



RFP for Project Management Unit for Implementation of DVDMS and strengthening of Drug Supply Chain in UP

Part – II – Draft Agreement

Date: _____

Tender Number: _____

National Health Mission

State Health Society,
19A Vidhan Sabha Marg,
Lucknow, Uttar Pradesh.



Table of contents

ARTICLE 1 - DEFINITIONS & INTERPRETATIONS	4
ARTICLE 2 – OBJECTIVE OF THIS AGREEMENT	8
ARTICLE 3 – ENGAGEMENT OF THE PROJECT MANAGEMENT UNIT	8
ARTICLE 4 – DURATION OF THIS AGREEMENT	9
ARTICLE 5 – GEOGRAPHICAL COVERAGE OF THIS AGREEMENT	9
ARTICLE 6 – COMMENCEMENT AND PERFORMANCE OF SERVICES.....	9
ARTICLE 7 – CONSIDERATION AND PAYMENT TO PMU.....	9
ARTICLE 8 – INTELLECTUAL PROPERTY RIGHTS AND PUBLICITY	14
ARTICLE 9 – MANPOWER	16
ARTICLE 10 – DELETED	17
ARTICLE 11 – REVIEW.....	17
ARTICLE 12 – COVENANTS OF PMU AND SELECTED BIDDER	17
ARTICLE 13 – COVENANTS OF THE AUTHORITY	19
ARTICLE 14 – PERFORMANCE SECURITY	19
ARTICLE 15 – APPOINTMENT OF COMMITTEES, AGENCIES, ETC.	20
ARTICLE 16 - REPRESENTATIONS AND WARRANTIES.....	20
ARTICLE 17 – FORCE MAJEURE.....	23
ARTICLE 18 - TERMINATION	26
ARTICLE 19 - DISPUTE RESOLUTION	28
ARTICLE 20 - GOVERNING LAW AND JURISDICTION.....	29
ARTICLE 21 – INDEMNITY	29
ARTICLE 22 - DELETED	31
ARTICLE 23 - DELETED	31
ARTICLE 24 – INSURANCE.....	31
ARTICLE 25 – LIMITATION OF PMU’S LIABILITY TOWARDS THE AUTHORITY.....	32
ARTICLE 26 – ASSIGNMENT / NOVATION	32
ARTICLE 27 - MISCELLANEOUS.....	33



AGREEMENT

This Agreement is entered into on this the day of, 2015 by and between

1. **Mission Director, UPNHM**(hereinafter referred to as “the Authority” which expression shall unless repugnant to the context or meaning thereof include its successors in office) of the First Part,

AND

2. XX, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at _____, INDIA (herein after referred to as the “Project Management Unit” which expression shall unless repugnant to the context or meaning thereof include its successors) of the Second Part.

“Authority”, “Project Management Unit” and the “Selected Bidder” shall hereinafter be individually referred to as “Party” and jointly as “Parties”.

WHEREAS:

- A. The Authority is desirous of engaging organizations/entities with experience in



the system integration to implement the Project, i.e., Project Management Unit for Implementation of DVDMS and strengthening of Drug Supply Chain in UP.

- B. The Authority had accordingly invited proposals by its Request for Proposal No. dated (the “Request for Proposal” or “RFP”) under a single-stage bid process from interested parties for implementing the project
- C. In response to the RFP, the Authority received applications from various Bidders including the Bid dated submitted by the Selected Bidder.
- D. The Authority, after evaluating all the proposals received by it from the various Bidders, accepted the Bid dated submitted by the Selected Bidder and communicated its acceptance to the Selected Bidder vide Letter of Intent No. dated (“LOI”).
- E. The Selected Bidder accepted the LOI and returned to the Authority a duplicate copy of the LOI duly signed by its Authorized representative in token of acceptance thereof.
- F. The Authority has agreed to the said request of the Selected Bidder, and has accordingly agreed to enter into this Agreement with the Project Management Unit (PMU) for execution of the Project on the terms and conditions set forth hereinafter, subject to the Selected Bidder also signing this Agreement as the Confirming Party.
- G. The Project Management Unit has furnished the Performance Security of Rupees in the form of Bank Guarantee on dated
- H. The Project Management Unit has complied or has undertaken to comply with all the conditions contained in the RFP enabling the signing of this Agreement.

ARTICLE 1 - DEFINITIONS & INTERPRETATIONS

1. In this Agreement, unless the context otherwise requires the following expressions



shall have the meaning assigned as under:

- a) “Agreement” shall include the contents and provisions of this Agreement; of all Schedules hereto; of the terms contained in the Request for Proposal (RFP) as amended and clarified by Authority until the submission of the bid by the interested parties; the LOI No. dated; the related agreements, inter-alia, including Bank Guarantee, undertaking and other instruments furnished by the PMU and the memorandums signed between the Project Management Unit and Authority from time to time in terms of this Agreement in regard to the Area of Operation and other matters, manner and method for execution and implementation of the Project.
- b) “Agreement Period” shall have the meaning as ascribed to it under Article 4.
- c) “Applicable Laws” means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in the State of Uttar Pradesh, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement.
- d) “Applicable Permits” means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement.
- e) “Areas of operations” shall mean all the districts of Uttar Pradesh.
- f) “Commencement Date” shall mean the date of signing this Agreement.
- g) “Effective Date” shall mean the date of signing this Agreement.
- h) “Manpower” shall mean any or all employees, personnel, staff of the Project Management Unit whether sourced from outside or on the payroll of the Project Management Unit.
- i) “Project” means the Project Management Unit for Implementation of DVDMS and



strengthening of Drug Supply Chain in UP in accordance with the provisions of this Agreement and Schedules.

- j) “DVDMS” shall mean a Drug and Vaccine Distribution Management System.
 - k) “State” shall mean the State of Uttar Pradesh.
 - l) “CDAC” shall mean Centre for Development of Advanced Computing
 - m) “DGMH” shall mean Director General of Medical Health
 - n) “UPTSU” shall mean Uttar Pradesh Technical Support Unit.
 - o) “PMU” shall mean Project Management Unit for monitoring the progress of the project and adherence to the project scope and timelines.
 - p) “GAD” would mean Gap Analysis Document.
 - q) “UAT” would mean User Acceptance Test.
 - r) “NIC” would mean National Informatics Corporation
 - s) “CMSD” would mean Chief Medical Stores Depot.
 - t) “UPDPL” would mean Uttar Pradesh Drug Pharmaceutical Company Ltd
 - u) “Healthcare facilities” would mean Primary Healthcare centers (PHCs), Community Healthcare centers (CHCs), District Hospitals (DH) and Drug warehouses
 - v) “DDC” would mean Drug distribution counters
2. The capitalized terms not specifically defined in this Agreement shall have the meaning as ascribed to them in the RFP.
3. In this Agreement, unless the context otherwise requires,



- (a) references to any legislation or any provision thereof shall include amendment or re- enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) words referring to a “person” shall be construed as a reference to any individual, firm, company, corporation, society, trust, or any association;
- (c) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (d) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (e) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (f) any reference to day shall mean a reference to a calendar day;
- (g) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (h) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Lucknow are generally open for business;
- (i) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days and dates;

Provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;



- (j) the words importing singular shall include plural and vice versa;
- (k) references to any gender shall include the other and the neutral gender;
- (l) “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (m) references to the “winding-up”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (n) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;

Provided that this sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (o) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- (p) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (q) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and



ARTICLE 2 – OBJECTIVE OF THIS AGREEMENT

1. The objective of this Agreement is to carry out Project Management of the DVDMS implementation project along with strengthening drug supply chain and it's roll out in all districts in the state of Uttar Pradesh for a duration of 3 calendar years from the date of signing of this contract.

ARTICLE 3 – ENGAGEMENT OF THE PROJECT MANAGEMENT UNIT

1. Subject to the terms and conditions contained in this Agreement, the Authority hereby engages the Project Management Unit to provide the following services.
 - Ensuring an effective DVDMS rollout
 - Project manage DVDMS implementation
 - User acceptance testing and ensuring tool meets the end user and supply chain requirements
 - Successful rolling out of DVDMS at all healthcare facilities
 - Project manage migration of data and application.
 - Strengthening Supply Chain processes in Uttar Pradesh
 - Provide assistance to State government in various supply chain related functions like Procurement, demand estimation, inventory management, Logistics planning etc.
 - Ensure drug availability at healthcare facilities
 - Ensure effective DVDMS and Supply Chain training rollout
 - Coordinate DVDMS training rollout by CDAC
 - Coordinate and monitor CDAC and Supply Chain training for healthcare facilities in the state
2. The detailed scope of the services shall be as defined in Schedule 1 and the services shall be governed by the Service Level Agreements as outlined in Schedule 2.

ARTICLE 4 – DURATION OF THIS AGREEMENT

1. This Agreement, unless otherwise terminated in accordance with the provisions of Article 18 herein, shall remain valid and in force for a period of 36 (Thirty Six months), which period shall be reckoned from the Commencement Date (“Agreement Period”).

ARTICLE 5 – GEOGRAPHICAL COVERAGE OF THIS AGREEMENT

The geographical coverage of the DVDMS project shall include all districts of Uttar Pradesh.



ARTICLE 6 – COMMENCEMENT AND PERFORMANCE OF SERVICES

1. The PMU shall commence the project and execute the activities as per the timelines specified in Schedule 1 and in accordance with the terms and conditions of this Agreement.
2. In the event the PMU fails to commence and execute the Project within the timelines and milestones stated in Schedule 1 and Service Levels as specified in Schedule 2, the PMU shall be subject to payment of penalty as provided for under Schedule 2.

ARTICLE 7 – CONSIDERATION AND PAYMENT TO PMU

1. The consideration provided in this Agreement shall be the full and comprehensive consideration for all services to be performed and the obligations undertaken by the Project Management Unit under this Agreement and the Project Management Unit shall not directly or indirectly be entitled to any other sum either from the Authority, users/beneficiaries of DVDMS system or any other person, whatsoever.
2. The Authority will form a Designated committee under chairmanship of Director General of Medical Health to approve payments to the PMU. Subject to the provisions of this Agreement and in consideration of the Project Management Unit undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, the Authority agrees and undertakes to pay to the Project Management Unit the following amounts as set forth in **Table - 1** below with effect from the Commencement Date on approval of deliverables by the Designated Committee.

Table -1				
S. No.	Deliverables	Scope	Timeline	Payment Terms
1	UAT Testing and Validation	Ensure Acceptance specification meets GAD. Coordinate with CDAC for completion of UAT and conforming the final result. In case of feedback, weekly closure status follow up to be done by PMU and status to be reported in Monthly Status Report	1 month of software release	5%



Table -1

S. No.	Deliverables	Scope	Timeline	Payment Terms
2	Conduct of DVDMS Training by CDAC and migration of Past data from NIC to DVDMS	Coordination and conduct of CDAC training to be provided to Master trainers Complete migration of existing data from NIC based system to DVDMS within 30 days of Go Live date	within 1 month of go live date	5%
3	Roll out of DVDMS at Healthcare facilities	Coordination of Roll out of DVDMS at all healthcare facilities. Closure status of issues to be tracked and follow up to be done by PMU and consolidated status to be reported in Monthly Status Report. . In case the rollout of system cannot happen due to factors outside the control of PMU, the payment for this deliverable will be removed from total cost.	At all district Hospitals within 1 month of Go live	4%
			At all CHCs within 3 months of go live	3%
			At all PHCs within 6 months of go live	3%
4	Training and Usage effectiveness of Staff at Health facilities	Planning and monitoring the staff training along with tracking the usage of DVDMS at healthcare facilities. Monthly status reports on issues and follow ups. In case the rollout of system cannot happen due to factors outside the control of PMU, the payment for this deliverable will be removed from total cost.	90% usage by DHs within 3 months of rollout at DHs	4%
			90 % usage by CHCs within 6 months of rollout at CHCs	3%
			90% usage by PHCs within 12 months of rollout at PHCs	3%



Table -1

S. No.	Deliverables	Scope	Timeline	Payment Terms
5	Application and Database migration of DVDMS	Coordination of Migration and hosting of DVDMS application and Database from CDAC center to an appointed center by govt.	12 months of go live date	5%
6	Supply Chain training	Coordination of Roll out of Supply Chain training at all healthcare facilities. Closure status of issues to be tracked and follow up to be done by PMU and consolidated status to be reported in Monthly Status Report	6 months of completion of divisional training by Accenture	5%
7	Hiring of 3rd party logistics provider	Develop and execute the RFP for 3rd party logistics provider. In case the hiring of 3 rd party logistics provider is not approved by govt., the payment for this deliverable will be removed from total cost	By Mar '17	10%
8	Demand Generation	Generate and Consolidate the demand for all the EDL drugs at State level so that quantity contracts can be executed with vendors	Demand estimation for FY 17-18 at all districts by Oct 2016	10%
			Demand estimation for FY 18-19 at all districts by Oct 2017	
9	Inventory norms for drugs at healthcare facilities	Create Inventory norms (Reorder quantity) for all EDL drugs at healthcare facilities level	Inventory norms for all EDL drugs at each healthcare	5%



Table -1

S. No.	Deliverables	Scope	Timeline	Payment Terms
			facility by Dec 16	
10	Drug availability at healthcare facilities	Monitor drug availability at health facilities and assist CMSD/UPMSC in purchase order planning. In case this deliverable cannot be completed due to factors outside the control of PMU, the payment for the same will be released on condition that the factors have been adequately highlighted by PMU	At least 40% drug availability by end of Dec '17	11%
			At least 75 % drug availability by end of Dec '18	
11	Project Status Report	Provide status information on work stream progress and overall project accomplishments for the period	Monthly by 5 th of every month	24 % in equated Quarterly Installments from start of the 2nd Year of the contract
12	Monthly Issue, Risk and Action Log	Tracks risks, issues, mitigation plans and contingency plans.	Monthly by 5 th of every month	
13	Monthly Training and Usage Effectiveness Report	Tracks Training and Usage effectiveness of DVDMS across various modules in all healthcare facilities	Monthly by 5 th of every month	
14	MIS Report	Generate Dashboard report for CMSD/UPMSC for drug availability and inventory across healthcare facilities	By 15 th of every quarter (as per Financial year calendar)	

3. All payments under this contract shall be inclusive of all taxes, cess and levies other than Service Tax. Service Tax, if any, shall be payable on actuals by the Authority at the prevailing rate computed against each payment.



4. The Project Management Unit shall be required to submit invoices by 7th (seventh) day of every month, for the previous month, along with a declaration stating that it has performed all the activities and tasks envisaged under this Agreement. The invoices shall be supported by monthly reports supporting the Service Level Agreements as outlined in **Schedule 2** of this Agreement and such other reports or documents as may be requested by the Designated Committee/Authority from the Project Management Unit from time to time.
5. The Fee shall be paid by the Authority to the PMU upon verification of the invoices and claims of the Project Management Unit by the Designated Committee within 30 (thirty) days from the date of receipt of the invoice and after deducting: (i) any TDS or other taxes as required to be deducted under the Applicable Law, (ii) any penalties/liquidated damages, that may be imposed by Authority, in accordance with **Schedule 2** and (iii) any amounts recoverable by Authority from the Project Management Unit under this Agreement.
6. The Authority at its discretion may appoint any other external agency for verifying invoices/claims, monitoring of processing and handling the disbursement of Fee or any other amount payable to the Project Management Unit under this Agreement. The authority at its discretion may appoint any other external agency to verify reports, source code, designs, layouts, logs, specifications, deliverables, third party tools used and any other work product which may have been developed or used as part of the project.
7. In case, the Authority is not able to pay the Fee to the PMU within the stipulated time, it shall be liable to pay the PMU an interest 0.1% (zero point one per cent) on the unpaid amount for each day's delay, subject to the maximum of 40% of the unpaid monthly amount.
8. Notwithstanding any verification made by the Authority or any external agency, if the invoices or claims made by the Project Management Unit are found to be incorrect, the Project Management Unit shall be liable to refund to Authority three times of the amount wrongly invoiced or claimed. This shall be without prejudice to the rights of the Authority to treat the PMU to be in material breach of this Agreement and proceed against the Project Management Unit as specified in this Agreement.
9. It is hereby agreed that penalties imposed on the Project Management Unit in pursuance of **Schedule 2** or any other amount payable by the Project Management Unit to the Authority shall be first sought to be adjusted against the Fee or any other amounts payable to the PMU by the Authority.
10. Notwithstanding anything mentioned to the contrary herein, the Authority shall have the right to adjust the penalties imposed / levied / charged on the PMU under this Agreement from the monthly Fee payable to the Project Management Unit. In case any amount of penalty remains unrecovered after adjustment of penalty amount from the Fee, then the Authority shall be entitled to recover the remaining



balance of the penalty from the Performance Security. If any amount is recovered from Performance Security under this Article, Project Management Unit shall replenish the Performance Security with the same amount.

11. The Project Management Unit shall provide the services covered under this contract free of cost to the beneficiaries covered under the scope of this contract.

ARTICLE 8 – INTELLECTUAL PROPERTY RIGHTS AND PUBLICITY

1. “Intellectual property” shall mean all intellectual property related to the Assets of either the Authority or the PMU and the project, including without limitation:
 - (i) any and all rights, privileges and priorities arising under the laws or treaties of India, any state, territory, any other country, relating to intellectual property, including patents, copyrights, trade names, trademarks, designs, service marks, mask works, trade secrets, inventions, databases, names and logos, trade dress, technology, know-how, and other proprietary information and licenses from third persons granting the right to use any of the foregoing, including all registrations and applications for any of the foregoing that have been issued by or filed with the appropriate authorities, any common-law rights arising from the use of the foregoing, any rights commonly known as "industrial property rights" or the "moral rights" of authors relating to the foregoing, all rights of renewal, continuations, divisions, extensions and the like regarding the foregoing and all claims, causes of action, or other rights arising out of or relating to any actual or threatened Infringement by any person relating to the foregoing;
 - (ii) all computer/mobile applications, programs and other software, including without limitation operating software, network software, firmware, middleware, and design software, all design tools, systems documentation and instructions, databases, and related items and
 - (iii) all cost information and related data, customer lists, records, customer and vendor data, correspondence and lists, project literature, artwork, architectural design, development and manufacturing files, formulations and specifications, quality records and reports and other books, records, studies, surveys, reports, plans and documents
2. Any / all Intellectual Property Rights (“IPR”) owned by the PMU prior to the execution date and/ or applied for prior to the execution date of this contract (“herein after referred to as “pre-existing IPR”) shall strictly vest with the PMU and the Authority shall have no right whatsoever on such Intellectual Property Rights.



3. Any/ All Intellectual Property Rights modified by the PMU during the Contract Term, which is not related to work within this contract, shall also exclusively vest with the PMU.
4. Any / all Intellectual Property owned by the Authority prior to the execution date and/ or any Intellectual Property Right applied for prior to the execution date (“herein after referred to as “pre-existing IP”) shall strictly vest with the Authority and the PMU shall have no right whatsoever on such Intellectual Property.
5. After the execution date the Authority shall exclusively own/ have rights/ title and have right in perpetuity to use all Intellectual Property that:
 - (i) are newly created and developed by the PMU during execution of this Contract and/ or for the exclusive use of the Authority or primarily in connection with the Authority’s Assets;
 - (ii) was developed exclusively or primarily for the conduct of the Authority’s Project or in connection with the Authority’s Assets;
 - (iii) arose from funding by the Authority, or exclusively or primarily for the benefit of/ the conduct of, the Authority’s Project or in connection with the Authority’s Assets.
6. The PMU shall grant non-exclusive, non-transferable, irrevocable licenses, to the Authority, for its project at all geographic locations where the project shall be undertaken, to use their pre-existing IPRs and any foreground IPRs developed by them after the execution date, but not restricted to the term of this Contract.
7. If the Authority desires, the PMU shall be obliged to ensure that all approvals, registrations, licenses, permits and rights etc. which are inter-alia necessary for use of the goods supplied / installed by the PMU, the same shall be acquired in the name of the Authority, prior to termination of this Contract and which may be assigned by the Authority to the PMU for the purpose of execution of any of its obligations under the terms this Contract. However, subsequent to the term of this Contract, such approvals, registrations, licenses, permits and rights etc. shall endure to the exclusive benefit of the Authority.
8. PMU shall ensure that while it uses any software, hardware, processes, document or material in the course of performing the Services, it does not infringe the Intellectual Property Rights of any person/ third party and PMU shall keep the Authority indemnified against all costs, expenses and liabilities. Howsoever, arising out of any illegal or unauthorized use (piracy) or misuse/ breach of terms of contract or in



connection with any claim or proceedings relating to any breach or violation of any permission/ license terms or infringement of any Intellectual Property Rights by PMU as per the terms of the indemnification clause.

9. The PMU and/or its employees shall not make or permit to be made a public announcement or media release about the existence of this agreement or any aspect of this Agreement or the outcomes of the activities performed as part of performance of this Agreement in print, television, radio, internet, social media channels, own or third party websites, or any other media unless the Authority first gives the PMU its written consent and provides written approval of the contents being publicized.

ARTICLE 9 – MANPOWER

1. The PMU acknowledges that it shall appoint and recruit Manpower and impart adequate training to the Manpower for performance of all its the obligations in accordance with the terms, conditions and covenants set forth in this Agreement.
2. The Manpower appointed or hired shall be employees of the PMU and the Authority will not be liable for any acts of omission/ commission vis-à-vis the Manpower appointed or hired by the PMU.
3. The PMU shall be responsible to comply with all applicable labor legislation in respect of the Manpower appointed or hired by the PMU in respect of execution and implementation of the Project and shall indemnify and keep indemnified the Authority for any claim, action or demand whatsoever in that regard.
4. The PMU will ensure that in the event of change of project resources during the course of the project, prior intimation shall be given to MD, UPNHM and suitable knowledge transfer shall take place. Also the replacement of the resource shall be of higher or similar skill-set, experience level and shall need to be approved by MD, UPNHM.

ARTICLE 10 – DELETED

ARTICLE 11 – REVIEW

The review of the Project Management Consultant under this Agreement shall be done as stated below:

- (a) The Executive Committee (EC) of NHM will review the services of the PMU on a quarterly basis. A separate agenda will be put-up before EC for decision on the implementation issues and bottlenecks. The EC will address implementation bottlenecks



and shall be the final authority to consider any revision arising out of changes in the policy, structure of the services, etc.

(b) The Director General, Medical Health will monitor and review the services of the Operator under this Agreement on monthly basis and will require the Operator to be responsible for the smooth implementation of the DVDMS.

ARTICLE 12 – CONVENANTS OF PMU AND SELECTED BIDDER

Covenants of the Project Management Unit:

1. The PMU agrees and undertakes to render Project Management Services for DVDMS as mentioned in Schedule 1 of this Agreement and comply with other provisions of this Agreement with regularity throughout the Agreement Period.
2. The PMU shall be obliged to provide services under this Agreement as detailed in Schedule 1 and deploying the Manpower required.
3. The PMU shall be responsible for performance of the activities as described in Schedule 1 of this Agreement.
4. The PMU shall ensure that the services provided are compliant with the Service Level Agreements described in Schedule 2 of this Agreement.
5. The PMU shall duly maintain such records including log books as the Authority may require and furnish the same to the Authority in such manner and in such form as may be prescribed by the Authority.
6. The PMU agrees that it shall cooperate and shall be obliged to give all the requisite information and details to the Authority or any other designated representative of Authority for the purpose of verification of its claims.
7. The PMU agrees and undertakes to render services incidental to the scope and conditions of work as contained in this Agreement without any extra charges or payment; Provided that the quantum of such extra work does not result in extra expenditure to the PMU.
8. The PMU hereby covenants that it shall at all times during the Agreement Period maintain such displays, promotional material and/or messages as may be directed or approved by Authority free of cost.
9. The PMU agrees that it shall ensure and shall not contest that all rights and interests of the PMU in and to the Project vest in the Authority during and after the Agreement Period without any further act or deed on the part of the PMU or Authority.
10. PMU hereby covenants that it or its Manpower shall not use the Project Documentation for any purpose other than for the purposes of this Agreement.



11. The PMU acknowledges and accepts that service levels as contained in Schedule 2 are the performance indicators for the purposes of this Agreement and is also the essence of this Agreement. In case of breach of the said performance indicators and service levels as per Schedule 2, the PMU shall be liable to penalty/liquidated damages in accordance with Schedule 2.
12. The PMU shall ensure that the staffing norms mentioned in the Schedules are adhered to and reported to Authority or any other agency appointed by the Authority in that behalf.
13. The PMU agrees that Authority or its representative shall at all times have access to and ownership of all the data, databases and software systems pertaining to the Project and the Project Facilities.
14. The PMU shall at all times provide to the representatives of the Authority, access to the Project Documentation to review the progress of the operation of the services under this Agreement and to ascertain compliance with any of the requirements of this Agreement;

Provided that non-inspection by the Authority of any Project Documentation shall not, in relation to such Project Documentation, (i) amount to any consent or approval by the Authority nor shall the same be deemed to be waiver of any of the rights of the Authority under this Agreement; and (ii) release or discharge the PMU from its obligations or liabilities under this Agreement in respect of execution and implementation of the Project.

15. The PMU shall submit all the reports as specified in Schedule 1 of this Agreement and such other reports or documents as may be requested by the Authority from the PMU from time to time.
16. The PMU shall ensure that they will follow good industry practices in, rollout of the DVDMS system.

ARTICLE 13 – COVENANTS OF THE AUTHORITY

1. The Authority shall be responsible for payment of the Fee mentioned in Article 7 of this Agreement.
2. The Authority shall provide appropriate assistance to the PMU in Project Management of the Project.
3. The Authority shall be responsible for the monitoring and evaluation of the Project and Project Activities.
4. The Authority will instruct the Department of Medical Health, Govt. of UP to provide all necessary assistance to the PMU and coordinate the smooth implementation and operation of the Project in all the districts. . The Authority



may also constitute a High Powered Committee to provide policy direction, assistance and regulations for the implementation and operation of the Project.

5. The Authority will form a Designated committee under chairmanship of Director General of Medical Health to approve deliverables payments to the PMU.

ARTICLE 14 – PERFORMANCE SECURITY

1. To ensure due and satisfactory performance of its obligations under this Agreement, the PMU has, before the execution of this Agreement, furnished a performance security in the form of an irrevocable bank guarantee from a Nationalized Bank (“Performance Security”) details of which are given below:
 - a. Name of issuing bank:
 - b. Amount of bank guarantee:
 - c. Date of issue:
 - d. In favor of:
 - e. Validity period:
 - f. Encashable and enforceable in Lucknow
2. The Performance Security shall be maintained and shall be available for the Authority to enforce in case of any failure or default on the part of the PMU in performing its obligations under this Agreement or otherwise to meet any claim against the PMU or any other reason including but not limited to recovery of penalties, excess payments made previously and non- performance (by the PMU) that causes financial loss to the Authority.
3. The PMU shall be liable to restore/ replenish the Performance Security to the full amount in case of part encashment/ invocation of the same by the Authority. This shall be done within 30 (thirty) days of any such part encashment/ invocation. Failure of the PMU to provide a valid Performance Security and/or restore / replenish and maintain the Performance Security in accordance with this Article 13 shall entitle the Authority to forthwith terminate this Agreement.

ARTICLE 15 – APPOINTMENT OF COMMITTEES, AGENCIES, ETC.

1. Authority at its discretion may constitute committees or appoint external agencies for the monitoring of performance, processing and verifying invoices/claims, handling disbursement of funds, etc.
2. Authority may from time to time appoint and reconstitute appropriate committees and agencies, to monitor and coordinate the work and services of the PMU and undertake various studies, investigation, inquiries, verifications, etc. as may be considered appropriate.

ARTICLE 16 - REPRESENTATIONS AND WARRANTIES

1. The PMU represents and warrants that:



- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or registration;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) it has the requisite standing and capacity including to undertake the work under this Agreement;
- (e) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) all the information furnished in the Proposal is, and shall be, true and correct as on the Effective Date and the balance sheet and profit and loss account of the PMU for its every accounting years after the Effective Date furnished to the Authority shall give true and fair view of the affairs of the PMU;
- (g) it shall furnish a copy of its audited accounts within 120 (one hundred twenty) days of the close of its every accounting year after the Effective Date and any material change subsequent to the date of such accounts shall be notified to the Authority by the PMU within thirty (30) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- (h) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or any covenant, agreement, understanding, decree or order to which, it is a Party or by which it or any of its properties or assets is bound or affected;
- (i) there are no actions, suits, proceedings, or investigations pending or, to the PMU's 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 or constitute a default of the PMU under this Agreement or which individually or in the aggregate may result in any adverse effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to



perform its obligations and duties under this Agreement;

- (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any adverse effect or impairment of the PMU's ability to perform its obligations and duties under this Agreement;
 - (k) it has complied with all Applicable Laws 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 adverse effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
 - (l) No representation or warranty by the PMU contained herein or in any other document furnished by it to the Authority, or to any Governmental Agency in relation to applicable permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
 - (m) it warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the PMU, to any person by way of fees, commission or otherwise for securing or entering into this Agreement or for influencing or attempting to influence any officer or employee of Authority in connection therewith; and
 - (n) it shall duly renew and maintain Performance Security at all times up till six months after the expiry of the Agreement Period in full force and effect in accordance with the provisions of this Agreement.
2. The PMU undertakes to observe the highest standard of ethics during the performance of its obligations under this Agreement without indulging in any Corrupt, Fraudulent, Collusive or Coercive Practices. For the purposes of this provision, the terms set forth below shall have the meaning assigned to them as follows:
- (a) "Corrupt Practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any party in the procurement process or the execution of a contract;
 - (b) "Fraudulent Practice" means a misrepresentation or omission of



facts in order to influence a procurement process or the execution of a contract;

- (c) “Collusive Practices” means a scheme or arrangement between two or more SIs, with or without the knowledge of Authority, designed to influence the action of any party in the procurement process or execution of the contract;
 - (d) “Coercive Practices” means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of the contract;
 - (e) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the bidding process; or (ii) having a Conflict of Interest; and
 - (f) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among applicants/ bidders with the objective of restricting or manipulating a full and fair competition in the bidding process.
3. The PMU acknowledges that prior to the submissions of the Proposal, the Selected Bidder had after a complete and careful examination made an independent evaluation of all the information provided by the Authority and had determined to the Selected Bidder’s satisfaction the nature and extent of such difficulties, risks and issues as are likely to arise or may be faced by the PMU in the course of performance of its obligations hereunder.
4. The PMU acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Authority shall not be liable for the same in any manner whatsoever to the PMU.

ARTICLE 17 – FORCE MAJEURE

1. As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in the State of any or all of Non-Political



Event, Indirect Political Event and Political Event respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has material adverse effect on the Affected Party.

2. **Non-Political Event:** A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion;
- (b) strikes or boycotts (other than those involving the PMU or its respective employees/representatives, or attributable to any act or omission of any of them) interrupting DVDMS system and/or any of the Project Facilities for a continuous period exceeding 7 (seven) days in an accounting year, and not being an Indirect Political Event;
- (c) any judgment or order of any court of competent jurisdiction or statutory authority made against the PMU in any proceedings for reasons other than (i) failure of the PMU to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or
- (d) any event or circumstances of a nature analogous to any of the foregoing.

3. **Indirect Political Event:** An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any Indirect Political Event that causes a Non-Political Event; or
- (c) any event or circumstances of a nature analogous to any of the foregoing.



4. Political Event: A Political Event shall mean one or more of the following acts or events by or on account of any Government instrumentality:
- (a) compulsory acquisition in national interest or expropriation of any Project Facilities or rights of the PMU;
 - (b) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the PMU to perform its obligations under this Agreement;

Provided that such delay, modification, denial, refusal or revocation did not result from the PMU's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit; and
 - (c) any event or circumstance of a nature analogous to any of the foregoing.
5. Upon occurrence of a Force Majeure Event, the Affected Party shall by written notice report such occurrence to the other Party within 48 hours from such occurrence. Any notice pursuant hereto shall include full particulars of:
- (a) the nature and extent of each Force Majeure Event which is the subject matter for any claim for relief under this Article with evidence in support thereof;
 - (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or shall have on the Affected Party's performance of its obligations under this Agreement;
 - (c) the measures which the Affected Party is taking or proposes to take for mitigating the impact of such Force Majeure Event; and
 - (d) any other information relevant to the Affected Party's claim.



6. The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it has notified the other Party of the occurrence of the Force Majeure Event forthwith and in any event not later than 48 hours after the Affected Party knew, or ought reasonably to have known, of its occurrence.
7. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular reports containing information of the event and such other information as the other Party may reasonably request from the Affected Party.
8. After the Effective Date, if any Force Majeure Event occurs, the dates set forth in the Schedule 2, at the sole discretion of Authority, may be extended by a period for which effect of such Force Majeure Event subsists.
9. If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, Authority may in its discretion terminate this Agreement by issuing a termination notice to the other Party without being liable in any manner whatsoever, and upon issue of such termination notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith;

Provided that before issuing such termination notice, Authority shall inform the PMU and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period in its sole discretion issue the termination notice.

10. The non-availability of the Manpower, and/or other Project Facilities due to repair etc. shall not be considered as Force Majeure and it shall be the responsibility of the PMU to arrange for appropriate alternatives to maintain the services and work as stipulated in this Agreement. It shall be entirely the obligation of the PMU to maintain the Manpower, Technical Infrastructure and other Project Facilities required rendering the services and working under this Agreement.

ARTICLE 18 - TERMINATION

1. This Agreement shall terminate by efflux of time on the expiry of the Agreement Period.
2. Authority may terminate this Agreement for any of the following events of default



(“ Event of Default ”) on the part of PMU:

- (a) The PMU is in material breach of this Agreement and in case such breach is rectifiable and the PMU fails to cure such breach within a period of 10 days from the receipt of notice from Authority;
- (b) The PMU transfers or creates any Encumbrance, charge or lien over any of the Project Facilities in favor of any person/agency;
- (c) The PMU transfers or fails to perform any of its obligations specified under this Agreement;
- (d) The PMU collects fees in any form from the Beneficiaries/users;
- (e) The PMU has failed to achieve the required milestones in accordance with Schedule 1 of this Agreement and delay is more than 90 days for achieving any of the milestones;
- (f) The PMU has failed to comply with the performance indicators and Service Level Agreements as provided in Schedule 2 and the default continues for a period of 3 months;
- (g) The PMU does not maintain the Performance Security or comprehensive insurance as provided in this Agreement;
- (k) The PMU is adjudged bankrupt or insolvent or a trustee or receiver is appointed for the PMU or for any of its property that has a material bearing on the Project;
- (l) Petition for winding up of the PMU is admitted by a court of competent jurisdiction;
- (m) The PMU abandons the operations of the Project for more than 15 (fifteen) consecutive days without the prior consent in writing of Authority;
Provided that the PMU shall be deemed not to have abandoned such operation if such abandonment was as a result of Force Majeure Event and is only for the period when such Force Majeure Event is continuing;
or
- (n) The PMU repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.



3. Save and except as otherwise provided and without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence of any Event of Default by the PMU, the Authority shall issue a notice to the PMU to cure such Default and on the failure of the PMU to cure such Default within 30 (thirty) days from date of issue of such notice, the Authority shall be entitled to terminate this Agreement forthwith by a termination notice to the PMU and the termination shall be effective from the date notified to the PMU.
4. Authority shall be entitled to enforce the Performance Security and the Bank Guarantee and recover the amount due to it in respect of such claim, damages, rights or remedy without prejudice to its rights.
5. Notwithstanding anything to the contrary contained in this Agreement, termination of this Agreement shall be without prejudice to other rights of the Authority including its right to claim and recover damages and other rights and remedies which it may have in law or under this Agreement.
6. Notwithstanding anything contained in this Agreement, the Authority may terminate this Agreement if it is found after execution of this Agreement that Selected Bidder has directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, collusive practice, coercive practice, undesirable practice or restrictive practice in the Bidding process. In such circumstances, the Authority shall be entitled to forfeit and appropriate/ invoke the Bid Security or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the Authority under this Agreement.
7. The PMU may by way of a written notice terminate this Agreement if the Authority defaults in performance of the Covenants mentioned in Clauses (1), (2) and (3) of Article 13 and such defaults continues for a period of sixty days.
8. Upon expiry or earlier termination of this Agreement, the PMU shall:
 - (a) notify Authority forthwith about the location and particulars of all Project Facilities and Intellectual Property; and
 - (b) deliver forthwith the possession and control to Authority or any person designated by Authority the Project Facilities including the `excluding manpower in working and operable condition, free and clear of all Encumbrances and execute such deeds, writings and documents as may be required by Authority and under Applicable Laws for fully and effectively divesting the PMU of all of the rights and interests in the



Project.

9. Notwithstanding anything contained in this Agreement, if it is found after execution of this Agreement that Selected Bidder was ineligible to participate in the Bidding process according to the provisions of RFP Part-I, Authority shall after giving fifteen days' notice to the PMU, terminate this Agreement. In such event, Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be.

ARTICLE 19 - DISPUTE RESOLUTION

1. Amicable Resolution:

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including incompleteness of the Project, between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Sub-clause (b) below.
- (b) In the event of any dispute between the Parties, either Party may call upon the Principal Secretary, Health of the State of Uttar Pradesh to mediate and assist the Parties in arriving at an amicable settlement thereof. The Principal Secretary, Health shall meet with the PMU not later than 15 (fifteen) days of the date of such request to discuss and attempt to amicably resolve the Dispute.
- (c) If the dispute is not amicably resolved pursuant to the above as evidenced by the signing of the written terms of settlement within 30 (thirty) working days of the aforesaid notice in writing or such longer period as may be mutually agreed by the Parties then the dispute shall be referred to adjudication by the arbitrators.

2. Arbitration:

- (a) Any Dispute, which is not resolved amicably as provided in Clause (1) of this Article 19 shall be finally decided by reference to arbitration by an arbitral tribunal of three arbitrators - one each to be appointed by the Authority and the PMU and the two arbitrators so appointed to appoint the third arbitrator who shall act as the presiding arbitrator. The arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.



- (b) The arbitrators shall issue a reasoned award.
- (c) The venue of such arbitration shall be in Lucknow, Uttar Pradesh.
- (d) The Parties undertake to carry out any decision or award of the arbitrators (the “Award”) without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.
- (e) The Parties agree that an Award may be enforced against the PMU and/or Authority, as the case may be and their respective assets wherever situated.
- (f) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

ARTICLE 20 - GOVERNING LAW AND JURISDICTION

1. This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at Lucknow, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

ARTICLE 21 – INDEMNITY

1. Indemnity by the PMU:
 - (a) The PMU shall indemnify and hold the Authority harmless, from any and all action, claims, suits and/or legal proceedings initiated by any person, third party or otherwise, that may be initiated or raised against Authority whether that may be in the nature of criminal, civil, medico-legal proceedings, proceedings under the Consumer Protection Act, 1986 or any Applicable Law that may arise under this Agreement.
 - (b) The PMU shall also indemnify and hold the Authority harmless from any and all actions, claims, liabilities, costs, damages and expenses of every kind and nature in respect of the sickness, injury or death of any person employed directly or indirectly by the PMU and damage to or destruction of any property or equipment of the PMU arising during or as a result of the performances or non-performance of this Agreement from any cause



whatsoever provided that this Article shall not apply to injury, death, damage or destruction to the extent caused by the gross negligence, default or omission of the Authority or its employees.

2. Indemnity -Third Party:

The PMU shall indemnify and hold the Authority harmless from any and all claims, liabilities, costs, damages, and expenses of every kind and nature in respect of the sickness, injury or death of any third party and the damage to or destruction of any property of any third party arising directly or indirectly as a result of any gross negligence, default or omission of the PMU or its employees.

3. Non-Compliance with Applicable Laws:

The PMU shall indemnify and hold the Authority harmless from any fines, penalties and similar charges which may be attributed to or imposed or assessed against the Authority by reason of the failure of the PMU to comply fully with all Applicable Laws and Applicable Permits save to the extent such failure was caused by the gross negligence, default or omission of the Authority or its employees.

4. General Indemnity:

The PMU shall indemnify and hold the Authority harmless for and against any and all claims, liabilities, costs, damages and expenses of whatsoever nature howsoever incurred by the Authority arising whether directly or indirectly as a result of the breach by the PMU of any of the PMU's obligations under this Agreement save to the extent such claims, liabilities, costs, damages and expenses were caused by the gross negligence, default or omission of the Authority or its employees.

Notwithstanding the termination of this Agreement, the PMU shall indemnify and hold the Authority harmless for and against any and all claims, liabilities, costs, damages and expenses of whatsoever nature incurred by the Authority during the subsistence of this Agreement.

5. Enforcement:

For the avoidance of doubt, nothing in this Article shall prevent or restrict a Party enforcing any obligation owed to it under this Agreement.

6. Defense:

The Authority shall promptly notify the PMU of any matter which may give rise to a right of the Authority to be indemnified under this Article 21.



The PMU may at its own cost conduct negotiations for the settlement of any claim made against it, and any litigation that may arise there from in such reasonable manner as the Authority shall from time to time approve (such approval not to be unreasonably withheld).

The PMU may not, however, conduct such negotiations or litigation before it has given the Authority such security as the Authority may reasonably require. The security shall be for an amount required by the Authority, which is its reasonable assessment of the amount for which it may become liable and which are the subject of the indemnities under this Article 21.

The Authority shall not make any admission which might be prejudicial to the PMU unless the PMU has failed to take over the conduct of the negotiations or litigation or provide security under this Article 21 within a reasonable time after having been so requested.

ARTICLE 22 - DELETED

ARTICLE 23 - DELETED

ARTICLE 24 – INSURANCE

1. The PMU during the term of this contract:
 - (i) shall take out and maintain, at his own cost but on the terms and conditions approved by Authority, insurance with financially sound and reputable insurers against the risks, and for the coverage, as specified below:
 - a) shall pay all premiums in relation thereto and shall ensure that nothing is done to make such insurance policies laps/ void or voidable.
 - b) at the Authority's request, shall provide evidence to the Authority showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.
2. Employer's liability and workers' compensation insurance in respect of the Personnel of the PMU/ PMU's Team, agents/ sub-contractor(s)/ sub-contractors in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate, shall be taken and borne by the PMU/PMU's Team, agents/ sub-contractor(s)/ sub-contractors respectively; and



3. Insurance against loss of or damage to (i) equipment or assets procured or developed in whole or in part for fulfilment of obligations under this Contract (ii) the PMU's assets and property used in the performance of the Services, and (iii) any documents prepared by the PMU in the performance of the Services shall be taken out at the sole expense of the PMU.

ARTICLE 25 – LIMITATION OF PMU'S LIABILITY TOWARDS THE AUTHORITY

1. Except in case of gross negligence or wilful misconduct on the part of the PMU or its agents/ Team/ representatives/ employees or on the part of any person or company acting on behalf of the PMU in executing the work or in carrying out its/ their obligations under this contract, the PMU, with respect to damage caused by the PMU or its agents/ Team/ sub-contractors/ representatives/ employees, to the property and/or assets of the Authority, shall not be liable to the Authority:
 - 1.1 for any indirect or consequential loss or damage; and
 - 1.2 for any direct loss or damage that exceeds (A) the Total Contract Value, or (B) the proceeds the PMU may be entitled to receive from any insurance maintained by the PMU to cover such a liability, whichever of (A) or (B) is higher.
2. This limitation of liability shall not affect the PMU liability, if any, for damage to Third Parties caused by the PMU or its agents/ sub-contractor(s)/ Team/ representatives/ employees or any person or firm/company acting on behalf of the PMU in executing the work or in carrying out the Services/ obligations under the Contract.
3. The PMU's liabilities shall not be limited if the loss/ damage is caused by Negligence/ gross negligence; Misconduct/ intentional misconduct; Breach of essential terms of the Contract; or Fraud attributable to the PMU and/ or its agents/ sub-contractor(s)/ Team/ representatives/ employees.
4. The allocation of risk herein is an essential element of the bargain between the parties, without which the parties would not have entered into this agreement

ARTICLE 26 – ASSIGNMENT / NOVATION

1. The PMU shall under no circumstance transfer any interest, right, benefit or obligation under this Contract to any third party, without the prior written consent of the Authority.
2. The Authority reserves the right to assign any/ all of its rights and obligations under this contract to any of its representatives during any stage of the contract term.



ARTICLE 27 - MISCELLANEOUS

1. Priority of agreements and errors/discrepancies:

This Agreement, and all other agreements and documents forming part of this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement read with Schedules;
- (b) Letter of Intent;
- (c) Request for Proposal; and
- (d) all other agreements and documents executed by and between the Parties.

In-case of any discrepancy or conflict between the provisions of the above documents, the provisions of the documents mentioned prior in the above order shall prevail over the provisions of the documents mentioned subsequently in the above order.

2. Waiver:

Waiver by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

3. Entire Agreement:

This Agreement and together with the other contract documents and the Schedules constitute complete and exclusive statement of the terms of this Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless expressly previously



approved in writing by the Authority and executed by the person expressly authorised by a resolution of Authority in this behalf.

4. Notices:

Any notice or other communication to be given by one Party to the other Party under, or in connection with the matters contemplated by this Agreement shall be in writing and shall be given at the respective addresses given in Article 27 (11) below, by letter delivered by registered post to the person designated or the purpose in writing by the concerned party from time to time.

5. Severability:

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner.

6. Assignment, etc.:

The PMU shall not assign, sub-contract or transfer its rights and obligations under this Agreement to any person, in any manner whatsoever.

7. Relationship of the Parties:

Nothing contained in this Agreement shall be construed or interpreted as constituting a joint venture, partnership or agency relationship between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever. The Parties have entered into this Agreement on a principal to principal basis.

8. Language:

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

9. Exclusion of Implied Warranties etc.:

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement among the Parties or any representation by either Party not contained in a binding legal agreement executed by Parties.

10. Counterparts:



This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

11. Address for Correspondence:

For the Authority

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.....
.....

For the PMU

.....
.....
.....
.....

For the Selected Bidder

.....
.....
.....
.....

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

SIGNED, SEALED AND DELIVERED

For and on behalf of



UPNHM

By:

_____ (Signature)

..... (Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of

(Name of the PMU):

By:

_____ (Signature)

_____ (Name)

_____ (Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of

(Name of the Selected Bidder):

By

_____ (Signature)

_____ (Name)

_____ (Designation)

In the presence of:

1. _____

2. _____



3. _____

4. _____