

**RFP for Implementation of Hospital Management System (HIS) in
CHCs & PHCs of Gorakhpur Districts of Uttar Pradesh**

Part – II – Draft Contract

Date: _____

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CONTRACT

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

1. **Mission Director, NHM-UP** (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. _____, a company in corporate under the provisions of the Companies Act, 1956 and having its registered office at _____, INDIA (hereinafter referred to as the “Operator” which expression shall unless repugnant to the context or meaning thereof include its successors) of the Second Part.

“Authority” and “Operator” 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., Implementation of HIS in CHCs/PHCs of Gorakhpur District of Uttar Pradesh.

- B. The Authority had accordingly invited proposals by its Request for Proposal No.dated.....(the “Request for Proposal” or “RFP”) under a single 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 datedsubmitted 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 accordingly agreed to enter into this Contract with the Operator for execution of the Project on the terms and conditions set forth hereinafter, subject to the Selected Bidder also signing this Contract as the Confirming Party.
- G. The Operator has furnished the Performance Security of Rupees.....in the form of Bank Guarantee dated.....
- H. The Operator has complied or has undertaken to comply with all the conditions contained in the RFP enabling the signing of this Contract.

ARTICLE 1 - DEFINITIONS & INTERPRETATIONS

1. In this Contract, unless the context otherwise requires the following expressions shall have the meaning assigned as under:
 - a. “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 Contract. “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 Contract. “Areas of operations” shall mean all the intended facilities, namely District Headquarters, CHCs and PHCs, of district Gorakhpur of Uttar Pradesh.
 - b. “Authority” shall refer to Mission Director, NHM-UP.
 - c. “Contract” shall include the contents and provisions of this Contract; 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 Contracts, inter-alia, including Bank Guarantee, undertaking and other instruments furnished by the Operator and the memorandums signed between the Operator and Authority from time to time in terms of this Contract in regard to the Area of Operation and other matters, manner and method for execution and implementation of the Project.
 - d. “Contract Period” shall have the meaning as ascribed to it under Article 4.
 - e. The term "Data" as used in the implementation of **Hospital Management System (HIS)** means all data items inputed and stored into the Webbased Information System during the development, testing and implementation phase..
 - f. “Effective Date” shall mean the date of signing this Contract.

- g. “Encumbrances” means, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project and/or the Project Facilities.
- h. “Go-Live” is defined as the achievement of all of the conditions Mentioned in schedule 3.1
- i. “Good Industry Practice” means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced System Integration engaged in operation and maintenance of facilities, equipment or systems of the type and size similar to the Project Facilities and the services contemplated under the Project.
- j. “Manpower” shall mean any or all employees, personnel, staff of the Operator whether sourced from outside or on the payroll of the Operator.
- k. “MCTS” shall mean web based Mother and Child Tracking System maintained by Ministry of Health & Family Welfare, Government of India.
- l. “HMIS” shall mean wed based reporting portal of the Government of India being used by NHM-UP
- m. “Project” means the Implementation of HIS in the Gorakhpur district of Uttar Pradesh in accordance with the provisions of this Contract and Schedules.
- n. “Project Facilities” shall mean HIS application software, technical helpdesk facilities, development centers, data centers, data center devices and other accessories deployed for this project
- o. “State” shall mean the State of Uttar Pradesh.
- p. “Operator” shall refer to the successful bidder (sole bidder / consortium) signing this contract with the Authority.
- q. “Technical Helpdesk” shall mean a facility fully equipped and manned in accordance with the Schedule 1 to support HIS.

2. The capitalized terms not specifically defined in this Contract shall have the meaning as ascribed to them in the RFP.

3. In this Contract, 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 Contract are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Contract;
 - (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 Contract 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 in corporate 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 Contract, any reference, at any time, to any Contract, deed, instrument, license or document of any description shall be construed as reference to that Contract, 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 Contract, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Contract 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 Contract form an integral part of this Contract and will be in full force and effect as though they were expressly set out in the body of this Contract;
- (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

- (r) It is clarified that the reference of the phases under the Contract and in the RFP is with regards the Project which is divided into III (three) phases.

ARTICLE 2 – OBJECTIVE OF THIS CONTRACT

1. The objective of this Contract is to carry out Implementation of HIS and necessary training to the connected staff regarding utilization of software system, CHCs/PHCs of Gorakhpur District in the state of Uttar Pradesh. including establishment of Technical Help Desk at district headquarters to monitor, control and take corrective action as and when required during the project period.

ARTICLE 3 – ENGAGEMENT OF THE OPERATOR

2. Subject to the terms and conditions contained in this Contract, the Authority hereby engages the Operator and the Operator hereby accepts the engagement to provide the following services in CHCs/PHCs of Gorakhpur district of Uttar Pradesh.
 - a. Ensure availability of computer systems, printers, UPS, Internet Connectivity, and all other ancillary hardware tools necessitated for implementation of HIS.
 - b. Deployment of Operators, technicians, consultants, engineers and HR personnel as mentioned in the project for successful implementation of the HIS.
 - c. Detailed Design of HIS System Architecture
 - d. Software Application Development and Rollout
 - e. Deployment and commissioning of Hosting infrastructure for the HIS application
 - f. Training and handholding of all concerned staff. Setting up and operation of Technical Helpdesk
 - g. Transition and handover of project to GoUP
 - h. The detailed scope of the services shall be as defined in Schedule 1 and Schedule 2 and the services shall be governed by the Service Level Agreements as outlined in Schedule 3.

ARTICLE 4 – DURATION OF THIS CONTRACT

1. This Contract, unless otherwise terminated in accordance with the provisions of Article 17 herein, shall remain valid and in force for a period of 12 months (Twelve months), which period shall be reckoned from the Effective Date (“Contract Period”).

ARTICLE 5 – GEOGRAPHICAL COVERAGE OF THIS CONTRACT

The geographical coverage of the HIS project shall include 89 PHCs & CHCs (60 & 29 respectively) in the Gorakhpur district of Uttar Pradesh.

ARTICLE 6 – COMMENCEMENT AND PERFORMANCE OF SERVICES

1. The Operator shall commence the project and execute the activities as per the timelines specified in Schedule-3 and in accordance with the terms and conditions of this Contract.
2. In the event the Operator fails to commence and execute the Project within the timelines and milestones stated in Schedule-3 and Service Levels as specified in Schedule - 3, the Operator shall be subject to payment of penalty as provided for in Schedule3.

ARTICLE 7 – CONSIDERATION AND PAYMENT TO OPERATOR

1. The consideration provided in this Contract shall be the full and comprehensive consideration for all services to be performed and the obligations undertaken by the Operator under this Contract and the Operator shall not directly or indirectly be entitled to any other sum either from the Authority, users/beneficiaries of HIS or any other person, whatsoever.
2. The payment will be in two parts a. 20% of bid amount will be paid as per table-1 of Schedule-3 and. b. 80% of the bid amount will be paid in 9 equal monthly installments. The above payments will be subject to completion of all obligations by the operator contained in the agreement.
3. Subject to the provisions of this Contract and in consideration of the Operator undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Contract, the Authority agrees and undertakes to pay to the Operator the following amounts as set forth in of schedule 3.1.
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 actual by the Authority at the prevailing rate computed against each payment.
4. All payments shall be paid by the District Health Society.
5. The Operator 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 Contract. The invoices shall be supported by monthly reports supporting the Service Level Agreements

as outlined in Schedule - 3 of this Contract and such other reports or documents as may be requested by the Authority from the Operator from time to time.

6. The Fee shall be paid by the Authority to the Operator upon verification of the invoices and claims of the Operator 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 3 and (iii) any amounts recoverable by Authority from the Operator under this Contract.
7. 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 Operator under this Contract. 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.
8. Incase, the Authority is not able to pay the Fee to the Operator within the stipulated time, it shall be liable to pay the Operator an interest 0.1% (zero point one percent) on the unpaid amount for each day's delay, subject to the maximum of 40% of the unpaid monthly amount.
9. Notwithstanding any verification made by the Authority or any external agency, if the invoices or claims made by the Operator are found to be incorrect, the Operator 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 Operator to be in material breach of this Contract and proceed against the Operator as specified in this Contract.
10. It is hereby agreed that penalties imposed on the Operator in pursuance of **Schedule 3** or any other amount payable by the Operator to the Authority shall be first sought to be adjusted against the Fee or any other amounts payable to the Operator by the Authority.
11. Notwithstanding anything mentioned to the contrary herein, the Authority shall have the right to adjust the penalties imposed/ levied/ charged on the Operator under this Contract from the monthly Fee payable to the Operator. 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, Operator shall replenish the Performance Security with the same amount.
12. The Operator shall provide the services covered under this Contract free of cost to the FLWs and beneficiaries covered under the scope of this Contract.
13. The Operator is required to achieve the following Data Receipt Index ("DRI") as specified in the Schedule to the agreement.
14. The Variable Payment to be made per month based on the DRI achieved by the OPERATOR is described in Table – 4 below. (to be incorporated by MIS)

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 Operator 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
 - (iv) Any / all Intellectual Property Rights(“IPR”) owned by the OPERATOR 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 OPERATOR and the Authority shall have no right whatsoever on such Intellectual Property Rights.
 - (v) Any/ all Intellectual Property Rights modified by the OPERATOR during the Contract Term, which is not related to work within this Contract, shall also exclusively vest with the OPERATOR.
 - (vi) 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 OPERATOR or its sub-contractors shall have no right whatsoever on such Intellectual Property.

2. 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 OPERATOR 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.
3. The OPERATOR and/or its sub-contractors/consortium member and/ or 3rd party vendors as the case may be, 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.
4. If the Authority desires, the Operator 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 OPERATOR, 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 OPERATOR 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.
5. Operator or its sub-contractor(s) 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 OPERATOR shall keep the Authority indemnified against all costs, expenses and liabilities.
6. The Operator shall bear all costs and expenses relating to obtaining any user license in favor of the Authority or for ensuring the due transfer of the equipment, software and technology to the Authority upon the expiry or earlier termination of this Contract. The licenses should have a validity of at

least 1 (one) year beyond the date of expiry or early termination of the Contract. The Operator shall ensure that all warranties and/or guarantees that may be valid and existing at the time of expiry and/or earlier termination of this Contract are also transferred to the Authority with the relevant equipment hardware/software and/or technology, as the case may be without any cost whatsoever to the Authority.

ARTICLE 9 – MANPOWER

1. The Operator 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 Contract.
2. The Manpower appointed or hired shall be employees of the Operator and the Authority will not be liable for any acts of omission/ commission vis-à-vis the Manpower appointed or hired by the Operator.
3. The OPERATOR shall be responsible to comply with all applicable labor legislation in respect of the Manpower appointed or hired by the Operator 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 Operator will ensure that in the event of change of project resources during the course of the project, prior intimation shall be given to Authority 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 Authority.

ARTICLE 10 – REVIEW OF HIS

The review of HIS to be enabled by the Operator under this Contract shall be done in the following three levels:

1. State Level:
 - (a) MD,NHM will review the services of the Operator on a quarterly basis.
2. District Level:
 - (a) District Health Society (DHS) under the Chairmanship of District Magistrate will review the services of the Operator under this Contract in the district on monthly basis and may submit recommendations to MD, NHM for the approval/directions.

- (b) The Chief Medical Officer, of the respective District, will be responsible for the smooth implementation of HIS and review and verify the services of the Operator under this Contract on monthly basis.
 - (c) The Operator shall ensure their appropriate representation during the review meetings.
3. Block Level:
- (a) The Medical Officer In-charge/ Superintendent of the Block PHC/CHC would be the nodal officer for HIS at its Block. The Medical Officer In-charge will assist the DHS in monitoring and supervision of operators services in the block and district under this Contract.

ARTICLE 11 – COVENANTS OF OPERATOR

- a. The OPERATOR shall be obliged to provide OPERATOR services under this Contract as detailed in Schedule 1 and deploying the Manpower required.
- b. Subject to the provisions of this Contract, the OPERATOR shall be responsible for availability and maintenance of all hardware as per the specifications contained in Schedules to agreement.
- c. The OPERATOR shall develop a suitable software solution as per the requirements detailed in Schedule – 1 & 2 of this Contract and perform its ongoing maintenance.
- d. The OPERATOR shall be responsible for performance of the following activities as described in Schedule 1 and Schedule 2 of this Contract. The detailed description of each of the activities is provided in Scope of Work of Schedule 1.
- e. availability, distribution and maintenance of computer hardware, UPS, printer, and other equipment necessary for implementation of HIS
- f. Detailed Design of HIS System Architecture
- g. Software Application Development and Rollout
- h. Deployment and commissioning of Hosting infrastructure for the HIS application
- i. Training and handholding of MOICs, Doctors, Paramedics and all other connected personnel.
- j. Setting up and operation of Technical Helpdesk & Control centre at District headquarters
- k. Transition and handover of project to GoUP
- l. The OPERATOR shall develop and provide the application software for the Project and the hardware components. The OPERATOR shall also update the software periodically as per the requirement. Any hardware which requires replacement/upgradability with respect to the latest technological advancement, which in turn enables to make the medical and healthcare services under this Contract faster and more efficient, shall be done by the OPERATOR during the Contract period at its own cost.

- m. The OPERATOR shall ensure that the services provided and the overall HIS system are compliant with the Service Level Agreements described in Schedule – 3 of this Contract.
- n. The OPERATOR 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.
- o. The OPERATOR 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.
- p. The OPERATOR agrees and undertakes to render services incidental to the scope and conditions of work as contained in this Contract without any extra charges or payment; Provided that the quantum of such extra work does not result in extra expenditure to the OPERATOR.
- q. The OPERATOR hereby covenants that it shall at all times during the Contract Period maintain such displays, promotional material and/or messages as may be directed or approved by Authority free of cost.
- r. The OPERATOR acknowledges and accepts that the technology and software that shall be financed, procured and/or developed by the OPERATOR during the Contract period shall be provided to the Authority, free of cost, in accordance with the provisions of this Contract, for the purposes of using the said software for the operation of the HIS
- s. The OPERATOR agrees that it shall ensure and shall not contest that all rights and interests of the OPERATOR in and to the Project vest in the Authority during and after the Contract Period without any further act or deed on the part of the OPERATOR or Authority.
- t. The OPERATOR hereby covenants that it shall duly maintain the Project Facilities (i.e., HIS, application software, technical helpdesk facilities, development centers, data centers, data center devices and other accessories deployed for this project) free and clear of all liens, claims, and Encumbrances and it shall not at any time create any charge, lien or Encumbrances whatsoever over the Project Facilities in favor of any other person. The OPERATOR shall maintain the Project Facilities in good condition.
- u. OPERATOR hereby covenants that it or its Manpower shall not use the Project Facilities for any purpose other than for the purposes of this Contract.
- v. The OPERATOR hereby covenants to undertake Information, Education and Communication (“IEC”) activities, promotion and advertisement of HIS and the Centralized Technical Helpdesk to create mass awareness among the beneficiaries it serves and thereby increase uptake of HIS.
- w. All major and minor repairs of the devices shall be the responsibility of the OPERATOR.

- x. The OPERATOR shall be responsible for provision and replenishment of uninterrupted internet connectivity to facilities under this Contract.
- y. The OPERATOR acknowledges and accepts that service levels as contained in Schedule 3 are the performance indicators for the purposes of this Contract and is also the essence of this Contract. In case of breach of the said performance indicators and service levels as per Schedule 3, the OPERATOR shall be liable to penalty/liquidated damages in accordance with Schedule 3.
- z. The OPERATOR 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 its behalf.
- aa. The OPERATOR 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.
- bb. The OPERATOR shall at all times provide to the representatives of the Authority, access to the Project Facilities to review the progress of the operation of the services under this Contract and to ascertain compliance with any of the requirements of this Contract;
- cc. Provided that non-inspection by the Authority of any Project Facilities shall not, in relation to such Project Facilities, (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 Contract; and (ii) release or discharge the OPERATOR from its obligations or liabilities under this Contract in respect of execution and implementation of the Project.
- dd. The Operator shall submit all the reports as specified in Schedule 1 and 2 to Contract and such other reports or documents as may be requested by the Authority from the Operator from time to time.
- ee. The Operator shall ensure that it will follow good industry practices in development, integration, rollout and maintenance of the HIS.

ARTICLE 12 – COVENANTS OF THE AUTHORITY

1. The Authority shall be responsible for payment of the Fee mentioned in Article 7 of this Contract.
2. The Authority shall provide appropriate assistance in implementation 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 District Health Society to provide all necessary assistance to the Operator and coordinate the smooth implementation and operation of the Project in the respective District.

ARTICLE 13 – PERFORMANCE SECURITY

1. To ensure due and satisfactory performance of its obligations under this Contract, the Operator has, before the execution of this Contract, furnished a performance security of Rs (value totaling to 10% of the “Bid Amount”), in the form of an unconditional, unequivocal and irrevocable bank guarantee from a Scheduled Commercial 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 Operator in performing its obligations under this Contract or otherwise to meet any claim against the Operator or any other reason including but not limited to recovery of penalties, excess payments made previously and non- performance (by the Operator) that causes financial loss to the Authority.
3. The Operational 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 Operator to provide a valid Performance Security and/or restore/replenish and maintain the Performance Security in accordance with this Article shall entitle the Authority to forthwith terminate this Contract.

ARTICLE 14 – 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 Operator and undertake various studies, investigation, inquiries, verifications, etc. as may be considered appropriate.

ARTICLE 15 - REPRESENTATIONS AND WARRANTIES

1. The Operator 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 Contract 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 Contract;
- (d) it has the requisite standing and capacity including to undertake the work under this Contract;
- (e) this Contract 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 Operator for its every accounting years after the Effective Date furnished to the Authority shall give true and fair view of the affairs of the Operator;
- (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 Operator 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 Contract will not conflict with, result in the breach of, constitute a default under or any covenant, Contract, 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 Operator'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 Operator under this Contract 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 Contract;

- (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 Operator's ability to perform its obligations and duties under this Contract;
 - (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 Contract;
 - (l) no representation or warranty by the Operator 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 Operator, to any person by way of fees, commission or otherwise for securing or entering into this Contract 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 Contract Period in full force and effect in accordance with the provisions of this Contract.
2. The Operator undertakes to observe the highest standard of ethics during the performance of its obligations under this Contract without indulging in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive 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 Operators, 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 Operator acknowledges that prior to the submission 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 Operator in the course of performance of its obligations hereunder.
- 4. The Operator 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 Operator.

ARTICLE 16 – FORCE MAJEURE

- 1. As used in this Contract, 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 Contract and which actor 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 Operator or its respective employees/ representatives, or attributable to any act or omission of any of them) interrupting HIS 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 Operator in any proceedings for reasons other than (i) failure of the Operator 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 Contract, or (iv) exercise of any of its rights under this Contract 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 Operator;

- (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 Operator to perform its obligations under this Contract;

Provided that such delay, modification, denial, refusal or revocation did not result from the Operator'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 Contract;
 - (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 Contract by issuing a termination notice to the other Party without being liable in any manner whatsoever, and upon issue of such termination notice, this Contract shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith;

Provided that before issuing such termination notice, Authority shall inform the Operator 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 Operator to arrange for appropriate alternatives to maintain the services and work as stipulated in this Contract. It shall be entirely the obligation of the Operator to maintain the Manpower, Technical Infrastructure and other Project Facilities required rendering the services and working under this Contract.

ARTICLE 17 - TERMINATION

1. This Contract shall terminate by efflux of time on the expiry of the Contract Period.
2. Authority may terminate this Contract for any of the following events of default ("Event of Default") on the part of Operator:
 - (a) The Operator is in material breach of this Contract and in case such breach is rectifiable and the Operator fails to cure such breach within a period of 10 days from the receipt of notice from Authority;
 - (b) The Operator transfers or creates any Encumbrance, charge or lien over any of the Project Facilities in favor of any person/agency;
 - (c) The Operator transfers or fails to perform any of its obligations specified under this Contract;

- (d) The Operator collects fees in any form from the Beneficiaries/users;
- (e) The Operator has failed to achieve the required milestones in accordance with Schedule 1 of this Contract and delay is more than 90 calendar days for achieving any of the milestones;
- (f) The Operator has failed to comply with the performance indicators and Service Level Agreements as provided in Schedule – 3 and the default continues for a period of 3 months;
- (g) The Operator does not maintain the Performance Security or comprehensive insurance as provided in this Contract;
- (k) The Operator is adjudged bankrupt or insolvent or a trustee or receiver is appointed for the Operator or for any of its property that has a material bearing on the Project;
- (l) Petition for winding up of the Operator is admitted by a court of competent jurisdiction;
- (m) The Operator abandons the operations of the Project for more than 15 (fifteen) consecutive days without the prior consent in writing of Authority;
 Provided that the Operator 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 Operator repudiates this Contract or otherwise evidences an intention not to be bound by this Contract.

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 Contract, upon the occurrence of any Event of Default by the Operator, the Authority shall issue a notice to the Operator to cure such Default and on the failure of the Operator to cure such Default within 30 (thirty) days from date of issue of such notice, the Authority shall be entitled to terminate this Contract forthwith by a termination notice to the Operator and the termination shall be effective from the date notified to the Operator.
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 Contract, termination of this Contract 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 Contract.
6. Notwithstanding anything contained in this Contract, the Authority may terminate this Contract if it is found after execution of this Contract 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 Earnest Money Deposit 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 Contract.
7. The Operator may by way of a written notice terminate this Contract 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 Contract, the Operator 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 software and hardware 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 Operator of all of the rights and interests in the Project.
9. Notwithstanding anything contained in this Contract, if it is found after execution of this Contract 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 Operator, terminate this Contract. In such event, Authority shall be entitled to forfeit and appropriate the Earnest Money Deposit or Performance Security, as the case may be.
10. In case of the termination of this contract, the exit management (Clause 2.4) as in Schedule 2 of the RFP will be invoked.
11. The payment due to the Operator will be made for services rendered till the last day of the month prior to the termination date. The payments will be made as per Article 7 of this contract.

ARTICLE 18 - DISPUTE RESOLUTION

1. Amicable Resolution:

- (a) Save where expressly stated to the contrary in this Contract, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Contract 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, Medical, Health & Family Welfare of the State of Uttar Pradesh to mediate and assist the Parties in arriving at an amicable settlement thereof. The Principal Secretary, Medical, Health & Family Welfare shall meet with the Operator 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 18 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 Operator 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 Operator and/or Authority, as the case may be and their respective assets wherever situated.
- (f) This Contract and rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

ARTICLE 19 - GOVERNING LAW AND JURISDICTION

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

ARTICLE 20 – INDEMNITY

1. Indemnity by the Operator:

- (a) The Operator 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 Contract.
- (b) The Operator 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 Operator and damage to or destruction of any property or equipment of the Operator arising during or as a result of the performances or non-performance of this Contract 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 Operator 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 Operator or its employees.

3. Non-Compliance with Applicable Laws:

The Operator 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 Operator 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 Operator 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 Operator of any of the Operator's obligations under this Contract 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 Contract, the Operator 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 Contract.

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 Contract.

6. Defense:

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

The Operator 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 Operator 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

Operator unless the Operator 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 21 - WARRANTY

1. A comprehensive warranty applicable on all goods supplied under this Contract shall be provided by the respective OEM of the Operator for a period as stated in Schedule to agreement.
2. Technical Support for Software shall be provided by the respective OEM for 3 (Three) calendar years from the date of go-live of the HIS system, which period may be extendable upon the sole discretion of the Authority and subject to this Contract term being granted an extension. The Technical Support should include all upgrades, updates and patches to the respective Software for the above stated period.
3. The Operator warrants that the Goods supplied under the Contract are new, non-refurbished, unused and recently manufactured; shall not be nearing End of sale / End of support; and shall be supported by the Operator and respective OEM along with service and spares support to ensure its efficient and effective operation for the entire duration of the contract.
4. The Operator warrants that the goods supplied under this Contract shall be of the highest grade and quality and consisted with the established and generally accepted standards for materials of this type. The goods shall be in full conformity with the specifications and shall operate properly and safely. All recent design improvements in goods, unless provided otherwise in the Contract, shall also be made available.
5. The Operator further warrants that the Goods supplied under this Contract shall be free from all encumbrances and defects/faults arising from design, material, manufacture or workmanship (except insofar as the design or material is required by the Authority's Specifications) or from any act or omission of the Operator, that may develop under normal use of the supplied Goods in the conditions prevailing at the respective Project sites and Locations.
6. The Authority shall promptly notify the Operator in writing of any claims arising under this warranty.
7. Upon receipt of such notice, the Operator shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without prejudice to any other rights which the Authority may have against the Operator under the Contract.
8. If the Operator, having been notified, fails to remedy the defect(s) within a reasonable period, the Authority may proceed to take such remedial action as may

be necessary, at the Operator's risk and expense and without prejudice to any other rights which the Authority may have against the Operator under the Contract.

ARTICLE 22 – LIMITATION OF OPERATOR'S LIABILITY TOWARDS THE AUTHORITY

1. Except in case of gross negligence or willful misconduct on the part of the Operator or its agents/ Team/ representatives/ employees or on the part of any person or company acting on behalf of the Operator in executing the work or in carrying out its/ their obligations under this contract, the Operator, with respect to damage caused by the Operator 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 Operator may be entitled to receive from any insurance maintained by the Operator to cover such a liability, whichever of (A) or (B) is higher.
2. This limitation of liability shall not affect the Operator liability, if any, for damage to Third Parties caused by the Operator or its agents/ sub-contractor(s)/ Team/ representatives/ employees or any person or firm/company acting on behalf of the Operator in executing the work or in carrying out the Services/ obligations under the Contract.
3. The Operator'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 Operator 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 Contract

ARTICLE 23– ASSIGNMENT / NOVATION

1. The Operator 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 24 – CHANGE ORDERS/ALTERATION/VARIATION

1. The Operator agrees that the System requirements/ quantities/ licenses/ specifications and Service requirements given in the RFP are minimum requirements and are in no way exhaustive and guaranteed by the Authority.
 - a. Any upward revision and/or additions consequent to errors, omissions, ambiguities, discrepancies in the quantities, specifications, drawings etc. of the RFP which the Operator had not brought out to the Authority's notice till the time of award of work and not accounted for in his Bid shall not constitute a change order and such upward revisions and/or addition shall be carried out by Operator without any time and cost effect to Authority.
 - b. It shall be the responsibility of the Operator to meet all performance and other requirements of the Authority as stipulated in the Contract. Any upward revisions / additions of quantities, specifications, technical manpower, service requirements to those specified by the Operator in his Bid documents, that may be required to be made during installation / commissioning of the System or at any time during the currency of the contract in order to meet the conceptual design, objective and performance levels or other requirements as defined in the RFP shall not constitute a change order and shall be carried out by the Operator without any change order and without any time and cost effect to the Authority whatsoever.
2. The Authority may at any time, by a written change order given to the Operator, make changes within the general scope of the Contract. The Authority will have the option to increase or decrease (decrease only if communicated to Operator prior to availing of services / dispatch of goods / equipments) the Quantities, Licenses and/or Specifications of the goods/equipment to be supplied and installed by the Operator or service requirements, as mentioned in the Contract, at any time during the contract period.
3. The written advice to any change shall be issued by the Authority to the Operator upto 4 (four) weeks prior to the due date of provisioning/supply of such goods/equipments or commencement of services.
4. In case of increase in Quantities/ Licenses / Specifications or Service requirements or in case of additional requirement, the Operator agrees to carry out / provision for such additional requirement at the rate and terms and conditions as provided in the Contract except for the appropriate extension of time to be allowed for delivery/installation of such extra goods/equipment or for commencement of such services. In case of decrease in Quantities or Specifications of goods/equipment or Service requirements, the Operator shall give a reduction in price at the rate given in the Contract corresponding to the said decrease.

5. In case applicable rates for the increase/decrease in question are not available in the Contract then the rates as may be mutually agreed shall apply. The Operator shall not be entitled to any claim by way of change of price, damages, losses, etc. The Operator shall be compensated at actual for any cancellation charges provided the claim is duly supported by documentary evidence of having incurred cancellation charges, which results from Authority's action in reducing/ cancelling Scope of work.

6. Conditions for Change Order

- a. The change order will be initiated only in case (i) the Authority directs in writing the Operator to incorporate changes to the goods or design requirements already covered in the Contract. (ii) the Authority directs in writing to the Operator to include any addition to the scope of work or services covered under this Contract or delete any part thereof, (iii) Operator requests to delete any part of the work which will not adversely affect the operational capabilities and functioning of the system and if the deletions proposed are agreed to by the Authority and for which cost and time benefits shall be passed on to the Authority,
- b. Any change order comprising an alteration which involves change in the cost of the goods and/or services (which sort of alteration is hereinafter called a "Variation") shall be the Subject of an amendment to the Contract by way of an increase or decrease in the Contract Value and adjustment of the implementation schedule if any.
- c. If the Contract provides applicable rates for the valuation of the variation in question, the Contract Value shall subject to Clause 4 of this Article be increased or decreased in accordance with those rates.
- d. If parties agree that the Contract does not contain applicable rates or that the said rates are inappropriate or the said rates are not precisely applicable to the variation in question, then the parties shall negotiate a revision of the Contract Value which shall represent the change in cost of the goods and/or works caused by the Variations. Any change order shall be duly approved by the Authority in writing.
- e. If there is a difference of opinion between the Operator and Authority's Representative on whether a particular item, work or part of the work constitutes a change order or not, the matter shall be handled in accordance with the procedures set forth in Clause 6(a) of this Article.

7. Procedures for Change Order

- a. Upon receiving any revised requirement/advice, in writing, from the Authority, the Operator would verbally discuss the matter with Authority's Representative.
- b. In case such requirement arises from the side of the Operator, he would also verbally discuss the matter with Authority's Representative giving reasons thereof.
- c. In either of the two cases as explained in Clause 7 (a) and Clause 7 (b) above, the representatives of both the parties will discuss on the revised requirement for better understanding and to mutually decide whether such requirement constitutes a change order or not.
- d. If it is mutually agreed that such Requirement constitutes a "Change Order" then a joint memorandum will be prepared and signed by the Operator and Authority to confirm a "Change Order" and basic ideas of necessary agreed arrangement.
- e. Operator will study the revised requirement in accordance with the joint memorandum under Clause 7(d) of this Article and assess subsequent schedule and cost effect, if any.
- f. Upon completion of the study referred to above under Clause 7(e), the results of this study along with all relevant details including the estimated time and cost effect thereof with supporting documents would be submitted to the Authority to enable the Authority to give a final decision whether Operator shall proceed with the change order or not in the best interest of the works.
- g. The estimated cost and time impact indicated by Operator shall be considered as a ceiling limit and shall be provisionally considered for taking a decision to implement change order.
- h. The time impact applicable to the Contract shall be mutually agreed, subsequently, on the basis of the detailed calculations supported with all relevant back up documents.
- i. In case Operator fails to submit all necessary substantiation/calculations and back up documents, the decision of the Authority regarding time and cost impact shall be final and binding on the Operator.
- j. If Purchaser accepts the implementation of the change order under Clause 7 (e) of this article in writing, which would be considered as change order, then Operator shall commence to proceed with the enforcement of the change order pending final agreement between the parties with regard to adjustment of the Contract Value and the Schedule.
- k. In case, mutual agreement under Clause 7 (d) above, i.e. whether new requirement constitutes the change order or not, is not reached, then Operator in the interest of the works, shall take up the enforcement of the change order, if advised in writing to do so by the Authority pending settlement between the two parties to the effect whether such requirement constitutes a change order

or not as per the terms and conditions of Contract documents. The time and cost effects in such a case shall be mutually verified and recorded. Should it establish that the said work constitutes a change order, the same shall be compensated taking into account the records kept in accordance with the Contract.

1. The Operator shall submit necessary back up documents for the change order showing the break-up of the various elements constituting the change order for the Authority's review. If no agreement is reached between the Authority and Operator within 60 days after Authority's instruction in writing to carry out the change concerning the increase or decrease in the Contract Value and all other matters described above, either party may refer the dispute to arbitration.
8. Conditions for revised work / change order
- a. The provisions of the Contract shall apply to revised work / change order as if the revised work / Change order has been included in the original Scope of work.
 - b. However, the Contract Value shall increase / decrease and the schedule shall be adjusted on account of the revised work / Change orders as may be mutually agreed in terms of provisions set forth in this article. The Operator's obligations with respect to such revised work / change order shall remain in accordance with the Contract.

ARTICLE 25 - MISCELLANEOUS

1. Priority of Contracts and errors/discrepancies:

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

- (a) this Contract read with Schedules;
- (b) Letter of Intent;
- (c) Request for Proposal; and
- (d) all other Contracts 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 Contract:

- (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 Contract;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Contract 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 Contract 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 here under.

3. Entire Contract:

This Contract and together with the other Contract documents and the Schedules constitute complete and exclusive statement of the terms of this Contract 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 Contract shall be in writing and shall be given at the respective addresses given in Article 28 (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 Contract 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 Operator shall not assign, sub-contract or transfer its rights and obligations under this Contract to any person, in any manner whatsoever.

7. Relationship of the Parties:

Nothing contained in this Contract 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 Contract 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 Contract shall be in writing and in English language.

9. Exclusion of Implied Warranties etc.:

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

10. Counterparts:

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

11. Address for Correspondence:

For the Authority

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.....
.....

For the Operator

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.....
.....

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

SIGNED,SEALED AND DELIVERED

For and on behalf of

NHM-UP

By:

_____ (Signature)

..... (Designation)

SIGNED,SEALED AND DELIVERED

For and on behalf of

(Name of the Operator)::

By:

_____ (Signature)

_____ (Name)

_____ (Designation)

In the presence of:

1. _____

2. _____

3. _____

4. _____