

E-GOVERNANCE MISSION MODE PROJECT (MMP)

# CRIME & CRIMINAL TRACKING NETWORK AND SYSTEM (CCTNS)

## REQUEST FOR PROPOSAL FOR SELECTION OF SYSTEM INTEGRATOR FOR IMPLEMENTATION OF CCTNS IN ODISHA

### VOLUME - III: CONTRACTUAL & LEGAL SPECIFICATIONS



DEPARTMENT OF HOME, GOVERNMENT OF ODISHA

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## Abbreviations

Table 1 Abbreviation

Sr. No.	Abbreviation	Description
1.	CAS	Core Application Software
2.	CCIS	Crime and Criminals Information System
3.	CCTNS	Crime and Criminal Tracking Networking and Systems
4.	CIPA	Common Integrated Police Application
5.	CPMU	Central Project Management Unit
6.	DC	District Collector
7.	DCRB	District Crime Record Bureau
8.	DGP	Director General of Police
9.	DIG	Deputy Inspector General
10.	DPO	District Police Office
11.	DSR	Daily Status Report
12.	FCR	Fortnightly Crime Report
13.	FIR	First Information Report
14.	FSL	Forensic Science Laboratory
15.	GoO	Government of Odisha
16.	HC	Head Constable
17.	IG	Inspector General
18.	IIC	Inspector In charge
19.	IO	Investigating Officer
20.	IOC	Officer In charge
21.	IPC	Indian Penal Code
22.	IT	Information Technology
23.	MMP	Mission Mode Project
24.	NCRB	National Crime Record Bureau
25.	NIC	Nation Informatics Centre
26.	NOC	No Objection Certificate
27.	OIC	Officer In charge
28.	PCR	Police Control Room
29.	POC	Place of Occurrence
30.	PS	Police Station
31.	RPF	Request for Proposal
32.	RPO	Regional Passport Office
33.	SAP	Special Armed Police
34.	SC/ST	Scheduled Caste/Scheduled Tribe
35.	SCRB	State Crime Record Bureau
36.	SDPO	Sub Divisional Police Officer
37.	SI	System Integrator
38.	SP	Superintendent of Police

Sr. No.	Abbreviation	Description
39.	SPA	State Police Academy
40.	SPMC	State Project Management Consultants
41.	SR	Special Report
42.	SWAN	State Wide Area Network
43.	U/S	Under Section

Contract No

Dated &lt;&lt;date&gt;&gt;

THIS CONTRACT is made on this <<day>> day of <<month>>, 2011, by and between:

- (i) The Governor of Odisha, through Director, State Crime Records Bureau (SCRB), Government of Odisha, represented by Shri <<Name>> (hereinafter called as the “**BUYER**”, which expression unless repugnant to the context or meaning thereof, shall mean and include its successors or nominees or assignees or legal representative) of the FIRST PART;

AND

- (ii) <<Company name with address>>, a company registered under Indian Companies Act, 1956 represented by Shri <<name with designation>>, and in the business of development, integration, customization, maintenance and providing related services of system development and integration (hereinafter called as “**System Integrator**” or “**SI**”, which expression unless repugnant to the context or meaning thereof, shall mean and include its successors or permitted assigns of the SECOND PART).

(The BUYER and the SI are collectively referred to as the “**Parties**” and individually as a “**Party**”)

#### RECITALS

##### WHEREAS

- A. The BUYER, with the ultimate objective of enhancement and implementation of CAS (State) across the State of for providing citizen services, improved investigation and crime prevention tools, intends to procure the services for designing, developing, enhancing/extending, implementing and managing the Project (defined hereinafter) involving, *inter alia*, the enhancement and implementation of CAS (State) exclusively for the Odisha State Police;
- B. The BUYER carried out selection of a suitable system integration agency by adopting an open tender process, through competitive bidding for undertaking and implementing the Project, and issued an “RFP” (as defined hereinafter);
- C. SI has been selected as the successful bidder to undertake and implement the Project involving without limitation the design, development, roll out and maintenance of CAS (State) and system to be implemented and rolled out in Odisha and providing operations and maintenance support as mentioned in the RFP and desired service levels, on the basis of the proposal dated XXXX submitted by SI (“Proposal”).
- D. The BUYER has agreed to accord the SI, the mandate to undertake and implement the Project in Odisha on the terms and conditions set forth below.
- E. SI in pursuance of its Proposal undertakes to implement the Project on the terms and conditions set forth below.

NOW THEREFORE, IN THE TERMS AND CONDITIONS OF THIS INDENTURE AS SET OUT HEREIN UNDER, the Parties have agreed to enter into this Contract to govern the manner in which the SI shall implement and execute the Project and define the roles and responsibilities of the BUYER and SI.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers or representatives.

**For and on behalf of BUYER**

**For and on behalf of (SI)**

An authorized signatory duly nominated  
Pursuant to Board Resolution No.

(<<Name>>)  
Director - SCRB, Government of Odisha

(<<Name>>)  
<<Designation>>  
<<Company Name>>

**Date:**  
**Place: Bhubaneswar**

**Date:**  
**Place: Bhubaneswar**

**Witnessed by**

- 1.
- 2.

**Witnessed by**

- 1.
- 2.

## 1. ARTICLE 1: Definitions and Interpretations

### 1.1. Definitions

In this Contract, unless the context otherwise requires

- (a) **“Annual Maintenance Contract” (AMC)** shall mean and include without limitation the following services to be provided by SI.
  - (i) Warranty Services
  - (ii) Annual Technical Support (ATS)

The above services include routine, periodic and milestone maintenance and servicing to ensure the BUYER, continuous and efficient operation of the hardware, software and related services required for the Project.
- (b) **“Annual Maintenance Services” or “AMS” or “Operations and Maintenance Services”** means the services to be governed by the AMC and includes without limitation, the activities covered during the period from “Go Live” till the expiry or termination of the Contract. Some of the key activities in this stage include but are not limited to supporting the users in using the new System and maintenance of the entire information technology infrastructure.
- (c) **“Applicable Laws”** includes all applicable statutes, enactments, acts of legislature or parliament laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental authority, tribunal, board, court or other quasi-judicial authority.
- (d) **“Availability”** means the time for which the services and facilities are available for conducting operations on the CAS (State) including application and associated infrastructure. Availability is defined as:  

$$(\text{Scheduled Operation Time} - \text{System Downtime}) / (\text{Scheduled Operation Time}) \times 100\%$$
- (e) **“CAS (State) Availability and Performance Report”** means the report on the Service Levels measured for the defined period.
- (f) **“Bill of Material” or “BoM”** means the bill of material regarding CAS (State) provided by SI in its Proposal, stating the prices and the quantity of the materials to be procured by the SI (on behalf of the BUYER) in pursuant to the specifications more elaborately stated in RFP and also stated in Schedule V of this Contract.
- (g) **“CAS”** means basic CCTNS Core Application Software designed, developed, implemented and maintained exclusively for NCRB.
- (h) **“CAS (Centre)”** means CAS for NCRB designed, developed, implemented and maintained by NCRB at the Centre.
- (i) **“CAS (State)”** means CAS integrated with CAS (Centre), which would be configured, customized and implemented by the State SIs in their respective States and Union Territories.
- (j) **“CAS Solution”** means the overall solution including the CAS (Centre), CAS (State) and other application software and hardware.
- (k) **“Centre”** means NCRB including all its units in which CAS (Centre) will be implemented.
- (l) **“Change in Law”** means any of the following events which have a Material Adverse Effect:
  - (i) Adoption, promulgation, Modification, reinterpretation or repeal after the date of this Contract by any Government Authority of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or

- (ii) The imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by SI of any Applicable Permit) in connection with the issuance, renewal or Modification of any applicable permits after the date of this Contract which renders the performance by SI of any of the terms of this Contract impossible or unviable; or
- (iii) Any applicable permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of SI or if granted for a limited period, being renewed on terms different from those previously stipulated.
- (iv) Provided any (1) imposition of new taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, and/or (2) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or (3) any rules or regulations stipulated by regulatory authority having jurisdiction over the Project in respect of the standards of service, testing, acceptance norms, shall not constitute a Change in Law.
- (m) **“Conditions Precedent”** shall have the meaning assigned to it in ARTICLE 2.2 hereof.
- (n) **“Contract”** means this contract together with contents and specifications set out in RFP and in all the attached schedules and shall include any Modifications, alterations, additions or deletions thereto agreed between the Parties in writing after the date hereof in terms of this contract. In the event of a conflict between this Contract and the Schedules, the terms of the Contract shall prevail.
- (o) **“Control”** means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of any entity, whether through the ownership of voting securities, by contract or otherwise.
- (p) **“Confidential Information”** means all information as defined in the ARTICLE 17.
- (q) **“Configuration of CAS”** means the process of setting the options, lists and parameters provided by CAS (State) as per the requirements of the State/UT, without modifying the basic source code.
- (r) **“Customization of CAS”** means the process of making modifications and/or Enhancements to CAS (State), to meet the requirements of the State/UT.
- (s) **“Data”** shall mean any record of any matter or thing tangible or intangible, factual, fictitious or imaginary, hypothetical or abstract, known or unknown, accurate or inaccurate provided by Stakeholders to SI and includes any thought, form or substance, or knowledge proposition or opinion supplied or recorded by man or machine and prepared, stored or transmitted in computer readable form and shall include information.
- (t) **“Data Centre” or DC** means the primary centre where Data, software, computer systems and associated components, such as telecommunication and storage systems, redundant or backup power supplies, redundant data communications, environment controls and security devices and other services as detailed in Schedule V are housed and operated from.
- (u) **“Disaster Recovery Centre” or DRC** means the centre that is designed to act as the Data Center on occurrence of a disaster / non-functioning of the DC.
- (v) **“Data Migration”** means moving and integration of Data from existing manual systems or existing automated systems to the CAS (State) enhanced by SI pursuant to the Project.

- (w) **“Deliverables”** means the products, infrastructure and services agreed to be delivered by the SI in pursuance to the Contract and defined more elaborately in the RFP and includes all documents related to the CAS (State), user manual, business designs, the process documentations, the artifacts, the training materials, technical manual, process and operating manuals, service mechanisms, policies, guidelines, source code etc. and all their respective modifications.
- (x) **“Design, Development, Implementation, Integration and Management”** includes the activities to be performed by SI pursuant to the Contract till Go Live. These activities are more elaborately defined in the RFP and include but are not limited to preparation of project plan, creation and maintenance of requirements traceability matrix, System requirements specifications, project documentation, manuals, procuring, managing and maintaining project management tools, carrying out System study, preparing software requirement specifications, conducting conference room pilot, preparing test plans, development of source code as per the approved specifications, configuration, integration, testing, training and other related activities required for the management of CAS (State).
- (y) **“Design and Development Stage”** shall have the meaning attributed to it in ARTICLE 2.2 of the Contract.
- (z) **“Development Site”** means the site that is provided to SI by the BUYER where SI would perform all the activities related to the Project.
- (aa) **“DCO” or “Data Center Operator”** means the person designated by the BUYER for operating Data Centre and fulfilling its responsibilities in pursuant to the Contract.
- (bb) **“Documentation”** shall mean the explanatory electronic or paper documents and notes referring to the maintenance and use of the Software.
- (cc) **“Earnest Money Deposit”** shall mean the bank guarantee provided by the SI as per RFP.
- (dd) **“Effective Date of Contract” or “Effective Date”** means the date on which this Contract is signed by both the Parties.
- (ee) **“Effective Date of Project Commencement”** means the date on which the Conditions Precedent have been satisfied by SI or waived by the BUYER. For calculation of all project schedules/delays etc, this date will be taken into account as the date of commencement of the Project.
- (ff) **“End Users”** means the users who use the software and services.
- (gg) **“Enhancement”** means incorporation of new modules, functions etc made to CAS (State), so as to support new technologies, functionalities and upgrades.
- (hh) **“Equipment”** means the computer hardware, machinery and other tangible equipments used for the Project, pursuant to the Contract.
- (ii) **“Empowered Committee”** shall be the committee as defined vide Government of Odisha No. XXXX and which is responsible for giving the approval for Go Live as per Schedule IX of the Contract.
- (jj) **“Gateway”** means National e-Governance Services Delivery Gateway (NSDG) and State e-Governance Services Delivery Gateway (SSDG) designed to form a platform for Data exchange between departments’ applications and applications of external agencies.
- (kk) **“Go-Live”** means the date on which i) the CAS (State) is completely operational; and ii) the CCTNS Empowered Committee has given its approval as per Schedule IX hereof.
- (ll) **“Implementation Services”** means the services required to be delivered by SI to the BUYER for successful and comprehensive implementation of CAS (State) for the BUYER as per the requirements detailed in ARTICLE 3.

- (mm) **“Incident”** refers to any event / abnormalities in the functioning of the Data Centre / Services that may lead to disruption in normal operations of the Data Centre, System or application services.
- (nn) **“Information”** shall mean any Data after being processed for the purpose of being applied or supplied in response to a given requirement and other statement or record made by man or machine and capable of being perceived by the human senses.
- (oo) **“Intellectual Property Rights”** means rights as defined in the ARTICLE 14.
- (pp) **“Modification”** means any change effected to fix bugs and program errors, incorporation of minor new features etc in the CAS (State) or any other software by the SI, so as to make it functionally complete.
- (qq) **“Material Adverse Effect”** means material adverse effect on (a) the ability of SI to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Contract and/or (b) the legal validity, binding nature or enforceability of this Contract.
- (rr) **“Maintenance Stage”** is as per the meaning attributed to it in ARTICLE 2.1(a) of this Contract.
- (ss) **“Milestones”** means the Service Levels determining the completion of a particular stage of the Project in prescribed time pursuant to the Contract.
- (tt) **“NCRB”** means the National Crime Records Bureau with its Headquarters situated at East Block-7, R.K. Puram, New Delhi-110066.
- (uu) **“SCRB Supplied Equipment”** means the computer hardware or any other tangible / movable / immovable assets supplied by the BUYER to SI for usage in the Project
- (vv) **“Network”** means the physical medium through which Data is transferred from source to destination.
- (ww) **“New Version”** means a version of Software released as “New Version” by the SI.
- (xx) **“OEM” or “Original Equipment Manufacturer”** means the original manufacturer and owner of the Intellectual Property Rights of any Third Party Software or Equipment to be used in the Project and to which the BUYER has been granted unlimited license to use.
- (yy) **“Operative Period of Contract” or “Term”** means the period of the Contract commencing from the Effective Date of Project Commencement and continuing till the last day of Operations and Maintenance Service, or the date of termination, in case of earlier termination of the Contract.
- (zz) **“Payment Milestones”** means the Milestones, more specifically given in Schedule VII of this Contract, with which the payments to the SI for providing its Services are linked.
- (aaa) **“Project”** means the entire set of activities that include without limitation activities related to “Design, Development, Integration and Management Stage” and Maintenance Stage i.e. “AMC” of the CAS (State) in Odisha.
- (bbb) **“Project Assets”** means the assets, other than SCRB Supplied Equipment, acquired or procured and supplied by the SI to the BUYER for the purpose of the Project, pursuant to this Contract.
- (ccc) **“Project Site”** means the sites including and not limited to Development Sites, as specified by the BUYER where the Services pursuant to the Project are provided by the SI.
- (ddd) **“Request for Proposal (RFP)”** means the documents containing the general, technical, functional, commercial and legal specifications for the implementation of the Project issued in three different volumes i.e. Volume I, II and III respectively and as different Appendices and forms and includes the clarifications, explanations, minutes of the

meetings and amendments issued from time to time during the bidding process and on the basis of which SI has submitted its Proposal.

- (eee) **“Replacement SI”** means the meaning attributed to it under Schedule X of this Contract.
- (fff) **“Scheduled Maintenance Time”** shall mean the time that the System is not in service due to a scheduled activity as defined in this SLA. The scheduled maintenance time would not be during 16X6 timeframe. Further, scheduled maintenance time is planned downtime with the prior permission of Odisha State Police.
- (ggg) **“Scheduled operation time”** means the scheduled operating hours of the System for the month. All scheduled maintenance time on the System would be deducted from the total operation time for the month to give the scheduled operation time. The total operation time for the systems and applications will be 24X7X365.
- (hhh) **“Services”** means the services to be performed by the SI in pursuant to the Contract more elaborately provided in the RFP and mentioned in ARTICLE 3 of the Contract.
- (iii) **“Service Level”** means the level of service and other performance criteria determining the completion of services by the SI as set out in ARTICLE 19.
- (jjj) **“SI Assets for Own Use” or “SI Assets”** means assets other than the Project Assets including but not limited to the computer hardware, software, Network components, power supply and other tangible equipment owned and used by SI for the Project.
- (kkk) **“Software”** shall mean all the software including and not limited to CAS (State) Software provided, designed, developed or integrated by the SI pursuant to the Project.
- (lll) **“Source Code”** means the human-readable version of the Software made up of the source program containing computer instructions and Data definitions, which cannot be executed on a computer processor without compilation or conversion into binary language.
- (mmm) **“Solution”** means the application software, proposed by SI to meet the functional and technical requirements of the BUYER. This includes all the hardware, equipment, servers, third party tools, databases, and middleware software required to make it work as a complete CAS (State).
- (nnn) **“Stakeholders”** means Odisha State Police, Government of Odisha, citizens and citizen Groups, departments such as jails, courts, passports office, transport Departments, hospitals and the entities designated by Odisha State Police in which CAS (State) needs to be implemented.
- (ooo) **“System”** means the completed CAS (State) enhanced, developed, implemented and maintained exclusively for Odisha State Police by SI, pursuant to the Project.
- (ppp) **“System or Application downtime”** means accumulated time during which the System is totally inoperable within the Scheduled Operation Time but outside the scheduled maintenance time and measured from the time Odisha State Police and/or its employees log a call with the SI team of the failure or the failure is known to the SI from the availability measurement tools to the time when the System is returned to proper operation.
- (qqq) **“Third Party Software”** means systems or any part thereof for which the Intellectual Property Rights are owned by a third party and the BUYER has been granted a license to use.
- (rrr) **“Transfer Date”** shall mean date on which the Project Assets or any part thereof are transferred to the BUYER or its nominee, pursuant to the Contract, on Go Live coming



into effect or on termination of the Contract, if such termination happens prior to Go-Live.

- (sss) **“Updates”** means but is not limited to a minor change, Modification, Customization made to the Software by SI or OEM so as to incorporate ‘bug fixes’, or improve the existing technology, features or functionality.
- (ttt) **“Working Day”** means any day on which any of the local unit of Odisha State Police will be functioning. The BUYER will provide list of its scheduled holidays.

## 1.2. Interpretations.

In this Contract unless the context otherwise requires:-

- (a) Any reference to a statutory provision shall include reference to such provision as from time to time modified, amended or re-enacted or consolidated and to all statutory instruments pursuant to it.
- (b) The words importing singular shall include plural and vice versa, and words denoting natural person shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations, executors, administrators, successors, agents, substitutes and any permitted assignees or other entities (whether or not having a separate legal entity). A reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually. A word denoting a gender includes all genders.
- (c) Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Contract as a whole and not to any particular Article or Schedule. The words "include" and "including" shall not be construed as terms of limitation. The words "day" and "month" mean "Gregorian calendar day" and "Gregorian calendar month" unless otherwise stated. Where, because of a difference in time zone, the calendar day or calendar month in one Country differs from another Country, then the calendar day or calendar month shall be deemed to be the calendar day or calendar month applicable to Odisha. The term Articles, refers to Articles of this Contract. The words "in writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated. Any reference to attorneys' fees shall include fees of the professional assistants of such attorneys.
- (d) The headings and use of bold type in this Contract are for convenience only and shall not affect the interpretation of any provision of this Contract.
- (e) References to “installation” include investigation, design, engineering, procurement, delivery, installation, processing, testing, commissioning.
- (f) References to “implementation” include investigation, design, engineering, procurement, delivery, installation, processing, testing, commissioning.
- (g) References to “States” mean reference to all States and Union Territories of India.
- (h) Any reference to any period of time shall mean a reference to that according to Indian standard time.
- (i) 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 innovated at the time of such reference.
- (j) Any contract, consent, approval, authorization, notice, communication, Information or report required under or pursuant to this Contract from or by any Party or the independent engineer and/or a statutory auditor and/or any other authority shall be valid and effectual only if it is in writing under the hands of duly authorized

- representative of such Party or the independent engineer and/or statutory auditor or any other authority, as the case may be, in this behalf and not otherwise.
- (k) Unless otherwise stated, any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include either such days or dates.
  - (l) Unless otherwise specified, any interest to be calculated and payable under this Contract shall accrue on an Annual basis and from the respective due dates as provided for in this Contract.
  - (m) A reference to an article, clause, section, schedule, annexure or appendix is a reference to an article, clause, section, schedule, annexure or appendix to this Contract unless otherwise stated and references to this Contract include any recital, schedule, annexure or appendix to this Contract.
  - (n) A reference to knowledge of a person includes Information that a reasonable person in the circumstances of that person would have known by reasonable inquiry.
  - (o) In interpreting this Contract no rule of construction applies to the disadvantage of a party because that party or its legal advisor was responsible for the preparation of this Contract or any part of it.
  - (p) The business hours are 9:00AM - 06:00PM on all working days (Mon-Sat) excluding public holidays or any other holidays observed by Odisha State Police however for the SI business hours will be as and when the CAS (State) requires their Services.

### **1.3. Measurements and Arithmetic Conventions.**

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

### **1.4. Ambiguities and Discrepancies.**

In case of ambiguities or discrepancies within this Contract, the following shall apply:-

- (a) Between two Articles of this Contract, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles.
- (b) Between the dimension scaled from the design and drawings and its specific written dimension, the latter shall prevail.
- (c) Between any value written in numerals and that in words, the latter shall prevail; and
- (d) Between the provisions of this Contract and any other documents forming part of this Contract, the former shall prevail.



## 2. ARTICLE 2: Structure

### 2.1. Overview

This Contract shall operate as a legally binding contract for the Project specifying the master terms which apply to the Parties under this Contract, including but not limited to terms in relation to design, development and management of software, training of the users and subsequently operate and maintain the System with commitment for delivering the software and services specified under this Contract in accordance with roles and responsibilities set herein for maximum total consideration of Rs. <<amount>> inclusive of all taxes, levies, cess and any other statutory dues.

(a) There are two distinct stages during which the Contract will be in force. The nature of work, the commitment and the interpretation of the Contract will be based on the context of these two stages. Both these stages together comprise the Project:-

- (i) Design and development stage
- (ii) Maintenance stage

The “Design and Development Stage” will be a stage prior to Go-Live and in which the services will be executed in a project mode with emphasis on the supply of the Project Assets, installing, commissioning and implementing them as per the product/ process specifications. In this stage services like designing, enhancement, development of the CAS (State), preparing System requirement specifications, conducting System assessment, Data Migration, user testing, delivering and commissioning of hardware at the Police Stations and Higher Offices etc. will be provided by SI. This stage will stand concluded on the successful Go-Live date.

The “Maintenance Stage” will be a stage after the date of Go-Live and will be driven by definition of services, the Service Levels, the measurement of Service Levels, penalties for non conformance to services etc. In this stage the SI will be responsible for providing services like Annual Maintenance Services, handholding, training etc.

The above mentioned stages have been discussed in greater detail in the RFP.

### 2.2. Conditions Precedent

(a) **Conditions Precedent for Design and Development Stage:** Subject to express terms to the contrary, the rights and obligations in respect to the Design and Development Stage under this Contract shall be effective only upon fulfillment of all the conditions precedent set out in this Article 2.2 (a) (“**Conditions Precedent for Design and Development Stage**”). The following conditions needs to be fulfilled by the SI:-

- (i) Provide the “Performance Bank Guarantee” (as defined in Article 2.4 of the Contract) to the BUYER as specified in RFP
- (ii) Provide the BUYER, the certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Contract with the BUYER.

However, the BUYER may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for Design and Development Stage.

**(b) Non-fulfillment of Conditions Precedent**

- (i) Subject to Article 2 (b) (iv) below, in the event that any of the Conditions Precedent has not been fulfilled within 15 (fifteen) days of the Effective Date and the same has not been waived by the BUYER fully or partially, this Contract shall stand terminated as of that date.
- (ii) In the event of termination of the Contract on account of non-fulfillment of Conditions Precedent, the BUYER shall not be liable in any manner whatsoever to SI and SI shall forthwith forfeit the money deposited by Buyer under RFP. Such termination and forfeitures shall be without prejudice or other rights of the BUYER under law or Contract.
- (iii) In the event that vacant possession of any of the Project facilities and/or equipment has been delivered to SI prior to the fulfillment in full of the Conditions Precedent, then on termination of this Contract such possession shall immediately revert to the BUYER free and clear from any encumbrances or claims. In case SI has created any charge on the aforementioned assets, then the SI will be liable to get the charge released and the BUYER will be entitled to claim the appropriate damages from the SI.
- (iv) Instead of terminating this Contract as provided in Article 2.2 (b) (i) above, the Parties may mutually agree in writing to extend the time for fulfilling the Conditions Precedent and the Term. It is further clarified that any such extension of time shall be subject to imposition of penalties on SI linked to the delay in fulfilling the Conditions Precedent. In case, the Conditions Precedent for Design and Development Stage has not been fulfilled by the SI even on the extended date, then in that case all the provisions contained in Article 2.2(b) (i), 2(b) (ii) and 2(b) (iii) of this Contract shall become applicable.

**(c) Conditions Precedent for Maintenance Stage:**

Subject to express terms to the contrary, the rights and obligations of the Parties in respect of the Maintenance Stage shall be effective only upon fulfillment of all the conditions precedent set out in this Article 2.2 (c) (“Conditions Precedent for the Maintenance Stage”). However, the BUYER, may at any time at its sole discretion waive fully or partially any of the aforesaid conditions precedent for the SI. The following conditions precedent needs to be fulfilled by the SI:

- (i) The Enhanced CAS (State) is designed, developed, tested, audited and certified in accordance with related provisions of the RFP;
- (ii) The IT and non-IT infrastructure is established at Police Stations, Higher Offices, Data Center, and Disaster Recovery Center as required;
- (iii) The ownership of the Project Assets, CAS (State), Third Party Software (in the form of licenses obtained in favour of BUYER) is passed on to the BUYER within a period of 15 days from the date of certification of such assets by the third Party appointed by the BUYER;
- (iv) The CAS (State) has been successfully tested and implemented in at least 15 Police Stations and 3 Districts to the satisfaction of the BUYER.

**(d) Non-fulfillment of Conditions Precedent for Maintenance Stage**

- (i) In the event that any of the Conditions Precedent for the Maintenance Stage has not been fulfilled within the timelines specified by the BUYER and the same has not

been waived by the BUYER fully or partially, this Contract shall stand terminated as of that date, at the sole option of the BUYER.

- (ii) Notwithstanding anything contained to the contrary, in the event of termination of this Contract, on account of non-fulfillment of the Conditions Precedent for the Maintenance Stage, the BUYER shall not be liable in any manner whatsoever to the SI and the BUYER shall forthwith invoke the Performance Guarantee and forfeit the guaranteed amount. Such termination and forfeiture shall be without prejudice or other rights of the BUYER under law or Agreement.
- (iii) The possession of any of the Project facilities and/or Project Data delivered to the SI prior to the fulfillment of all of the Conditions Precedent for the Maintenance Stage, upon the termination of this Contract such possession shall immediately revert to the BUYER, free and clear from any encumbrances or claims.
- (iv) The Project Assets and the licenses which the BUYER intends to take at such date shall be transferred to the BUYER at the predetermined rates.
- (v) Instead of terminating this Contract as provided in Article 2.2(d) above, the BUYER may extend the time for fulfilling the Conditions Precedent for Maintenance Stage and the Milestones set out in this Contract. It is clarified that any extension of time shall be subject to imposition of agreed liquidated damages on the SI linked to the delay in achieving the Milestone.

### **2.3. Undertakings by the SI:**

The SI represents and warrants to the BUYER that the SI shall be bound by the undertakings submitted by the SI to SCRB as part of the clarifications to the technical proposal submitted by the SI. The undertakings are listed in the Schedule III.

### **2.4. Continuous Improvement of CAS (State).**

The SI shall execute enhancements priced up to Rs. <<amount>> and release new versions of CAS (State). The costs for the enhancements that qualify as Continuous Improvement shall be calculated on the basis of implementation costs and blended person-month rate quoted by the SI and provided in Schedule VI and estimated blended person-month effort to be submitted by the SI and mutually agreed upon by the SI and SCRB. The enhancements proposed by the SI should be based on the collection and collation of end-user feedback; as well as ideas generated by the SI through their research and other sources. The BUYER may also propose enhancements based on user-feedback from Police Stations, various Headquarters and other Stakeholders. Only those enhancements that qualify as significant enhancements, that when implemented will result in a quantum leap in meeting user needs, enhancing the user experience and acceptance and improve the outcomes in policing, will be considered for Continuous Improvement. Each enhancement will have to go through the Change Control Procedure as elaborated in the Schedule VIII and blended person-month rate quoted by the SI and provided in Schedule VI will be used to cost the change request. However, the total value of all the change requests will be limited to Rs. <<amount>>. In case there are no approved enhancements to the CAS (State) for the next version, this amount will remain unused and will not be paid to the SI.

### **2.5. Additional work:**

The BUYER has the option to avail the services of SI for carrying out any extension or changes in scope of work, as a part of the Project, provided the prices for the same has been obtained already in the bidding process leading to this Contract and listed in the Schedule VI. All such

additional work will be initiated using the change control procedures listed in the Schedule VIII.

#### **2.6. Supply to BUYER:**

The SI represents and warrants to the BUYER to supply to the BUYER the components that form the Bill of Materials proposed for the deployment of CAS (State). The commitment shall cover procurement costs (including multiple units of software licenses and all infrastructure associated with the deployment of the application and its components directly from the main suppliers and not resellers) and the cost of ownership / maintenance.

#### **2.7. Performance Bank guarantee**

SI warrants to provide bank guarantee for the Contract as a whole, valued at 10% of value of the Contract valid for the Operative Period of Contract. (**“Performance Bank Guarantee”**) or (**“PBG”**)

#### **2.8. Extension of the Contract**

The BUYER has the option to extend the Contract on expiry, to avail the services of SI for specific work or continuation of the work carried out during the Operative Period of Contract. All the general terms and conditions other than the scope of work as listed in Article 3 of this Contract will be in force during the extended period of the Contract. The new scope of work for the extension period will be defined through the change control procedure mentioned in Schedule VIII.

#### **2.9. Amendment**

No provisions of this Contract shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the Effective Date of Contract and signed by both Parties and which expressly states to amend this Contract.

#### **2.10. Contract Documents**

The following documents shall be deemed to form and be read and construed as part of the Contract,

- (a) This Contract and all the attached Schedules
- (b) The Request for Proposal Document issued to short-listed bidders on XXXX, the addenda and pre-bid clarifications issued subsequent to the release of Request for Proposal Document and attached as Appendix I
- (c) The undertakings submitted by the SI as part of the clarifications submitted to the BUYER and attached as Appendix II.
- (d) The Technical Proposal dated XXXX submitted by SI, subsequent clarifications submitted by SI and the technical presentation submitted by the SI in response to the RFP and attached as Appendix III
- (e) The Commercial bid proposal submitted by the SI in response to the RFP dated XXXX and attached as Appendix IV
- (f) Letter of Acceptance of Offer for the SI No: XXXX and dated XXXX and Attached as Appendix V

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the above chronological order in which the Contract Documents are listed, provided the Terms of this contract agreement and Schedules attached thereof

take precedence over all other documents as listed above. Further in case of conflict between RFP document, as amended, and proposal of SI, the provisions mentioned in the RFP document, its annexures, addenda and pre-bid clarifications issued for the RFP shall prevail.

### 3. ARTICLE 3: SCOPE OF PROJECT

<<The scope of work for the SI will be as per the scope defined in the Volume I of the RFP>>

#### **Interpretation of the Scope of Work:**

- (a) The BUYER retains the right of the final say in the interpretation of the scope of the Project. The possible variations to the processes during the Business Design phase from the way they are specified in this Schedule should not be considered as deviations or extensions to the original process specifications.
- (b) The final acceptance of the integrated solution and infrastructure components should be as per the performance requirements and will be the determining factor but not the specifications of the solution or infrastructure alone.

#### **4. ARTICLE 4: Payment Terms**

##### **4.1. Terms of Payment**

- (a) In consideration of the Project and subject to the provisions of this Contract, the BUYER shall pay SI, in accordance with the Schedule VII to this Contract.
- (b) BUYER shall release the payment to SI only if SI is able to achieve the Service Levels as specified in Schedule II of this Contract. In case SI is unable to achieve the Service Levels within the time lines specified in Schedule II of this Contract, the BUYER shall be entitled to charge penalties as specified in the said Schedule.
- (c) Except as otherwise provided for herein or as agreed between the Parties in writing, the BUYER shall not be required to make any payments in respect of the services other than those covered by the terms of payment as stated in the Schedule VII read along with Schedule II of this Contract.
- (d) The BUYER is entitled to deduct following sums from the payments to be made to SI in pursuant to this Contract :-
  - (i) Penalties: If SI fails to meet Minimum Service Levels, as measured on a half-yearly basis, for a particular Service Level, the BUYER shall deduct the amount of penalties related to the severity of violation, calculated as per Schedule II of this Contract.
  - (ii) The BUYER can also calculate a financial sum and deduct the same from the payment to be made to the SI, as a result of the failure of the SI to meet the Milestones within the time limits prescribed under the Contract.

##### **4.2. Invoicing and Settlement**

In respect of its remuneration for the Project, the SI shall be eligible to receive payments in accordance with the Schedule VII read along with Schedule II of this Contract.

- (a) The BUYER shall be invoiced by the SI within 30 (Thirty) days of achieving respective Payment Milestones for the Project. Unless otherwise agreed in writing between the Parties or expressly set out in the Contract, the SI shall raise an invoice as per the terms of payment as stated in Schedule VII.
- (b) The invoices will be accepted by the BUYER for payment only after the SCRB or the designated representative of the SCRB has issued an acceptance certificate that the respective Payment Milestones and the Deliverables of those milestones are accepted.
- (c) Any invoice presented in accordance with this Article shall be in a form agreed in advance by the BUYER.
- (d) In case of delay of more than 180 (One hundred and eighty) days in raising an invoice by the SI, the BUYER may not pay the SI for that part of the Services.



- (e) Invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in the Schedule VII shall be applied to the next payment invoice.
- (f) The BUYER shall be entitled to process the payment of any invoice raised by SI or part of it only after the acceptance certificate for the Deliverables is issued by the SCRB. Any exercise by the BUYER under this Article shall not entitle SI to delay or withhold provision of the Project.

#### **4.3. Payment of Tax / Tax Considerations**

- (a) The BUYER shall be entitled to deduct tax from the amounts due and payable to SI, wherever applicable. SI shall pay for all other taxes in connection with this Contract, and any other including, but not limited to, property, sales, use, excise duty, value-added goods and services, consumption and other similar taxes or duties.
- (b) The BUYER or its associated entity shall provide SI with the statement of tax receipt of any taxes deducted at source and paid for the Project on payments under this Contract. SI agrees to reimburse and not hold the BUYER accountable from any deficiency (including penalties and interest) relating to taxes that are its responsibility under this paragraph. For purposes of this Contract, taxes shall include taxes incurred on transactions between and among the BUYER and the SI.
- (c) In the event of any increase or decrease of the rate of taxes due to any statutory notification/s during the term of the Contract, the consequential effect shall be to the account of SI.
- (d) The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with (i) any resale certificates, (ii) any relevant Information regarding use of out-of-state materials, or services and (iii) any exemption certificates or Information reasonably requested by the other Party.

#### **4.4. Liquidated Damages**

In the event of SI's failure to submit the Bonds, Guarantees and Documents, supply the Project Assets and conduct trials, installation of equipment and training as per RFP, the BUYER may at his discretion withhold any payment until the completion of the Contract. The BUYER may also deduct from SI as agreed, liquidated damages to the sum of 0.5% of the Contract price of the delayed/undelivered stores/ services mentioned above for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not higher than 10% of the value of delayed services. This right to claim any liquidated damages shall be without prejudice to other rights and remedies available to BUYER under the Contract and/or any other law.



## 5. ARTICLE 5: Representation and Warranties

### 5.1. Representations and Warranties and Covenants of SI

*SI represents and warrants and covenants to the BUYER that:*

- (a) It is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Contract or matters arising there under including any obligation, liability or responsibility hereunder.
- (b) It has full power and authority to execute, deliver and perform its obligations under this Contract.
- (c) This Contract is executed by a duly authorized representative of the SI.
- (d) It has taken all necessary action to authorise the execution, delivery and performance of this Contract.
- (e) This Contract constitutes the legal, valid and binding obligation of SI, enforceable against it in accordance with the terms hereof.
- (f) There are no actions, suits or proceedings pending or to its best knowledge threatened against or affecting it, before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Contract.
- (g) It has the financial standing and capacity to undertake the Project in accordance with the terms of this Contract.
- (h) It will discharge its obligations under this Agreement with due skill, care and proper diligence.
- (i) The execution, delivery and performance of this Contract will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or any Applicable Laws or any covenant, Contract, agreement, arrangement, understanding, decree or order to which it is a Party or by which it or any of its properties or assets is bound or affected.
- (j) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Contract and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Contract.
- (k) It has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in

the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Contract.

- (l) All its rights and interests in the Project/Project Assets that are to be transferred to the BUYER, pursuant to this Contract shall pass to and vest in the BUYER or its nominee on the Transfer Date free and clear of all liens, claims and encumbrances, without any further act or deed on its part or that of the BUYER, and that none of the Project Assets that are acquired by the BUYER shall be acquired by it, subject to any agreement under which a security interest or other lien or encumbrance is retained by any person, save and except as expressly provided in this Contract.
- (m) No representation or warranty by it contained herein or in any other document furnished by it to the BUYER including the Proposal or to any Government Authority contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.
- (n) No sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Contract or entering into this Contract or for influencing or attempting to influence any officer or employee of the BUYER in connection therewith.
- (o) Agrees that the execution, delivery and performance by it of this Contract and all other agreements, Contracts, documents and writings relating to this Contract constitute private and commercial acts and not public or governmental acts.
- (p) Consents generally in respect of the enforcement of any judgement against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings.
- (q) Provide support in terms of annual maintenance for a minimum period of three years from the date of Go Live. The BUYER has the option to go for additional annual maintenance for a period of two years.
- (r) It shall co-operate and co-ordinate with Replacement SI as per provisions of Schedule X of this Contract.
- (s) It shall provide a monthly Availability and Performance Report in SCRB suggested format, to the SCRB at the end of every month containing the summary of all Incidents reported to it and SI's related performance measurement for that period. The monthly Availability and Performance Report will be deemed to be accepted by the SCRB upon review and signoff by both SI and SCRB.
- (t) It must deploy Enterprise Management System and other tools as required and develop additional scripts (if required) for capturing the required data for service level report generation in automated way. These tools shall play a critical role in monitoring the service level compliance and hence will have to be customized accordingly. These tools should generate the Service Level monitoring report in the end of every month which is to be shared with SCRB on a monthly basis. The tools should also be capable of

generating Service Level reports on a monthly/quarterly/half-yearly basis. SCRB will audit the tools and the scripts on a regular basis.

- (u) It will achieve all the Service Levels within the time lines defined in Schedule II of this Contract and in its failure of achieving the same, it shall be liable to pay penalties to the BUYER.
- (v) Apart from fulfilling its other obligations as specified in this Contract, SI shall develop Interfaces/ APIs for the required departments during CAS (State) Enhancement development including other applications and CAS (State) Portal to enable access and integration.
- (w) SI shall certify, develop, test as per the requirements of RFP.

## **5.2. Representations and Warranties of the BUYER**

The BUYER represents and warrants to SI that:-

- (a) It has full power and authority to execute, deliver and perform its obligations under this Contract.
- (b) It has taken all necessary action to authorize the execution, delivery and performance of this Contract.

## **5.3. Warranties on the Supply and Services**

- (a) SI warrants that the Project Assets supplied under this Contract conform to technical specifications and functional requirement specifications prescribed in RFP and shall perform according to the said technical specifications.
- (b) SI warrants that it will procure all the Project Assets and Third Party Software from the vendors of repute, duly approved by the BUYER. The BUYER hereby reserves its right to reject the assets and software procured by SI from any other vendor other than the vendors duly approved by the BUYER.
- (c) SI warrants that the Project Assets are of the latest version, at the time of delivery to the BUYER. They shall not be nearing end of sale/ end of support; and shall be supported by SI to ensure its efficient and effective operation for the entire Operative Period of Contract.
- (d) SI warrants that the Project Assets supplied under this Contract shall be of the highest grade and quality and consistent with the established and accepted standards. The Project Assets shall be in full conformity with the specifications and shall operate properly and safely. All recent design improvements in Project Assets, unless provided otherwise in the Contract shall also be made available.
- (e) SI warrants that the Project Assets shall be free from all encumbrances and defects / faults arising from design, material, manufacture or workmanship or from any act or omission of SI that may present a snag/fault, under normal use of the same.

- (f) SI warrants for a period of three years of mandatory support and two years of support optional at BUYER's discretion for maintenance of the CAS (State) from the date of Go Live; that the Project Assets and/or services supplied under this Contract and each component used in the software thereof shall be free from all types of defects / failures.
- (g) If within the period of warranty, the Project Assets are reported by the BUYER to have failed to perform as per the specifications, SI shall rectify the same free of charge or accept damages as per Service Levels and terms of damages contained in this Contract. Warranty of such Project Asset would be extended by such duration. Record of the down time would be maintained by user in log book. Resources required for fixes shall be maintained at the Project Site.
- (h) In case complete delivery of the Project Assets are delayed beyond the period stipulated in this Contract, then SI undertakes that the annual maintenance period for such Project Assets shall be extended to that extent.
- (i) SI hereby warrants that necessary service back up during the annual maintenance shall be provided and it will ensure that the performance, availability, and other metrics for application (including OS) is as per Service Levels described in Schedule II.
- (j) SI hereby warrants that it will collect and maintain all the information collected from various offices at the Project Sites of Odisha State Police. All such information will be treated as Confidential Information by the SI and will not be disclosed and used by it other than the purposes set out in this Contract.
- (k) SI shall be responsible for the acts of its employees, sub-contractors, OEM personnel or any other persons deployed by it for performing its obligations pursuant to the Project.
- (l) SI hereby warrants that it will fulfill its entire obligations listed in all the volumes of RFP and the Contract in pursuant to the Project.

#### **5.4. Mutual covenants, representation and warranties of the BUYER and SI**

The Parties represent and warrants to each other that they will be responsible for fulfilling all their responsibilities as per the Contract.

#### **5.5. Insurance**

SI warrants and represents that it shall maintain adequate standard forms of comprehensive insurance including liability insurance and any other insurance for the personnel, assets, Data, software, etc and further agrees to provide to the BUYER on request copies of such policy of insurance and evidence that the premiums have been paid. SI also warrants and represents that it shall keep all their respective directors, partners, advisers, agents, representatives and or employees adequately insured in respect of business travel in Odisha and further agrees to provide to the BUYER on request copies of such policy of insurance and evidence that the premiums have been paid.

**5.6. Disclosure.**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Contract.

**5.7. Invoking Performance Guarantee**

Notwithstanding what has been stated elsewhere in this Contract and the Schedules attached herein, in the event the SI is unable to meet the obligations pursuant to the implementation of the Project and/or provide the Operations and Maintenance Services and any related scope of work as stated in this Contract, the BUYER will, inter alia, have the option to invoke the Performance Guarantee after serving a written notice fifteen days in advance on the SI. Such right of the SI shall be without prejudice to any other rights or remedies available under law or contract.

## **6. ARTICLE 6: Obligations and Compliances**

### **6.1. Statutory Obligations**

- (a) The Contract shall be governed by and interpreted in accordance with the laws of the Republic of India.
- (b) The Parties agree that the rights and obligations under this Contract are recognized and performed in conformity with laws and legal procedures established in the country and no right under this Contract becomes enforceable and no obligation requires performance, if the enforcement of such right or the performance of such obligation violates any such laws and legal procedures established.
- (c) SI represents and warrants to the BUYER that the performance of obligations under this Contract will not conflict with or result in a breach of any of the terms, conditions or provisions of or constitute a default or require any consent under, any instrument or arrangement to which SI is a party or violate any other Applicable Laws or any writ, order, injunction or judgment by which SI is bound and notwithstanding ARTICLE 6.1 (a) as far as SI is aware, no provision of this Contract derogates from the statutory obligations of SI.

### **6.2. Compliance with Laws**

- (a) Each Party to this Contract accepts that its individual conduct shall (to the extent applicable to it) at all times comply with all applicable laws, rules and regulations. For the avoidance of doubt the obligations of the Parties to this Contract are subject to their respective compliance with all applicable laws and regulations.
- (b) Compliance with all applicable laws: SI agrees and undertakes to observe, adhere to, abide by, comply with and notify the BUYER about all laws in force or as are or as made applicable in future, pertaining to or applicable to them, their business, their employees or their obligations towards them pursuant to the Project and shall indemnify, keep indemnified, hold harmless, defend and protect the BUYER and its employees/officers/staff/ personnel/representatives/agents from any failure or omission on its part to do so and against all claims or demands of liability and all consequences that may occur or arise for any default or failure on its part to conform or comply with the above and all other statutory obligations arising there-from.
- (c) Compliance in obtaining approvals/permissions/licenses: SI has already obtained all such consents, permissions, approvals, licenses, etc., as may be necessary or required for any of the purposes of this Contract or for the conduct of its own business under any applicable Law, Government regulation/guidelines and shall keep the same valid and in force during the term of this Contract and shall also promptly obtain all such future approvals and consents from various departments as may be required in future under any amendments in law or notifications issued by the Government, and in the event of any failure or omission to do so, shall indemnify, keep indemnified, hold harmless, defend, protect and fully compensate the BUYER and its employees/ officers/ staff/ personnel/ representatives/agents from and against all claims or demands of liability and all

consequences that may occur or arise for any default or failure on its part to conform or comply with the above and all other statutory obligations arising there-from.



## 7. ARTICLE 7: Force Majeure Events and Events of Default

### 7.1. Force Majeure Events

- (a) The failure or delay of a Party (“Affected Party”) to perform any obligation under this Contract solely by reason of “Force Majeure” event shall not be deemed to be a breach of this Contract, provided, however, that the Affected Party so prevented from complying shall continue to take all actions within its power to comply as fully as possible herewith and to remove or remedy such cause with all reasonable dispatch. ‘Force Majeure’ events are only those events which prevents or impedes the due performance of the Affected Party and which such Affected Party while observing due diligence is unable to avoid or overcome through its individual concerted effort. For the purpose of this Contract, Force Majeure event shall mean but not limited to acts of God not confined to the premises of the Affected Party, flood, drought, lightning or fire, earthquakes, strike, lock-outs beyond its control, labour disturbance not caused at the instance of the Affected Party, acts of government or other competent authority, “Change in Law”, war, terrorist activities, military operations, riots, epidemics, civil commotions etc. Notwithstanding anything contained herein, no failure, delay or other default of any contractor or sub-contractor to either Party shall entitle such Party to claim Force Majeure under this provision.
- (b) The Party seeking to rely on Force Majeure shall promptly, within 2 days, notify the other Party (“Non Affected Party”) of the occurrence of a Force Majeure event as a condition precedent to the availability of this defense with particulars detailed in writing to the Non Affected Party and shall demonstrate that it has and is taking all reasonable measures to mitigate the events of Force Majeure. The Non Affected Party may grant such extension of the date of completion as may be considered reasonable in those circumstances.
- (c) If any delay in the Affected Party’s performance caused by Force Majeure event exceeds ninety (90) days, the Non Affected Party may at its option terminate this Contract immediately.
- (a) In the event the Force Majeure substantially prevents, hinders or delays the SI’s performance of Services necessary for Project’s implementation or the operation of Project’s critical business functions for a period in excess of 30 (Thirty) days, the BUYER may declare that an emergency exists. However, when the situation arising out of Force Majeure comes to an end in the assessment of BUYER, the following conditions shall apply:
- (i) Prior to commencement of Maintenance Stage: If the event of Force Majeure occurs prior to commencement of operations and continues for a period in excess of 15 (Fifteen) days, then the BUYER will grant a period of 15 (Fifteen) days to the SI to resume normal activities under the Agreement. In case the default continues, and SI does not resume normal activities under this Agreement, the BUYER will have the option to invoke the Performance Guarantee and/or terminate this Agreement forthwith, without any liability (except the payments due to the SI for the Services already rendered under the SLA) after intimating the SI of the same in writing.



- (ii) Post-commencement of Maintenance Stage: If the event of Force Majeure occurs post commencement of operations and continues for a period in excess of 10 (Ten) days, then the BUYER will grant a period of 10 (Ten) days to the SI to resume normal services under the Agreement. In case the default continues, the BUYER, if considers necessary, may grant an extension of time to the SI for rectifying the situation. However, the BUYER will deduct for each day of the extension period a percentage proportionate to the number of days and the affected areas/s from the next payable amount. If there is any further delay despite the extended period, the BUYER will have the option to invoke the Performance Guarantee and/or terminate the Agreement.
- (b) Notwithstanding anything contained herein, the failure on the part of the SI under the Contract to implement any disaster contingency planning and back-up and other data safeguards against natural disaster, fire, sabotage or other similar occurrence shall not be an event of Force Majeure.
- (c) Notwithstanding the rights of SI during an event of Force Majeure, if it is essential for the BUYER to run its operations smoothly and uninterrupted, like in the case of war or external aggression, if the Project is under annual maintenance Stage, the BUYER has the right to reject the notice of SI for a Force Majeure and request SI to provide the services required by the BUYER. However under these circumstances, it will be the responsibility of the BUYER to provide security to SI personnel on duty and be responsible and accountable for all the eventualities as per the Applicable Laws.

## **7.2. SI Event of Default**

“SI Event of Default” means any of the following events unless such an event has occurred as a consequence of a Force Majeure Event:-

- (a) SI’s failure to perform or discharge any of its obligations in accordance with the provisions of this Contract.
- (b) The activities at any Project Site is abandoned by SI for more than 7 (Seven) Days during the Project.
- (c) A delay of more than 180 (one hundred and eighty) days from any Milestone date in achieving any of the performance obligations set forth for the relevant Milestone date.
- (d) Change in the structure of the Project team comprising of the Key Personnel (as defined in ARTICLE 16 and Schedule IV) by SI without written approval of the BUYER for the changes.
- (e) Inability to staff the Project with competent team in case any of the team members leave the Project either due to voluntary severance or disciplinary actions against them.
- (f) SI’s failure to perform or discharge any of its obligations under any other project contract, which has or is likely to affect the Project/ facilities and services related to the Project, materially.

- (g) Any representation made or warranties given by SI under this Contract are found to be false or misleading.
- (h) If SI has given false Information in qualifying for the Project or getting selected or any Information provided by the SI during the procurement process is found to be false.
- (i) Appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of SI by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.
- (j) Levy of an execution or restraint on SI's assets which has or is likely to have Material Adverse Effect and/or affect the Project and services related to the Project, materially and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days.
- (k) The Performance Bank Guarantee and any other securities required to be maintained under this Contract is not maintained in terms of the provisions hereof.
- (l) SI abandons or expresses its intention to revoke/terminate this Contract without being entitled to do so as is expressly provided in the Contract.
- (m) Change in constitution/organization of SI which violates the pre-qualification criteria used in RFP process.
- (n) Amalgamation of SI with any other company or reconstruction or transfer of the whole or part of the Project or the revenue earning parts of the Project [other than transfer of assets in the ordinary course of business] in contravention with the provisions of ARTICLE 2 hereof; and
- (o) SI engages or knowingly allows any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Contract and/or by law or which constitutes a breach of the Contract or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Contract.
- (p) SI suffers a change of Control. For the purpose of this provision the change of control of SI would happen if:
- (q) If the promoter group of SI ceases to control the board of directors of SI; or
- (r) Any reduction in the cumulative shareholding of the promoter group of SI falls below 26% of the total paid up equity share capital of SI.

**Note:** For this provision "Promoter group" shall mean the names of the promoters and entities as defined under the Monopolies and Restrictive Trade Practices Act, 1969 read with Section 3(1)e(1) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 of <<Company Name>> as mentioned below.

- (i) <<Name>> partner representing <<Company Name>>
- (ii)

- (s) Breach of the SI's obligations pursuant to the Project including without limitation obligations as set out in Confidentiality clause of this Contract by the SI.
- (t) SI's failure in achieving the Service Levels within the timelines defined in Schedule II of this Contract.
- (u) SI's failure in providing the Project Assets as per the BUYER requirements.

### **7.3. The BUYER Events of Default**

The BUYER's failure to perform or discharge its obligations in accordance with the provisions of this Contract unless such failure has occurred as a consequence of any SI Event of Default or a Force Majeure Event.

### **7.4. Parties Rights.**

- (a) Upon the occurrence of SI's Event of Default, the BUYER shall without prejudice to any other rights and remedies available to it under this Contract, be entitled to terminate this Contract forthwith and/or charge penalties as per the provisions of the Contract or at the BUYER's option in accordance with the procedure mentioned in this Contract.
- (b) Upon the occurrence of the BUYER Event of Default, SI shall be entitled to terminate this Contract.
- (c) Consultation Notice. The non defaulting Party shall issue to the defaulting Party a notice in writing specifying, in reasonable detail, the underlying Event of Default(s) and proposing consultation amongst the Parties to consider possible measures of curing or otherwise dealing with the underlying Event of Default ("**Consultation Notice**").

### **7.5. Remedial Process.**

The Parties shall endeavor to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default within 90 (ninety) Days or such extended period as the Parties may agree in writing ("Remedial Period") from the date of issuance of the Consultation Notice by the non-defaulting Party.

### **7.6. Obligations during Remedial Period.**

Except expressly provided otherwise in the Contract, during the Remedial Period, the Parties shall continue to perform their respective obligations under this Contract, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

### **7.7. Revocation of Consultation Notice.**

If during the Remedial Period, the underlying Event of Default is cured or waived or the Parties agree upon any of the measures set out in this ARTICLE 7, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

**7.8. Termination due to Events of Default.**

If upon the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived, the Party who has issued the Consultation Notice shall have the right to terminate this Contract, in which event, inter alia, the provisions of ARTICLE 9 and Schedules IX and X shall, to the extent expressly made applicable, apply.

**7.9. Remedies Cumulative.**

The exercise of right by either Party to terminate this Contract, as provided herein, shall not preclude such Party from availing any other rights or remedies that may be available to it under any other law or Contract. All remedies available to the Parties shall be cumulative and the exercise or failure to exercise, one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

## **8. ARTICLE 8: DISPUTE RESOLUTION**

### **8.1. Amicable Settlement.**

- (a) If any dispute or difference or claims of any kind arise between the BUYER and SI in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Contract pursuant to the Project or the rights, duties or liabilities of any Party under this Contract, whether before or after the termination of this Contract, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.
- (b) Any dispute arising out of or in connection with this Contract shall in the first instance be dealt with in accordance with the escalation mechanism as set out in the Schedule IX.
- (c) Assistance of Experts The Parties may, in appropriate cases agree to refer the matter to an Expert/s appointed by the BUYER. The cost of obtaining the service of the Expert shall be shared equally.

### **8.2. Arbitration**

Any dispute or difference whatsoever arising between the Parties out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof, which cannot be resolved through the application of the provisions of ARTICLE 8.1 above, shall be taken to arbitration.

### **8.3. Arbitrators**

- a) Failing amicable settlement and/or settlement with the assistance of Expert appointed by the Parties by mutual consent, the dispute or differences or claims as the case may be, shall be finally settled by the arbitration proceedings shall be carried under the Indian Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof.
- b) The arbitration shall be by a panel of three Arbitrators, one to be appointed by each Party and the third, who shall act as presiding arbitrator, to be appointed by the two arbitrators appointed by the Parties.
- c) The arbitration shall be invoked by any party issuing a 30 days written notice to the other party, invoking the arbitration and appointing an Arbitrator. Upon receipt of the notice, the other Party shall appoint the second Arbitrator. The two Arbitrators so appointed shall appoint the third Arbitrator who shall act as the 'Presiding Arbitrator'. In the event of a vacancy caused in the office of the arbitrators, the Party which nominated such arbitrator shall be entitled to nominate another in his place and the arbitration proceedings shall continue from the stage they were left by the retiring arbitrator.
- d) In the event of one of the Parties failing to appoint an arbitrator within thirty (30) days from the receipt of notice or if any of the Parties does not nominate another arbitrator within thirty (30) days of the place of arbitrator falling vacant, the appointment shall be made upon request of the other Party by the Chief Justice of the Odisha High Court.

- e) Both the Parties will make attempts to appoint arbitrators with background in Information Technology related activities, Information Technology related acts, understanding of the processes and activities of police organizations and an understanding of the software applications .

#### **8.4. Place of Arbitration**

Place of arbitration will be Bhubaneswar, Odisha.

#### **8.5. Language for Arbitration**

The request for arbitration, answer to the request, terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

#### **8.6. Procedure**

The procedure to be followed within the arbitration, including appointment of arbitrator/arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof.

#### **8.7. Enforcement of Award**

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

#### **8.8. Fees and Expenses**

- (a) The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid equally by respective Parties subject to determination by the arbitrators.
- (b) The arbitrators may provide in the arbitral award for the reimbursement to the successful party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the Party.

#### **8.9. Performance during Arbitration**

Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is made; the Parties shall continue to perform all of their obligations under this Contract without prejudice to a final adjustment in accordance with such award.

## 9. ARTICLE 9: TERMINATION AND TRANSFER

### 9.1. Termination Procedure

- a) The Party entitled to terminate this Contract either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing as per Schedule IX to the other Party. The Termination Notice shall be of not more than 30 (thirty) days, (“**Termination Period**”) and at the expiry of the Termination Period, this Contract shall stand terminated without any further notice.
- b) In case SI is in material breach of its obligations (including and not limited to the SI Event of Default) or its representation and warranties under this Contract, the BUYER may terminate this Contract upon notice to SI. Any notice served pursuant to this Article shall give reasonable details of the material breach, which could include the following events:
  - (i) If there is breach which translates into default in providing Services by SI pursuant to the Contract, continuously for more than one week, then the BUYER, will serve a 30 (Thirty) days notice in writing (as per Schedule IX) to SI for curing such breach. In case the breach continues after the notice period, the BUYER will have the option to terminate the Contract at the end of the notice period and forfeit the Performance Bank Guarantee.
  - (ii) In case there is a delay of more than 4 (Four) weeks in completion of the Design Development and Management Phase by SI, the BUYER may terminate this Contract and forfeit the Performance Bank Guarantee, after affording a reasonable opportunity to SI to explain the circumstances leading to such a delay.

### 9.2. Obligations during Termination Period.

During Termination Period, SI shall, subject to where applicable to the provisions of this Article, continue to perform its obligations under this Contract including and not limited to co-operation and co-ordination with Replacement SI pursuant to Schedule X of this Contract, failing which the SI shall compensate the BUYER for any loss or damage occasioned or suffered on account of the underlying failure/breach.

### 9.3. Consequence of Termination.

- (a) The liability of BUYER in case of termination of the Contract initiated on account of BUYER event of default or Force Majeure shall be limited to payment for the Services, up to the Milestone immediately preceding the Milestone, SI would be working on at the time of termination.
- (b) In case of termination due to SI Event of Default, SI shall pay damages to the BUYER, and in case of SI's failure in payment of such damages, BUYER shall be entitled to encashment of all bank guarantees furnished by the BUYER and all outstanding payments. Any additional expenditure arising from subsequent negotiations of the Contract with any other agency will also be SI's liability. Final payment up to the last completed Milestone will be after handing over the complete documentation and meeting all requirements as per the Contract to the satisfaction of SCRB.
- (c) In case termination is due to SI's failure in meeting the Service Levels in pursuant to this Contract, the BUYER shall also be entitled to claim penalties as per the provisions of Schedule II.



- (d) In the event of a termination effected in pursuance of this Article, or expiry of this Contract, the relevant provisions of the Exit Management (Schedule X) shall apply.

#### **9.4. SI obligations during Termination Period:-**

##### **9.4.1. Transfer of assets**

- a) **Termination during Design and Development Stage:** In case of termination during Design and Development Stage, the BUYER shall provide a list of the Project Assets, Third Party contracts, and licenses to the Third Party Software used by the SI in pursuant to the Project, which it intends to obtain from the SI. SI shall transfer all such assets, third party contracts, third party software etc. mentioned in the list to the BUYER at the prices quoted by it in the Bill of Materials in its Proposal, on the specifications stated by the BUYER more elaborately detailed in RFP and mentioned in Schedule V of this Contract and accepted by the BUYER. In case certain payments are pending for the assets, third party contracts, third party software etc to be transferred in favour of the BUYER, then the SI will make all the required payments prior and pursuant to such transfer. Needless to say as the CAS (State) software is being given by the BUYER and is being enhanced and developed exclusively for the BUYER, thus all the ownership rights etc will always remain vested with the BUYER. BUYER may also require SI to transfer any of the SI Assets at prices mutually agreed between the Parties.
- b) **Termination during Maintenance Stage:** The warranties etc or any other Project Asset purchased by SI pursuant to the Project shall be transferred to the BUYER.

##### **9.4.2. SCRB supplied equipment and facilities**

SI shall handover the peaceful possession of all the equipment and facilities supplied by the BUYER including and not limited to Odisha Police/ SCRB Supplied Equipment and to the Project Sites, pursuant to the Project. BUYER shall be entitled to claim the damages in case of damage to any of the above mentioned equipment, facilities and sites etc by the SI.

#### **9.5. Risk**

Until transfer in accordance with the Contract, during the Project, the Project Assets shall remain at the sole risk of SI except for any loss or damage caused to or suffered by SI due to any direct default on the part of the BUYER under this Contract.



## 10. ARTICLE 10: Use of Undue Influence

### 10.1. Undertaking by SI

- a) SI undertakes that it has not given, offered or promised to give, directly or indirectly any gift, consideration, reward, commission, fees brokerage or inducement to any person in service of the BUYER or otherwise in procuring the Contract or forbearing to do or for having done any act in relation to obtaining or execution of the Contract or any other agreement with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other agreement with the Government. Any breach of the aforesaid undertaking by SI or any one employed by it or acting on its behalf (whether with or without the knowledge of SI) or the commission of any offence by SI or anyone employed by it or acting on its behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1988 or any other acts/legislations enacted for the prevention of corruption shall entitle the BUYER to forthwith terminate the Contract and all or any other contracts with SI and recover from SI the amount of any loss arising from such cancellation. The decision of the BUYER or his nominee to the effect that a breach of the undertaking had been committed shall be final and binding on SI.
- b) Giving or offering of any gift, bribe or inducement or any attempt at any such act on behalf of SI towards any officer/employee of the BUYER or to any other person in a position to influence any officer/employee of the BUYER for showing any favour in relation to this or any other Contract, shall render SI to such liability/ penalty as the BUYER may deem proper, including but not limited to termination of the Contract, imposition of penal damages, forfeiture of the bank guarantees (including Performance Bank Guarantee) and seek immediate refund of the amounts paid by the BUYER.

## **11. ARTICLE 11: Agents / Agency Commission**

### **11.1. Undertaking by SI**

SI confirms and declares to the BUYER that it has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommend to the Government of Odisha or any of its functionaries, whether officially or unofficially, to the award of the Contract to SI; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. SI agrees that if it is established at any time to the satisfaction of the BUYER that the present declaration is in any way incorrect or if at a later stage it is discovered by the BUYER that SI has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after signing of this Contract, SI will be liable to refund that amount to the BUYER. SI will also be debarred from entering into any contract with the Government of Odisha for a minimum period of five years, which may be extended by the BUYER at its sole discretion. The BUYER will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to SI who shall in such event is liable to refund all payments made by the BUYER in terms of the Contract along with interest at the rate of 2% per annum above LIBOR rate. The BUYER will also have the right to recover any such amount from any contracts concluded earlier with the Government of Odisha.

## **12. ARTICLE 12: Non-Disclosure of Contract Documents**

### **12.1. Undertaking by SI**

Except as provided under the Contract, SI shall not disclose and cause other parties (connected with the Project, who have been disclosed the Information on Contract as per the terms of the Contract) not to disclose the Contract or any provision, specification, plan, design, pattern, sample or Information thereof to any third party, without prior written consent of the BUYER. For the aforesaid purpose Parties to the Contract shall enter into the Non-Disclosure Agreement (“NDA”) the format of which is provided in Schedule XII of this Contract.

### **13. ARTICLE 13: Assets and Third Party Contracts**

#### **13.1. The Physical Assets of SI Prior to Go Live**

- a. SI agrees to install and commission a development environment consisting of the hardware, Networks, software, power backup at a mutually agreed Project Site big enough to organize the entire Project team pursuant to this Contract.
- b. SI Assets for Own Use will be owned, operated and managed by SI.
- c. SI is free to bring in and move out of the SCRB, all SI Assets for own Use by following the procedure listed below:-
  - (i) The details of Equipments required to be brought in/ taken out of the SCRB/ Odisha Police Area, will be approved by an official designated by the BUYER for the purpose.
  - (ii) When the Equipments have to be brought in to the SCRB/ Odisha Police Area, a requisite permission will be sought and the Equipments would move in on an approval slip signed by designated official.
  - (iii) When the Equipments have to be taken out of the SCRB/ Odisha Police Area, a gate pass will be prepared and signed by the Director SI / delegated authority. A copy of signed gate pass will be deposited at the main gate.
  - (iv) SI must adhere to the security regulations of the SCRB/ Odisha Police in vogue.
- d. SI will keep a register of all the Equipment brought into the SCRB/ Odisha Police Area and inform BUYER of this movement.
- e. It is the responsibility of SI to ensure the safety, security and up keeping of the physical assets brought into the SCRB/ Odisha Police Area.
- f. The BUYER shall not be liable for the safety, security and upkeep of any of the assets of SI.

#### **13.2. The Project Assets**

- (a) The physical/tangible/intangible assets, forming part of the Project Assets shall be brought into SCRB/ Odisha Police area by SI for the purpose of the Project and transferred to the BUYER, pursuant to this Contract.
- (b) SI will keep a register of all the assets of the Project bought into the Project Site, with all the documents indicating the movement and ownership. This register will be countersigned by the BUYER representative
- (c) It is the responsibility of SI to ensure the safety of the Project Assets and insure these assets till transfer of ownership.
- (d) The ownership of all the Project Assets will be transferred to BUYER or its nominee, in the event of Go-Live coming into effect. Further in the event of termination of the Contract prior to Go-Live, the ownership of only such Project Assets shall be transferred to the BUYER or its nominee as the BUYER in its sole discretion may determine. The

relevant provisions of Schedule X would apply to any transfer of the Project Assets to the BUYER, pursuant to this Article.

### **13.3. Transfer of Project Assets**

- (a) All the Project Assets shall be transferred to the BUYER on the Go-Live coming into effect or as per ARTICLE 9 of this Contract, in case of termination of the Contract prior to Go-Live, without any liabilities. In case certain payments are pending for the assets, third party contracts, third party software etc to be transferred in favour of the BUYER, then the SI will make all the required payments pursuant and prior to such transfer.
- (b) The transfer of these assets means the BUYER will have the complete ownership of these assets and will be responsible for safety of these assets and authority for usage.
- (c) However, SI will continue to be responsible for maintaining Project Assets after Go Live, as per the annual maintenance clauses and will be fully accountable for it.

### **13.4. ODISHA POLICE Supplied Equipment**

- (a) Odisha Police Supplied Equipment includes the office space, the physical assets associated with the office, and hardware belonging to BUYER and earmarked by BUYER for the purpose of the Project and used by SI for the Project are treated as the ODISHA POLICE assets for the Project.
- (b) The details of the assets earmarked by the BUYER for the purpose of the Project and used by SI shall be listed in a register duly signed by the representatives of SI and BUYER.
- (c) The ownership of Odisha Police Supplied Equipment lies with BUYER.
- (d) In normal circumstances the BUYER will not charge SI for using the ODISHA POLICE Supplied Equipment.
- (e) SI is responsible for ensuring that the Odisha Police Supplied Equipment is used for the purpose of the Project only.
- (f) If SI is found to be using the Odisha Police Supplied Equipment for any other activity other than directly or indirectly related to the Project, the BUYER has the rights to initiate appropriate proceedings and claim relief (including damages) against SI for the misuse of the ODISHA POLICE Supplied Equipment.
- (g) The Odisha Police Supplied Equipment shall not be transferred or moved by SI either within or outside the premises of Odisha Police.

### **13.5. Third Party Contracts**

- (a) The contracts executed by SI to procure any of the services or Project Assets to be used by SI in the Project, including but not limited to development tools, testing facilities, outsourcing contracts during the Project are to be treated as “Third Party Contracts”.

- (b) The Third Party Contracts are owned by SI and the liability for these contracts lies solely with SI.
- (c) The agreements with the OEMs for supply of goods and service including but not limited to hardware, network components, software applications, service contracts for annual maintenance support, specialized services for audit/testing etc. will be assigned to the BUYER or its nominees and will indicate Odisha Police as “End Users” as per the Contract.
- (d) SI will share these contracts and licenses in entirety with the BUYER and BUYER will have the right to further share or sub-license these contracts with other entities at its sole discretion. However the ultimate responsibility towards the OEMs etc will be of the SI.
- (e) The BUYER will have the right to overrule any restrictive clauses or clauses limiting the ownership of these contracts.
- (f) In the event of termination of the Contract, SI shall transfer/assign or cause to be transferred/assigned to the BUYER or its nominee such third party contracts which are valid and subsisting and which the BUYER has chosen to take over at its sole discretion as per Schedule X hereof.

## 14. ARTICLE 14: INTELLECTUAL PROPERTY

### 14.1. Intellectual Property

- (a) **Pre-Existing Works of Odisha Police** The copyright and other Intellectual Property Rights in any materials or software (whether written or machine-readable) created by Odisha Police/ SCRB and licensed to SI for enhancement or modification as a part of this Contract will remain vested in Odisha Police/ SCRB. Such Pre-Existing Works of Odisha Police shall include but is not limited to CAS (State), source code, complied code, version control system, documentations and artifacts.
- (b) **Pre-Existing Works** The copyright and other Intellectual Property Rights in any materials or software (whether written or machine-readable) created by or licensed to SI prior to this Contract or outside this engagement and any subsequent Modifications to same (“**Pre-Existing Works**”) will remain vested in SI or a third party. To the extent that pre-existing works are embedded in any deliverable materials, the BUYER will have a license to use them in accordance with the provisions stated herein below in ARTICLE 14.1 (b) of this Contract.
- (c) **Other Deliverable Materials** The BUYER will own the copyright in all deliverable materials created under this Contract by SI. The Commercial Off the Shelf (COTS) products and their IPRs will be owned and controlled by the Original Equipment Manufacturers (OEMs) like IBM, Microsoft, Oracle, Sun. The IPR of any product or software which has been developed/ enhanced/ modified/ configured by the SI shall be transferred to the BUYER.
- (d) SI agrees that ownership of all Intellectual Property Rights for any functional and technical process of Odisha Police or Information or materials or Odisha Police Supplied Equipment provided to SI by the BUYER shall remain vested in the BUYER.
- (e) SI agrees that the BUYER shall own all Intellectual Property Rights in all Project Assets procured, purchased and produced exclusively for the BUYER by SI pursuant to this Contract including improvements that are developed by SI for the BUYER. SI shall execute necessary documents and instruments to perfect the ownership of SCRB in respect of the aforesaid materials.
- (f) Notwithstanding any other provision of this Contract, SI will not be prevented or restricted by this Contract from using any technique, idea, concepts or know-how relating to SI's business activities. Nothing contained in this Contract shall restrict either Party from the use of any ideas, concepts, know-how, or techniques relating to software development, which either Party, individually or jointly, develops or discloses under this Contract, except to the extent such use infringes any of either Party's patent rights or copyrights. However, except for the licenses expressly granted by an agreement between the Parties to this Contract, neither this Contract nor any disclosure made hereunder grants any license to either Party under any patents or copyrights of the other Party.



#### 14.2. Infringement of Intellectual Property Rights

- a) SI confirms that there shall be no infringement of any patent or intellectual & industrial property rights as per the applicable laws of relevant jurisdictions, having requisite competence, in respect of the Project Assets or any part thereof, supplied under this Contract. SI shall indemnify the BUYER against all cost/claims/legal claims/liabilities arising from third party claim at any time on account of the infringement or unauthorised use of patent or intellectual & industrial property rights of any such parties, whether such claims arise in respect of manufacture or use. Without prejudice to the aforesaid indemnity, SI shall be responsible for the completion of the development and uninterrupted use of such Project Asset or any part thereof by the BUYER and persons authorised by the BUYER, irrespective of the fact of claims of infringement of any or all the rights mentioned above.
- b) If, as a result of such claim, the BUYER is injuncted from using such Project Asset or any part thereof or in is likely to be injuncted, SI, at its expense, shall (i) modify such Project Asset (provided its functionality is not impaired) so that it is no longer infringing and obtains a certificate to the said effect from the party claiming infringement, (ii) replace such Project Asset with a functionally equivalent of the same, or (iii) obtain the right for the BUYER to continue using such Project Assets.
- c) For a third party product supplied by SI, SI shall pass on to BUYER all the indemnities offered by the third party.

#### 14.3. Trademarks and Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party. Except as required by law or the rules and regulations of each stock exchange upon which the securities of one of the Parties is listed, neither Party shall publish or permit to be published either along or in conjunction with any other person any press release, Information, article, photograph, illustration or any other material of whatever kind relating to this Contract, or the business of the Parties without prior reference to and approval in writing from the other Party, such approval not to be unreasonably withheld or delayed.

**15. ARTICLE 15: Access to Books of Accounts, Audit and Reporting****15.1. Access to Books of Accounts, Audit and Reporting**

- (a) SI shall provide access to the auditors of the BUYER or the authorised representatives of the BUYER to the following or any such material required, under circumstances to determine, compensation, payment of agent's commission, unlawful payments, employment of suspected personnel for the Project, availability and grant of the authorisation to the authorized representatives of SI etc:-
  - (i) Books of accounts.
  - (ii) SI's contracts.
  - (iii) Recruitment and employment practices.
  - (iv) Project loading practices and procedures.
  - (v) The project management techniques and tools.
  - (vi) The documentation standards.
  - (vii) Statutory Books and Registers
- (b) SI should provide the BUYER or its authorized representatives necessary Information/right to inspect the documents or Information as per Schedule XI.

## 16. ARTICLE 16: Personnel

### 16.1. Supervision and Management

- (a) Personnel assigned by SI to implement the Project shall be employees of SI, and under no circumstances will such personnel be considered employees of the BUYER.
- (b) SI agrees that no right of any employment with BUYER shall accrue or arise, by virtue of engagement of employees, agents, contractors, subcontractors etc. by SI, pursuant to this Contract.
- (c) All remuneration, claims, wages, dues of such employees, agents, contractors, subcontractors of SI is agreed to be paid by SI alone and the BUYER shall not have any direct or indirect liability or obligation, to pay any charges, claims or wages of any of employee, agents, contractors, and subcontractors of SI.
- (d) SI has the responsibility for payment of such personnel's entire compensation, including salary, withholding of income taxes and other taxes as applicable, worker's compensation, employee and disability benefits and the like and shall be responsible for all employer obligations under all applicable laws
- (e) SI shall have the sole responsibility for supervision and control of its personnel and ensuring that they carry out their assigned job in a professional manner.
- (f) SI shall use its best efforts to ensure that sufficient SI personnel are employed to perform the services pursuant to the Project, and also that such personnel have appropriate qualifications to perform the services.
- (g) The BUYER has the right to seek the replacement of any member of the Project team being deployed by SI or the subcontractor, based on the assessment of the BUYER that the person in question is incompetent to carry out the tasks expected of him/her or found that person does not really possess the skills /experience/qualifications as projected in his/her profile or on the ground of security concerns or breach of ethics.
- (h) Except as stated in this Article, nothing in this Contract will limit the ability of SI to assign or reassign its employees; provided that SI shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. The BUYER shall have the right to review and approve SI's plan for any such knowledge transfer. SI shall maintain the same standards for skills and professionalism among replacement personnel as in personnel being replaced.
- (i) In the event that the BUYER requests that any SI personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule but not later than 15 Working Days from the date of such requests.
- (j) The BUYER would like to identify those persons whose profiles were the basis for the evaluation of the competence of SI to carry out the implementation of the Project at the BUYER as the "Key personnel" as listed in Schedule IV. It is the responsibility of SI to

deploy these resources either on a full time or part time basis for the activities they have been proposed to be deployed during the Project as per the response to the RFP submitted by SI.

- (k) In the event that the BUYER identifies any personnel of SI as “Key Personnel”, then SI shall not remove or replace such personnel without the prior written consent of the BUYER under the applicable section of this Contract.
- (l) Under exceptional circumstances when the Key Personnel are to be replaced or removed, SI shall put forward the profiles of personnel being proposed as replacements. These profiles should be either equivalent or better than the ones being replaced. However whether these profiles are better or equivalent to the ones being replaced will be decided by the BUYER or its authorised representative. The BUYER or its authorised representative will have the right to accept or reject these substitute profiles.
- (m) In the event that any Key Personnel is to be replaced for reasons not attributed to the BUYER the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule but not later than 7 Working Days from the date of exit of such personnel.
- (n) In the event that the Key Personnel are to be replaced, it can be done only by following the procedure in Schedule IV.
- (o) Each Party shall be responsible for the performance of all its obligations under this Contract and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- (p) SI warrants that its personnel shall at all times comply with security regulations in effect from time to time at the BUYER premises and externally for materials belonging to the BUYER.
- (q) SI will comply with the directions issued from time to time by the BUYER and the standards related to the security and safety insofar as it applies to the personnel operating out of the BUYER premises.

#### **16.2. The Minimum Proficiency**

The BUYER would like to identify certain roles of the Project team being deployed by SI during the implementation of Project, as key roles as per Schedule IV. These key roles are identified to be critical to the success of the Project and it is expected that these key roles will be staffed with personnel with adequate proficiency. The minimum proficiency in terms of expertise, skills and educational qualifications are listed in Schedule IV.

#### **16.3. Clearance for Personnel**

- (a) In pursuance of the conditions in the RFP, SI undertakes that all the personnel being deployed by SI for the Project are Indian nationals.

- (b) It is the responsibility of SI to ensure that all the personnel deployed by SI for the Project are not involved in any criminal or antinational activities.
- (c) SI should submit the police verification records of any of the personnel of SI/ Sub Contractors.

#### **16.4. Sub Contract Liabilities**

Any sub contracting by SI shall be as per the terms of the Contract. It is understood by the Parties that SI shall be liable for any such subcontracting and further SI shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. SI undertakes to indemnify the BUYER or its nominated agencies from any claims on the grounds stated hereinabove.

#### **16.5. Third Party Personnel**

- (a) In pursuance of the commitment made in the Contract, SI undertakes to take the services of experts from the OEM for the specific activities for the Third Party Software and products
- (b) The OEM personnel and the services rendered by them will be paid by SI.
- (c) The OEM personnel will report directly to the BUYER on their work, observations and audit findings
- (d) BUYER will seek the deployment of the OEM personnel through SI within the framework of this Contract.
- (e) OEM personnel will not be treated as employees of the BUYER in any circumstances whatsoever and hence will not be held responsible for payment of any compensation etc. to them regarding their work pursuant to the Project.
- (f) OEM Personnel will be bound by all the provisions of the Contract including and not limited to the confidentiality provisions provided herein.

#### **16.6. Liability for Actions of the Personnel**

- (a) SI agrees to be responsible for managing the activities of its personnel or the personnel of its subcontractors (if any) and shall be accountable for both.
- (b) The SI agrees and shall be vicariously liable for any acts, deeds or things done by their employees, agents, contractors, subcontractors, etc., which is outside the scope of power vested or instructions issued by the BUYER.
- (c) SI agrees and shall be the principal employer of the employees, agents, contractors, subcontractors, OEM personnel etc. engaged by SI and shall be vicariously liable for all the acts, deeds or things, whether the same is within the scope of instructions or outside the scope of instructions set out in the Contract.
- (d) SI agrees to hold the BUYER, its successors, assignees, employees, representatives and administrators fully indemnified and harmless against loss or liability, claims actions or proceedings, if any, that may arise from whatsoever nature caused to the BUYER through the action of its employees, agents, contractors, subcontractors, OEM Personnel etc.

- (e) The BUYER agrees to inform SI of all breaches and claims of indemnification and agrees to grant SI sole authority to defend, manage, negotiate or settle such claims; and make available all reasonable assistance in defending the claims and the expenses of such activities are directly borne by SI.
- (f) The written demand by the BUYER as to the loss / damages stated in Articles 16.6(a) to (e) shall be final, conclusive and binding on SI and SI agrees and shall be liable to pay on demand the actual amount of such loss / damages caused to the BUYER.

#### **16.7. Personnel during Exit Management**

- (a) At any time during the exit management period, SI shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the BUYER a list of all employees (with job titles) of SI dedicated to providing the services at the commencement of the exit management period.
- (b) If the termination happens and the exit management provisions need to be invoked during the design and development Stage, the BUYER will have the right to request the services of the Key Personnel of SI to facilitate transfer of knowledge to the BUYER or the Replacement SI as per the Schedule X.
- (c) On the termination of the Contract during annual maintenance Stage, the BUYER will have the right to identify SI personnel and demand their presence for knowledge transfer to the BUYER or the Replacement SI.
- (d) If the BUYER hires the services of another agency on the expiry of the Contract, or before that, to carry out the next phase of “roll out” of the application, SI shall cooperate with the new agency in knowledge transfer and the BUYER shall have the right to demand the presence of the required personnel from SI for this purpose.

#### **16.8. Non Hiring**

- (a) During the term of the Contract and for a period of one year thereafter, except as otherwise provided under this Contract neither party shall (either directly or indirectly through a third party) employ, solicit to employ, cause to be solicited for the purpose of employment or offer employment to any employee/s or sub contractor/s of the other party, or aid any third person to do so, without the specific written consent of the other party.
- (b) The clause does not prevent hiring based on responses by employees to public advertisement on any media that are not specifically targeted at the other Party's employees.

## **17. ARTICLE 17: Information Security and Audit Rights**

### **17.1. Information Security**

- (a) SI shall also comply with the Information Technology security and standards policies in force from time to time at the Project Site of the BUYER and SI, and which the BUYER makes SI aware insofar as the same apply to the Project.
- (b) The SI shall report forthwith in writing all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Project's Data, facilities or Confidential Information.
- (c) SI shall upon request by the BUYER participate in regular meetings when safety and Information Technology security matters are reviewed.
- (d) The SI shall promptly report in writing any act or omission which it is aware that could have an adverse effect on the proper conduct of safety and information technology security at the Project Site.
- (e) The Parties acknowledge that high level of security needs to be maintained. All persons employed by SI for this Contract shall undergo verification as per regulations in force in ODISHA POLICE. SI undertakes to treat information passed on to them under this Contract as classified. Such Information will not be communicated/published/advertised by SI to any person without the express permission of the BUYER. All persons working on this Contract shall be required to render a certificate that they have familiarized themselves with the provisions of The Indian Official Secret Act 1923 and the Information Technology Act 2000.
- (f) Any private, proprietary or classified Information which has to be made available by the receiving party to a third party for the execution of this Contract, shall be submitted to such a third party with the same restrictions as included in this Article.
- (g) SI undertakes to meet the laid down security requirements/stipulations. All the matters related to the Contract will be treated as classified and highly confidential and shall not be communicated to anybody (except for the purpose of this Contract) or published/advertised without the written consent of the BUYER.

### **17.2. Confidential Information**

- (a) SI recognizes that during the term of the Contract, sensitive Data will be procured and made available to it, its sub-contractors and agents and others working for or under SI. Further, SI also recognises that any improper and unauthorised disclosure or usage of the Project Data by any such recipient may constitute a breach of applicable laws causing harm not only to BUYER but also the stakeholders whose data is used. SI, its subcontractors and agents shall demonstrate utmost care, sensitivity and strict confidentiality. Any breach of any confidentiality obligation set out in the Contract including Articles will result in BUYER a right to seek injunctive relief and damages



suffered or are reasonably likely to be suffered and the cost incurred to mitigate the implication of such disclosure or usage, from the SI.

- (b) **“Confidential Information”** means any and all information that is or has been received by either Party (the “Receiving Party”) from the other Party (the “Disclosing Party”) and that: (a) relates to the Disclosing Party; and (b) is designated by the Disclosing Party as being confidential or is disclosed in circumstances where the Receiving Party would reasonably understand that the disclosed information would be confidential or (c) is prepared or performed by or on behalf of the Disclosing Party by its employees, officers, directors, agents, representatives or consultants.
- (c) Without limiting the generality of the foregoing, Confidential Information shall mean and include any information, data, analysis, compilations, notes, extracts, materials, reports, designs, specifications, graphs, plans, charts, studies, memoranda or other documents, or materials relating to the Software, the modules, the Program Documentation, the Source Codes, the object codes and all Enhancements and Updates, services, systems processes, ideas, concepts, formulas, methods, know how, trade secrets, designs, research, inventions, techniques, processes, algorithms, schematics, testing procedures, software design and architecture, computer code, internal Documentation, design and function specifications, product requirements, problem reports, analysis and performance information, business affairs, Projects, technology, finances (including revenue projections, cost summaries, pricing formulae), clientele, markets, marketing and sales programs, client and customer data, appraisal mechanisms, planning processes etc. or any existing or future plans, forecasts or strategies in respect thereof.
- (d) **“Confidential Materials”** shall mean all tangible materials containing Confidential Information, including, without limitation, written or printed documents and computer disks or tapes, whether machine or user readable.

### 17.3. Managing Confidential Information

- (a) The Receiving Party agrees to regard, preserve and keep as secret and confidential all confidential information and materials of the Disclosing Party howsoever obtained and agrees that it shall not, without obtaining the written consent of the Disclosing Party :-
- (b) Disclose, transmit, reproduce or make available any such Confidential Information and materials to any person, firm, Company or any other entity other than its directors, partners, advisers, agents or employees, who need to know the same for the purposes of the Project. The Receiving Party agrees to be responsible for ensuring that the usage and confidentiality by its directors, partners, advisers, agents or employees is in accordance with the terms and conditions of this Contract; or
  - (i) Unless otherwise agreed herein, use any such Confidential Information and materials for its own benefit or the benefit of others or do anything prejudicial to the interests of the Disclosing Party or its customers or their projects.
- (c) In maintaining confidentiality hereunder the Receiving Party on receiving the Confidential Information and materials agrees and warrants that it shall:

- (i) Take at least the same degree of care in safeguarding such Confidential Information and materials as it takes for its own Confidential Information of like importance and such degree of care shall be at least that which is reasonably calculated to prevent such inadvertent disclosure.
  - (ii) Keep the Confidential Information and materials and any copies thereof secure and in such a way so as to prevent unauthorized access by any third party.
  - (iii) Limit access to such Confidential Information and materials to those of its directors, partners, advisers, agents or employees who are directly involved in the consideration/evaluation of the Confidential Information and bind each of its directors, partners, advisers, agents or employees so involved to protect the Confidential Information and materials in the manner prescribed in this Contract; and
  - (iv) Upon discovery of any unauthorized disclosure or suspected unauthorized disclosure of Confidential Information, promptly inform the Disclosing Party of such disclosure in writing and immediately return to the Disclosing Party all such Information and materials, in whatsoever form, including any and all copies thereof.
- (d) The Receiving Party who receives the Confidential Information and materials agrees that on a regular basis or in receipt of a written demand from the Disclosing Party :-
- (i) Immediately return all Confidential Materials and all copies thereof provided to, or produced by it or its advisers, as the case may be, which is in Receiving Party's possession or under its custody and control;
  - (ii) Hand over all analyses, compilations, notes, studies, memoranda or other documents prepared by it or its associates to the extent that the same contain, reflect or derive from Confidential Information relating to the Disclosing Party.
  - (iii) Expunge any Confidential Information relating to the Disclosing Party or its projects from any computer, word processor or other device in its possession or under its custody and control; and
  - (iv) Furnish a certificate signed by its director or other responsible representative confirming that to the best of his/her knowledge, information and belief, having made all proper enquiries the requirements of this paragraph have been fully complied with.

- (e) The restrictions in this ARTICLE 17.3 shall not apply to:
  - (v) Any information that is publicly available at the time of its disclosure or becomes publicly available following disclosure (other than as a result of disclosure by the Disclosing Party contrary to the terms of this Contract); or
  - (vi) Any disclosure required by law or by any court of competent jurisdiction, the rules and regulations of any recognized stock exchange or any enquiry or investigation by any governmental, statutory or regulatory body which is lawfully entitled to require any such disclosure provided that, so far as it is lawful and practical to do so prior to such disclosure, the Receiving Party shall promptly notify the Disclosing Party of such requirement with a view to providing the Disclosing Party an opportunity to obtain a protective order or to contest the disclosure or otherwise agree to the timing and content of such disclosure; or
  - (vii) Is identified in writing by the Discloser as no longer proprietary or confidential.
- (f) The Receiving Party agrees that its obligation under this Section with respect to confidentiality will survive the termination of this Contract.
- (g) Confidential Information shall be and remain the property of the Discloser and nothing in this Article shall be construed to grant either Party any right or licence with respect to the other Party's Confidential Information otherwise than as is expressly set out in this Contract.
- (h) Both Parties agree that monetary damages would not be a sufficient remedy for any breach of this Article by the other Party and that the BUYER shall be entitled to equitable relief, including injunction and specific performance as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by a Party of this Article, but shall be in addition to all other remedies available at law or equity to the damaged Party.
- (i) In connection with the Project under this Contract, the BUYER may from time to time undertake one or more quality assessment reviews for the purpose of improving quality of the Project. In order for such reviews to be frank and candid, for the greatest benefit to the BUYER and SI, they shall be kept confidential to the greatest extent possible. The Parties agree that any Documentation created in connection with such quality assessment reviews shall be Confidential Information of the BUYER which is licensed to SI for any internal use except that in no event shall such Documentation or the results of such reviews be discoverable or admissible (or used for any purpose) in any arbitration or legal proceedings against the BUYER related to this Contract or the Project.
- (j) SI agrees that all information processed, stored, or transmitted by SI equipment belongs to the BUYER. By having the responsibility to maintain the equipment, SI agrees not to acquire implicit access rights to the information or rights to redistribute the information.
- (k) SI understands and agrees that civil, criminal, or administrative penalties may apply for failure to protect information appropriately.

**17.4. Information Ownership**

- (a) SI agrees that all information processed, stored, or transmitted by the Project Assets or SI Assets for Own Use belongs to the BUYER. By having the responsibility to maintain the equipment, SI agrees not to acquire implicit access rights to the information or rights to redistribute the information.
- (b) SI understands and agrees that civil, criminal, or administrative implications may arise for failure to protect information appropriately.
- (c) SI agrees that:
  - (i) All customers', supplier's, associated organisations and process information related information of the BUYER is considered as sensitive and will be protected from unauthorized disclosure, Modification or access.
  - (ii) Any sensitive information of the BUYER would be protected from unauthorized disclosure, Modification or access.
  - (iii) The type of sensitive information that will be found on the BUYER systems that SI agrees to support or have access to includes but not limited to , process information, user rights, security features & guidelines, disaster management practices etc.

**17.5. Privacy and Security Safeguards**

- (a) SI agrees not to publish or disclose in any manner, under any circumstances the details of any security safeguards designed, developed, or implemented by SI under this Contract or existing at any of the BUYER location.
- (b) SI agrees to develop procedures and implementation plans to ensure that IT resources (being used during the testing phase or annual maintenance phase) leaving the control of the assigned user (such as being reassigned, removed for repair, replaced, or upgraded) are cleared of all the BUYER information, data and sensitive application software.
- (c) SI understands and agrees to the fact that very sensitive Confidential Information about the BUYER and general public will be made available to it, pursuant to the Project. SI agrees not to disclose and/or use such information in any manner whatsoever except for fulfilling its obligations under the Contract and pursuant to the Project.

**17.6. Access for Inspection**

- (a) SI shall be obliged to extend all co-operations to the BUYER personnel or the experts appointed by the BUYER for purposes of verifying that the Project Systems and the Project Facilities and the activities within the Project team are operated and maintained in compliance with Information Technology Security Policies of ODISHA POLICE.
- (b) Additionally, SI shall upon prior intimation by the BUYER provide the BUYER personnel or the authorized representatives of the BUYER access to the Project Assets/the Project

Facilities and documents for inspection and review of operations and also to ascertain compliance with any of the requirements under this Contract.

- (c) Without prejudice to the generality of this provision, it is agreed that SI shall in particular extend all co-operation and information required by the experts appointed by the BUYER for conducting a security audit and verifying that the Project/Project Facilities and Services are in strict compliance with the information security requirements.
- (d) These audits may include, but are not limited to, a review of access and authorization procedures, physical security controls, backup and recovery procedures, Network security controls and program change controls.
- (e) SI agrees to provide the BUYER access to various monitoring and performance measurement systems (both manual and automated). The BUYER has the right to get the monitoring and performance measurement systems (both manual and automated) audited without prior approval / notice to SI.
- (f) The audit, access, reporting and inspection rights of the BUYER under this Article shall be governed by Schedule XI of the Contract.

**18. ARTICLE 18: Indemnities, Limitations of Liabilities****18.1. Third Party Claims**

- (a) SI undertakes to indemnify the BUYER from and against all losses, claims or damages on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the BUYER) attributable to SI's performance under this Contract.
- (b) The indemnities set out in this Articles shall be subject to the following conditions:-
  - (i) The BUYER, as promptly as practicable, informs SI in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise.
  - (ii) The BUYER may at its option (but shall not be obligated to), at the cost of SI, give SI all reasonable assistance in the defense of such claim including reasonable access to all relevant information, Documentation and personnel provided that the BUYER may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such defense.
  - (iii) If SI does not assume full control over the defense of a claim as provided in this Article, the BUYER may participate in such defense at cost and expense of SI.
  - (iv) The BUYER shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of SI.
  - (v) All settlements of claims subject to indemnification under this Article will: (i) be entered into only with the consent of the BUYER, which consent will not be unreasonably withheld and include an unconditional release to the BUYER from the claimant for all liability in respect of such claim; and (ii) include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement.
  - (vi) The BUYER shall account to SI for all awards, settlements, damages and costs (if any) finally awarded in favor of the BUYER which are to be paid to it, in connection with any such claims or proceedings;

**18.2. Limitation of Liability**

- (a) SI's aggregate liability for actual direct damages shall be capped at 100% of the value of the Contract provided that this limit shall not apply to 1) the bodily injury (including death) and damage to real property and tangible personal property caused by SI's negligence and/or 2) the intellectual property infringement claims as per ARTICLE 14.
- (b) SI shall not in any event be liable for any indirect or consequential damages, or for loss of profit, business, revenue, goodwill, anticipated savings or Data, or third party claims except with respect to bodily injury (including death) and damage to real and tangible personal property.

- (c) Neither this Contract nor the services delivered by SI under this Contract grants or creates any rights, benefits, claims, obligations or causes of action in, to or on behalf of any person or entity (including any third party) other than between the respective Parties to this Contract, as the case may be.
- (d) Title and Risk of Loss. SI shall bear the risk of loss on Project Assets; up to the time they are transferred and handed over to the BUYER - after which it shall stand transferred to the BUYER. SI shall arrange and pay for insurance to cover such item until it is transferred and even after the transfer of the Project Assets till the insurance policies come up for a renewal.



**19. ARTICLE 19: Service Levels**

- (a) The BUYER shall sign Service Level Agreement(s) (“SLA”) with SI. These SLAs will prevail from the start of the Maintenance Stage. However, SLAs will be subject to being redefined, to the extent necessitated by SCRB and the SLAs may be reviewed on a bi-annual basis as SCRB decides after taking the advice of the SI and other agencies provided that the fundamental objectives and principles of the SLA remain intact. All the changes in terms of addition, alteration or deletion of certain parameters would be made by SCRB in consultation with the SI. Payments to the SI are linked to the compliance with the SLA metrics by the SI.
- (b) The SLA parameters shall be monitored on a monthly basis as per the individual SLA parameter requirements. However, if the performance of the System/services is degraded significantly at any given point in time during the Contract and if the immediate measures are not implemented and issues are not rectified to the complete satisfaction of SCRB or an agency designated by them, then SCRB will have the right to take appropriate disciplinary actions including termination of the Contract.
- (c) A Service Level violation will occur in case of SI’s failure to meet minimum Service Levels, for a particular Service Level. Minimum Service Levels will be measured on a half-yearly basis. Overall availability and performance measurements will be on a monthly/activity basis for the purpose of Service Level reporting. The Availability and Performance Report will be provided by the SI on monthly basis in the SCRB suggested format and a review shall be conducted based on this report. A monthly Availability and Performance Report shall be provided to SCRB at the end of every month containing the summary of all incidents reported and associated SI performance measurement for that period. The monthly Availability and Performance Report will be deemed to be accepted by the SCRB upon review and signoff by both SI and SCRB. Where required, some of the Service Levels will be assessed through audits or reports e.g. utilization reports, measurements reports, etc., as appropriate to be provided by the SI on a monthly basis, in the formats as required by the SCRB. The tools to perform the audit will need to be provided by the SI. Audits will normally be done on regular basis or as required by SCRB and will be performed by SCRB or SCRB appointed third party agencies.
- (d) SI shall put in its best efforts in order to achieve the Service Levels in accordance with Schedule II. In case these Service Levels cannot be achieved within the timelines defined in the Schedule II, it shall result in a breach of Contract and invoke the penalty clause laid down in Schedule II. The penalties will be computed and calculated as per the computation explained in the schedule.

## 20. ARTICLE 20: Miscellaneous

### 20.1. Entire Agreement

- (a) This Contract shall constitute the entire agreement amongst the Parties hereto in respect of the subject matter hereof. If there is any aspect of the Project not covered by any of the provisions of this Contract, then and only in that event, reference may be made by the Parties to the bid documents, inter alia including the clauses and materials of all the specifications, terms and conditions of RFP, issued by the BUYER and also including the addendums, clarifications given in writing in the pre-bid meetings and the submissions of SI and the bid submitted by SI but not otherwise. In case of any contradictions in the terms of this Contract and any such other bid documents as referred to above, the terms of this Contract shall prevail.
- (b) This Contract, including all documents incorporated herein by reference, constitutes the complete and final agreement between the BUYER and SI with respect to the subject matter hereof, and supersedes all prior or contemporaneous negotiations, written or oral understandings and agreements, between the Parties regarding such subject matter.
- (c) This Contract may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

### 20.2. Notices

- (a) Except expressly otherwise provided in this Contract, any notice or other document, which may be given by either Party under the Contract, shall be given in writing in person or by pre-paid recorded delivery post or by facsimile transmission or by email.
- (b) All the notices will be initiated by the designated officers of the respective Parties

**NOTE:** All the notices will be sent to the “principal officers” of both Parties with a copy marked to the designated initiating officers of the other party.

- (c) In relation to a notice given under the Contract, any such notice or other document shall be addressed to the other Party's address as set out below:

BUYER:

Inspector General of Police,  
Police Computer Wing,  
State Crime Records Bureau,

.....

.....

SI:

<<Designation>>

<<Company Name>>

<<Address>>

Email Address:

Tel:

- (d) Any notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) between the hours of 9.00 am and 5.00 pm (or on the next Working Day thereafter if delivered outside such hours) at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission between the hours of 9.00 am and 5.00 pm (or on the next Working Days thereafter if delivered outside such hours), and 7 Working Days from the date of posting (if by letter under Regd. AD)
- (e) Either Party to the Contract may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its Effective Date.

### **20.3. Independent Contractors**

Nothing in this Contract shall be construed as establishing or implying any partnership or joint venture between the Parties to this Contract and, except as expressly stated in this Contract, nothing in this Contract shall be deemed to constitute any Parties as the agent of any other Party or authorizes either Party:

- (a) To incur any expenses on behalf of the other Party,
- (b) To enter into any engagement or make any representation or warranty on behalf of the other Party,
- (c) To pledge the credit of or otherwise bind or oblige the other Party,
- (d) To commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

### **20.4. Sub Contractors**

SI shall not subcontract any work related to the following works related to the design, development, and management of CAS (State) to be performed under this Contract without the BUYER's prior written consent :-

- (a) Project management for the implementation of the CAS (State) Solution
- (b) Project management and implementation of CAS (State) including enhancements, modifications, extensions, integration, CAS (State) Portal, SMS Gateway, Knowledge Repository
- (c) Augmentation of the SDC
- (d) Procurement, installation and commissioning of the DR
- (e) Network monitoring
- (f) Business design and process Documentation
- (g) Conference room pilot of the application
- (h) Roll out of the application
- (i) Continuous improvement

**20.5. Authority for Assignment**

- (a) The BUYER may assign this Contract in whole or as part of a reorganization, restructuring, consolidation, merger, or as per the decisions of Government of Odisha.
- (b) SI shall not assign the Contract or its rights or its duties under this Contract either in whole or in part without the prior written consent of the BUYER, and any attempted assignment or delegation without such consent will be void. It is understood that transfer of 25% or more voting share capital of SI by one transaction or a series of transaction in favour of any person or a group persons shall inter-alia be considered and deemed to be an assignment/transfer of this Contract and shall require prior written consent of the BUYER.

**20.6. Specific Performance**

SI acknowledges and agrees that the BUYER would suffer irreparable loss and damage in the event any of the provisions of this Contract are not performed in accordance with their specific terms or are otherwise breached. Accordingly, SI agrees that BUYER shall be entitled to an injunction or such other equitable relief without notice to SI to prevent any breach of the provisions of this Contract and to enforce this Contract specifically and the terms and provisions hereof in any action instituted in any court having jurisdiction over the Parties and the matter, in addition to any other remedy to which the BUYER may be entitled, at law or in equity.

**20.7. Severability**

If any provision of the Contract, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of the Contract or the remainder of the provisions in question which shall remain in full force and effect. The Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.

**20.8. Waiver**

No waiver of any provision of this Contract shall be effective unless set forth in a written instrument signed by the Party waiving such provision. No failure or delay by a Party in exercising any right, power or remedy under this Contract shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. Without limiting the foregoing, no waiver by a Party of any breach by any other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

**20.9. Survival**

The termination of this Contract shall in no event terminate or prejudice (a) any right or obligation arising out of or accruing under this Contract attributable to events or circumstances occurring prior to such termination; (b) the provisions of this Contract that by their nature are intended to survive the termination of this Contract, including without limitation the provisions dealing with the Representations and Warranties of the Parties, Termination, Confidentiality, Indemnity Arbitration, Non-Solicitation, Governing Law and Notice respectively.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorised officers or representatives.

***For and on behalf of BUYER***

***For and on behalf of BUYER***

An authorized signatory duly nominated  
Pursuant to Board Resolution No.

(<<Name>>)

<<Designation>>

<<Company Name>>

Director, SCRB  
Government of Odisha

**Date:**  
**Place: Bhubaneswar**  
**Witnessed by**  
1.

2.

**Date:**  
**Place: Bhubaneswar**  
**Witnessed by**  
1.

2.

***Request for Proposal: CAS (State) Project, Government of Odisha- Volume III***

**Schedules of the Contract**



**21. SCHEDULE I: DELIVERABLES AND DELIVERY SCHEDULE**

<As per the Volume I of the RFP>

## 22. SCHEDULE II: SERVICE LEVELS AND PENALTIES

<As per the Volume I of the RFP>

### 23. SCHEDULE III: LIST OF ALL UNDERTAKINGS BY THE SI

The SI shall adhere to all the undertakings provided to the SCRB. The undertakings listed below are attached as Appendix II.

- (a) Undertaking on the Patent Rights
- (b) Undertaking on Conflict of Interest
- (c) Non-Malicious Code Certificate
- (d) Undertaking on Pricing of Items of Technical Response
- (e) Undertaking on Technology Information Provided
- (f) Undertaking on Price Commitment, Validity and Warranty Support
- (g) Details of the Storage Capacity
- (h) Undertaking on Offline Functionality
- (i) Undertaking on Provision for Required Storage Capacity
- (j) Undertaking on Compliance and Sizing of CAS (State) Infrastructure
- (k) Undertaking on Provision of Support for Software
- (l) Undertaking on Service Level Compliance
- (m) Undertaking on Deliverables
- (n) Undertaking on Training the Users of CAS (State) as per the Capacity Building plan
- (o) Undertaking on Support to Certification
- (p) Undertaking on Exit Management and Transition
- (q) Undertaking on Continuous Improvement
- (r) Undertaking on Personnel
- (s) Undertaking on Provision of Work Environment at Odisha Police
- (t) Undertaking on Changes to the Contract Clauses
- (u) Undertaking on Provision for Required Storage Capacity
- (v) Undertaking on Commercial Breakdown

## 24. SCHEDULE IV: PERSONNEL

### 24.1 The “Key Personnel” and the Procedure for Replacement

#### (a) The List of Key Personnel

Sl. No	Name	Proposed Position	Relevant Experience	Key Project handled
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				

### 24.2 The Procedure for Replacing Key Personnel

- (a) SI will give an advanced notice in writing of not less than four weeks on its intention to replace the core team member.
- (b) After getting the approval of the BUYER, SI will propose an equivalent profile as replacement to the BUYER.
- (c) The BUYER or its authorized representative will evaluate the profile and indicate the acceptance / rejection of the profile. The BUYER may seek a personal interview of the person being proposed.
- (d) After getting the approval of the BUYER, SI will ensure that there will be sufficient time for the replacement person to work with the person being replaced, for transferring the Project specific knowledge to him/her.
- (e) If the proposed profile is rejected by the BUYER, SI will provide alternate profiles, till there is an acceptable profile.
- (f) The costs associated with replacements like conducting interviews, travel costs of the replacement profile will be completely borne by SI
- (g) The format for submitting the profiles of replacement for core team members should be as below:

<b>Name of the person</b>	
---------------------------	--

<b>Role in the Project</b>	
<b>Qualification</b>	
<b>Total number of years of experience</b>	
<b>Number of years with the current company (the bidder)</b>	
<b>Functional area / expertise</b>	
<b>Area of certification</b>	
<b>Number of complete life cycle implementations carried out</b>	
<b>The names of customers. (Please provide the relevant names)</b>	
<b>The functional areas /processes implemented</b>	

## 25. SCHEDULE V: BILL OF MATERIALS

Detailed Bill of Materials for the Technical Environment at ODISHA POLICE (along with technical specifications) with Complete Break-up of Costs and Pricing for Different Items.

<<To be filled up after the finalization of the bidder>>

## 26. SCHEDULE VI: COSTS AND PRICING

Tables: Unit Rates for Supplementary Work / Services/ Resources:

<<To be filled up after the finalization of the bidder>>

Blended Person-month Quote for 50 Person-months

<<To be filled up after the finalization of the bidder>>



## **27. SCHEDULE VII: TERMS OF PAYMENT SCHEDULE**

### **27.1. Performance Bank Guarantee**

As required a PBG of 10% of value of the contract will be furnished by the SI in the form of a Bank Guarantee as per format provided in the RFP from Indian Public Sector Banks authorized by the Government to conduct Government transactions. The PBG is valid for entire term of the Contract.

### **27.2. Liquidated Damages**

In the event of the SI's failure to submit the Bonds, Guarantees and Documents and supply the solution / equipment as per schedule specified in the RFP, SCRB may at its discretion withhold any payment until the completion of the contract. SCRB may also deduct from the SI as agreed, liquidated damages to the sum of 0.5% of the contract price of the delayed/undelivered services (as detailed in the RFP) for every week of delay or part of a week, subject to the maximum value of the Liquidated Damages being not more than 10% of the value of delayed services. This right to claim any liquidated damages shall be without prejudice to other rights and remedies available to SCRB under the contract and law.

### **27.3. Payment Schedules and Milestones**

Total payment to be made to SI pursuant to the Project will have XXXX (need to define)

<<To be filled up as per Volume II of the RFP after the finalization of the bidder>>

## **28. SCHEDULE VIII: CHANGE CONTROL**

### **28.1. Purpose**

This Schedule applies to and describes the procedure to be followed in the event of any proposed change to the scope of work. Such change shall include, but shall not be limited to, changes in the scope of services provided by SI, pursuant to this Contract and changes to the terms of payment as stated in the Schedule VII. The BUYER and SI recognize that change is an inevitable part of delivering services and that a significant element of this change can be accomplished by re-organizing processes and responsibilities without a material effect on the cost. SI will endeavour to the best of its ability, to effect change without an increase in the terms of payment as stated in the Schedule VII and The BUYER will work with SI to ensure that all changes are discussed and managed in a constructive manner.

### **28.2. Change Control Note (CCN)**

- a) Change requests in respect of the Contract, the scope of work, the Deliverables, the acceptance criteria for the Deliverables, the Project management, or the Annual Maintenance Services will emanate from the Parties' respective relevant Project representatives who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the change control process and will complete Part A of the CCN given under section 2.7. CCNs will be presented to the other Party's Programme Manager who will acknowledge receipt by signature of the CCN.
- b) SI and the BUYER, while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of services pursuant to the Contract including ancillary and concomitant services required and as detailed in the RFP and is suggested and applicable only after the design, development, testing, acceptance of the application, as set out in this Contract.
- c) SI shall undertake the BUYER's approved changes up to 15% of the design and development costs of the CAS (State) to the BUYER.
- d) It is hereby also clarified that the costs for the changes brought in after Project sign-off will be calculated on the basis of implementation cost and blended person-month cost quoted by SI in its bid and estimated blended person-month effort to be submitted by SI prior to taking up the change of control event and accepted by the BUYER.

### **28.3. Quotation**

- a) SI shall assess the CCN and complete Part B of the CCN as per section 2.7. In completing Part B of the CCN SI shall provide as a minimum :-
  - (i) A description of the change.
  - (ii) A list of Deliverables required for implementing the change. A timetable for implementation.

- (iii) An estimate of the timelines or effort of any proposed change.
  - (iv) The unit of measure to cost the change (either the resource cost as indicated in the proposal or as a work element as mentioned in the proposal of SI).
  - (v) Any relevant acceptance criteria.
  - (vi) An assessment of the value of the proposed change.
  - (vii) Material evidence to prove that the proposed change is not already covered within the scope of the Project and the Implementation Services.
  - (viii) Description of the circumstances which influenced the origin of this change.
  - (ix) Alternative options possible to address the change if any and the implications of these alternative options.
- b) Prior to submission of the completed CCN to the BUYER, or its nominated agencies, SI will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, SI shall consider the materiality of the proposed change in the context of the Contract, the scope of Implementation Services, the Deliverables, the Project Management, Operation and Maintenance affected by the change and the total effect that may arise from implementation of the change.
- c) Materiality criteria will be established by the BUYER and SI's Programme Manager. Changes requiring no escalation of authority can be implemented. Discussion and Contract as to materiality will be held in accordance with the Schedule IX.

**28.4. Costs**

Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided SI meets the obligations as set in the CCN. In the event SI is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party will be borne by SI.

**28.5. Reporting**

Change requests and CCNs will be reported monthly to each Party's Programme Managers who will prioritize and review progress.

**28.6. Obligations**

SI shall be obliged to implement any proposed changes once the approval in accordance with clauses above has been given, with effect from the date agreed for implementation.

**28.7. Change Control Note**

<b>Change Control Note</b>		<b>CCN Number:</b>
<b>Part A: Initiation</b>		
Title:		
Originator:		
Sponsor:		
Date of Initiation:		
<b>Details of Proposed Change</b>		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)		
Authorized by THE BUYER	Date:	
Name:		
Signature:		
Received by the Operator	Date:	
Name:		
Signature:		
<b>Change Control Note</b>		<b>CCN Number:</b>
<b>Part B : Evaluation</b>		
(Identify any attachments as B1, B2, and B3 etc.)		
Changes to Services, charging structure, payment profile, Documentation, training, services and component working arrangements and any other contractual issue.		
<b>Brief Description of Solution:</b>		
<b>Impact:</b>		
<b>Deliverables:</b>		
<b>Timetable:</b>		
<b>Charges for Implementation:</b> (including a schedule of payments)		
<b>Other Relevant Information:</b> (including value-added and acceptance criteria)		
Authorized by the Operator	Date:	

<b>Name:</b>	
<b>Signature:</b>	
<b>For the BUYER and its nominated agencies</b>	<b>For SI</b>
Signature	Signature
Name	Name
Title	Title
Date	Date
<b>Change Control Note</b>	<b>CCN Number :</b>
<b>Part C : Authority to Proceed</b>	
Implementation of this CCN as submitted in Part A, in accordance with Part B is: (tick as appropriate)	
<b>Approved</b>  <b>Rejected</b>  <b>Requires Further Information</b> (as follows, or as Attachment 1 etc.)	
<b>For the BUYER and its nominated agencies</b>	<b>For SI</b>
Signature	Signature
Name	Name
Title	Title
Date	Date

### 28.8. Amendment to the Contract

<b>Amendment Note</b>	<b>Amendment Number:</b>
<b>Part A: Initiation</b>	
Title:	
Originator:	
Date of Initiation:	
<b>Details of Amendment</b>	
(To include reason for amendment and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)	
The clause or schedule of the	

Contract (the original wording)	
The clause or schedule of the Contract - changed wording	
Validated by PM of THE BUYER	Date:
Name:	
Signature:	
Validated by PM of SI	Date:
Name:	
Signature:	
Change Control Note	Amendment Number :
Part C : Authority to Incorporate (tick as appropriate)	
Approved	
Rejected	
Requires Further Information (as follows, or as Attachment 1 etc.)	
For the BUYER and its nominated agencies	For the SI
Signature	Signature
Name	Name
Title	Title
Date	Date

## 29. SCHEDULE IX: GOVERNANCE

### 29.1. The Governance Structure and Governance Procedure

- (a) There will be a 3 tier Governance Structure for managing the Project. The governance structure will be duly constituted within seven days of signing the Contract:
  - (i) State Mission Team
  - (ii) State Empowered Committee
  - (iii) State Apex Committee
- (b) The Apex Committee is chaired by the Chief Secretary, Government of Odisha
- (c) The “Empowered Committee” is chaired by Director, State Crime Records Bureau, Govt. of Odisha and is the overall monitoring and supervisory body for CAS (State) (CCTNS). This Committee will responsible for giving approval for Go-Live Date and other deliverables.
- (d) The principal officers: - Project Director and the Representative of SI will be “Principal Officers” with authority and responsibility for initiating actions for dispute resolution, overcoming the impact of events, facilitating consultation and initiating notices which will have impact on the continuity and content of the Contract.

### 29.2. Project Directors.

- (a) The relationship under this Contract will be managed by the Project Directors appointed by each Party, who will provide the interface between the executive officers of the respective Parties.
- (b) In the case of the BUYER the Project Director will be Mission Leader of the State Mission Team, who is also the Nodal Officer for CCTNS (“**Mission Leader - CCTNS**”). In the case of SI, the Project Director will be the Project Manager of the Project. In the event that either Party wishes to substitute its Project Director it will do so in manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within fourteen days of the substitution.
- (c) The Project Directors shall have responsibility for maintaining the interface and communication between the Parties.
- (d) **The Project Director of the BUYER**, who will be part of the State Mission Team, will be single point of contact for SI. The responsibilities of the Project Director of the BUYER shall include the following :-
  - (i) Provide access to information required and available with BUYER for the engagement.
  - (ii) Owner of Project Plan, Project Communication and Team Coordination.
  - (iii) Project Reporting and Communication.
  - (iv) Project issue resolution.
  - (v) Initiate Change Control process, whenever, required.



- (vi) Expedite approvals and clarifications raised by SI and the BUYER team.
  - (vii) Provide access to physical resources as outlined above.
  - (viii) Nominate specific executives from within the BUYER for the Project for a specific process and activity and responsibility.
  - (ix) Coordinate with the BUYER Management on any specific aspects requiring their approval.
  - (x) Initiating the notices as applicable.
  - (xi) Accepting or rejecting or suggesting changes to the Deliverables during the course of the Project.
  - (xii) Accepting or rejecting the Change notices suggested for the scope of work, or recommending changes to the scope of work, accepting the amendments to the Contract and for adding any supplement to the Contract.
  - (xiii) Deciding on the nature of additional work, the pricing for the additional work and accepting the additional work/ Deliverables.
  - (xiv) Accepting rejecting or taking any other action as relevant on the different notices which have been initiated during the course of the Project.
- (e) **The Project Director of the SI.** The Project Director assumes overall responsibility for the assignment and ensures that all resources required are made available and the engagement is carried out according to agreed implementation plans. He/she shall function as the primary channel of communication for all the BUYER requirements to SI. The Project Director of the SI will be co-opted into the State Mission Team. The responsibilities of Project Director include the following:
- (i) Overall responsibility for operations of SI at the Project Site.
  - (ii) Lead the Project team of SI.
  - (iii) Ensure successful completion of unit tests and integration tests for all development activity.
  - (iv) Ensure that all phases of the development activity are duly signed off by the BUYER.
  - (v) He / She will handle all the issues at the BUYER relating to implementation Project.
  - (vi) Walk-through of System analysis, ensure sign off of detailed design and coordinate testing activities.
  - (vii) Project reporting and Communication and reporting to the PMO.
  - (viii) Project issue resolution.
  - (ix) Initiating the notices as applicable.

### **29.3. CCTNS State Core Team (Project Management Office)**

- (a) Project Management Office consists of senior level experts in domain/functional, technical and project management areas who will closely oversee the project development. The shall include members of the State Project Management Unit (SPMU), members of the SCRB, Govt. of Odisha and selected members of SI and other stakeholders. They will meet formally on a regular basis at a time and location (either physically at one place or through teleconferencing facility) to be agreed between them. These meetings will cover, as a minimum, the following agenda items :-
- (i) Consideration of monthly Performance Reports.

- (ii) Consideration of matters arising out of the Schedule VIII.
- (iii) Issues escalated in accordance with the escalation procedure as set out in the Schedule IX.
- (iv) Matters to be brought before the CCTNS State Core Team in accordance with the Contract and the Schedules.
- (v) Any matter brought before the CCTNS State Core Team by SI or the BUYER under this Schedule.
- (vi) Any other issue which either Party wishes to add to the agenda.

#### **29.4. Purpose of Governance Procedures**

*The purpose of Governance procedure is to:-*

- (a) Establish and maintain the formal and informal processes for managing the relationship between the BUYER and SI (including the outputs from other Schedules to this Contract).
- (b) Define the principles that both Parties wish to follow to ensure the delivery of the Services.
- (c) Ensure the continued alignment of the interests of the Parties.
- (d) Ensure that the relationship is maintained at the correct level within each Party.
- (e) Create the flexibility to revise and maintain the relationship and this Contract during the Term.
- (f) Set out the procedure for escalating disagreements and resolving disputes.
- (g) Enable Contract administration and performance management.

#### **29.5. Governance Procedures**

- (a) The agenda for each meeting of the Committees, shall be set to reflect the discussion items referred to above and extraordinary items may be added either with the Contract of the Parties or at the request of either Party. Copies of the agenda for meetings of the Committees, along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.
- (b) All meetings and proceedings will be documented; such documents to be distributed to both Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.
- (c) The Parties shall ensure as far as reasonably practicable that CCTNS State Mission Team shall resolve the issues and resolve the objectives placed before them and those members representing that Party are empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achieve this.
- (d) In the event that there is any material factor which affects the Project or the terms of payment as stated in the Schedule VII, the Parties agree to discuss with **Mission Leader - CCTNS** any appropriate amendment to the Contract or Statement of Works including any variation to the terms of payment as stated in the Schedule

VII. Any variation so agreed shall be put forward to the EC / Apex Committee for approval and action.

- (e) Any amendments to the Contract or any supplements to be added to the Contract will be discussed by **Mission Leader - CCTNS**, and placed before the EC for approval. These documents will become part of the Contract after being duly signed by the authorised representatives of the BUYER and SI.

#### **29.6. Escalation Procedures**

- (a) Irrespective of the nature of disputes, events, defaults, the notices for discussion or resolution will follow the escalation procedures.
- (b) The initiation of the escalation activities, other than the ones for termination and arbitration, will be from State Mission Team or its members.
- (c) The matters unresolved by **State Mission Team** are to be taken up to EC or Apex Committee as appropriate.
- (d) The escalations will follow the guidelines listed for each type of notices.

#### **29.7. Procedure for Issuing Notices**

- (a) Subject to the provisions hereof, all notices hereunder shall be issued as per ARTICLE 19.1 (Notices) of this Contract.
- (b) If the responding party fails to respond to the notice within 21 days of a notice, a maximum of one more notice to the same effect may be issued to the party.
- (c) If the responding party does not respond to two notices, it is treated as wilful violation of the Contract and the actions related to breach of Contract will come into force.

#### **29.8. Notices on Disputes**

- (a) Either Party ("Claimant") shall first submit any dispute or disagreement (dispute notice) between the Parties arising out of or relating to and/or in connection with this Contract which is not a material breach of this Contract (a "Disputed Matter") to the SCRB.
- (b) The dispute notices will be a written notice and shall be accompanied by :-
  - (i) A statement by the Claimant describing the Disputed Matter in reasonable detail.
  - (ii) Documentation, if any, supporting the Claimant's position on the Disputed Matter.
- (c) The other Party ("Respondent") shall have the right to respond to the Dispute Notice within 7 days after receipt of the Dispute Notice.

- (d) The two designated authorities from both the parties will resolve the dispute through mutual discussions
- (e) In case the Disputed Matter remains unresolved, the same shall be then submitted to **Mission Leader - CCTNS**.
- (f) In the event that Inspector General - CCTNS is unable to resolve the Disputed Matter within a further period of 7 days, it shall refer the Disputed Matter to next level, the EC the highest authority of the dispute resolution for action.
- (g) The minutes of the meeting of the proceedings of the committees will serve as the basis for action on disputes, withdrawal of notice, or taking matter to arbitration.

#### **29.9. Notice for Consultation**

- (a) The Party shall submit a notice for consultation for an event of default to the SCRB with a copy to the other Party,
- (b) The consultation notice will be accompanied by :-
  - (i) Description of the event of default.
  - (ii) The date and circumstances of default.
  - (iii) Documentary evidence if any of the event of default.
- (c) The other Party ("Respondent") shall have the right to respond to the Consultation Notice within 7 days after receipt of the Consultation Notice.
- (d) The respective authorities will initiate the remedial process, with specific action and timelines for action (not exceeding 90 days) to rectify the event of default, through mutual discussions.
- (e) In case the remedial process is not successful the same shall be then submitted to ADG - CCTNS.
- (f) In the event that ADG- CCTNS is unable to resolve the event of default, within a further period of 7 days, it shall refer the Matter to next level, the EC the highest authority of the dispute resolution for action.
- (g) The minutes of the meeting of the proceedings of the committees will serve as the basis for action on consultation, withdrawal of notice or termination.

#### **29.10. Notice of an Event**

- (a) The Affected Party shall give notice on the event to the other Party of the occurrence of any of the event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence.
- (b) The Notice shall include details of :-
  - (i) The nature, time of occurrence and extent of the Force Majeure Event with documentary evidence in respect thereof.
  - (ii) If the event is due to Change in Law, a certified copy of the changed law, the Effective Date of the law and a copy of the earlier law which was applicable when the Contract came into effect.
  - (iii) If the event is due to Change in Law, the notice will also include the list of articles or part of the articles which will be impacted and suggestions if any for Modification.
  - (iv) Description of the adverse effect it has or is likely to have on the performance of the party's obligations under this Contract.
  - (v) The duration or estimated duration and the effect or probable effect the Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Contract.
  - (vi) The measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Event or to mitigate the damage; and
  - (vii) Any other relevant information.
- (c) If the notice of an event is accepted by the other Party as valid, the two Principal Officers will initiate the actions required to be undertaken and the periodicity (at least once in a month) for the affected party to submit reports on the event to the other party.

#### **29.11. Notices on Arbitration and Termination**

- (a) Notice for arbitration or termination will be issued when all the mechanisms of dispute resolution listed in the governance procedure have failed to resolve or overcome the event.
- (b) The minutes of the EC will be the basis for issuing arbitration and/or termination notices.
- (c) The arbitration and termination notices will include :-
  - (i) The details of events, default or disputes leading to arbitration or termination.

- (ii) The proceedings, minutes of the meeting of the discussions of State Mission Team, EC on the events, defaults and disputes.
- (iii) In case of termination, a deadline and a plan of action for exit management.

#### **29.12. Declaration of “Go- Live”**

- (a) The two Project directors from the BUYER and SI, after satisfactory completion of all the activities as listed in the section on scope of design and development of the ARTICLE 3, and after scrutinizing all the inspection reports, audit findings, Contracts, licensing agreements etc. will initiate jointly the notice for declaring “Go Live”.
- (b) The “Go Live” notice is submitted to the State Mission Team for action.
- (c) Within fifteen days of receiving the notice State Mission Team will decide on the actions to be taken on “Go Live”.
- (d) If State Mission Team approves the Go-Live notice, the same is submitted to the CCTNS Empowered Committee.
- (e) The Go-Live date comes into effect only when the CCTNS Empowered Committee approves the notice for Go Live.

In the event that any of the approving committees do not approve or suggest further action, the notices are reinitiated only after the recommended actions have been satisfactorily completed.

### **30. SCHEDULE X: EXIT MANAGEMENT**

#### **30.1. Initiation.**

- (a) This schedule sets out the provisions, which will apply on expiry or termination of the Contract, during the Design and Development Stage and Annual Maintenance Stage of the Project.
- (b) In the case of termination of the Contract as per the provisions of ARTICLE 9 of this Contract or otherwise, the Parties shall agree at that time whether, and if so during what period, the provisions of this schedule shall apply.
- (c) In case SI desire to close or shut down its business then in that case, SI shall inform the BUYER at least [please provide] months before closing its business. Failure on the part of SI in informing the BUYER about its intention to close its business shall make BUYER entitled to claim compensation and forfeit the Performance Bank Guarantee.
- (d) In case of expiry of the Contract or part of the contracted service, the provisions of this schedule shall come into effect three months prior to the contract for the particular service is coming to an end.
- (e) However if the BUYER in the intervening period invokes the provisions of the Contract and extends the term of the Contract for the particular service, the provisions of the schedule will not come into effect at that time but at the expiry of such extended period, provisions of this Schedule X of the Contract shall apply.
- (f) The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Schedule.

### 30.2. Exit Management Plan

- (a) On the initiation of the provisions of the exit management schedule by the BUYER, SI shall provide the BUYER with a recommended exit management plan which shall deal with at least the following aspects of exit management in relation to the Contract or the particular service of the Contract :-
- (b) A detailed program of the transfer process that could be used in conjunction with a Replacement SI or the BUYER's Project team including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer.
- (c) Plans for the communication with such of SI's sub-contractors, staff, suppliers, and any related third party as are necessary to avoid any material detrimental impact on Project's operations as a result of undertaking the termination or expiry.
- (d) The proposed arrangements for the segregation of communication means (including but not limited to transfer of data in electronic forms, emails etc.) from the Networks employed by the BUYER and identification of specific security tasks necessary for ensuring this.
- (e) Plans for provision of contingent support to the BUYER and Replacement SI for a reasonable period after transfer.
- (f) The plan for settling the payments and claims pursuant to the Contract, if applicable.
- (g) The list of services to be rendered by SI, during the exit management period.
- (h) The acceptance mechanisms for successful completion of exit management.
- (i) Payments during the Exit Management period shall be made in accordance with the Schedule VII.
- (j) This Exit Management plan shall be furnished in writing to the BUYER within 7 days from the date on which the action for termination is initiated or ninety days prior to the date of expiry of the Contract

### 30.3. SI Obligations on Termination

On termination or expiry of the Contract, SI obligations are listed below and shall be applicable on the basis of the last milestone achieved by SI prior to termination :-

- (a) Hand over the possession of the Development Site, Project Assets, SCRB Supplied Equipment and Documentation to the BUYER or its nominee.



- (b) Transfer all rights, titles and interests in such Project Assets (as the BUYER in its sole discretion may determine) to the BUYER or its nominee and transfer information which are required to be transferred to the BUYER in accordance with this Contract and execute such deeds and documents as may be necessary for the aforesaid purposes including completing all legal or other formalities required in this regard.
- (c) Hand over to the BUYER or its nominee all documents including but not limited to, process specifications, testing specifications, test results, manuals and records relating to operation and maintenance of the software and hardware.
- (d) Transfer/assign or cause to be transferred/assigned to the BUYER or its nominee any OEM contracts which are valid and subsisting and those OEM Contracts which the BUYER has chosen to take over, and cancel or cause to be cancelled such OEM contracts not to be transferred/assigned to the BUYER or its nominee. For this purpose, SI shall ensure that all OEM Contracts are assignable in favor of the BUYER or its nominee without any further action on part of the respective counterparties. SI shall entirely at its cost, terminate all such OEM contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the BUYER.
- (e) Transfer/assign all the warranties for the hardware and software, in favour of the BUYER or its nominee, which are required by the BUYER to continue to operate or use either during the design and development Stage or annual maintenance Stage.
- (f) At its cost, remove within 90 (ninety) days from expiry of the Contract, from the Project Site, any moveable assets that are not taken over by or not to be transferred to the BUYER in terms of the provisions of this Contract.
- (g) SI shall extend all support for the exit without service disruption as per the conditions under this Schedule.

#### **30.4. Confidential Information, Security and Data**

SI will promptly on the commencement of the exit management period, hand over to the BUYER the following:-

- a) Information relating to the current services rendered and customer satisfaction surveys and performance data relating to the performance of sub Contractors in relation to the services.
- b) Documentation relating to Project's Intellectual Property Rights.
- c) The Data belonging to the BUYER and Confidential Information.
- d) Documentation relating to sub-contractors (if any).

- e) All current and updated data of the Project as is reasonably required for purposes of the BUYER or its nominated agencies transitioning the services to its Replacement SI in a readily available format nominated by the BUYER.
- f) All other information (including but not limited to documents, records and Contracts) relating to the services reasonably necessary to enable the BUYER or its nominated agencies, or its Replacement SI to carry out due diligence in order to transition the provision of the services to the BUYER or its nominated agencies, or its Replacement SI (as the case may be).
- g) Before the expiry of the exit management period, SI shall deliver to the BUYER; all new or up-dated materials from the categories set out in this ARTICLE 6 and other articles of this Contract and shall not retain any copies thereof,.
- h) Before the expiry of the exit management period, unless otherwise provided under the Contract, the BUYER shall deliver to SI all forms of SI's confidential information, which is in the possession or control of the BUYER or its users.

### **30.5. Knowledge Transfer**

- a) SI will undertake the following activities to ensure that the knowledge about the entire Information Technology System including but not limited to the applications, the design and operational characteristics of these systems are transferred to the Buyer Team or the Replacement SI. The activities will be aimed at :-
  - (i) Knowledge transfer of operations.
  - (ii) Knowledge transfer of technology.
  - (iii) Knowledge transfer of processes.
  - (iv) Knowledge transfer of any other processes etc not covered by (i) to (iii) above.
- b) Some of the key activities to be carried out by SI for knowledge transfer will be :-
  - (i) Documents to explain design and characteristics.
  - (ii) The code to explain the characteristics of the software applications.
  - (iii) Joint operations of key activities or services.
  - (iv) Briefing sessions on process and process Documentation.
  - (v) The logs of the bugs, the changes to the codes etc.
  - (vi) Briefing sessions on applications, the way these are deployed and integrated.
- c) Transfer technology and up-to-date know-how relating to operation and maintenance of the software and hardware.

**30.6. Employees**

- a) Since the Project team of SI is critical for effective knowledge transfer and exit management SI will comply with the obligations set out in ARTICLE 16.7 of the Contract and ensure the following during the exit management period :-
  - (i) At least 75% of the Key Personnel as identified in the Schedule IV are available for joint operations and knowledge transfer.
  - (ii) At least 75% of the operations team is staffed with people with minimum proficiency as listed in the Schedule IV.
- b) Ensure that all the employees who worked on the Project have followed the clauses in the ARTICLE 14 and ARTICLE 17 of this Contract.
- c) Ensure that the exiting employees have followed the security guidelines of the SCRB premises.

**30.7. General Obligations of SI**

- a) SI will involve the services of the subcontractors if required but with the prior permission of the BUYER, for the purpose of executing the exit management plans, without any costs for the BUYER.
- b) SI shall provide all such information as mentioned in the above clauses in order to affect as seamless handover as practicable in the circumstances.
- c) For the purposes of this Schedule, anything in the possession or control of SI, any associated entity, or sub-Contractor is deemed to be in the possession or control of SI.
- d) SI shall commit adequate resources to comply with its obligations under this Exit Management Schedule.
- e) The task of SI with reference to the exit management is deemed to be complete only when the Project Director of the BUYER issues a satisfactory completion certificate for the “exit management plan”.

**30.8. BUYER's Obligations on Termination**

On termination of the Contract, the BUYER'S obligations towards SI will be as follows:-

- a) The BUYER confirms that the payment for the last milestone achieved by SI will be expedited subject to the set off rights.
- b) The BUYER shall extend all support for the knowledge transfer activities as per this Schedule X.

## **31. SCHEDULE XI: AUDIT, ACCESS, AND REPORTING**

### **31.1. Purpose**

This Schedule details the audit, access and reporting rights of the BUYER and respective obligations of SI under the Contract.

### **31.2. Audit Notice and Timing**

- a) As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavours to agree to a timetable for routine audits during the Project. Such time table may be reviewed every 3 months. During the Term, the BUYER or its nominated agencies shall conduct routine audits in accordance with such agreed timetable and shall not be required to give SI any further notice of carrying out such audits.
- b) The BUYER, may conduct non-timetabled (ad hoc) audits at its own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the SI, a security violation, or breach of confidentiality obligations by SI, provided that the requirement for such an audit is notified in writing to SI a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If SI considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Schedule IX.
- c) The frequency of audits which shall be six (6) monthly provided always that the BUYER or SCRB shall endeavour to conduct such audits with the lowest levels of inconvenience and disturbance as practicable being caused to SI.
- d) The audit and access rights contained shall survive the termination or expiration of the Contract for a period of twenty-four (24) months.

### **31.3. Access**

SI shall, provide to the BUYER or its nominated agencies, or its or their authorised representatives, reasonable access to employees, subcontractors, suppliers, third party facilities, including leased premises, Data Recovery Centres, documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The BUYER or its nominated agencies during the Project shall have the right to copy and retain copies of any relevant records. SI shall make every reasonable effort to co-operate with them in effecting the Audit.

### **31.4. Audit Rights**

- a) The BUYER shall have the right to audit and inspect suppliers, agents, third party facilities, including leased premises, Data recovery centres, documents, records,

procedures and systems relating to the Project, but only to the extent that they relate to these, as shall be reasonably necessary to verify:

- b) The security, integrity and confidentiality availability of all the BUYER Data processed, held or conveyed by SI on behalf of the BUYER or its nominated agencies and its Users and Documentation related thereto;
- c) That SI has complied with the relevant technical standards, and has adequate internal controls in place; and
  - (i) The compliance of SI with any other obligation under the Contract.
  - (ii) SI's internal cost records shall be excluded for the purpose of audit
  - (iii) That the actual level of performance of the Services is the same as specified in the Service Level Agreement

### **31.5. Audit Rights of Sub-Contractors, Suppliers and Agents**

- a) SI shall use reasonable endeavours to achieve the same audit and access provisions as defined in this Schedule with sub-Contractors, suppliers and agents who supply labour, services, equipment or materials in respect of the services. SI shall inform the BUYER prior to concluding any sub-Contract or supply agreement of any failure to achieve the same rights of audit and/or access.
- b) **Reporting.** SI will provide reports to the BUYER regarding any specific aspects of the Project and in context of the audit and access information as required by the BUYER

### **31.6. Action and Review**

- a) Any change or amendment to the systems and procedures of SI, or sub-Contractors, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- b) Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to SCRB representative who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the Contract.

### **31.7. Records and Information**

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

## 32. SCHEDULE XII: NON DISCLOSURE AGREEMENT

This **NON DISCLOSURE AGREEMENT (“NDA”)** is made this on \_\_\_\_ day of [ ], 2011, by and between:

The Governor of Odisha represented through the Director, State Crime Records Bureau (SCRB), Government of Odisha by Shri. <<Name>>, (hereinafter called as the “**BUYER**”, which expression unless repugnant to the context or meaning thereof, shall mean and include its successors or nominees or assignees or legal representative) of the **FIRST PART**;

AND

<<Company Name with Address>>, a company registered under Indian Companies Act, 1956 represented by Shri. <<Name with Designation>> and in the business of development, integration, customization, maintenance and system Integration (hereinafter called or “**SI**”, which expression unless repugnant to the context or meaning thereof, shall mean and include its successors or permitted assigns of the **SECOND PART**).

(The **BUYER** and the **SI** are collectively referred to as the “**Parties**” and individually as a “**Party**”)

WHEREAS in order to pursue the mutual business purpose of this particular project of development of CAS (State) and SI recognize that there is a need to disclose to SI certain information, as defined in para 1 below, of the **BUYER** to be used only for the purpose of Project and to protect such confidential information from unauthorized use and disclosure.

In consideration of the other party’s disclosure of such information, SI agrees as follows:

- a) This NDA will apply to all confidential and proprietary information disclosed by the **BUYER** to SI, including information listed in Exhibit A attached hereto and other information consisting of certain specifications, documents, software, prototypes and/or technical information, and all copies and derivatives containing such Information, that may be disclosed to SI for and during the purpose, which the **BUYER** considers proprietary or confidential (“**Confidential Information**”).

Confidential Information may be in any form or medium, tangible or intangible, and may be communicated/disclosed in writing, orally, or through visual observation or by any other means to SI by the **BUYER**.

- b) SI and the **BUYER** hereby agreed at during the Confidentiality Period:

- (i) SI shall use Confidential Information only for providing Services under the Contract, shall hold Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, but not less than reasonable care, taking into account the nature of the Confidential Information, and shall grant access to Confidential Information only to its employees who have a need to know, but only to the extent necessary to carry out the business purpose of this Project shall cause its employees to comply with the provisions of this NDA applicable to the SI, shall reproduce Information only to the extent essential to fulfilling the purpose, and shall prevent disclosure of Confidential Information to third parties.

SI may with a prior approval of the BUYER, however, disclose the Confidential Information to its contractors with a need to know; provided that by doing so, SI agrees to bind those consultants and contractors to terms at least as restrictive as those stated herein, advise them of their obligations, and indemnify the BUYER for any breach of those obligations.

- (ii) Upon the disclosing party's request, SI shall either return to the disclosing party all Confidential Information or shall certify to the disclosing party that all media containing Confidential Information have been destroyed.
- c) The foregoing restrictions on SI's use or disclosure of the Confidential Information shall not apply to the information that the SI can demonstrate:
- (i) was independently developed by or for the SI without reference to the information, or was received without restrictions; or
  - (ii) has become generally available to the public without breach of confidentiality obligations of the SI; or
  - (iii) was in SI's possession without restriction or was known to SI without restriction at the time of disclosure; or
  - (iv) is the subject of a subpoena or other legal or administrative demand for disclosure; provided, however, that SI has given the disclosing party prompt notice of such demand for disclosure and SI reasonably cooperates with the disclosing party's efforts to secure an appropriate protective order; or
  - (v) is disclosed with the prior consent of the disclosing party; or
  - (vi) was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing party and was not previously acquired by SI from the disclosing party under an obligation of confidence; or
  - (vii) SI obtains or has available from a source other than the disclosing party without breach by SI or such source of any obligation of confidentiality or non-use towards the disclosing party.
- d) SI agrees not to remove any of the other party's Confidential Information from the premises of the BUYER without BUYER's prior written approval. SI agrees to exercise extreme care in protecting the confidentiality of any Confidential



Information which is removed, only with the BUYER's prior written approval, from the BUYER's premises. SI agrees to comply with any and all terms and conditions the disclosing party may impose upon any such approved removal, such as conditions that the removed Confidential Information and all copies must be returned by a certain date, and that no copies are to be made off the BUYER's premises.

- e) Upon BUYER's request, SI will promptly return to the BUYER all tangible items containing or consisting of the disclosing party's Confidential Information all copies thereof.
- f) SI recognizes and agrees that all of the disclosing party's Confidential Information is owned solely by the BUYER (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. Accordingly, SI agrees that the BUYER will have the right to obtain an immediate injunction enjoining any breach of this NDA, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.
- g) Access to the Confidential Information hereunder shall not preclude an individual who has seen such Confidential Information for the purposes of the NDA from working on future projects for the BUYER which relate to similar subject matters, provided that such individual does not make reference to the Confidential Information and does not copy the substance of the Confidential Information during the term of the Contract. Furthermore, nothing contained herein shall be construed as imposing any restriction on SI's disclosure or use of any general learning, skills or know-how developed by SI's personnel under this NDA, if such disclosure and use would be regarded by a person of ordinary skill in the relevant area as not constituting a disclosure or use of the Confidential Information.
- h) As between the Parties, all Information shall remain the property of the BUYER. By disclosing Confidential Information or executing this NDA, the BUYER does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right. Execution of this NDA and the disclosure of Confidential Information pursuant to this NDA do not constitute or imply any commitment, promise, or inducement by either party to make any purchase or sale, or to enter into any additional agreement of any kind.
- i) The BUYER'S failure to enforce any provision, right or remedy under this NDA shall not constitute a waiver of such provision, right or remedy.
- j) This NDA will be construed in, interpreted and applied in accordance with the laws of Odisha.



- k) That in case of any dispute or differences, breach & violation relating to the terms of the NDA, the said matter or dispute, difference shall be referred to sole arbitration of the BUYER or any other person appointed by him. The award of the arbitrator shall be final and binding on both the Parties. In the event of such Arbitrator to whom the matter is originally referred to is being transferred or vacates his office on resignation or otherwise or refuses to do work or neglecting his work or being unable to act as Arbitrator for any reasons whatsoever, the BUYER shall appoint another person to act as Arbitrator in place of outgoing Arbitrator and the person so appointed shall be entitled to proceed further with the reference from the stage at which it was left by his predecessor. SI will have no objection in any such appointment, that arbitrator so appointed is an employee of the BUYER. The said Arbitrator shall act under the Provisions of the Arbitration and Conciliation Act, 1996 or any statutory modifications or reenactment thereof or any rules made thereof.
- l) This NDA and Exhibit A attached hereto constitutes the entire agreement of the parties with respect to the parties' respective obligations in connection with Information disclosed hereunder and supersedes all prior oral and written agreements and discussions with respect thereto. The Parties can amend or modify this NDA only by a writing duly executed by their respective authorized representatives. Neither party shall assign this NDA without first securing the other party's written consent.
- m) This NDA will remain in effect for, at the entire term of the Contract which time it will terminate, unless extended by the disclosing party in writing.

IN WITNESS WHEREOF, the parties hereto have executed this NDA by their duly authorized officers or representatives.

**For and on behalf of BUYER**

**For and on behalf of (SI)**

An authorized signatory duly nominated  
Pursuant to Board Resolution No.

((<<Name>>))  
Director, SCRB  
Government of Odisha

((<<Name>>))  
<<Designation>>  
<<Company Name with Address>>

**Date:**  
**Place: Bhubaneswar**  
**Witnessed by**  
1.  
2.

**Date:**  
**Place: Bhubaneswar**  
**Witnessed by**  
1.