

Appointment of E-Commerce
Aggregator to develop and
manage a dedicated online
marketplace, manage end-to-end
logistics and customer service, for
Canteen Stores Department
(CSD)

Request for Proposal
Volume-3: Legal Terms & Master Service Agreements

13 May 2024

Canteen Stores Department
Ministry of Defence
Government of India

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Abbreviations

Abbreviation	Description
CSD	Canteen Stores Department
DPM	Defence Procurement Manual
ECS	Electronic Clearance service
FAQ	Frequently Asked Questions
FRS	Functional Requirement Specification
GFR	General Financial Rules
GST	Goods and Service Tax
HO	Head Office
IFSC	Indian Financial System Code
IPR	Intellectual Property Rights
IT	Information Technology
LIBOR	London Interbank Offered Rate
MIS	Management Information System
MoD	Ministry of Defence
NEFT	National Electronic Fund Transfer
PCDA	Principal Controller of Defence Accounts
QA	Quality Assurance
RFP	Request For Proposal
RTGS	Real Time Gross Settlement System
SLA	Service Level Agreement
SOFR	Secured Overnight Finance Rate
VAT	Value Added Tax

1. Definitions and Interpretations

1.1. Definitions

1. 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 e-commerce industry shall be interpreted in accordance with their generally understood meaning in such industry.

1.2. Interpretation

In this Agreement, unless a contrary is evident:

1. Unless otherwise specified, a reference to a clause, sub-clause or section is a reference to a clause, sub-clause or section of this Agreement including any amendments or modifications to the same from time to time.
2. Words denoting the singular include the plural and vice versa and use of any gender includes the other genders.
3. References to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established.
4. Words denoting a person shall include an individual, corporation, company, body corporate, partnership, or a trust.
5. A reference to legislation includes legislation repealing, replacing or amending that legislation.
6. The clause headings are for convenient reference only and do not form part of this Agreement.
7. Unless otherwise specified a reference to a clause number is a reference to all its sub-clauses.
8. Where a word or phrase is given a particular meaning, it includes the appropriate grammatical forms of that word or phrase having corresponding meanings.

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. Documents forming part of Agreement

The following documents shall be deemed to form and be read and constructed as part of the Agreement viz.:

1. This Agreement.
2. The Letter of Award.
3. The RFP; Corrigendum; Addendum and
4. The Proposal.

1.4. Ambiguities within Agreement

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

1. As between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause.
2. As between the provisions of RFP and any Corrigendum issued thereafter, the provisions of the Corrigendum shall, to that extent only, prevail over the corresponding earlier provision of the RFP;
3. As between the provisions of this Agreement and the RFP and the Proposal, this Agreement shall prevail;
4. As between the provisions of the RFP and the Proposal, unless otherwise decided by the Purchaser, the RFP shall prevail; and
5. As between any value written in numerals and that in words, the value in words shall prevail.

2. Scope of Work

1. In consideration of the award of the work under the RFP to the bidder and payments to be made by the Purchaser to the Bidder as hereinafter mentioned, the bidder hereby covenants with the Purchaser to accomplish the entire Scope of Work as provided in Volume 1 of the RFP and clarifications, annexures, schedules etc. thereof and to perform all obligations mentioned in all volumes of the RFP.
2. The Purchaser hereby covenants to pay the bidder in consideration of the accomplishment of Scope of Work and for performance of all obligations mentioned in the RFP, the Fees 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 Agreement

1. This Agreement shall come into force and effect on the date of signing of this Agreement by all the Parties (hereinafter the 'Effective Date') and, unless terminated earlier in accordance with the provisions of this Agreement, shall remain in force for a period of 3 years (6 months for setup phase and 2.5 years for operations) from the Effective Date ('Term').
2. The Purchaser reserves the sole right to grant any extension to the Term abovementioned and shall notify in writing to the bidder, at least 6 months before the expiration of the Term hereof, whether it will grant the bidder an extension of the Term. The extension shall be given for 2 years at a time post approval from bi-yearly performance review meeting, for pan-India roll out and operation of the e-commerce facility to other depots and beneficiaries. The terms and conditions for such extension will be re-negotiated between the purchaser and the bidder upon successful implementation and operation of e-commerce facility in pilot phase.
3. Any further extension beyond 3 + 2 years (extension) will be granted on mutual consent of the Purchaser and Bidder on the existing Terms and Conditions.
4. Depots may be added during operations phase on mutual consent of the Bidder and Purchaser.

4. Standard Conditions

1. **Law:** The Contract shall be considered and made in accordance with the laws of the Republic of India. The contract shall be governed by and interpreted in accordance with the laws of the Republic of India.

Irrespective of the place of delivery, or the place of performance or the place of payments under the contract, the contract shall be deemed to have been made at the place from which the contract Agreement, has been issued. The courts of such a place shall alone have jurisdiction to decide any dispute arising out or in respect of the contract.

Unless otherwise stipulated in the contract, if after the last deadline for the bid submission (Techno-commercial), any law, regulation, ordinance, order or bye-law having the force of law is enacted, promulgated, abrogated, or changed in India (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/ or the contract Price, then such Delivery Date and/ or Contract Price shall be correspondingly increased or decreased, to the extent that the bidder has thereby been affected in the performance of any of its obligations under the contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable.

2. **Effective Date of the Contract:** The contract shall come into effect on the date of signatures of both the parties on the contract (Effective Date) and shall remain valid until the completion of the obligations of the parties under the contract. The deliveries and supplies and performance of the services shall commence from the effective date of the contract.
3. **Arbitration:** All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to performance, which cannot be settled amicably, may be resolved through arbitration as explained in **Section 22.14**. All future litigation, if any, will be subject to jurisdiction of Mumbai only.
4. **Penalty for use of Undue influence:** The bidder undertakes that he has not given, offered or promised to give, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Canteen Stores Department (CSD) or otherwise in procuring the Contracts or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the present Contract or any other Contract with the Government of India for showing or forbearing to show favor or disfavor to any person in relation to the present Contract or any other Contract with the Government of India. Any breach of the aforesaid undertaking by the Bidder or any one employed by him or acting on his behalf (whether with or without the knowledge of the Bidder) or the commission of any offers by the Bidder or anyone employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1986 or any other Act enacted for the prevention of corruption shall entitle the CSD to cancel the contract and all or any other contracts with the Bidder and recover from the Bidder the amount of any loss arising from such cancellation. A decision of the CSD or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on to cancel the contract and all or any other contracts with the Bidder and recover from the Bidder the amount of any loss arising from such cancellation. A decision of the CSD or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on the Bidder. Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of the Bidder towards any officer/employee of the CSD or to any other person in a position to influence any officer/employee of the CSD for showing any favor in relation to this or any other contract, shall render the Bidder to such liability/ penalty as the CSD may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amounts paid by the CSD.

5. **Agents / Agency Commission:** The bidder confirms and declares to the CSD that the bidder is the original provider of the services referred to in this Contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of India or any of its functionaries, whether officially or unofficially, to the award of the contract to the bidder; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The bidder agrees that if it is established at any time to the satisfaction of the CSD that the present declaration is in any way incorrect or if at a later stage it is discovered by the CSD that the Bidder has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract, the bidder will be liable to refund that amount to the CSD. The bidder will also be debarred from entering any supply / service Contract with the Government of India for a minimum period of five years. The CSD will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the bidder who shall in such an event be liable to refund all payments made by the CSD in terms of the Contract along with interest at the rate of 2% per annum above London Interbank Offered Rate (LIBOR) or Secured Overnight Finance Rate (SOFR) in case LIBOR is discontinued. The CSD will also have the right to recover any such amount from any contracts concluded earlier with the Government of India.
6. **Access to books of Accounts:** In case it is found to the satisfaction of the CSD that the bidder has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents/Agency Commission and penalty for use of undue influence, the bidder, on a specific request of the CSD, shall provide necessary information/ inspection of the relevant financial documents/information.
7. **Non-disclosure of Contract documents:** Except with the written consent of the CSD/ Bidder, other party shall not disclose the contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.
8. **Termination of the Contract:** The CSD shall have the right to terminate this Contract in part or in full in any of the following cases.
 - a. The bidder is not able to meet SLA parameters due to reasons solely attributable to the bidder and not attributable to Force Majeure for more than 6 months consecutively for any SLA or for more than 3 months consecutively for the same SLA with a Severity Level 6 as mentioned in the Service Level Agreements section of Vol II.
 - b. When the bidder or consortium member is found to have made any false or fraudulent declaration or statement to get the contract or he is found to be indulging in unethical or unfair trade practices.
 - c. If it comes to knowledge of the Purchaser that the Bidder 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
 - d. The bidder or Consortium Member or their team has failed to comply with or is in breach or contravention of any Applicable Laws
 - e. The bidder is declared bankrupt or becomes insolvent.
 - i. When both parties mutually agree to terminate the contract.
 - ii. The delivery of material / service is delayed due to causes of Force Majeure by more than Six months.
 - iii. The purchaser has noticed that the bidder has utilized the services of any Indian/Foreign agent in getting this contract and paid any commission to such individual/company etc.
 - iv. As per decision of the Arbitration Tribunal.

9. **Notices:** Any notice required or permitted by the contract shall be written in the English language and may be delivered or may be by email to the assigned designated addressed to the of the party to whom it is sent.
10. **Transfer and sub-letting:** The bidder has no right to give, bargain, sell, assign or sublet or otherwise dispose of the entire Contract, as well as to give or to let a third party take benefit or advantage of the present Contract or any part thereof, unless mutually agreed and approved by the Purchaser. Reference to Volume II of this RFP, in case of Sub-contracting or consortium or JV, bidder will be required to disclose the work share allocated to the Sub-Contractor or Partner agencies.
11. **Patents and Other Intellectual Property Rights:** The prices stated in the present Contract shall be deemed to include all amounts payable for the use of patents, copyrights, registered charges, trademarks and payments for any other intellectual property rights. The bidder shall indemnify the CSD against all claims from a third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraphs, whether such claims arise in respect of manufacture or use.
12. **Amendments:** No provision of present Contract shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Contract and signed on behalf of both the parties and which expressly states to amend the present Contract

13. Taxes and Duties

a. General

- i. If Bidder desires to ask for GST, the same must be specifically stated. In the absence of any such stipulation, it will be presumed that the prices include all such charges and no claim for the same will be entertained.
- ii. If reimbursement of any Duty/Tax/GST is intended as extra over the quoted prices, the Bidder must specifically say so. In the absence of any such stipulation it will be presumed that the prices quoted are firm and final and no claim on account of such duty/tax/GST will be entrained after the opening of tenders.
- iii. If a Bidder chooses to quote a price inclusive of any duty/tax/GST and does not confirm inclusive of such duty/tax/GST so included is firm and final, he should clearly indicate the rate of such duty/tax and quantum of such duty/tax/GST included in the price. Failure to do so may result in ignoring of such offers summarily.
- iv. If a Bidder is exempted from payment of any duty/tax up to any value of services from them, he should clearly state that no such duty/tax will be charged by him up to the limit of exemption which he may have. If any concession is available regarding rate/quantum of any Duty/tax/GST, it should be brought out clearly. Stipulations like, the said duty/tax/GST was presently not applicable but the same will be charged if it becomes leviable later, will not be accepted unless in such cases it is clearly stated by a Bidder that such duty/tax/GST will not be charged by him even if the same becomes applicable later on. In respect of the Bidders, who fail to comply with this requirement, their quoted prices shall be loaded with the quantum of such duty/tax which is normally applicable on the item in question for the purpose of comparing their prices with other Bidders.
- v. Any change in any duty/tax upward/downward as a result of any statutory variation in taxes taking place within contract terms shall be allowed to the extent of actual quantum of such duty/tax paid by the supplier. Similarly, in case of downward revision in any duty/tax/GST, the actual quantum of reduction of such duty/tax/GST shall be reimbursed to the CSD by the Bidder. All such adjustments shall include all reliefs, exemptions, rebates, concession etc. if any obtained by the Bidder.
- vi. Applicable GST law/ rules for the project include
 - (a) Central Goods and Services Tax Act, 2017
 - (b) Integrated Goods and Services Tax Act, 2017

- (c) Central Goods and Services Tax Rules, 2017
- (d) Union Territory Goods and Services Tax Act, 2017
- (e) Union Territory Goods and Services Tax Rules, 2017
- (f) All State specific Goods and Services Tax Act, 2017
- (g) All State specific Goods and Services Tax Rules, 2017
- (h) any additional tax imposed by Govt subsequently.

- b. **Customs Duty** – Not Applicable
- c. **Excise Duty**- Not Applicable
- d. **Octroi Duty & Local Taxes**- Not Applicable

14. **Pre-Integrity Pact Clause** – An “Integrity Pact” would be signed between the CSD and the Bidder. This is a binding agreement between the CSD and Bidder for specific contracts in which the CSD promises that it will not accept bribes during the procurement process and Bidder promise that they will not offer bribes. Under this Pact, the Bidder for specific services or contracts agree with the CSD to carry out the procurement in a specified manner. The Format of Pre-Integrity Clause will be as per Form DPM-10 (Available in MoD website and can be provided on request), refer Volume II of this RFP for the format. The essential elements of the Pact are as follows:

- a. A pact (contract) between the Government of India (Canteen Stores Department, Ministry of Defense) (the authority or the “principal”) and those companies submitting a tender for this specific activity (the “Bidder”);
- b. An undertaking by the Principal that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary or criminal sanctions in case of violation;
- c. A statement by each Bidder that it has not paid, and will not pay, any bribes;
- d. An undertaking by each Bidder to disclose all payments made in connection with the Contract in question to anybody (including agents and other middlemen as well as family members, etc., of officials); the disclosure would be made either at the time of submission of Bids or upon demand of the Principal, especially when a suspicion of a violation by that Bidder emerges;
- e. The explicit acceptance by each Bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning Bidder until the contract has been fully executed.
- f. Undertaking on behalf of a Bidding Company will be made “in the name and on behalf of the company’s Chief Executive Officer”.
- g. The following set of sanctions shall be enforced for any violation by a Bidder of its commitments or undertakings
 - i. Denial or loss of contracts;
 - ii. Forfeiture of the Bid security and performance bond;
 - iii. Liability for damages to the principal and the competing Bidders; and
 - iv. Debarment of the violator by the Principal for an appropriate period

5. Special Conditions

1. **Performance Bank Guarantee** - The bidder will be required to furnish a Performance Bank Guarantee as mentioned in **RFP Vol – II** by way of Bank Guarantee through a public sector bank or a private sector bank authorized to conduct government business (ICICI Bank Ltd., Axis Bank Ltd, IDBI Bank Ltd. or HDFC Bank Ltd.) within 30 days after the issue of Letter of Award (LoA or the contract, if LoA is skipped) by the Purchaser, the bidder shall furnish to the Purchaser ,PBG, valid up to 90 days after the date of completion of all contractual obligations by the bidder, including the Defect Liability obligations. Performance Bank Guarantee would be renewed on annual basis by the purchaser as mentioned in RFP Vol II. Performance Bank Guarantee should be furnished as per the format provided in **Appendix E (Vol - II)**.

If the bidder, having been called upon by the Purchaser to furnish Performance Security, fails to do so within the specified period, it shall be lawful for the Purchaser at its discretion to annul the award and enforce Bid Securing Declaration (in lieu of forfeiture of the Bid Security).

If the bidder during the currency of the Contract fails to maintain the requisite Performance Security, it shall be lawful for the Purchaser at its discretion.

- a. to terminate the Contract for Default besides availing any or all contractual remedies provided for breaches/ default, or
- b. without terminating the Contract:
 - i. recover from the bidder the amount of such security deposit by deducting the amount from the pending bills of the bidder under the contract or any other contract with the Purchaser or the Government or any person contracting through the Purchaser
 - ii. treat it as a breach of contract and avail any or all availing any or all contractual remedies provided for breaches/ default.

In the event of any amendment issued to the contract, the purchaser shall furnish suitably amended value and validity of the Performance Security in terms of the amended contract within fourteen days of issue of the amendment.

The Purchaser shall be entitled, and it shall be lawful on his part,

- a. to deduct from the performance securities or to forfeit the said security in whole or in part in the event of:
 - i. any default, or failure or neglect on the part of the bidder in the fulfilment or performance in all respect of the contract under reference or any other contract with the Purchaser or any part thereof
 - ii. for any loss or damage recoverable from the bidder which the Purchaser may suffer or be put to for reasons of or due to above defaults/ failures/ neglect
- b. and in either of the events aforesaid to call upon the bidder to maintain the said performance security at its original limit by making further deposits, provided further that the Purchaser shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time after that may become due to the bidder for similar reasons.

Subject to the sub-clause above, the Purchaser shall release the performance security without any interest to the bidder on completing all contractual obligations, including the Defect Liability obligations, if any. Alternatively, upon the bidder submitting a suitable separate Defect Liability Security for the duration of Defect Liability obligations, the original Performance Guarantee Security shall be released mutatis mutandis.

No claim shall lie against the Purchaser regarding interest on cash deposits or Government Securities or depreciation thereof.

2. **Payment Terms:** It will be mandatory for the Bidders to indicate their bank account numbers and other relevant payment details so that payments could be made through ECS/EFT mechanism instead of payment through cheques, wherever feasible. The payment to the bidder will be made monthly, basis the order deliveries (including exchange orders) in the previous month. The bidder will raise the invoice once the required documents (provided in the “paying authority” clause) are reconciled by the purchaser and an approval is provided.
3. **Advance Payments:** No advance payment(s) will be made.
4. **Paying Authority:** The payment authority will be **DGM (F&A)**. The payment of bills will be made on submission of the following documents by the bidder to the Paying Authority along with the bill on monthly basis:
 - a. Original Invoice (GST Compliant format)
 - b. Copy of Performance Bank Guarantee.
 - c. Delivery Invoices / Bill of Supply.
 - d. Details of exchange orders.
 - e. Damaged Goods Report.
 - f. SLA review report.
 - g. Details for electronic payment viz Account holder’s name, Bank name, Branch name and address, Account type, Account number, IFSC code, MICR code (if these details are not incorporated in supply order/contract).
 - h. Any other documents as specified by Purchaser.
5. **Force Majeure Clause:**
 - a. The Bidder or the Purchaser, 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’).
 - b. Should any Force Majeure circumstances arise, each of the contracting party shall be excused for the non-fulfilment or for the delayed fulfilment of any of its contractual obligations, if the affected party within 7 days of its occurrence informs the other party in writing. Force Majeure shall mean fires, floods, natural disasters or other acts, that are unanticipated or unforeseeable, and not brought about at the instance of the party claiming to be affected by such event, or which, if anticipated or foreseeable, could not be avoided or provided for, and which has caused the non-performance or delay in performance, such as turmoil, strikes, sabotage, explosions, quarantine restriction beyond the control of either party. However, war, military operations or war like situation will be excluded from the Force Majeure circumstances.
 - c. Any pandemic situation declared by the Central Government/State Government will also be considered as a force Majeure for purposes of service, provided the restrictions imposed by Government order prevent the bidder in performing the project obligations.
 - d. In such circumstances the time stipulated for the performance of an obligation under the present contract is extended correspondingly for the period of time of action of these circumstances and their consequences.
 - e. The party for which it becomes impossible to meet obligations under this contract due to Force Majeure conditions, is to notify in written form the other party of the beginning and cessation of the above circumstances immediately, but in any case, not later than 7 (Seven) days from the moment of their beginning.

- f. Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organization of the respective country shall be a sufficient proof of commencement and cessation of the above circumstances. If the impossibility of complete or partial performance of an obligation lasts for more than 6 (six) months, either party hereto reserves the right to terminate the contract totally or partially upon giving prior written notice of 30 (thirty) days to the other party of the intention to terminate without any liability other than reimbursement on the terms provided in the agreement for the goods received.
- g. A party claiming Force Majeure shall exercise reasonable diligence to seek to overcome the Force Majeure event and to mitigate the effects thereof on the performance of its obligations under this RFP.
- h. For the avoidance of doubt, it is expressly clarified that the failure on the part of the bidder under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking shall not be considered as arising due to forces of nature and shall not qualify under the definition of "Force Majeure". The bidder 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).
- 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 Party 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.
- j. 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.
- k. 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:
 - a. Upon occurrence of an event mentioned in force majeure clause, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
 - b. 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.
- l. On the occurrence of any unforeseen event, beyond the control of either Party, directly interfering with the delivery of Services arising during the currency of the contract, such as war, hostilities, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, or acts of God, the affected Party shall, within a week from the commencement thereof, notify the same in writing to the other Party with reasonable evidence thereof. Unless otherwise directed by the Purchaser in writing, the bidder shall continue to perform its obligations under the contract as far as reasonably practicable and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. If the force majeure condition(s) mentioned above be in force for 90 days or more at any time, either party shall have the option to terminate the contract on expiry of 90 days of commencement of such force majeure by giving 14 days' notice to the other party in writing. In case of such termination, no damages shall be claimed by either party against the other, save and except those which had occurred under any other clause of this Contract before such termination.

- m. Notwithstanding the remedial provisions contained in clause 13, none of the Party shall seek any such remedies or damages for the delay and/ or failure of the other Party in fulfilling its obligations under the contract if it is the result of an event of Force Majeure.
6. **Limitation of Liability:** CSD agrees that the bidder's total liability for all claims connected with the services or this agreement, whether in contract, tort, statute, indemnities or otherwise, is limited to 100% of the performance bank guarantee (PBG) except for gross negligence, bad faith or willful misconduct adjudicated by a court of competent jurisdiction.
 7. **Continual:** In the eventuality of delay in undertaking renewal of contract, after termination of timelines of the ongoing contract, the bidder would be required to continue in the interim period, with reference to the same terms and conditions of the existing contract for another 6 months.
 8. **Concluding the Assignment:**
 - a. The contract is normally considered closed on the day after the completion date listed in the contract. Any expenditure incurred after the completion date are unlikely to be paid.
 - b. In case the bidder has submitted the claims before the contract closure date and have not received payments, the Bidder is subject to payments from the CSD within 90 days of the completion of contract.
 9. **Sub-Contracting:** The bidder may part of Scope of Work on prior approval from the CSD. The bidder can under no circumstance sub-contract the complete Scope of Work to a third party. The bidder would be entirely liable for quality / standard and timely execution of the sub-contracted work. The supervision of work for the sub-contracted jobs is to be done by the bidder only. The bidder is not permitted to seek any relaxation in SLAs metrics citing delay on the part of sub-contractors or re-work arising out of sub-contracted work.
 10. **Financial Audit:** The bidder will be free to carry out their financial and internal audit activities as per the corporate laws. The bidder must ensure that conducted audit reports and corresponding account & financial books and other supporting documents are made available to the CSD upon request.
 11. **Penalty:** Maximum penalty against breach of SLA by the bidder will be no more than 10% of the bidder's monthly payment invoice. Frequent breach of SLA can be ground for termination or payment withholding. SLAs have been detailed out in Volume II of this RFP.

6. Conditions Precedent

6.1. Key performance measurement

1. The bidder shall commence the performance of its obligations under the Agreement from the Effective Date and shall proceed to 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 bidder shall be responsible for and shall ensure that all Services are performed in accordance with the specifications and that the bidder's Team complies with such specifications and all other standards, terms and other stipulations/conditions set out hereunder.

6.2. Commencement and progress

1. The bidder shall perform the activities/services and carry out its obligations under the Agreement with due diligence, efficiency and economy, in accordance with generally accepted techniques and best practices used in the information technology, e-commerce and logistics industry with professional engineering and standards recognized by international professional bodies and shall observe sound management, engineering and security practices. It shall employ appropriate advanced technology and engineering practices and safe effective equipment, machinery, material and methods. The bidder shall always act, in respect of any matter relating to this Agreement, as faithful advisors to the Purchaser and shall, at all times, support and safeguard the Purchaser's legitimate interests in any dealings with bidder's Team and third parties.
2. In providing the Services, the bidder shall use reasonable effort to prevent any disruption to Purchaser's normal business operations.

6.3. Final testing and Acceptance

1. In reference to the Functional Requirement Specifications (FRS) provided for the online portal in Volume I of RFP, bidder will be required to integrate all the required functionalities and conduct required testing of the portal.
2. The portal will go-live only after the final testing is conducted and the acceptance certificate is provided by the Purchaser.

6.4. Penalties and SLAs

1. The bidder shall accomplish the Scope of Work under this Agreement as per the Timelines and as per the Service Levels provided in Volume I and II of the RFP. If the bidder fails to achieve the Timelines or the Service Levels due to reasons solely attributable to the bidder or any of its Consortium Members or subcontracts etc., the bidder shall be liable to pay penalty as per Volume II of the RFP.
2. Payment of penalty shall not be the sole and exclusive remedy available to the Purchaser and the bidder shall not be relieved from any obligations by virtue of payment of such penalties. Penalties will be capped as mentioned in Volume II of the RFP. If the penalty for any timeline or service level exceed the cap on penalty mentioned in Volume II of the RFP, the Purchaser shall have the right to treat it as an event of default and the consequences for event of default as mentioned in this Agreement shall be applicable. Each of the Parties shall ensure that the range of the Services/Deliverables under the SLA shall not be varied,

reduced, or increased except with the prior written agreement between the Purchaser and the Bidder in accordance with the provisions of Change Control set out in Volume I.

3. In case of any violation of Terms and Conditions of the Agreement pertaining to adherence to management, laws, ethics, taxation, timelines or any such terms agreed upon in the Agreement, the purchaser retains the right to Invoke the Performance Bank Guarantee and other Guarantees furnished hereunder, enforce indemnity provisions, recover such other costs/losses and other amounts from the bidder which may have resulted from such violation and pursue such other rights and/or remedies that may be available to the Purchaser under law.

7. Representations

7.1. Representations of the eCommerce Aggregator

Each of the Bidder and the Consortium Partner hereby represent as of the date hereof, which representations shall remain in force during the Term and extension thereto, the following:

1. It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
2. It is a competent provider of a variety of Information Technology, e-commerce marketplace and logistics services. 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;
3. 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 Purchaser under this Agreement;
4. It and its team 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;
5. It shall ensure that all assets/components including but not limited to equipment, software, licenses, processes, documents, etc. installed, developed, procured, deployed and created during the term of this Agreement are duly maintained and suitably updated, upgraded, replaced with regard to contemporary requirements;
6. It has the financial standing and capacity to undertake the Project and obligations in accordance with the terms of this Agreement;
7. 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;
8. 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;
9. There are, to the best of its knowledge, 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 materially impair its ability to perform any of its material obligations under this Agreement;
10. It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may

give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

11. It has, to the best of its knowledge, 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;
12. To the best of its knowledge, no representation by it contained herein or in any other document furnished by it to the Purchaser or its nominated agencies in relation to the any consents contains any untrue or misleading statement of material fact or omits to state a material fact necessary to make such representation not misleading;
13. 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 purchaser in connection therewith.

7.2. Representations of the Purchaser

The Purchaser represents to the Bidder and Consortium Partner that:

1. 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;
2. 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;
3. It has the financial standing and capacity to perform its obligations under the Agreement;
4. 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;
5. The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under 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;
6. It has complied with Applicable Laws in all material respects.

8. Purchaser's Obligation

The obligations of the Purchaser described in this are related to, and not in derogation of, the obligations mentioned in Volume 1 of the RFP (Roles and Responsibilities Section) and the two are to be read harmoniously. Without prejudice to any other undertakings or obligations of the Purchaser under this Agreement or the RFP, the Purchaser shall perform the following:

1. The Purchaser shall ensure that timely approval is provided to the bidder as and when required, which may include approval of project plans, implementation methodology, FRS, or any other document necessary in fulfillment of this Agreement.
2. The Purchaser's Representative shall interface with the bidder to provide the required information, clarifications and to resolve any issues as may arise during the execution of the Agreement. The Purchaser shall provide adequate cooperation in providing details, coordinating, and obtaining of approvals from various governmental agencies, in cases, where the intervention of the Purchaser is proper and necessary.
3. The Purchaser may provide on the bidder's request, particulars information/or documentation that may be required by the bidder for proper planning and execution of work and for providing Services covered under this Agreement and for which the bidder may have to coordinate with respective consortium members or sub-contractors.
4. The Purchaser will be responsible for making all payments due to the bidder in respect of services provided by the bidder as per the set SLAs and accepted by the Purchaser in accordance with the terms of this Agreement.
5. The Purchaser agrees that all Purchaser's Documentation/Information provided to the bidder by or on behalf of Purchaser for bidder's use in providing the Services will be owned by or fully licensed to the Purchaser or Purchaser's authorized representative/service provider etc. and Purchaser shall have procured the right to provide such documentation/information to the bidder. Bidder will be permitted to use such documentation/Information in accordance with the license conditions.

Unless otherwise stipulated in the contract, The Purchaser may supply without any obligation to do so, to the bidder part or whole of the quantity of the water and electricity required for the delivery of Services from the Purchaser's existing water/ electricity supply system at or near the site of Services on specified terms and conditions and on chargeable basis (If applicable) as per government Rates (unless specified otherwise), provided that the bidder shall arrange, at his own expense, to effect the connections and lay additional pipe/ power lines and accessories on the site. Nevertheless, it shall be the responsibility of the bidder to install adequate alternative arrangements to tide over outages in utilities or failure in supply by the Purchaser, and that the bidder shall not be entitled to any compensation— nor shall this be a reason for the delay in delivery of Services. Wherever the purchaser provides godown or bidder is constructing on CSD/Govt. land the charges/ lease rent for CSD as per MES rate shall be paid to CSD for the godowns used for E-commerce facility/packaging etc.(where applicable).

8.1. Custody and Return of the Purchaser's Assets loaned to Bidder

1. The bidders shall sign accountable receipts for all tools, plants and materials or other assets/ properties made over to him by the Purchaser. All such assets shall be deemed to be in good condition when received by the bidder unless he has within twenty-four hours of the receipt thereof notified the Purchaser to the contrary. Otherwise, he shall be deemed to have lost the right to do so at any subsequent stage.

2. These assets shall remain the property of the Purchaser, and the bidder shall take all reasonable care of all such assets. The bidder shall be responsible for all damage or loss from whatever cause caused while assets are possessed or controlled by the bidder, staff, workmen, or agents.
3. Where the bidder insures such assets against loss or fire at the request of the Purchaser, such insurance shall be deemed to be by way of additional precaution and shall not prejudice the bidder's liability as aforesaid.
4. The bidder shall return all such assets in good order and repair, fair wear and tear excepted, before the completion/ closure/ termination of the contract and shall be responsible for any failure to account for the same or any damage done to that as assessed by the Purchaser whose decision shall be final and binding.

9. Acceptance of Deliveries and Testing

9.1. Testing

1. The bidder will be required to customize e-Commerce portal as per the Functional Requirements Specifications provided in the volume 1. The purchaser will test the portal and post approval from the purchaser or any agencies authorized by the Purchaser, the portal will go-live.

9.2. Acceptance of Deliveries

1. The bidder will be required to upload the monthly invoices in the invoice uploading software provided by the Purchaser. Payment to the bidder will be made post successful reconciliation by the Purchaser.
2. The bidder will be required to share the information of orders returned and damaged as well to the purchaser. Purchaser will make the required adjustment while making payment to the bidder.

10. Access to locations or its Nominated Agencies

10.1. Access to locations

1. For so long as the bidder provides services to the locations of the Purchaser or its nominated agencies, the Purchaser shall, subject to compliance by the bidder with any safety and security guidelines which may be provided by the Purchaser and notified to the bidder in writing, provide the bidder, on a non-permanent basis and to the extent necessary, with reasonable access to the location (warehouse/fulfilment centers) from where services are to be performed.

10.2. Limitations to access to locations

The bidder agrees to ensure that its employees, agents and contractors/sub-contractors shall not use the location, services and equipment referred to in the for the following purposes:

1. For the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
2. In a manner which constitutes 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);
3. Any other activity not associated with e-commerce project.

11. Management of Project

11.1. Governance

1. The review and management process of this Agreement shall be carried out in accordance with a Governance Schedule that will be mutually agreed between the Parties and shall cover all the management aspects of the Project. Bidder shall prepare a Governance Schedule in consultation with the Purchaser and shall be obliged to get the same approved by the Purchaser within the operations set-up phase. The mutually agreed Governance Schedule shall form an integral part of this Agreement.
2. Before commencement of the Services, the bidder shall submit for approval of the Purchaser a **Project Plan (Appendix C.6.3 in Volume II)** showing the Methods; schedule of delivery of services, the deployment plans for Personnel; Equipment and Materials for the execution of the services. The programme of delivery of Services amended as necessary by discussions with the Purchaser shall be treated as the agreed Project Plan for this Contract. The Services shall be carried out and monitored as per the approved Program as updated.
3. Unless otherwise stipulated in the contract or agreed between the parties, the Project Plan shall be based on round-the-clock (24X7) operations without violating statutory regulations.

11.2. Changes

1. Any changes to the scope of work and consequent impact on the SLAs shall be dealt with in accordance with the provisions of Change Management and Control set out in Volume 1 of the RFP.

11.3. Security and Safety

1. 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.
2. The bidder 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 bidder shall also comply with the IT Security policy and practices of the Purchaser. For avoidance of doubt, it is agreed that the bidder will at least have to comply with the security policies and practices that are to be followed by bidder as service provider to any organization which is ISO 45001:2018 compliant. In the event of any change in laws (related to security and safety) or IT security policy and practices of the Purchaser, the compliance to such changed laws and policy practices by bidder shall be subject to such terms as may be agreed by the Purchaser in its sole discretion except where compliance with change in laws is applicable on the bidder in its own right as an IT service provider or irrespective of services being provided by the bidder under this Agreement.
3. The Parties shall use reasonable endeavors to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Purchaser as the case may be or any of their nominees data, facilities or the Confidential Information.
4. The bidder shall upon reasonable request by the Purchaser as the case may be or their nominee(s) participate in regular meetings when safety and Information Technology security matters are reviewed.

5. As per the provisions of this Agreement, the bidder shall use reasonable efforts to promptly report in writing to the Purchaser 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 the Purchaser 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:

1. Does not require material expenditure by the Providing Party to provide the same;
2. Is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement;
3. Cannot be construed to be Confidential Information; and
4. Is capable of being provided by the Providing Party.

Further, the bidder agrees to co-operate with the consultants, contractors, stakeholders and subcontractors of the Purchaser, or any other body appointed or nominated by the Purchaser as reasonably requested in order to accomplish the purposes and objective of this Agreement.

11.5. Deployment of Resources

11.5.1. Site and Assets thereon

11.5.1.1. Site of Service Delivery

1. The site for Service delivery shall through the lands, spaces, and other places on, under, in or through which the Services are to be carried out and any other lands or places provided by the Purchaser for the contract.
2. No land or building or any other asset belonging to or in possession of the Purchaser shall be occupied by the bidder without the permission of the Purchaser. The bidder shall not use or allow to be used the site for any purposes other than executing or concerning the execution of the services.
3. Facilities for Inspection: the Bidder shall afford the Purchaser and his representative every facility for entering in and upon every portion of the site at all hours for inspection or otherwise and shall provide all facilities required for the purpose. The Purchaser and his representative shall have free access to every part of the site and all places at which materials, tools, and plants are stored or prepared for the Services.
4. Existing Roads and Waterways: Existing roads or water courses shall not be blocked, cut through, altered, diverted, or obstructed in any way by the Bidder, except with the permission of the Purchaser. All compensations claimed for any unauthorized closure, cutting through, alteration, diversion or obstruction to such roads or water courses by the Bidder or his agent or his staff shall be recoverable from the Bidder by deduction from any sums which may become due to him in terms of Agreement, or otherwise according to law.

5. Non-Obstruction of Access: During the progress of Services in any street or thoroughfare, the Bidder shall make adequate provision for the passage of traffic, for securing safe access to all premises approached from such street or thoroughfare and for any drainage, water supply or means of lighting which may be interrupted by reasons of the execution of the Services and shall react and maintain at his cost barriers, lights and other safeguards as prescribed by the Purchaser, for the regulation of the traffic, and provide security staff necessary to prevent accidents.
6. No Obstruction to Flow of Work and Personnel of Purchaser: Bidder shall arrange his work in consultation with the in such a manner to avoid obstruction to the normal flow of work and personnel of the Purchaser at the site, preferably utilizing non-business hours for such obstructive or hazardous activities.

11.5.1.2. Temporary Works at Site

The bidder shall at his own expense erect temporary works, e.g., sheds, yards, and storehouses in such situations, and such numbers as in the opinion of the Purchaser is requisite for performing the Services. The bidder shall keep at each such sheds, yards, and storehouses a sufficient quantity of materials/ plant in stock as not to delay the performance of the Services with due expedition. The Purchaser and its representative shall have free access to the said sheds/yards/ store houses at any time to inspect the stock of materials or plant so kept in hand, and any materials or plant which the Purchaser may object to shall not be brought upon or used in the services but shall be forthwith removed from the sheds/yards/store houses by the Bidder.

11.5.1.3. Security Arrangements

1. The Bidder shall secure security arrangements at the site against unauthorized access/ trespass, pilferage, theft, leakage or misuse of property or belongings of his or his staff or Purchaser and its Staff by his staff or third parties or trespassers.
2. Preservation of Peace
 - a) the Bidder shall take requisite precautions and use their best endeavors to prevent any riotous or unlawful behavior by or amongst their workers and others, employed directly or through the petty Bidders or sub-contractors for services, and for the preservation of peace and protection of the inhabitants and security of property in the neighborhood of the site of services.
 - b) If the Purchaser stipulates maintenance of a special watch & word personnel/security personnel at or in the vicinity of the site during the tenure of service Contract, the expenses thereof shall be borne by the Bidder and, if paid by the Purchaser, shall be recoverable from the Bidder.
3. Prohibition of Smoking and Intoxicants: the Bidder or his staff or any labor employed through sub-contractors or petty contractors shall be prohibited from Smoking in 'No Smoking Zone' and in Public Places and also prohibited from the use of any intoxicating substances including, but not limited to, intoxicating beverages during the service period or on-site or near the site or in any of the facilities, sites, buildings, encampments, or tenements owned, occupied by or within the control of the Bidder or any of his employees. The Bidder shall exercise influence and authority to the utmost extent to secure strict compliance with this condition.

11.5.1.4. Safety Issues

1. The bidder shall be responsible for the safety of all activities on the Site.
2. The bidder shall be responsible for the safety of all persons employed by him on Site, directly or through petty contractors or Sub-Contractors, and shall report accidents to any of them, however, and wherever occurring on Works, to the Purchaser or his representative, and shall make every arrangement to render all possible assistance and to provide prompt and proper medical attention. The

compensation for affected Workers or their relatives shall be paid by the bidder in such cases expeditiously as per the Workmen's Compensation Act and other labour codes.

3. Safety of Public and Third parties: the bidder shall be responsible for taking all precautions to ensure the safety of the public and third parties, whether on public or Purchaser's property and shall post look out, such persons as may, in the opinion of the Purchaser, be required to comply with regulations appertaining to the service. No explosives shall be used for the Services rendered or on the site by the bidder.

11.5.1.5. Clearance of Site on Completion

On completion of the services, the bidder shall clear away and remove all tools /plants and surplus materials, rubbish and temporary works of every kind and leave the whole of the site clean to the satisfaction of the Purchaser.

1. If the bidder provides temporary huts on the Purchaser land for labour engaged by him to execute services, the bidder shall arrange for handing over vacant possession of the said land after the service is completed.
2. No final payment in settlement of the accounts for the Services shall be paid, held to be due or shall be made to the bidder till, in addition to any other condition necessary for final payment, site clearance shall have been effected by him.
3. In the event of failure on the part of the bidder to comply with this provision within 7 days after receiving notice for clearance of Purchaser's site and lands, the Purchaser shall cause them to be removed through public sales of such materials and property or in such a way as deemed fit and convenient and cost as increased by supervision and other incidental charges shall be recovered from the bidder. If the bidder's labour refuses to vacate and has to be ejected following due process by the Purchaser, necessary expenses incurred by the Purchaser in connection shall be borne by the bidder. The Purchaser shall not be held liable for any loss or damage to the bidder's property as may be on the site and due to such removal.

11.5.2. Key and Non-key Personnel

11.5.2.1. Key Personnel

1. The titles agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the bidder's Key Personnel will be fixed according to the Plan submitted by the Bidder in **Appendix C.6.2 of the Volume II** of this RFP as described in **Volume I Appendix A.7**.
2. Except as the Purchaser may otherwise agree, no changes shall be made in the Key Personnel. If it becomes necessary to replace any of the Key Personnel for any reason beyond the bidder's reasonable control, the bidder shall provide as a replacement a person of equivalent or better qualifications.

11.5.2.2. Non-key Personnel

1. The bidder must ensure deployment of non-key Personnel as per the Personnel Deployment Plan approved by Purchaser. If the Purchaser believes that the bidder is not employing sufficient staff and workers as is specified or otherwise for the proper execution of the Services, he shall issue a notice to the bidder for remedial measures. The bidder shall forthwith on receiving intimation to this effect deploy the additional number of staff and labour as specified by the Purchaser immediately, and failure on the part of the bidder to comply with such instructions shall entitle the Purchaser to penalize the bidder for the shortfall in performance or terminate the contract as per the contract and avail all the remedies

thereunder. Such action shall be in addition to deduction from Bidder's payment cost of shortfall personnel.

2. The bidder shall also deploy efficient and competent supervisory staff to give the necessary directions to his workers and to see that they provide their services desirably and adequately and shall employ only such supervisors, workers & labour in or about the execution of any of these Services as are careful and skilled in the various trades. Daily attendance records of such supervisors and labour shall be maintained.
3. Police Verification of Labour employed by Bidder: the bidder must submit Police Verification certificates in a format prescribed by the Police Department (or as directed by the Purchaser) for all contractual staff hired for delivery of Services for Purchaser.
4. The bidder shall, when he is not personally present on the site of the workplace, shall keep a responsible agent during working hours who shall, on receiving reasonable notice, present himself to the Purchaser and orders given by the Purchaser or his representative to the agent shall be deemed to have the same force as if they had been given to the bidder. The bidder shall furnish the name and address of his agent for this clause and failure on the bidder's part to comply with this provision at any time shall entitle the Purchaser to terminate the contract and avail any or all the remedies thereunder.

11.5.2.3. Removal of Personnel on Orders of Purchaser

1. If the Purchaser finds that any of the Personnel have (i) committed severe misconduct or have been charged with having committed a criminal act, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the bidder shall, at the Purchaser's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Purchaser, subject to sub-clause 2) below.
2. The Bidder shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

11.5.3. Key and Non-key Equipment, Tools and Plants

1. The details of Key Equipment required to be deployed are to be described and approved by the Purchaser.
2. Except as the Purchaser may otherwise agree, no changes shall be made in the deployment of Key Equipment. If it becomes necessary to replace any of the Key Equipment for any reason beyond the bidder's reasonable control, the bidder shall provide Equipment of equivalent or better performance as a replacement.
3. The bidder must ensure deployment of non-key Equipment as per the Deployment Plan in approved Project Plan as updated. In the event of the Purchaser believing that the bidder is not employing on the Services sufficient Equipment/Tools/ Plant as is specified or otherwise for the proper execution of the Services within the prescribed procedure and time, the bidder shall forthwith on receiving intimation to this effect deploy the additional equipment/ tools/ plants as specified by the Purchaser immediately and failure on the part of the bidder to comply with such instructions shall entitle the Purchaser to penalize the bidder under shortfall in performance.
4. the Purchaser or his representative shall be entitled to order within the time stipulated in the order:
 - a. The removal of any equipment/ tools/ plants which in their opinion are not as per the performance standards.
 - b. The substitution of proper and suitable equipment/ tools/ plants

11.5.4. Materials Deployment

1. Deployment of adequate inventory and supply chain of materials specified and provided in the agreement or necessary for the delivery of Services or Personnel and Equipment deployed shall be of specified specification and quality and if not specified as per the best of market and business practices. The materials may be subjected to tests employing such machines, instruments and appliances as the Purchaser Officer may direct and wholly at the bidder's expense.
2. Except as the Purchaser may otherwise agree, no changes shall be made in such materials' deployment, inventory, or supply chain. If for any reason beyond the bidder's reasonable control, it becomes necessary to do so, the bidder shall provide a replacement by materials of equivalent or better quality. The bidder must ensure the deployment of materials as per the Deployment Plan and the approved Project Plan. In the event of the Purchaser believing that the bidder is not employing on the Services sufficient materials/ inventory as is specified or otherwise for the proper execution of the Services within the prescribed procedure and time, the bidder shall forthwith on receiving intimation to this effect deploy additional materials/ inventory as specified by the Purchaser immediately and failure on the part of the bidder to comply with such instructions shall entitle the Purchaser to penalize the bidder under shortfall in performance or terminate the contract as a breach of contract. Such action shall be in addition to deduction from Bidder's payment cost.

11.5.5. Property in Equipment and Materials brought to Site

The materials and plant brought by the bidder upon the site or on the land occupied by the bidder in connection with the Services and intended to be used for the execution shall not be removed from the site without the approval of the Purchaser. However, materials/ equipment which the Purchaser rejects during the progress of the Services, or which after the grant of the certificate of completion, are declared as not needed or those that remain unused, can be removed from the site or the said land by the Bidder. This clause shall not in any way diminish the liability of the bidder nor shall the Purchaser be in any way answerable for any loss or damage which may happen to or in respect of any such materials or plant either by the same being lost, stolen, damaged, or destroyed by fire, tempest or otherwise.

11.6. Labour Codes and Related Obligations

11.6.1. Independent Contractor

The bidder's status shall be that of an independent bidder and Primary Employer of staff deployed during the contract by him or his sub-contractors or other associates. The bidder, its employees, agents, and subcontractors performing under this Contract are not employees or agents of the Purchaser or Central or State Government or their agencies/ Enterprises, simply by Services delivered under this Contract.

11.6.2. Obligations of the bidder under Labour Codes and Rules

1. In cases where Services are to be performed by the bidder at the premises of the Purchaser or Beneficiary, the bidder shall comply with the provisions of the Labour Codes including Code on Wages, 2019, The Industrial Relations Code 2020, Code on the Social Security 2020, and The Occupational Safety, Health and Working Conditions 2020, and Draft Rules made thereunder, as modified from time-to-time, wherever applicable and shall also indemnify the Purchaser from and against any claims under the aforesaid Labour codes and the Rules.
2. The bidder shall obtain a valid licence under the aforesaid Labour codes and the Rules as modified from time to time before the commencement of the contract and continue to have a valid licence until the completion of the contract. Any failure to fulfil this requirement, the Purchaser shall treat it as a breach of contract for default as per the contract and avail any or all remedies thereunder.
3. In respect of all labour directly or indirectly employed in the contract for the performance of the bidder's part of the contract, the bidder shall comply with or cause to comply with the provisions of the aforesaid Labour

codes and the Rules wherever applicable. The bidder shall be solely responsible for submitting all the necessary returns under these Codes and the Rules. Nevertheless, the bidder shall submit monthly returns to the Purchaser to confirm compliance with such Codes and rules. Failure to do so shall entitle Purchaser to take any measure to ensure compliance to such codes and rules by the bidder and his associates, including, but not limited to, withholding bidder's on-account bills.

4. The bidder shall pay the wages as per the Code on Wages to their workers not below the rate of minimum wages, as notified by the State Government or Central Government, whichever is higher, through the bank transfer. The bidder shall, notwithstanding the contract's provisions to the contrary, cause to be paid the wages to labour directly or indirectly engaged on the contract, including any engaged by his Sub-Bidders in connection with the said contract as if he had immediately employed the labour. The Purchaser shall, without any commitments or being obliged to do, may its discretion, monitor that such payments are being made. The bidder shall be required to submit, every month, documentary evidence in the form of a Bank Statement of having transferred the gross minimum wages to each worker. Failure to do so shall entail Purchaser taking up any measure to ensure the payment of wages including, but not limited to, withholding bidder's on-account bills.
5. In every case in which, by virtue of the provisions of the aforesaid Labour codes and the Rules, the Purchaser is obliged to pay any amount of wages to a workman employed by the bidder or his Sub-Bidder in execution of the contract or to incur any expenditure in providing welfare and health amenities required to be provided under the aforesaid Labour codes and the Rules or to incur any expenditure on account of the contingent liability of the Purchaser due to the bidder's failure to fulfil his statutory obligations under the aforesaid Labour codes and the Rules the Purchaser shall recover from the bidder, the amount of wages so paid or the amount of expenditure so incurred, and without prejudice to the rights of the Purchaser under the aforesaid Labour codes and the Rules, the Purchaser shall be at liberty to recover such amount or part thereof by deducting it from the security deposit and/ or from any sum due by the Purchaser to the bidder whether under the contract or otherwise. The Purchaser shall not be bound to contest any claim made against it under the aforesaid Labour codes and the Rules except on the bidder's written request, and upon giving the Purchaser complete security for all costs, for which the Purchaser might become liable in contesting such claim. The decision of the Purchaser regarding the amount recoverable from the bidder as stated above shall be final and binding on the bidder.

11.6.3. Mandatory Compliance of Government Welfare Schemes

The bidder must ensure and provide documentary evidence for the following and must submit documentary evidence to show the coverage of all his workers or labour under the following schemes at all times during the contract period on an annual basis:

1. All the bidder's labour employed directly or indirectly must be enrolled under the Pradhan Mantri Jan Dhan Yojana (PMJDY), a scheme that aims to provide all the citizens of India a bank account, credit facility, insurance cover and debit card.
2. All the workers or labour employed directly or indirectly by the bidder between the ages 18-70 years must be enrolled under the Pradhan Mantri Suraksha Bima Yojana (PMSBY), an accident insurance scheme which shall be a one-year cover, renewable from year to year, offering accidental death and disability cover for death or disability on account of an accident. The bidder shall pay the premium per annum per member for all his workers during the contract period.
3. All the workers or labour employed directly or indirectly by the bidder between the ages 18-50 years must be enrolled under the Pradhan Mantri Jeevan Jyoti Bima Yojana, an insurance scheme which shall be a one-year cover, renewable from year to year, offering life insurance cover for death due to any reason. The bidder shall pay the premium per annum per member for all his workers during the contract period.

11.6.4. Contract Labour Records and Management System

A comprehensive record needed for contract labour management and monitoring attendance (Identity Cards, Labour Records, Attendance, Time Sheets, Training Record, acknowledgements of labour Codes) for efficient performance and safeguarding workers welfare must be maintained by the bidder. It shall be inspected during Site Inspections by the Purchaser. The bidder shall put this system in place unless otherwise stipulated in the Special Conditions of Contract. If so stipulated in Special Conditions of Contract, a computerised Contract Labour Management system shall be mandatory.

11.6.5. The obligation of Bidder to ensure awareness of Labour Codes

1. The bidder has to mandatorily provide a comprehensive day-long training carried out by a certified Third-Party agency for the awareness of Labour codes and the Rules, grievance redressal mechanism and other provisions applicable to his and his Sub-contractor's staff, workers, labour employed by him directly or indirectly in delivery of service to the Purchaser. The bidder must submit relevant documentary proof to Purchaser of having conducted such training to all workers.
2. The bidder must provide a comprehensive booklet (Purchaser approves that) containing all the relevant updated labour codes, rules, and other applicable provisions, to every worker at the outset of the contract in the local vernacular language.
3. Purchaser, without any commitments or being obliged to do, may at its discretion, provide following facilities for Bidder's Contract Labour working on this Agreement:
 - a. Helpline for complaints from labour regarding payment of wages, work site facilities, sexual harassment etc
 - b. Provision for recording anonymous complaints from workers, citizens etc., regarding violation of Labour codes and the Rules by Bidder

11.7. Communications

1. All communications under the contract shall be served by the parties on each other in writing, in the contract's language, and served in a manner customary and acceptable in business and commercial transactions.
2. The effective date of such communications shall be either the date when delivered to the recipient or the effective date mentioned explicitly in the communication, whichever is later.
3. No communication shall amount to an amendment of the terms and conditions of the contract, except a formal letter of amendment of the contract, so designated.
4. Such communications would be an instruction or a notification or an acceptance or a certificate from the Purchaser, or it would be a submission or a notification from the bidder. A notification or certificate which the contract requires must be communicated separately from other communications.

11.7.1. The person signing the Communications.

For all purposes of the contract, including arbitration, thereunder all communications.

to the other party shall be signed by:

1. The person who has signed or the agreement on behalf of the bidder an authorized representative shall sign all correspondences. A person signing communication in respect of the agreement or purported to be on behalf of the bidder, without disclosing his authority to do so, shall be deemed to warrant that he has

authority to bind the bidder. If it is discovered at any time that the person, so signing has no authority to do so, the Purchaser reserves its right to, without prejudice to any other right or remedy, to terminate the contract for default in terms of the contract and avail any or all the remedies thereunder and hold such person personally and/ or the bidder liable to the Purchaser for all costs and damages arising from such remedies.

2. Unless otherwise stipulated in the contract, the representative authorized by the Head of Procuring Organization signing the contract shall administer the contract and sign communications on behalf of the Purchaser. Interim or ultimate consignees; Inspecting Agency/ officers and the paying authorities mentioned in the contract shall also administer respective functions during Contract Execution.

11.7.2. Address of the parties for sending communications by the other party

For all purposes of the contract, including arbitration, thereunder the address of parties to which the other party shall address all communications and notices shall be:

1. The address of the bidder as mentioned in the agreement unless the bidder has notified the change of address by a separate communication containing no other topic to the Purchaser. The Bidder shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid, and
2. The address of the Purchaser shall be the address mentioned in the contract. The Bidder shall also send additional copies to officers of the Purchaser presently dealing with the agreement.
3. In case of the communications from the bidder, copies of communications shall be marked to representative authorized by the Head of Procuring Organization for signing the contract, and as relevant also to Inspecting Agency/ Officer; interim/ultimate consignee and paying authorities mentioned in the contract. Unless already stipulated in the contract before the contract's start, the Purchaser and the bidder shall notify each other if additional copies of communications are to be addressed to additional addresses.

12. Financial Matters

12.1. Terms of Payment

1. Purchaser shall make payments only to the BIDDER (lead bidder in the case of consortium) at the time and in the manner set out in Payment Clauses in special condition section of this agreement, subject always to the fulfilment by the Bidder and Consortium Member of their obligations herein.
2. The Purchaser shall not be responsible for making any payments or any other related obligations under this Agreement to the Consortium Partner or Consortium Partner's subcontractors or Bidder's subcontractor, if any. The Bidder 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 bidder in any way connected with the discharge of the bidder's obligation under the Agreement and in any manner whatsoever.
3. All payments agreed to be made by Purchaser to the bidder/Lead Bidder (in case of consortium) in accordance with the Proposal shall be inclusive of all statutory levies, duties, taxes and other charges whenever levied/applicable including costs of maintenance, if any and Purchaser shall not be liable to pay any such levies/other charges under or in relation to this Agreement and/or the goods and Services.
4. In case of change in taxes under change in law, appropriate parties shall pass the benefit of the same to the other Party. In case of such change, bidder shall submit a formal request with necessary supporting documents to the Purchaser. The Purchaser shall verify these documents and if applicable and approved in writing by the Purchaser, the bidder shall incorporate such changes into subsequent regular invoice for payment.
5. Unless otherwise provided in this Agreement or as mutually agreed between the Parties, prices fees as mentioned in the Commercial Proposal shall remain firm and shall not be subject to any upward revision on any account whatsoever throughout the Term.
6. It is expressly agreed that the price/fees mentioned in the Proposal by the bidder 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 will be submitted by the bidder unless the said extra work/change order has been authorized/approved by the Purchaser in writing in accordance with the clause on Change Order.
7. In the event of the Purchaser noticing at any time that any amount has been disbursed wrongly to the bidder or any other amount is due from the bidder to the Purchaser, the Purchaser may without prejudice to its rights to recover such amounts by other means, after notifying the bidder deduct such amount from any payment falling due to the bidder. The details of such recovery, if any, will be intimated to the bidder. The bidder 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 bidder.
8. All payments are subject to deductions of applicable penalties as provided for in the SLA section of Vol II of the RFP. For the avoidance of doubt, it is expressly clarified that the Purchaser 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 bidder to meet the Timelines and/or Service Level.
9. Payments shall be made every month for the volume of Services rendered during the period. Unless instructed in writing by the Purchaser, payments shall not be made for any extra inputs deployed over and above the project Plans (Personnel, equipment, materials etc.) mentioned in the contract.

12.2. Invoicing and Settlement

1. The bidder shall submit its invoices in accordance with the following principles:
 - a. Generally, and unless otherwise agreed in writing between the Parties, the Bidder shall raise an invoice as per Payment Schedule mentioned in Special Condition Section of this agreement; and
 - b. Any invoice presented in accordance with this Clause shall be in a form agreed with the Purchaser.
2. The bidder alone shall raise invoices for all the payments after receiving due approval/acceptance of the Deliverables the Services from the Purchaser or any nominated agency. Such invoices shall be correct and accurate and shall be raised in a timely manner.
3. Subject to accomplishment of obligations of the bidder as per scope of work, payment shall be made by the Purchaser within 30 days from receipt of due, valid, correct and undisputed invoice along with supporting documents provided the invoice is submitted in timely manner. Payments will be subject to deduction as agreed herein.
4. Notwithstanding anything contained in clause (3) above, the Purchaser shall be entitled to delay or withhold payment of any invoice or part of it where the Purchaser disputes such invoice or part of it provided that such dispute is bonafide. Purchaser shall inform the bidder about the dispute within 21 days of receipt of invoice. The withheld amount shall be limited to that which is in dispute. A notice of such withholding shall be provided within reasonable time of receipt of the applicable invoice. The disputed withheld amount shall be settled in accordance with the escalation procedure as set out in Governance Schedule within reasonable time after notice of reference. However, the Purchaser shall release the disputed amounts as soon as reasonably possible, upon resolution of dispute. Any exercise by the Purchaser under this clause shall not entitle the bidder to delay or withhold performance of its obligations or delivery of Deliverables/Services under this Agreement.
5. Payments shall only be made in Indian Rupees.

12.3. Tax and Deductions

1. Where applicable, payments to the bidder 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. The Purchaser shall provide the bidder with the original tax receipt of any withholding taxes paid by the Purchaser or its nominated agencies on payments under this Agreement within reasonable time after payment. All costs, damages or expenses which the Purchaser may have paid or incurred, for which under the provisions of the Agreement, the bidder is liable, the same shall be deducted by the Purchaser from any dues to the bidder. All payments to the bidder shall be made after making necessary deductions as per terms of the Agreement.
2. The bidder shall bear all personnel taxes levied or imposed on its personnel, sub-contractor's personnel, bidder's consultants etc. on account of payment received under this Agreement. The bidder shall bear all corporate taxes, levied or imposed on the bidder on account of payments received by it from the Purchaser for the work done under this Agreement. The bidder shall bear all taxes and duties etc. levied or imposed on the bidder under the Agreement including but not limited to Customs duty, Excise duty and all Income Tax levied under Indian Income Tax Act – 1961 or any amendment thereof up to the date for submission of final price bid, i.e., on account of payments received by him from the Purchaser for work done under the Agreement. The bidder 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 bidder for works done under the sub-contracts in relation to this Agreement and the Purchaser will in no case bear any

responsibility for such payment of taxes. It shall be the responsibility of the bidder to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. The bidder shall also provide the Purchaser such information, as it may be required in regard to the bidder's details of payment made by the Purchaser under the Agreement for proper assessment of taxes and duties. The bidder and his sub-subcontractors or their personnel shall bear all the taxes if any, levied on the bidder's, sub-contractors' and the bidder's personnel. The amount of tax withheld by the Purchaser shall at all times be in accordance with Indian Tax Law and the Purchaser shall promptly furnish to the bidder original certificates (Challans) for tax deduction at source and paid to the Tax Authorities. The bidder agrees that it and its sub-contractors shall comply with the Indian Income Tax Act in force from time to time and pay Indian Income Tax, as may be imposed/levied on them by the Indian Income Tax Authorities, for the payments received by them for the works under the Agreement.

3. Should the bidder and/or Consortium Member fail to submit returns/pay taxes in times as stipulated under the Indian Tax Laws and consequently any interest or penalty is imposed by the authority, the bidder and/or Consortium Member, as the case may be, shall pay the same without any liability falling on the Purchaser.
4. the bidder shall be entirely responsible for all taxes, duties, fees, levies etc., incurred until delivery of the Services to the Purchaser.
5. If applicable under relevant tax laws and rules, the Purchaser shall deduct from all payments and deposit required taxes to respective authorities on account of GST Reverse Charge Mechanism; Tax Deducted at Source (TDS), and Tax Collected at Source (TCS) relating to Income Tax, labour cess, royalty etc.
6. Payment of GST Tax under the contract
 - a. The payment of GST and GST Cess to the bidder shall be made only on the latter submitting a GST compliant Bill/ invoice indicating the appropriate HSN code and applicable GST rate thereon duly supported with documentary evidence as per the provision of relevant GST Act and the Rules made there under. The delivery of Services shall be shown being made in the name, location/ state, and GSTIN of the beneficiary of the Services only, the location of the procurement office of the Purchaser has no bearing on the invoicing.
 - b. While claiming reimbursement of duties, taxes etc. (like GST) from the Purchaser, as and if permitted under the contract, the bidder shall also certify that in case it gets any refund out of such taxes and duties from the concerned authorities at a later date, it (the bidder) shall refund to the Purchaser, the Purchaser's share out of such refund received by the bidder. The bidder shall also refund the appropriate amount to the Purchaser immediately after receiving the same from the concerned authorities.
 - c. All necessary adjustment vouchers such as Credit Notes/ Debit Notes for any short/ excess delivery of Services or revision in prices or any other reason under the contract shall be submitted to the Purchaser in compliance with GST provisions.
 - d. GST shall be paid as per the rate at which it is liable to be assessed or has been assessed provided the provision of Services is legally liable to such taxes and is payable as per the terms of the contract subject to the following conditions:
 - i. The Purchaser shall not pay a higher GST rate if leviable due to any misclassification of HSN number or incorrect GST rate incorporated in the contract due to bidder's fault. Wherever the bidder invoices the Goods at GST rate or HSN number, which is different from that incorporated in the contract, payment shall be made as per GST rate, which is lower of the GST rates incorporated in the contract or billed.

- ii. However, the Purchaser shall not be responsible for the bidder's tax payment or duty under a misapprehension of the law.
 - iii. Bidder is informed that he shall be required to adjust his basic price to the extent required by a higher tax rate billed as per invoice to match the all-inclusive price mentioned in the contract.
 - iv. In case of profiteering by the bidder relating to GST tax, the bidder shall treat it as a violation of the Code of Integrity in the contract and avail any or all punitive actions thereunder, in addition to recovery and action by the GST authorities under the Act.
- e. The bidder should issue Receipt vouchers immediately on receipt of all types of payments along with tax invoices after adjusting advance payments, if any, as per Contractual terms and GST Provisions.
- f. Liquidated damages or any other recoveries should be shown as deductions on the invoice, and GST shall be applicable only on the nett balance payment due.

12.4. Withholding and lien in respect of sums claimed

1. Whenever any claim or claims for payment of a sum of money arises against the bidder, out of or under the contract, the Purchaser shall be entitled, and it shall be lawful on his part, to withhold and also have a lien to retain such sum or sums, in whole or in part pending finalisation or adjudication of any such claim from –
 - a. any security in the form of PBG deposited by the bidder.
 - b. any sum(s) payable till now or hereafter to the bidder under the same Contract or any other contract with the Purchaser if the security is insufficient or if no security has been taken from the bidder.
2. Where the bidder is a partnership firm or a limited company, the Purchaser shall be entitled, and it shall be lawful on his part, to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner/ limited company, as the case may be, whether in his capacity or otherwise.
3. It is an agreed term of the contract that the sum(s) of money so withheld or retained under the lien referred above shall be kept withheld or retained till the claim arising out of or under the contract is determined under clause 22.15 and/ or 13. The bidder shall have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as such to the bidder.
4. Lien in respect of Claims in other Contracts: Any sum of money due and payable to the bidder (including the security deposit returnable to him) under the contract may be withheld or retained by way of lien by the Purchaser or Government against any claim of the Purchaser or Government in respect of payment of a sum of money arising out of or under any other contract made by the bidder with the Purchaser or Government.

12.5. Completion Certificate and Final payment

12.5.1. Completion Certificate

Upon a written intimation from the bidder, the Purchaser shall issue a certificate of completion duly indicating the date of completion after satisfying himself of the following. The Purchaser may also issue such a certificate

indicating the date of completion concerning any part of the service (before the completion of the whole of service), which has been completed to the satisfaction of the Purchaser:

1. that the whole of the Services to be done under the provisions of the contracts have been completed or when any such certificate is given in respect of part of a service, such part shall be considered completed.
2. that they have been inspected by him since their completion and found to be in good and substantial order,
3. that such completed services have satisfactorily passed any final test or tests that may be prescribed,
4. that all properties, works and things, removed, disturbed, or damaged in consequence of the Services have been adequately replaced and
5. that the bidder has returned in good condition, all assets loaned or hired from the Purchaser and has given a satisfactory account of payments made to or retained by the Purchaser for such loaned/ hired assets,
6. that the bidder has made good and satisfied in conformity with the contract all expenses and demands
 - a. incurred by or made upon by the Purchaser.
 - b. for or in respect of damages or losses from or in consequence of the services.

12.5.2. Approval Only by Completion Certificate

No certificate other than completion certificate referred to in sub-clause above shall be deemed to constitute approval of any service or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the contract or any part thereof or of the accuracy of any claim or demand made by the bidder or of additional varied Services having been ordered by the Purchaser nor shall any other certificate conclude or prejudice any of the powers of the Purchaser.

12.5.3. Cessation of Purchaser's Liability

After the issue of Completion Certificate, the Purchaser shall not be liable to the bidder for any matter arising out of or in connection with the contract for the delivery of the Services, unless the bidder shall have claimed in writing in respect thereof before the issue of the Completion Certificate for service in Contract.

12.5.4. Unfulfilled Obligations

Notwithstanding the issue of Completion Certificate for service, the bidder and the Purchaser shall remain liable for the fulfilment of any obligation incurred under the provision of the contract before the issue of the Completion Certificate for service, which remains unperformed at the time such certificate is issued. The contract shall be deemed to remain in force till the nature and extent of any such obligations are determined.

12.5.5. Final Payment

The bidder shall submit a Final bill on the Purchaser's certificate of completion regarding the services. The Final payment shall be made as per the following calculations to the bidder after receiving a clear "No Claim Certificate" signed from him:

1. the total quantity of service executed by the bidder up to the completion date based on the Purchaser or his representative's certified measurements.
2. necessary adjustment for any payments already made or retained
3. any deduction which may be made under the contract,
4. a complete account of all claims Bidder may have on the Purchaser, and the Purchaser gave a certificate in writing that such claims are correct

12.5.6. No Claim Certificate and Release of Contract Securities

The bidder shall submit a 'No-claim certificate' (appendix B) to the Purchaser in such form as shall be required by the Purchaser after the Services are finally admeasured and before the final payment/ performance securities are released. The Purchaser shall release the contractual securities without any interest if no outstanding obligation, asset, or payments are due from the bidder. The bidder shall not be entitled to make any claim whatsoever against the Purchaser under or arising out of this Contract, nor shall the Purchaser entertain or consider any such claim, if made by the bidder, after he shall have signed a "No Claim" Certificate in favour of the Purchaser. The Contactor shall be debarred from disputing the correctness of the items covered by the "No Claim" Certificate or demanding a clearance to arbitration in respect thereof.

12.5.7. Post Payment Audit

Notwithstanding the issue of Completion Certificate and release of final Payment, the Purchaser reserves the right to carry out within 180 days (unless otherwise stipulated in the contract) of such completion/ final payment, a post-payment audit and/ or technical examination of the Services and the final bill including all supporting vouchers, abstracts etc. If any over-payment to the bidder is discovered due to such examination, the Purchaser shall claim such amount from the bidder.

12.5.8. Signature on Receipts for Amounts

Every receipt for money, which may become payable, or for any security which may become transferable to the bidders, under the contract, shall if signed in the partnership name by any one of the partners of a Bidder's firm, be a suitable and sufficient discharge to the Purchaser in respect of the sums of money or security purported to be acknowledged thereby. In the event of death of any bidder, partners during the pendency of the contract, every receipt by anyone of the surviving constituents shall be suitable and sufficient discharge as aforesaid. Nothing in this Clause shall be deemed to prejudice or effect any claim that the Purchaser may hereafter have against the legal representative regarding any breach of any contract conditions by any bidder partner/member so dying. Nothing in this clause shall be deemed to prejudice or effect the respective rights or obligations of the bidder partners/ members and the legal representatives of any deceased Bidder partners/ members.

12.6. Payment Against Time-Barred Claims

All claims against the Purchaser shall be legally time-barred after three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. The Purchaser is entitled to, and it shall be lawful for it to reject such claims.

13. Events of Breach, Default, Termination and Suspension

13.1. Defaults and Breach of Contract

In case the bidder undergoes insolvency or receivership; neglects or defaults, or expresses inability or disinclination to honour his obligations relating to the performance of the contract or ethical standards or any other obligation that substantively affects the Purchaser's rights and benefits under the contract, it shall be treated as a breach of Contract. Such defaults could include inter-alia:

1. Default in Performance and Obligations: if the bidder fails to deliver any or all of the Services or fails to perform any other contractual obligations (including Code of Integrity or obligation to maintain eligibility and Qualifications based on which contract was awarded) within the period stipulated in the contract or within any extension thereof granted by the Purchaser.
2. Insolvency: If the bidder being an individual or if a firm, any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for the administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or
3. Liquidation: if the bidder is a company being wound up voluntarily, or by order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture- holders to appoint a Receiver, Liquidator or Manager

13.2. Events of Default by eCommerce Aggregator

1. The events of default have been detailed out in the **Termination of Contract** clause of the **Standard Conditions** section.
2. Where there has been an occurrence of such Event of Defaults, inter alia, the Purchaser shall issue a notice of default to the bidder, setting out specific defaults, deviances, omissions and providing a period of up to thirty (30) days to enable the Bidder to remedy the default/deviances omissions committed.

13.3. Consequences for Events of Default

Where an Event of Default subsists or remains uncured even after expiry of 30 days as mentioned in clause 13.1 (2), the Purchaser shall be entitled to:

1. 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 Bidder shall be obliged to comply with. The Bidder shall in addition take all available steps to minimize loss resulting from such event of default.
2. Suspend all corresponding and relevant payments to the Bidder under the Agreement (except for Services which have been successfully achieved) by written notice of suspension to the bidder provided that such notice of suspension shall
 - a. specify the nature of failure; and
 - b. request the bidder to remedy such failure within a specified period from the date of receipt of such notice of suspension by the bidder.

3. Invoke the Performance Bank Guarantee and other Guarantees furnished hereunder, enforce indemnity provisions, recover such other costs/losses and other amounts from the bidder which may have resulted from such default and pursue such other rights and/or remedies that may be available to the Purchaser under law.
4. Prefer claims against insurances, if any.
5. Terminate this Agreement in full or in part.

13.4. Termination for Breach

1. The Purchaser may, terminate this Agreement by giving the bidder a prior and written notice of up to 30 days indicating its intention to terminate where the Purchaser is of the opinion that there has been such Event of Default on the part of the bidder which has not been cured within the 30 days' notice period provided under clause 13.2 (2). The Purchaser may, in its sole discretion, afford a further reasonable opportunity to the bidder to explain the circumstances leading to such a breach and may increase the time limit for curing such breach before terminating the Agreement.

13.5. Termination for Convenience

1. The Purchaser may, by written notice of 90 (ninety) days sent to the bidder, 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 Purchaser's convenience, the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective. The Purchaser may, at its discretion, relax or absolve the bidder from following the timelines and/or service levels related to the part of the Agreement which is being terminated.
2. The Purchaser reserves the right to terminate the contract, in whole or in part for its (the Purchaser's) convenience or frustration of Contract as per sub-clause below, by serving written 'Notice for Determination of Contract' on the bidder at any time during the currency of the contract. The notice shall specify that the termination is for the convenience of the Purchaser or the frustration of the contract. The notice shall also indicate inter-alia, the extent to which the bidder's performance under the contract is terminated, and the date with effect from which such termination shall become effective.
3. Such termination shall not prejudice or affect the rights and remedies accrued and/ or shall accrue after that to the Parties.
4. Unless otherwise instructed by the Purchaser, the bidder shall continue to perform the contract to the extent not terminated.
5. All Defect Liability obligations, if any, shall continue to survive despite the termination.
6. The Services and incidental goods/ works that can be delivered or performed within thirty days after the bidder's receipt of the notice of termination shall be accepted by the Purchaser as per the contract terms. For the remaining Services and incidental goods/ works, the Purchaser may decide:
 - a. To get any portion of the balance completed and delivered at the contract terms, conditions, and prices; and/ or

- b. To cancel the remaining portion of the Services and incidental goods/ works and compensate the bidder by paying an agreed amount for the cost incurred by the bidder, if any, towards the remaining portion of the Services and incidental goods/ works.

13.5.1. Frustration of Contract

1. Notice of Frustration Event: Upon a supervening cause occurring after the effective date of the contract, including a change in law, beyond the control of either party whether as a result of the Force Majeure clause or within the scope of section 56 of the Indian Contract Act, 1872, that makes it impossible to perform the contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification. The parties shall use reasonable efforts to agree to amend the contract, as may be necessary to complete its performance. However, if the parties cannot reach a mutual agreement within 60 days of the initial notice, the Purchaser shall issue a 'Notice for Determining the contract' and terminate the contract due to its frustration as in the sub-clause above.
2. However, the following shall not be considered as such a supervening cause.
 - a. Lack of commercial feasibility or viability or profitability or availability of funds
 - b. if caused by either party's breach of its obligations under this Contract or failure to act in good faith or use commercially reasonable due diligence to prevent such an event.

13.6. Effects of Termination

1. In the event of expiry of the Term or termination of this Agreement due to any cause whatsoever, the bidder shall comply with the Exit Management Schedule/Plan duly approved by the purchaser.
2. Where the termination of the Agreement is prior to its stipulated term on account of an Event of Default on the part of the bidder, the Purchaser shall pay the bidder for that part of the Services which have been authorized by the Purchaser and satisfactorily delivered performed by the bidder up to the date of termination.
3. Where the termination of the Agreement is prior to its stipulated term on account of termination for convenience by the Purchaser, the Purchaser shall pay the Bidder for all the successful deliveries (after adjusting refunds) by the bidder up to the date of termination. Depending on the merits of the case, the Purchaser will suitably compensate the bidder on mutually agreed terms for directly incurred costs.
4. Nothing herein shall restrict the right of the Purchaser to invoke the Bank Guarantee and other Guarantees furnished hereunder and pursue such other rights and/or remedies that may be available to the Purchaser under this Agreement and/or the Applicable Law.
5. Any and all payments under this clause shall be payable only after the bidder has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Purchaser. In case of expiry of the Agreement, the last due payment shall be payable to the bidder after the bidder has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of the Purchaser.

13.7. Rights other than Termination

1. The termination hereof shall not affect any accrued right or liability of either Party nor affect the operation of the provisions of this Agreement that are expressly or by implication intended to come into or continue in force on or after such termination.

14. Indemnification and Limitation of Liability

14.1. General Indemnity

1. Subject to Clause 14.2 below, the bidder (the “Indemnifying Party”) undertakes to indemnify the Purchaser, its nominated agencies and beneficiaries (the “Indemnified Party”) from and against all losses, claims, damages, compensation (including attorney fees) etc. on account of bodily injury, death or damage to tangible personal property arising in favour of any person, company or other entity (including the Indemnified Party) attributable to – the Indemnifying Party’s negligence, wilful default or lack of due care. The Indemnifying Party shall also indemnify Indemnified Party from and against all direct monetary losses, damages etc. suffered by Indemnified Party or any third party arising out of any defect, fault, deficiency in logistics services, deficiency in the applications/system developed and or maintained by the Indemnifying Party or any of its Consortium Member(s) or sub-contractors etc.
2. The bidder shall indemnify and keep harmless the Purchaser, from and against, all actions, suit proceedings, losses, costs, damages, charges, claims, and demands of every nature and description brought or recovered against the Purchaser because of any act or omission or default or negligence or trespass of the bidder, his agents, or employees despite all reasonable and proper precautions may have been taken, during the execution of the Services. The bidder shall make good at his own expense all resulting losses and/ or damages to:
 - a. the Services themselves or
 - b. any other property of the Purchaser or
 - c. the lives, persons, or property of others
3. In case the Purchaser is called upon to make good such costs, loss, or damages, or to pay any compensation, including that payable under the provisions of the Workmen's Compensation Act or any statutory amendments thereof; the amount of any costs or charges including costs and charges in connection with legal proceedings, which the Purchaser may incur about it, shall be charged to the bidder. All sums payable by way of compensation under any of these conditions shall be considered as reasonable compensation to be applied to the actual loss or damage sustained and whether or not any damage shall have been sustained.
4. The Purchaser shall have the power and right to pay or to defend or compromise any claim of threatened legal proceedings, or in anticipation of legal proceedings being instituted consequent on the action or default of the bidder, to take such steps as may be considered necessary or desirable to ward off or mitigate the effect of such proceedings, charging to bidder, as aforesaid, any sum or sums of money which may be paid and any expenses whether for reinstatement or otherwise which may be incurred and the propriety of any such payment, defence or compromise, and the incurring of any such expenses shall not be called in question by the bidder.

14.2. IPR Indemnity

1. If the Indemnified Party notifies the Indemnifying Party in writing –

- a. of a third-party claim against the Indemnified Party that any services provided by the Indemnifying Party infringes a copyright, trade secret, patent or other intellectual property rights of any third party, or
 - b. of a third-party claim against the Indemnified Party or any of its service provider that any Purchaser's Material provided by the Indemnified Party or any of its service provider has been used by Indemnifying Party in breach of licensing or use terms for such Purchaser's Material;
2. The Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the Indemnified Party or its service provider, provided, the Indemnifying Party will not indemnify the Indemnified Party if the claim of infringement is caused by
- a. The Indemnified Party's misuse or modification of the Deliverables;
 - b. The Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party;
3. The bidder shall indemnify and hold harmless, free of costs, the Purchaser and its employees and officers from and against all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which may arise in respect of the Services provided by the bidder under this Agreement, as a result of any infringement or alleged infringement of any patent, utility model, registered design, copyright, or other Intellectual Proprietary Rights (IPR) or trademarks, registered or otherwise existing on the date of the Agreement arising out of or in connection with: any design, data, drawing, specification, or other documents or Services provided or designed by the bidder for or on behalf of the Purchaser.
- a. The sale by the Purchaser in any country of the services/ products produced by the Services delivered by the bidder, and
 - b. The delivery of the Services by the bidder or the use of the Services at the Purchaser's Site
4. Such indemnity shall not cover any use of the Services or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, neither any infringement resulting from the use of the Services or any part thereof, or any service/ products produced thereby in association or combination with any other service, equipment, plant, or materials not delivered by the bidder.
5. If any proceedings are brought, or any claim is made against the Purchaser arising out of the matters referred above, the Purchaser shall promptly give the bidder a notice thereof. At its own expense and in the Purchaser's name, the bidder may conduct such proceedings and negotiations to settle any such proceedings or claim, keeping the Purchaser informed.
6. If the bidder fails to notify the Purchaser within twenty-eight (28) days after receiving such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its behalf at the risk and cost to the bidder.
7. At the bidder's request, the Purchaser shall afford all available assistance to the bidder in conducting such proceedings or claim and shall be reimbursed by the bidder for all reasonable expenses incurred in so doing.

14.3. Conditions for Indemnity

Without prejudice to the rights of the Purchaser in respect of indemnification for any claim:

1. The Purchaser shall notify the bidder upon receipt of any notice of claim setting out in reasonable particulars, the details of such notice of claim;

2. Immediately upon receipt of notification of any claim from the Purchaser, the bidder within a period of 5 days from date of receipt of such notice from the Purchaser, notify the Purchaser whether the bidder wish to assume the defense in relation to such claim (including settlement or resolution thereof). Thereafter, the bidder shall be entitled in consultation with the Purchaser, and only to the extent such action does not in any manner compromise, prejudice or adversely affect the interests of the Purchaser, to take such action as mutually agreed upon by bidder and the Purchaser to avoid, dispute, deny, resist, appeal, compromise or consent such claim, within a period of 30 days from the date of receipt of such claim notification;
3. Notwithstanding anything contained herein, the bidder and the Purchaser agree and covenant that a notice by the Purchaser to the bidder in relation to the claim as aforesaid shall amount to express acceptance and consent by the bidder to indemnify the Purchaser for all losses in relation to such claim. Upon notice by the bidder, the Purchaser shall reasonably co-operate with the bidder at the sole costs of the bidder, only to the extent the same does not in any manner compromise, prejudice or adversely affect the rights of the Purchaser. The Purchaser shall have the right, at its option, to participate in the defense of such claim at its own cost and expense;
4. If the bidder fails to take any action as per the above clause within the time period as specified therein, the Purchaser shall have the right, in its absolute discretion, to take such action as it may deem necessary to avoid, dispute, deny, resist, appeal, compromise or contest or settle any claim (including without limitation, making claims or counterclaims against third parties). If the bidder does not assume control of the defense of such claims (as mentioned above), the entire defense, negotiation or settlement of such claim by the Purchaser shall be deemed to have been consented to by, and shall be binding upon, bidder as fully as though the bidder alone had assumed the defense thereof and a judgement had been entered into by the bidder, for such claim in respect of the settlement or judgement.

14.4. Limitation of Liability

1. The liability of the Bidder (whether in Agreement, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables, Goods, Services shall be the payment of direct damages only which shall in no event in the aggregate exceed 100% of the Performance Bank Guarantee.
2. The liability of the Purchaser (whether in Agreement, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement shall be limited to the amount of Annual Project Fee remaining to be paid to the bidder under this Agreement.
3. 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.

14.5. Allocation of liability

1. The allocations of liability in clause 14 represent the agreed and bargained-for understanding of the parties and compensation for the Services/Deliverables reflects such allocations.

15. Confidentiality and Information Security

1. The Purchaser may allow the bidder to utilize confidential information required to provide the services mentioned in the scope of work and the bidder shall maintain the highest level of secrecy, confidentiality and privacy with regard to such Confidential Information. The bidder shall use its best efforts to protect the confidentiality, integrity and proprietary of the Confidential Information. No member of Bidder's Team shall, without prior written consent from the Purchaser, make any use of any Confidential and Proprietary Information given by the Purchaser, except for purposes of performing this Agreement. Each member of Bidder's Team shall keep all the Confidential and Proprietary Information, provided by the Purchaser to them or their respective employees as confidential.
2. Additionally, the bidder 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 bidder shall use the information only to execute the Project.
3. The Purchaser shall retain all rights to prevent, stop and if required take the necessary punitive action against the bidder regarding any forbidden disclosure. The Purchaser reserves the right to adopt legal proceedings, civil or criminal, against the bidder in relation to a dispute arising out of breach of obligation by the bidder under this clause.
4. The bidder shall execute a corporate non-disclosure agreement with purchaser (in the format provided by the Purchaser) and shall ensure that all its employees, agents and sub-contractors execute individual non-disclosure agreements, which have been duly approved by the Purchaser with respect to this Project.
5. The bidder may only disclose the Confidential Information in the following circumstances:
 - a. with the prior written consent of the Purchaser;
 - b. to a member of the Bidder's Team ("Authorised Person") provided the Authorised Person needs to know the Confidential Information for accomplishment of the Services and the Authorised Person has executed a confidentiality agreement with the Purchaser prior to receiving such information (Bidder and every other member of Bidder's Team shall ensure that such Authorised Person to whom such information is disclosed are bound by the similar confidentiality obligations as applicable to each member of Bidder's Team. Disclosure to any such Authorised Person shall be made in confidence on need-to-know basis i.e., so far as may be necessary for such Authorised Person for the purposes of performance of the obligations of this Agreement); and
 - c. if and to the extent that the bidder is compelled legally to disclose the Confidential Information.
6. When the bidder is aware of any steps being taken or considered to compel legally the bidder or an Authorised Person to disclose the Confidential Information, it shall:
 - a. to the extent legally permitted, defer and limit the disclosure with a view to preserving the confidentiality of the Confidential Information as much as possible;
 - b. promptly notify the Purchaser; and
 - c. do anything reasonably required by the Purchaser to oppose or restrict that disclosure.
7. The bidder shall notify the Purchaser promptly if it is aware of any disclosure of the Confidential Information otherwise than as permitted by this Agreement or with the authority of the Purchaser.

8. The bidder's personnel shall follow the Purchaser's Information Security policy. The bidder acknowledges that the Purchaser's business data and other Purchaser proprietary information or materials, whether developed by the Purchaser or being used by the Purchaser pursuant to a license agreement with a third party (the foregoing collectively referred to herein as "proprietary information") are confidential and proprietary to the Purchaser; and the bidder agrees to use reasonable care to safeguard the proprietary information and to prevent the unauthorized use or disclosure thereof, which care shall not be less than that used by the bidder to protect its own proprietary information. The bidder recognizes that the goodwill of the Purchaser depends, among other things, upon keeping such proprietary information confidential and that unauthorized disclosure of the same by the bidder could damage the Purchaser, and that by reason of the bidder's duties hereunder, the bidder may come into possession of such proprietary information, even though the bidder does not take any direct part in or furnish the services performed for the creation of said proprietary information and shall limit access thereto to employees with a need to such access to perform the services required by this agreement. The bidder shall use such information only for the purpose of performing the said services. The bidder shall, upon termination of this Agreement for any reason, or upon demand by the Purchaser, whichever is earliest return any and all information provided to the bidder by the Purchaser, including any copies or reproductions, both hardcopy and electronic.
9. The obligations of confidentiality under this Agreement shall remain in force for the Term of the Agreement and shall survive for a period of five (5) years after expiry of the Term or earlier termination.
10. Obligations under this clause 16 shall not apply to any information which is:
 - a. previously known to the bidder at the time of disclosure without obligation of confidentiality,
 - b. independently developed by bidder and not derived from the Confidential Information supplied by the bidder or the participation of individuals who have had access to Confidential Information,
 - c. in or subsequently comes into the public domain (other than as a result of a breach of this Agreement);
or
 - d. required to be disclosed by the bidder by law, regulation, court order or other legal process, provided, where legally permissible, bidder provides written notice to the Purchaser prior to such disclosure and provide reasonable assistance to the Purchaser in retaining the confidentiality of such information.

15.1. Protection and Security of Personal Data

1. Where the bidder is processing Personal Data, as a Data Processor or otherwise for the Purchaser, the bidder shall:
 - a. Process the Personal Data only as per instructions from Purchaser (detailed in **Volume I – Section 5.2.2 - Security standards and guidelines**) as set out in this Contract or as otherwise notified by Purchaser;
 - b. Comply with all applicable laws
 - c. Process the Personal Data only to the extent, and in such manner as is necessary for the discharge of the bidder's obligations under this Contract or as is required by Law or any Regulatory Body
 - d. Implement appropriate technical and organisational measures to protect Personal Data against unauthorized or unlawful Processing and accidental loss, destruction, damage, alteration, or disclosure. These measures shall be appropriate to the harm which might result from any unauthorized or unlawful Processing, accidental loss, destruction, or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- e. Take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
 - f. Obtain prior written consent from the Authority to transfer the Personal Data to any sub-bidder for the provision of the Services;
 - g. Not cause or permit the Personal Data to be transferred, stored, accessed, viewed, or processed outside of India without the prior written consent of the Purchaser.
 - h. Ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause.
 - i. Ensure that none of the staff and agents publishes or disclose any personal data to any third parties unless directed in writing to do so by the Purchaser.
 - j. Not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Purchaser or compliance with a legal obligation imposed upon the Purchaser;
2. Notify the Purchaser (within five Working Days) if it receives;
- a. a request from an employee of Purchaser to have access to his or other employees' Personal Data; or
 - b. a complaint or request relating to the Purchaser' obligations under the law
3. The provision of this clause shall apply during the contract Period and **indefinitely** after its expiry.

16. Stipulated Time Schedule

1. The Time Schedule has been mentioned in the Implementation Roadmap Section in Volume 1 of the RFP. The bidder shall perform the activities and comply in all respects with the critical dates, which will be communicated by the Purchaser to the bidder's team, as the case may be, and the parties hereby agree that failure on part of the bidder, and/or Consortium Member to meet the critical dates without prejudice to any other rights that the Purchaser may have, may lead to the imposition of such obligations as are laid down in levy of penalties as set out in the RFP and/or termination of the Agreement at the discretion of the Purchaser.

16.1. Time for Delivery of services and Extensions Thereof

The time and uninterrupted delivery of Services shall be deemed to be the essence of the contract. Subject to any requirement in the contract as to the completion of any portions or portions of the Services before completion of the whole; the bidder shall fully and finally complete the whole of the services comprised in the contract as per the Delivery and Completion Schedule stipulated in Project Plan. If at any time during the currency of the contract, the bidder encounters conditions hindering the timely performance of services, the bidder shall promptly inform the Purchaser in writing about the same and its likely duration. He must make a request to the Purchaser for an extension of the delivery schedule. On receiving the bidder's communication, the Purchaser shall examine the situation and, at its discretion, may agree to extend the completion schedule, with or without liquidated damages and with and without denial clause by issuing an amendment to the contract in terms of the following clauses.

16.1.1. Extension Due to Modification

The Purchaser might grant a reasonable extension of the completion date if any modifications ordered materially increase the time for delivery of the services. The bidder shall be responsible for requesting such extension of the date as soon as the cause thereof shall arise and, in any case, not less than one month before the expiry of the date fixed for completion of the services.

16.1.2. Extension for Delay Not Due to Bidder

1. If in the opinion of the bidder, the progress of Services has any time been delayed due to following reasons, then within 15 days of such happening causing delay, he shall give notice thereof in writing to the Purchaser, but shall nevertheless do due diligence to bring down or make good the delays and to proceed with the services:
 - a. any act or neglect of other bidder employed by the Purchaser or in executing the work/service not forming part of the contract but on which Bidder's performance necessarily depends or
 - b. proceeding taken or threatened by or dispute with external third parties arising otherwise than from the bidder's own default etc. or
 - c. any act or neglect of Purchaser's employees or
 - d. delay authorized by the Purchaser pending arbitration or
 - e. the bidder not having received in due time necessary instructions from the Purchaser for which he shall have especially applied in writing to the Purchaser or his authorized representative.

- f. hand over possession of the site or the necessary facilities/ documents/ data or instructions by the Purchaser to the bidder or
 - g. give the necessary notice to commence the services, or
 - h. any other delay caused by the Purchaser due to any other cause whatsoever.
2. The bidder may also indicate the period for which the Services is likely to be delayed and ask for a necessary extension of time. On receipt of such request from the bidder, the Purchaser shall consider the same and grant such extension of time as in his opinion is reasonable regarding the nature and period of delay and the type and quantum of work affected thereby. No other compensation shall be payable for works so carried forward to the extended period. The same rates, terms, and conditions as the original Contract shall apply during the extended period.

16.1.3. Extension of Time for Delay Due to Bidder

1. If the bidder fails to deliver the Services within the fixed/ extended period for reasons other than those stipulated in clause 16.1.1 and 16.1.2 above, the Purchaser may, if satisfied that the service delivery can still be completed within a reasonable time, extend the period further.
2. On such extension, the Purchaser shall be entitled without prejudice to any other right and remedy available on that behalf to recover from the bidder as agreed damages and not by way of penalty Liquidated Damages as per clause below.
3. Provided further, that if the Purchaser is not satisfied that the service can be completed by the bidder or in the event of failure on the part of the bidder to complete the service within the extension of time allowed further as aforesaid, the Purchaser shall be entitled without prejudice to any other right or remedy available in that behalf, treat the delay as a breach of contract and avail any or all the remedies thereunder, whether or not actual damage is caused by such default.
4. Inordinate Delays: Delays due to the bidder of more than one-fourth (25%) of the total completion period shall be treated as inordinate delays. Such inordinate delays shall be noted as poor performance and be held against the bidder in future tenders. A show-cause notice shall be issued to the bidder before declaring it a poor performance. Such delays may be considered as a breach of the contract at the option of the Purchaser.

16.2. Suspension of Services

16.2.1. Suspension Ordered by Purchaser

The bidder shall, on the order of the Purchaser, suspend the progress of the Services or any part thereof for such time or times and in such manner as the Purchaser may consider necessary, and shall during such suspension, adequately protect and secure the site and assets so far as is necessary in the opinion of the Purchaser. If such suspension is -

1. Provided for in the contract, or
2. Necessary for the proper execution of the Services or because of extraneous conditions or by some default on the part of the bidder and or
3. Necessary for the safety of the Services or any part thereof

16.2.2. Extension of Time and Compensation

The bidder shall not be entitled to the extra costs, if any, incurred by him during the period of suspension of the service, but in the event of any suspension ordered by the Purchaser for reasons other than aforementioned and when each such period of suspension exceeds 14 days, the Purchaser shall extend the time of service for completion of the Services as he may consider proper, having regard to the period or periods of such suspensions and such compensations as the Purchaser may consider reasonable in respect of expenses incurred by the bidder during the periods of such suspension.

16.2.3. Suspension Lasting More Than 3 Months

If the Purchaser suspends the Services or any part thereof for more than three months at a time, the bidder may serve a written notice on the Purchaser requesting permission to proceed with the suspended part(s) of service. If such permission is not granted within 15 days from the receipt thereof, the bidder by further written notice may, treat the suspended part(s) of the service as deleted from the Contract. If the whole of the services has been suspended, he may treat it as a breach of the contract by the Purchaser and avail any or all remedies provided in this regard in the contract.

17. Damages and Deductions Thereof

17.1. Right of the Purchaser to recover Damages

Purchaser shall be entitled to, and it shall be lawful for him to recover damages for the shortfall in performance and Liquidated damages as detailed in this clause from all payments due or any Performance Security or any retention money. This clause does not limit Purchaser from imposing more than one damages under the contract, and such damages shall be applied concurrently.

17.2. Damages for Shortfall in Performance

The Purchaser shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance a percentage as prescribed in Volume II section 3.7.7 SLA Calculation of the delivered price (including elements of GST & freight) of the defective Services, If the bidder fails to perform the Services as per Performance Standards and Quality, without having to prove actual loss incurred.

17.3. Liquidated damages

1. Subject to clause 16, if the bidder fails to perform the Services within the time frame(s) incorporated in the contract, the Purchaser shall, without prejudice to other rights and remedies available to the Purchaser under the contract, deduct from the contract price, as liquidated damages for each week of delay or part thereof until actual delivery or performance, but not as a penalty, a sum as prescribed (**SLAs in Volume II Section 3.7.6 Project Management SLAs**) of the related monthly bill of the Services. Besides liquidated damages during such a delay, the denial clause as per Section 17.4 shall also apply.
2. Any failure or delay by any sub-contractor, though their employment may have been sanctioned, shall not be admitted as a ground for any extension of time or for exempting the bidder from liability for any such loss or damage as aforesaid.

17.4. Denial Clause

1. No increases in price on account of any statutory increase in or fresh Imposition of GST, or on account of any other taxes/ duty/ cess/ levy) leviable in respect of the Services and incidental goods/ works stipulated in the said Contract which takes place after the original delivery date shall be admissible on such of the said Services, as are delivered after the said date; and
2. Notwithstanding any stipulation in the contract for an increase in price on any other ground, including the price variation clause, no such increase after the original delivery date shall be admissible on such Services delivered after the said date.
3. Nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of GST, or on account of any other Tax or duty.

18. Audit, Access and Reporting

1. The Purchaser reserves the right to inspect and monitor/assess the operations at any time during the course of the Agreement, after providing due notice to the bidder. The purchaser will be allowed to conduct unplanned inspection as well, without any prior notice. The Purchaser may demand and upon such demand being made, the Purchaser shall be provided with any document, data, material or any other information which it may require, to enable it to assess the operations conducted by the bidder.
2. The Purchaser shall also have the right to conduct, either itself or through another agency as it may deem fit, an audit to monitor the performance by the bidder of its obligations/functions in accordance with the standards committed to or required by the Purchaser and the bidder undertakes to cooperate with and provide to the Purchaser/any other agencies appointed by the Purchaser, all documents and other details as may be required by them for this purpose. To the extent reasonably possible, the Purchaser shall endeavour not to appoint a competitor of bidder as auditor. Any deviations or contravention, identified as a result of such audit/assessment, would need to be rectified by the bidder failing which the Purchaser may, without prejudice to any other rights that it may have issue a notice of default. Cost of acquisition of deliverables by the bidder and other sub-contractors is out of the purview of audit/inspections.
3. Without prejudice to the foregoing, the bidder shall allow access to the Purchaser or its nominated agencies to all information which is in the possession or control of the bidder and which relates to the provision of the Services/Deliverables as set out in the Audit, Access and Reporting Schedule.
4. The bidder shall provide all such reports and documents in the format and manner requested, as may be requested by the Purchaser for Purchaser's internal compliance purposes within 15 days (or such other period allowed by the Purchaser) of receipt of request from the Purchaser.
5. The Bidder shall keep accurate and systematic accounts and records regarding the provision of the Services under this Agreement, as per accounting principles prescribed in India.

19. Ownership and Intellectual Property Rights

- 1. Platform products and enhancements:** All platform products and related solutions and fixes provided by the Bidder pursuant to this Agreement shall be licensed to the Bidder according to the terms of the license agreement packaged with or otherwise applicable to such product. Such licenses shall be brought mentioning the Purchaser as the end user of such licenses. Bidder 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 the Purchaser 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 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 portal products, all intellectual property rights in any development/enhancement/customization etc. done on the platform products pursuant to this Agreement shall be owned by the Bidder. The Bidder undertakes to execute all such agreements/documents in filing all relevant applications, effect transfers and obtain all permits and approvals that may be necessary in this regard to effectively conserve the Intellectual Property Rights of the Bidder. The Bidder shall be obliged to ensure that all approvals, registrations, licenses, permits and rights which are, inter-alia, necessary for use of the Deliverables, services, applications, services etc. provided by the Bidder Consortium subcontractors under this Agreement shall be acquired in the name of the Bidder. The bidder shall have the right to use such licenses till the Term solely for the purpose of execution of any of its obligations under the terms of this Agreement.
- 2. Portal Development:** The bidder shall own all newly created Intellectual Property Rights which have arisen out of or have been developed under the Scope of Work during execution of this Agreement, including but not limited to all processes, products, specifications, reports, drawings, applications and codes which have been newly created and developed by the Bidder during the performance of the Services and for the purposes of, inter-alia, use or sub-license of such Services under this Agreement. The Purchaser shall have a right to use all newly created Intellectual Property Rights which have arisen out of or have been developed under the Scope of Work during execution of this Agreement, including but not limited to all processes, products, specifications, reports, drawings, applications and codes which have been newly created and developed by the Bidder during the performance of the Services and for the purposes of, inter-alia, use or sub-license of such Services under this Agreement. Portal development shall include any customization or enhancement to bidder products and the Bidder shall own and have a right in perpetuity to all IPRs in such customization/enhancement etc. All material related to such portal development shall be treated as Confidential Information by the Bidder. The Bidder undertakes to disclose all such Intellectual Property Rights arising in performance of the Services to the Purchaser. The Bidder shall execute all such agreements/documents and file all relevant applications, effect transfers and obtain all permits and approvals that may be necessary in this regard to effectively conserve the Intellectual Property Rights of the Bidder at the cost of the Bidder.
- 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.
- 4. Ownership of documents:** The Purchaser shall own all Documents provided by or originating from the Purchaser and all Documents produced by or from or for the Bidder in the course of performing the Services. Forthwith upon expiry or earlier termination of this Agreement and at any other time on demand by the

Purchaser, the Bidder shall deliver to the Purchaser all Documents provided by or originating from the Purchaser and all Documents produced by or from or for the Bidder in the course of performing the Services, unless otherwise directed in writing by the Purchaser at no additional cost. The Bidder shall not, without the prior written consent of the Purchaser store, copy, distribute or retain any such Documents.

20. Warranty

1. Once the goods received from depot and are inspected and restocked in the inventory, it becomes the responsibility of the bidder to keep the goods in a suitable environment. Any damage to the goods while being stored in the e-commerce facility created within the depot or during the delivery due to negligence of the bidder will be borne by the Bidder. Bidder will be required to submit the damaged goods report to the Purchaser regularly as per the timelines set in Volume I.
2. The bidder will be required to conduct the scheduled maintenance of the E-Commerce portal and ensure any errors/bugs are resolved within the set SLAs. Failure to comply with the set limit shall lead to penalty being imposed on the bidder as per the SLAs.
3. It will be the responsibility of the bidder to ensure the orders are delivered within the set delivery timelines in the SLAs. The bidder must duly inform the purchaser about the refund orders and perform the reverse logistics as per the industry best practices.
4. The bidder will be required to perform the above mentioned activities and ensure delivery standards for the complete duration.

21. Insurances

1. The bidder (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Purchaser, insurance against the risks, and for the coverage, as stipulated in the contract or any applicable law including Labour Codes; and at the Purchaser's request, shall provide evidence to the Purchaser showing that such insurance has been taken out and maintained and that the current premiums have been paid.
2. The bidder at his cost shall provide, in the joint names of the Purchaser and the bidder, insurance cover from the start date to the date of completion of the contract, in the amounts and deductibles as per the instructions of the Purchaser and the contract for the following events which are due to the bidder's risks:
 - a. loss of or damage to Equipment, materials for which advances have been paid.
 - b. loss of or damage to Equipment, materials for which advances have been paid.
 - c. Personal injury or death.
 - d. Penalties and demands by labour regulatory authorities.
3. Insurance policies and certificates for insurance shall be delivered to the Purchaser for approval before the Start Date. All such insurance shall provide compensation payable in Indian Rupees to rectify the loss or damage incurred.
4. Alterations to the terms of insurance shall not be made without the approval of the Purchaser.
5. Both parties shall comply with any conditions of the insurance policies.

22. Miscellaneous

22.1. eCommerce Aggregator Organization

1. The personnel assigned by the bidder to perform the Services shall under no circumstances be considered employees of the Purchaser or its nominated agencies. The bidder 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, provident fund, 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 the Applicable Law.
2. The bidder shall ensure that the bidder's team is competent and professional and possesses the requisite qualifications and experience appropriate to the task they are required to perform under this Agreement in addition to the minimum qualification and experience as explained in Volume 2 of the RFP.
3. The bidder shall appoint an employee as its authorized representative through a written notice to the Purchaser. The bidder's Representative shall have the authority to exercise all of the powers and functions of the bidder under this Agreement other than the power to amend this Agreement and ensure the proper administration and performance of the terms hereof and to bind the bidder in relation to any matter arising out of or in connection with this Agreement. The bidder, Consortium along with the Sub-Contractors/third parties shall be bound by all undertakings and representations made by the authorized representative of the bidder and any covenants stipulated hereunder, with respect to this Agreement, for and on their behalf. The bidder's representative shall have all the power requisite for the performance of the work under this Agreement. The bidder's Representative shall liaise with the Purchaser's Representative for the proper coordination and timely completion of the works and on any other matters pertaining to the works. The bidder's Representative will extend full co-operation to the Purchaser's representative for supervision/inspection/observation of the equipment/material procedures, performance, reports and records pertaining to the works. The bidder shall comply with any instructions that are given by the Purchaser's representative during the course of this Agreement in relation to the performance of its obligations under the terms of this Agreement and the RFP. bidder's Representative shall also have complete charge of the bidder's personnel engaged in the performance of the works and to ensure compliance of rules, regulations and safety practice. Bidder's Representative shall also cooperate with the other service providers/contractors of the Purchaser. Such bidder's representative shall be available to the Purchaser's Representative during the execution of Services.
4. The bidder shall, to the best of its efforts, avoid any change in the organizational structure proposed for execution of this Agreement or replacement of any manpower resource appointed. If the same is however unavoidable, due to circumstances such as death, medical incapacity, resource leaving bidder's organization, the same shall be notified to the Purchaser immediately. The bidder shall promptly inform the Purchaser in writing if any such revision or change is necessary. In case of replacement of any manpower resources, the bidder shall ensure efficient knowledge transfer from the outgoing resource to the incoming resource and adequate hand holding period and training for the incoming resource.
5. The Purchaser's Representative may at any time request the bidder to remove from the Services any employee of the bidder or its sub-contractor or any person(s) deployed by the bidder or its sub-contractor or consortium member for professional incompetence or negligence or for being deployed for work for which he is not suited or for unethical, corrupt, fraudulent behaviour. The bidder shall consider the Purchaser's Representative request and may accede to or disregard it except that in case of unethical, corrupt, fraudulent behaviour the bidder shall remove the person immediately. The Purchaser's Representative, having made

a request, as aforesaid in the case of any person, which the bidder has disregarded, may in the case of the same person at any time but on a different occasion, and for a different instance of one of the reasons referred to above in this Clause object to and require the bidder to remove that person from deployment on the work, which the bidder shall then forthwith do and shall not again deploy any person so objected to on the work or on the sort of work in question (as the case may be) without the written consent of the Purchaser's Representative. The Purchaser's Representative shall state to the bidder in writing his reasons for any request or requirement pursuant to this clause. The bidder shall promptly replace every person removed, pursuant to this section, with a competent substitute. The change or revision of resources shall be subject to levy of penalties as provided in Volume II of RFP.

22.2. Independent Contractor

1. Nothing in this Agreement or the SLA shall be construed as establishing or implying any partnership or joint venture between the Parties to this Agreement and, except as otherwise provided in this Agreement or any Power of Attorney given by Consortium Member to the Lead Member, 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

1. The bidder shall not subcontract any part of the scope of work other than the work allotment declared under this Agreement to any third party without the prior written consent of the Purchaser. Bidder shall assist the Purchaser with all documents etc. required by the Purchaser to decide whether to give its consent or not. While giving its consent for appointment of any subcontractor, the Purchaser may impose such conditions on subcontracting as mutually agreed between the Bidder and the Purchaser for successful accomplishment of the obligations of the Bidder under this Agreement and such conditions shall be applicable on the Bidder and the subcontractor (as applicable).
2. Prior to executing any contract or entering into any contract or understanding with a sub-contractor, the Bidder shall ensure that each sub-contractor appointed by the Bidder executes a non-disclosure agreement and a deed of adherence in the manner and form prescribed by the Purchaser. The deed of adherence will be a unilateral undertaking from the subcontractor to the Purchaser. The terms of deed of adherence shall be discussed by the Purchaser with the Bidder. Execution of deed of adherence by the subcontractor shall not in any way relieve the Bidder from any of its obligations and liability under this Agreement.
3. The Bidder shall ensure that the subcontractor proposed by Bidder is competent and professional and possess the requisite qualifications and experience appropriate to the tasks they will perform under this Agreement.
4. Any change of the sub-contractor(s), after the arrangement is firmed up, will be made by the Bidder only with the prior written approval of the Purchaser which approval shall not be unreasonably withheld or delayed.

5. The Bidder shall be responsible and shall ensure the proper execution and performance of the services or tasks so sub-contracted and shall be liable for any non-performance or breach by such sub-contractor. The Bidder indemnifies and shall keep indemnified the Purchaser against any losses, damages, claims or such other implications arising from or out of the acts and omissions of such sub-contractor. The Bidder shall be responsible for making all payments to the sub-contractor as may be necessary, in respect of any work performed or task executed, and the Purchaser shall not be responsible for any part or full payment, which is due to such sub-contractor.
6. All rights of use of any process, service or facility developed or any other task performed by the subcontractor for the Bidder or the Purchaser for the purposes of this Agreement, under a subcontract agreement would lie exclusively with the Purchaser in perpetuity free from all liens, encumbrances and other third party rights and the Bidder shall, wherever required take all steps that may be necessary to ensure the use of such rights by the Purchaser. Ownership and all rights of use of all deliverables documents/reports etc. supplied by the Bidder and/or by authorized subcontractor for the Bidder for the purposes of this Agreement, under a subcontract agreement would lie exclusively with the Purchaser in perpetuity free from all liens, encumbrances and other third party rights and the Bidder shall, wherever required take all steps that may be necessary to ensure the ownership and use of such rights by the Purchaser. Purchaser shall own and have a right in perpetuity to use all newly created Intellectual Property Rights which have been developed by the subcontractor solely during execution of this Agreement. The Bidder will provide the undertakings given by the subcontractor within 30 days from the date of appointment of subcontractor to disclose all such Intellectual Property Rights arising in performance of the Services to the Purchaser and execute all such agreements/documents and file 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 the Purchaser.
7. Nothing in this Agreement or any subcontract agreement hereunder shall relieve the Bidder from its liabilities or obligations under this Agreement to provide the Services in accordance with this Agreement.
8. Where the Purchaser deems necessary, it shall have the right to require replacement of any sub-contractor with another sub-contractor and the Bidder shall in such case find of the suitable replacement for such sub-contractor to the satisfaction of the Purchaser at no additional charge. Failure on the part of the Bidder to find a suitable replacement shall amount to a breach of the terms hereof and the Purchaser in addition to all other rights, have the right to claim damages and recover from the Bidder all losses/or other damages that may have resulted from such failure. In case the Bidder terminates any contract/arrangement or agreement with a sub-contractor for any reason whatsoever, the Bidder shall ensure the smooth continuation of Services by providing forthwith, a suitable replacement which is acceptable to the Purchaser at no additional charge. In case of a replacement of the sub-contractor, the new sub-contractor shall have the qualification at least as good as the replaced subcontractor.

22.4. E-commerce Aggregator's Obligations

The obligations of the Bidder described in this clause is in addition to, and not in derogation of, the obligations mentioned in Volume 1 of the RFP and the two are to be read harmoniously:

1. The Bidder shall be the sole point of contact for all matters relating to this RFP and Agreement thereof.
2. The Bidder shall ensure that the Bidder's Team is competent, professional and possesses the requisite qualifications and experience appropriate to the task they are required to perform under this Agreement. The Bidder shall ensure that the Services are performed through the efforts of the Bidder's Team, in accordance with the terms hereof and to the satisfaction of the Purchaser. Nothing in this Agreement relieves the Bidder from its liabilities or obligations under this Agreement to provide the Services in accordance with

the Purchaser's direction and requirements and as stated in this Contract and the performance, non-compliance, breach or other loss and damage resulting either directly or indirectly by or on account of Bidder's Team.

3. The Bidder's Representative(s) shall have all the power requisite for execution of Scope of Work and performance of services under this Agreement. The Bidder's Representative(s) shall liaise with the Purchaser's Representative for the proper coordination and timely completion of the works and on any other matters pertaining to the works. He will extend full co-operation to the Purchaser's Representative for the proper coordination and timely completion of the works and on any other matter pertaining to the works. He will extend full co-operation to Purchaser's Representative in the manner required by them for supervision/inspection/observation of the equipment/goods/material, procedures, performance, progress, reports and records pertaining to the works. He shall also have complete charge of the Bidder's personnel engaged in the performance of the works and to ensure compliance of rules, regulations and safety practice. He shall also cooperate with other Service Providers/Vendors of the Purchaser.
4. Changes in Constitution/ financial stakes/ responsibilities of a Bidder's Business - the Bidder must proactively keep the Purchaser informed of any changes in its constitution/ financial stakes/ responsibilities during the execution of the contract. Where the Bidder is a partnership firm, the following restrictions shall apply to changes in the constitution during the execution of the contract:
 - a. a new partner shall not be introduced in the firm except with the previous consent in writing of the Purchaser, which shall be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract before the date of such undertaking.
 - b. On the death or retirement of any partner of the Bidder firm before the complete performance of the contract, the Purchaser may, at his option, terminate the contract for default as per the contract and avail any or all remedies thereunder.
 - c. If the contract is not terminated as provided in Sub-clause (b) above notwithstanding the retirement of a partner from the firm, that partner shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, has been sent by him to the Purchaser in writing or electronically.
5. Obligation to Maintain Eligibility and Qualifications – The contract has been awarded to the Bidder based on specific eligibility and qualification criteria. The Bidder is contractually bound to maintain such eligibility and qualifications during the execution of the contract. Any change which would vitiate the basis on which the contract was awarded to the Bidder should be pro-actively brought to the notice of the Purchaser within 7 days of it coming to the Bidder's knowledge. These changes include but are not restricted to:
 - a. Change regarding declarations made by it in its bid in Forms attached in Appendix B and Appendix C of Volume II of the RFP.
 - b. Change in its qualification criteria submitted in its bid as prescribed in Volume II
6. Restriction on Potential Conflict of Interests –
 - a. Neither the bidder nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:
 - i. during the term of this Contract, any business or professional activities in India that would conflict with the activities assigned to them under this Contract.
 - ii. after the termination of this Contract, such other activities as may be stipulated in the contract.

22.4.1. Consequences of a breach of Obligations

Should the Bidder or any of its partners or its Subcontractors or the Personnel commit a default or breach of clauses within Section 22.1,22.3,14,15 of this RFP, the bidder shall remedy such breaches within 21 days, keeping the Purchaser informed. However, at its discretion, the Purchaser shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies thereunder. The decision of the Purchaser as to any matter or thing concerning or arising out of the above or on any question whether the Bidder or any partner of the Bidder firm has committed a default or breach of any of the conditions shall be final and binding on the bidder.

22.5. Assignment

1. All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the Purchaser, the Bidder, the Consortium Member and their respective permitted successors and permitted assigns.
2. The Bidder and Consortium Member shall not be permitted to assign or transfer any or all of its rights and obligations under this Agreement to any third party without the prior written permission of the Purchaser.
3. Subject to the foregoing, the Bidder 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 the Purchaser, which consent shall be provided without undue delay by the Purchaser subject to the Bidder 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 the Purchaser.
4. Parties acknowledge that the Purchaser may set up an entity/autonomous body etc. to, inter alia, take over and manage the Project. Parties agree that the Purchaser shall have the right to assign and novate all or any part of this Agreement and Schedules/Annexures etc. to such separate entity/autonomous body after giving 15 days written notice to the Bidder. The Bidder and Consortium Members agree that they shall forthwith execute, without demur, all such agreements and documents as may be requested by the Purchaser to give effect to such assignment novation.

22.6. Trademarks, Publicity

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

22.7. Severability and Waiver

1. 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.

2. 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.

22.8. Permits, Approvals and Licenses

1. Whenever the delivery of Services and incidental Goods/ Works requires the bidder to obtain permits, approvals, and licenses from local public authorities, it shall be the bidder's sole responsibility to obtain these and keep these current and valid. Such requirements may include but not be restricted to licences or environmental clearance if required. If requested by the bidder, the Purchaser shall make its best effort to assist the bidder in complying with such requirements in a timely and expeditious manner, without any dilution of the Bidder's responsibility in this regard.

22.9. Professional Fees

1. 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.

22.10. Ethics

1. The Bidder and Consortium Partner, for itself and on behalf of its subcontractors, agents, representatives, employees etc., represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of the Purchaser 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 the Purchaser's standard policies and may result in cancellation of this Agreement.

22.11. Amendment

1. Any amendment to this Agreement shall be made by mutual written consent of the Parties as per Change Management clause in Volume I.

22.12. Conflict of Interest

1. The Bidder shall disclose to the Purchaser in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the Bidder, Consortium Partner or the Bidder's or Consortium Partner's Team) in the course of performing the Services as soon as practical after it becomes aware of that conflict. Circumstances amounting to Conflict of Interest are mentioned in **Volume II Section 2.20 of the RFP**.

22.13. Survival

1. Any provision of this Agreement which imposes or intends to impose an obligation on any of the Parties after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

22.14. Resolution of Disputes

22.14.1. Disputes and Excepted Matters

All disputes and differences between the parties hereto, as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question; or any other account whatsoever, but excluding the Excepted Matters (detailed below); arising out of or in connection with the contract, within thirty (30) days from aggrieved Party notifying the other Party of such matters; whether before or after the completion/ termination of the contract, that cannot be resolved amicably between the Purchaser and the bidder within thirty (30) days from aggrieved Party notifying the other Party of such matters, shall be hereinafter called the "Dispute". The aggrieved party shall give a 'Notice of Dispute' indicating the Dispute and claims citing relevant Contractual clause to the designated authority and requesting for invoking the following dispute resolution mechanisms. The Dispute shall be resolved without recourse to courts through dispute resolution mechanisms detailed subsequently, in the sequence as mentioned below, and the next mechanism shall not be invoked unless the earlier mechanism has been invoked or has failed to resolve it within the deadline mentioned therein.

1. Adjudication
2. Conciliation
3. Arbitration

22.14.2. Excepted Matters

Matters for which provision has been made in any Clause of the contract shall be deemed as 'excepted matters' (matters not disputable/ arbitrable), and decisions of the Purchaser, thereon shall be final and binding on the bidder. The 'excepted matters' shall stand expressly excluded from the purview of the sub-clauses below, including Arbitration. However, where the Purchaser has raised the dispute, this sub-clause shall not apply. Unless otherwise stipulated in the contract, excepted matters shall include but not limited to:

1. any controversies or claims brought by a third party for bodily injury, death, property damage or any indirect or consequential loss arising out of or in any way related to the performance of this Contract ("Third Party Claim"), including, but not limited to, a Party's right to seek contribution or indemnity from the other Party in respect of a Third-Party Claim.
2. Issues related to the pre-award tender process or conditions
3. Issues related to ambiguity in contract terms shall not be taken up after a contract has been signed. All such issues should be highlighted before the signing of the agreement by the bidder
4. Provisions incorporated in the contract, which are beyond the purview of The Purchaser or are in pursuance of policies of Government, including but not limited to
 - a. Provisions of restrictions regarding local content and Purchase Preference to Local suppliers in terms of Make in India policy of the Government

- b. Provisions regarding restrictions on Entities from Countries having land borders with India in terms of the Government's policies in this regard
- c. Purchase preference policies regarding MSEs and Start-ups

22.14.3. Adjudication

After exhausting efforts to resolve the Dispute with the Purchasing Officer executing the contract on behalf of the Purchaser, the bidder shall give a 'Notice of Adjudication' specifying the matters which are in question, or subject of the dispute or difference indicating the relevant contractual clause, as also the amount of claim item-wise to CSD HO (hereinafter called the "Adjudicator") for invoking resolution of the dispute through Adjudication. During his adjudication, the Adjudicator shall give adequate opportunity to the bidder to present his case. Within 60 days after receiving the representation, the Adjudicator shall make and notify decisions in writing on all matters referred to him. The parties shall not initiate, during the adjudication proceedings, any conciliation or arbitral or judicial proceedings in respect of a dispute that is the subject matter of the adjudication proceedings. If not satisfied by the decision in adjudication, or if the adjudicator fails to notify his decision within the abovementioned time-frame, the bidder may proceed to invoke the process of Conciliation as follows.

22.14.4. Conciliation of disputes

1. Any party may invoke Conciliation by submitting "Notice of Conciliation" to the Head of the CSD HO, Since conciliation is a voluntary process, within 30 days of receipt of "Notice of Conciliation", the Head of the CSD HO shall notify a sole Conciliator if the other party is agreeable to enter Conciliation. If the other party is not agreeable to Conciliation, the aggrieved party may invoke Arbitration.
2. The Conciliator shall proactively assist the parties to reach an amicable settlement independently and impartially within the terms of the contract, within 60 days from the date of appointment of the Conciliator.
3. If the parties reach an agreement on a dispute settlement, they shall draw up a written settlement agreement duly signed by the parties and conciliator. When the parties sign the settlement agreement, it shall be final and binding on the parties. The dispute shall be treated as resolved on the date of such agreement.
4. The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.
5. Termination of Conciliation: Disputes shall remain alive if the conciliation is terminated as follows:
 - a. By written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of such declaration; or
 - b. By a written declaration of any party to the conciliator to the effect that the conciliation proceedings are terminated, on the date of such declaration; or
 - c. If the parties fail to reach an agreement on a settlement of the dispute, within 60 days of the appointment of Conciliator.
6. On termination of Conciliation, if the dispute is still alive, the aggrieved party shall be free to invoke Arbitration.

22.14.5. Arbitration Agreement

22.14.5.1. This Agreement

1. This Arbitration Agreement (hereinafter referred to as this “Agreement”) relating to this Agreement (hereinafter called the “Main Agreement” for this agreement) is made under the provisions of The Arbitration and Conciliation Act, 1996 as amended from time to time and the rules thereunder (hereinafter called The Arbitration Act). This Agreement shall continue to survive termination, completion, or closure of the Main Agreement for 120 days after that.
2. Subject to aforesaid provisions, relevant clauses of the contract shall apply to the appointment of arbitrators and arbitration proceedings under this Agreement.
3. The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to be referred to Micro and Small Enterprises Facilitation Council if the dispute is regarding any amount due under Section 17 of the MSMED Act, 2006. If a Micro or Small Enterprise, being a party to dispute, refers to the provisions in MSMED Act 2006, these provisions shall prevail over this Agreement.

22.14.5.2. Notice for Arbitration

1. Authority to Appoint Arbitrator(s): For this Arbitration Agreement ‘The Appointing Authority’, to appoint the arbitrator shall be Head of the Canteen Stores Department named in the agreement and includes if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.
2. In the event of any dispute, if the Adjudicator fails to decide within 60 days, or the Conciliation is Terminated then, parties to the contract, after 60 days but within 120 days of ‘Notice of Dispute’ (clause 20.14.1 above) shall request the Appointing Authority through a “Notice for Arbitration” in writing requesting that the dispute or difference be referred to arbitration.
3. The “Notice for arbitration” shall specify the matters in question or subject of the dispute or difference indicating the relevant contractual clause, as well as the amount of claim item-wise.

22.14.5.3. Reference to Arbitration

After appointing Arbitrator(s), the Appointing Authority shall refer the Dispute to them. Only such dispute or difference shall be referred to arbitration regarding which the demand has been made, together with counter-claims or set off. Other matters shall be beyond the jurisdiction of Arbitrator(s)

22.14.5.4. Appointment of Arbitrator

1. Qualification of Arbitrators:
 - a. In the case of retired officers of The Purchaser, he shall have retired in the rank of Senior administrative grade (or equivalent) and shall have retired at least 1 years prior and must not be over 70 years of age on the date of Notice for arbitration.
 - b. He/ they shall not have had an opportunity to deal with the matters to which the contract relates or who, in the course of his/ their duties as officers of the Purchaser Organization, expressed views on any or all of the matters under dispute or differences. A certification to this effect (as per Format in Appendix A.1) shall be taken from Arbitrators. The proceedings of the Arbitral tribunal or the award made by such Tribunal shall, however, not be invalid merely for the reason that one or more arbitrators had in the course of his service, an opportunity to deal with the

matters to which the contract relates or who in the course of his/ their duties expressed views on all or any of the matters under dispute.

- c. An Arbitrator may be appointed notwithstanding the total no. of arbitration cases in which he has been appointed in the past.
- d. Not be other than the person appointed by The Appointing Authority and that if for any reason that is not possible, the matter shall not be referred to arbitration at all.

2. Replacement of Arbitrators

If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or in the event of the arbitrator dying, neglecting/ unable or unwilling or refusing to act for any reason, or his award being set aside by the court for any reason, or in the opinion of The Appointing Authority fails to act without undue delay, the Appointing Authority shall appoint new arbitrator/ arbitrators to act in his/ their place in the same manner in which the earlier arbitrator/ arbitrators had been appointed. Such a re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

3. Appointment of Arbitrator:

- a. In cases where the total value of all claims in question added together does not exceed Rs 50,00,000/ - (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of sole Arbitrator. For this purpose, The Appointing Authority shall send to the bidder, within 60 days from the day of receipt of a written and valid notice for arbitration, a panel of at least four (4) names of retired officers, duly indicating their retirement dates.
- b. The bidder shall be asked to nominate at least two names out of the panel for appointment as his nominee within 30 days from the dispatch date of the request by The Appointing Authority. The Appointing Authority shall appoint at least one out of them as the sole arbitrator within 30 days from the receipt of the names of the bidder's nominees.
- c. In cases where the total value of all claims in question added together exceeds Rs 50,00,000/ - (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of three (3) retired Officers of the Purchaser Organisation. For this purpose, The Appointing Authority shall send a panel of at least four (4) names of such Officer(s) empanelled to work as Arbitrators duly indicating their retirement date to the bidder within 60 days from the day when a written and The Appointing Authority receives valid demand for arbitration.
- d. The bidder shall be asked to nominate at least 2 names out of the panel for appointment as his nominee within 30 days from the dispatch date of the request by The Appointing Authority. The Appointing Authority shall appoint at least one out of them as the bidder's nominee. It shall also simultaneously appoint the balance number of arbitrators either from the panel or outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed, within 30 days from the receipt of the names of Bidder's nominees.
- e. If the bidder does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, The Appointing Authority shall proceed for appointment of the arbitral tribunal within 30 days of the expiry of such time provided to the bidder.

22.14.5.5. Failure to appoint Arbitrators

If The Appointing Authority fails to appoint an arbitrator within 60 (sixty) days, then subject to the survival of this Arbitration Agreement, in international commercial arbitration, the Supreme Court of India shall designate the arbitral institution for the appointment of arbitrators. In case of national arbitrations, the High Court shall designate arbitral institutions. The Arbitration Council of India must have graded these arbitration institutions. These arbitral institutions must complete the selection process within thirty days of accepting the request for the arbitrator's appointment.

22.14.5.6. The Arbitral Procedure

1. **Effective Date of Entering Reference:** The arbitral tribunal shall be deemed to have entered the reference on the date on which the arbitrator(s) have received notice of their appointment. All subsequent time limits shall be counted from such date.
2. **Seat and Venue of Arbitration:** The seat of arbitration shall be the place from which the Letter of Award or the contract is issued. The venue of arbitration shall be the same as the seat of arbitration. However, in terms of section 20 of The Arbitration Act, the arbitrator, at his discretion, may determine a venue other than the seat of the arbitration without in any way affecting the legal jurisdictional issues linked to the seat of the arbitration.
3. If the Adjudication and/ or Conciliation mechanisms had not been exhausted before such reference to Arbitration, the Arbitrator should ask the aggrieved party to approach designated authority for such mechanisms before the Arbitration proceedings are started.
4. The claimant shall submit to the Arbitrator(s) with copies to the respondent his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within 30 days from the date of appointment of the Arbitral Tribunal unless otherwise extension has been granted by Arbitral Tribunal.
5. On receipt of such claims, the respondent shall submit its defence statement and counter claim(s), if any, within 60 days of receipt of the copy of claims, unless otherwise extension has been granted by Arbitral Tribunal.
6. No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during arbitration proceedings subject to acceptance by the Tribunal having due regard to the delay in making it.
7. Statement of claims, counterclaims and defence shall be completed within six months from the effective reference date.
8. **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day-to-day basis, and no adjournments shall be granted without sufficient cause. The arbitrator (s) may impose an exemplary cost on the party seeking adjournment without sufficient cause.
9. **Award within 12 (twelve) months:** The arbitral tribunal is statutorily bound to deliver an award within 12 (twelve) months from the date when the arbitral tribunal enters reference. The award can be delayed by a maximum of six months only under exceptional circumstances where all parties consent to such extension of time. The court's approval shall be required for further extension if the award is not made out within such an extended period. During the period of an application for extension of time is awaiting before the court, the arbitrator's proceedings shall continue until the disposal of the application.

10. **Fast Track Procedure:** The parties to arbitration may choose to opt for a fast track procedure either before or after the commencement of the arbitration. The award in fast-track arbitration is to be made out within six months, and the arbitral tribunal shall be entitled to additional fees. The salient features of the fast-track arbitration are:
 - a. The dispute is to be decided based on written pleadings only.
 - b. Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
 - c. An oral hearing may be held only if all the parties request or the arbitral tribunal considers it necessary.
 - d. The parties are free to decide the fees of the arbitrator(s) for fast-track procedure.
11. **Powers of Arbitral Tribunal to grant Interim Relief:** The parties to arbitration may approach the arbitral tribunal for seeking interim relief on the grounds available under section 9 of the act. The tribunal has the powers of a court while making interim awards in the proceedings before it.
12. **Confidentiality:** As provided in Section 42A of The Arbitration Act, all the details and particulars of the arbitration proceedings shall be kept confidential, except in certain situations like if the disclosure is necessary for the implementation or execution of the arbitral award.
13. **Obligation During Pendency of Arbitration:** Performance of the contract shall, unless otherwise directed by the Purchaser, continue during the arbitration proceedings, and no payment due or payable by the Purchaser shall be withheld on account of such proceedings, provided; however, it shall be open for Arbitral Tribunal to consider and decide whether or not the performance of the contract or payment therein should continue during arbitration proceedings.

22.14.5.7. The Arbitral Award

1. In the case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of the Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
2. The arbitral award shall state item-wise the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award can be inferred from it.
3. It is further a term of this arbitration agreement that where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made in terms of Section 31 (7) (a) of The Arbitration Act.
4. The award of the arbitrator shall be final and binding on the parties to this contract.
5. A party may apply for corrections of any computational errors, typographical or clerical errors, or any other error of similar nature occurring in the award or interpretation of a specific point of the award to the Tribunal within 60 days of receipt of the award.
6. A party may apply to the Tribunal within 60 days of receiving the award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

22.14.5.8. 11.5.8 Savings

The Arbitral Tribunal shall decide any matter related to Arbitration not covered under this Arbitration Agreement as per the provisions of The Arbitration Act.

22.14.5.9. Cost of Arbitration and fees of the Arbitrator(s)

1. The concerned parties shall bear the cost of arbitration in terms of section 31 (A) of The Arbitration Act. The cost shall inter-alia include fees of the Arbitrator. Further, the fees payable to the Arbitrator shall be governed by instructions issued on the subject by the Purchaser and/ or the Government from time to time, in line with the Arbitration and Conciliation Act, irrespective of the fact whether the Arbitrator is appointed by the Purchaser or the Government under this clause or by any court of law unless directed explicitly by Hon'ble court otherwise on the matter. A sole arbitrator shall be entitled to a 25% extra fee over such a prescribed fee.
2. The arbitrator shall be entitled to a 50 percent extra fee if the award is made within 6 months in terms of provisions contained in section 29(A) (2) of The Arbitration Act.
3. Besides the above, Arbitrator shall also be entitled to this extra fee in cases where Fast Track Procedure in terms of section 29 (B) of The Arbitration Act is followed.

23. Constitution of Consortium

1. For the purposes of fulfilment of its obligations as laid down under the Agreement, unless the context requires otherwise, Bidder shall be the sole point of interface between the Purchaser and the lead bidder would be absolutely accountable for the performance of its own, the other members of Consortium and or its Team's functions and obligations.
2. The Consortium Members agree that the Lead Bidder shall be the prime point of contact between the Consortium Members and the Purchaser and shall be primarily responsible for the discharge and administration of all the obligations contained herein and, the Purchaser, unless it deems necessary shall deal only with the Bidder.
3. Bidder shall not, except with the prior approval of the Purchaser, have any provision in the consortium agreement or make any amendments to the said consortium agreement which adversely affects the rights and/or obligations of Bidder and Consortium Members under this Agreement or any amendment which is contrary to the provisions of this Agreement.
4. The Bidder and Consortium Members shall be jointly and severally liable for all obligations under this Agreement. Notwithstanding the foregoing, in case of a breach of any of the terms hereof, the Consortium Member shall be responsible and liable only for obligations related to goods and services to be supplied by the Consortium Member and the Bidder shall be, in addition to its own obligation, responsible and liable for the obligations of the Consortium Members. 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 Purchaser may, if it deems necessary, deal with only the Lead Bidder or any member of the Consortium, individually or as a group.
5. The Lead Bidder shall ensure that at all times during the Term of this Agreement, Consortium Member and the Consortium Member's Team complies with all the terms and conditions of this Agreement.
6. The Bidder and the Consortium Member 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. The terms and conditions of this Agreement shall mutatis mutandis apply to all Consortium Members.
7. The Bidder shall not change any Consortium Member without the prior written approval of the Purchaser. The approval of the Purchaser may be subject to certain conditions in terms of credentials and qualifications of the new Consortium Member which the Bidder shall be liable to meet. The Bidder shall give a notice of at least 6 months in advance to the Purchaser if during the term of this Agreement the Bidder desires to terminate any contract/arrangement relating to the performance of Services hereunder with the Consortium Member. Where, during the term of this Agreement, the Bidder terminates any contract/arrangement or agreement relating to the performance of the Services hereunder with any Consortium Member (subject to approval by the Purchaser), the Bidder shall be liable for any consequences resulting from such termination. The Bidder shall in such case ensure the smooth continuation of Services by providing a suitable replacement subject to approval and to the satisfaction of the Purchaser at no additional charge and at the earliest opportunity.

Appendices

Appendix A – Arbitration

A.1 Certification by Prospective Arbitrators

To

Head of the CSD

Canteen Stores Department

[Complete address of the Purchaser]

Certification by Prospective Arbitrators

1. Name: _____

2. Contact Details: _____

3. I hereby certify that I am retired officer of *[Name of Organization]* retired as _____ in _____ grade.

4. I have no past or present relationship concerning the subject matter in dispute, whether financial, business, professional or another kind.

Or

I have past or present relationships concerning the subject matter in dispute, whether financial, business, professional or another kind. The list of such interests is as under :-----

5. I have no past or present relationship/ interest financial, business, professional or other, in any of the parties, which may raise justifiable doubts about my independence or impartiality in terms of the Arbitration and Conciliation Act 1996 amended from time to time.

Or

I have past or present relationship/ interest financial, business, professional or other, in any of the parties, which may raise justifiable doubts about my independence or impartiality in terms of the Arbitration and Conciliation Act 1996 as amended from to time. The details of such relationship or interest are as under: -----
-

6. There are no concurrent circumstances that are likely to affect my ability to devote sufficient time to the arbitration and finish the entire arbitration within twelve months.

Or

Some circumstances are likely to affect my ability to devote sufficient time to the arbitration and finish the entire arbitration within twelve months. The list of such circumstances is as under: -----

(Signature)

(Name & Designation)

Appendix B – No Claim Certificate

(On company Letterhead)

Bidder's Name _____

[Address and Contact Details]

Bidder's Reference No. _____

Date.....

To

The President of India, through

Head of the CSD

Canteen Stores Department

[Complete address of the Purchaser]

No Claim Certificate

Sub: Contract Agreement no. ----- dated -----for the supply of -----

We have received the sum of Rs. (Rupees _____ only) as final settlement due to us for the supply of _____ under the abovementioned contract agreement.

We have received all the amounts payable to us with this payment and have no outstanding dispute of any description whatsoever regarding the amounts worked out as payable to us and received by us.

We hereby unconditionally and without any reservation whatsoever, certify that we shall have no further claim whatsoever, of any description, on any account, against the Purchaser, under contract above. We shall continue to be bound by the terms and conditions of the contract agreement regarding its performance.

Yours faithfully,

Signatures of Bidder or

officer authorised to sign the contract documents.

on behalf of the bidder

(company Seal)

Date:

Place: