 0900hrs to 1700hrs, Monday to Friday, and
- After Hours: After normal business hours (including non business hours and weekends)
- Response time should be minimum on Holidays when there is some special task assigned by the Client.

Services provided to the client by operator

This SLA focuses on the service levels expected from the Operator for this Project of the Client in the State of Punjab covering the scope of work as detailed in RFP Volume 1, Volume 2 and the Agreement. The scope of the Operator should be to focus on successful completion of the Project.

Interpretation

Apart from the provisions as set out hereinabove, the terms and conditions stated in the MSA shall apply to this SLA. In the event of a conflict in interpretation of any article in the MSA and the SLA, the provisions of the MSA shall prevail.

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:

For Client

Signature _____

Name _____

Designation _____

Date _____

In PRESENCE OF:

For Operator

Signature _____

Name _____

Designation _____

Date _____

WITNESSES 1

Signature _____

Name _____

Designation _____

Date _____

WITNESSES 2

Signature _____

Name _____

Designation _____

Date _____

SCHEDULE III

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("NDA Agreement") is effective from _____ day of month _____ year 2018 by and between the client" Department of Transport, Government of Punjab having its principal place of operations at SCO 177-178, Sector-17 C, Chandigarh, AND

-
- AND
-

Hereinafter 'A' and 'B' collectively referred to as "Operator" which expression shall unless the context otherwise requires include his successors in office, assignees and delegates on the second part.

Purpose: This agreement is made in order for either party to receive from each other information regarding products/services which both parties may wish to acquire from each other under the terms that will protect the confidential and proprietary nature of such information. By mutual consent and without further action, this agreement shall become part of any and all agreements or requests for such products/services which Department of Transport and the Operators may discuss now or enter into in the future. For the purpose here in any coincidental business information of third persons furnished or disclosed by one party to the other party shall be deemed to be confidential information and shall be subject to the terms and conditions herein.

Confidential Information: As and when herein, confidential information shall mean and include any and all confidential or proprietary business information furnished, in whatever form or medium, or disclosed verbally or otherwise by the Parties to each other including but not limited to, the services, marketing plans, financial data and personal statistics, whether or not marked as confidential proprietary by the Parties.

Use of confidential Information: The Parties agree to hold such confidential information in strictest confidence and shall use it solely for the purpose of this agreement unless otherwise authorized in writing by the other Party. Except for a reasonable number of copies made for internal use or use consistent with the purposes of this agreement, the Parties shall not copy such confidential information without prior written permission of the other Party. The Parties shall not disclose such confidential information to anyone including but not limited to representatives and agents hereinafter collectively known as ("Representatives") except those representatives of the Parties to whom disclosure is necessary for the purpose set forth in this agreement. The Parties shall appropriately notify each such representative that the disclosure is made in confidence and must be kept in confidence in accordance with this agreement. Each Party shall not use such confidential information to copy or otherwise replicate a document/product of either party, including software or parts thereof or services unless authorized in writing. Also in no event shall

disclosure be made to a competitor of a Party without prior written consent, from the other Party.

In the event such confidential information must be disclosed by either Party to third persons for the purposes set forth herein, Department of Transport or shall first obtain the other Party's written permission to do so and till such time as no written consent or denial from the other Party, allowing or denying such disclosure is obtained, the Party seeking such consent or denial shall not proceed to disclose the same. Once the written consent by the consenting Party has been given, the disclosing Party shall obtain from such third persons a written agreement regarding confidentiality of the confidential information prior to disclosure.

Upon termination of this agreement for any reason or upon request of either Party, all confidential information, together with any copies of same as may be authorized in this agreement shall be returned to the requesting Party. The requirements of use and confidentiality set forth shall survive after termination and after return of such confidential information.

Copy confidential information: The Parties agree that copies of confidential information shall be made only in accordance with this agreement, and each copy made shall contain and state the same confidential or proprietary notices or legends which appear on the original. Nothing in this agreement shall be construed as granting any right or license under any copyrights, inventions or patents now or hereafter owned or controlled by either party.

No Further Obligations: Except for the obligations of use and confidentiality imposed herein upon the operator and Department of Transport, each party acknowledges that no obligation any kind is assumed by or implied against either party by virtue of any meeting or discussions regarding the purpose of this agreement with respect to whatever information is exchanged.

Exceptions: The obligations imposed herein shall not apply to any information that:

1. Is already in possession of or independently developed by either party as evidence by written record;
2. Becomes publicity available through no fault of either Party; or
3. Is ready publicity available.

Assignments: Neither this Agreement nor any rights hereunder shall be assignable or transferable in whole or in part, by either Party and the obligations contained in this agreement shall survive after termination of this agreement.

Amendments: Amendments or alternations of this agreement shall be binding and enforceable only if made in writing and signed by authorized representatives of the parties here to.

Governing Law & Jurisdiction: This agreement shall be governed by and interpreted according to the laws of India and subject to the jurisdiction of courts in Chandigarh

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to sign these Agreements as of the date first stated above.

For Client
Signature _____
Name _____
Designation _____
Date _____

In PRESENCE OF:

WITNESSES 1
Signature _____
Name _____
Designation _____
Date _____

for Operator
Signature _____
Name _____
Designation _____
Date _____

WITNESSES 2
Signature _____
Name _____
Designation _____
Date _____

For Department

Name _____
Designation _____
Date _____

For Operators
Signature-----
Name _____
Designation _____
Date _____

Signature