



CENTRAL WAREHOUSING CORPORATION

(A GOVT. OF INDIA UNDERTAKING)



Tender Reference No:

CWC/MIS-WMS/2017-18

11th May 2017

Warehouse Management Solution At

Central Warehousing Corporation

Volume III:

Draft Master Services Agreement and

Service Level Agreement

Central Warehousing Corporation

“Warehousing Bhawan” 4/1 Siri
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Central Warehousing Corporation (CWC) intends to implement a WMS for the modernization and computerization of the operations of its warehouses, Regional offices and the Corporate office. CWC intends to select and deploy a WMS software solution for this purpose. This document has been prepared on the basis of available information in CWC and other publicly available documents which CWC believes to be reliable. The sole objective of this document (the Request for Proposal or the RFP) is to solicit Techno commercial offers from interested parties for taking part in the future process leading to selection of System Integrator for implementation of WMS. While this document has been prepared in good faith, no representation or warranty, express or implied, is or will be made, and no responsibility or liability will be accepted by CWC or any of their employees, advisors or agents as to or in relation to the accuracy or completeness of this document and any liability thereof is hereby expressly disclaimed. Interested Parties may carry out their own study/ analysis/ investigation as required before submitting their Techno commercial proposals.

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Master Services Agreement

This Agreement along with all its Schedules, Annexures and Appendices (hereinafter referred to as the “**Agreement/MSA**”, as defined hereinafter) is made on this <<day>> day of <<month>>, 2017 by and between:

(i) **Central Warehousing Corporation, Warehousing Bhawan, 4/1, Siri Institutional Area, August Kranti Marg, HauzKhas, New Delhi 110016** (hereinafter called the ‘**CWC**’) being the Party of the FIRST PART;

AND

(ii) ___<name of the company>___, a company registered under the Indian Companies Act, 1956 having its registered office at ___<address>___ and place of business at ___<address>___ (hereinafter referred to as “**System Integrator / SI**”, which expression, unless excluded or the context otherwise required hereof includes its successors, administrators and assigns) represented through its ___<Name & designation of authorized person>___, who is duly authorized to sign, execute vide a board resolution dated <<date>> passed by its board of directors being the Party of the SECOND PART.

CWC and System Integrator shall independently be called as “Party” and jointly as “Parties”. This agreement is between **Principal to Principal** i.e. it is an agreement between two organizations.

WHEREAS

- A. Central Warehousing Corporation (CWC) intends to implement a Warehouse Management Solution (WMS) for the modernization and computerization of the operations of its Corporate office, Regional offices and its warehouses.
- B. In furtherance of the same, CWC undertook the selection of a suitable System Integrator through a competitive bidding process for implementing the Project and in this behalf issued Request for Proposal (RFP) dated <***>;
- C. The System Integrator has been selected as the successful bidder to undertake and implement the CWC-WMS Project involving customization, configuration, development, testing and auditing of the solution on cloud, its implementation & roll out and providing operations and maintenance support

of the project and desired service levels, on the basis of the proposal dated XXXX submitted by SI ("Proposal").

- D. CWC intends to engage the System Integrator to undertake and implement the CWC-WMS Project on the terms and conditions set forth below.
- E. The System Integrator in pursuance of its proposal undertakes to implement the CWC-WMS Project stated herein above.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS AND CONDITIONS HEREIN CONTAINED, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

CWC and the System Integrator have agreed to enter into this Agreement to govern the way in which the System Integrator will design, develop, customize, configure, implement & manage the solution and deliver the services specified under this Agreement and the Service Level Agreement ("SLA") in accordance with roles and responsibilities of CWC and its nominated agencies and the System Integrator as set forth in this agreement.

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

For and on behalf of CWC

For and on behalf of SI

An authorized signatory duly nominated pursuant to Board Resolution No.

(<<Name>>)

(<<Name>>)

<<Designation>>

<<Designation>>

Central Warehousing Corporation,
Public Sector Undertaking under GOI

<<Company Name>>

Date:

Date:

Place: New Delhi

Place: New Delhi

Witnessed by:

1.

2.

Witnessed by:

1.

2.

1 Article 1: Definitions and interpretations

1.1 Definitions: In this Agreement, unless the context otherwise requires

- i. **“Agreement/MSA”** means this agreement together with all the Schedules and the contents and specifications of all the volumes of the Request for Proposal (RFP) and in all the attached schedules and any addendums, corrigendum issued and shall include any modifications, alterations, additions or deletions thereto agreed between the Parties in writing after the date hereof in terms of this Agreement. In the event of a conflict between this Agreement and the Schedules, the terms of the Agreement shall prevail;
- ii. **“Agreement Value”** means the total cost of all the Components 1 to 9 and cost of any optional components A to G procured by CWC as mentioned in Schedule VIII.
- iii. **“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 or other governmental restriction or any similar form of decision applicable to the relevant Party and as may be in effect on the date of execution of this Agreement and during the subsistence thereof, applicable to the Project.
- iv. **“Bill of Material”** or **“BoM”** means the bill of material regarding CWC-WMS provided by SI in its Proposal, stating the prices and the quantity of the materials to be procured by the SI (on

behalf of CWC) in pursuant to the specifications more elaborately stated in RFP and also stated in Schedule VII of this Agreement.

- v. **“Change in Law”** does not include (i) 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 (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or (iii) any rules or regulations stipulated by regulatory authority having jurisdiction over the Project in respect of the standards of service, testing, acceptance norms,
- vi. **“Project”** means CWC-WMS Project involving the System Design, Development, Customization, configuration, Implementation, Operations, Management and Maintenance across all the identified locations as per the terms and conditions laid in the RFP and provision of services in conformance to the SLA;
- vii. **“Commercially Off the Shelf (COTS)”** refers to a readily available Application Software / **Package that can be customized and** deployed rapidly. The solution should have been productized and implemented at multiple locations. A COTS has an established & published roadmap to conform to evolving “Best Practices and Standardization” from the experience over the life-cycle of the product.
- viii. **“Confidential Information”** means all information as defined in ARTICLE 16.
- ix. **“Data”** shall mean any record, transaction, document and information related to the Project which includes, but not limited to, any matter or thing tangible or intangible, factual, fictitious or imaginary, hypothetical or abstract, known or unknown, accurate or inaccurate provided by CWC 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. However, the ownership of all the Data belongs to CWC and SI would merely handle the data on behalf of CWC.

- x. **“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 VII are housed and operated from.
- xi. **“Disaster Recovery Centre” or “DR”** means the centre that is designed to act as the Data Center on occurrence of a disaster / non-functioning of the DC.
- xii. **“Cloud Service Provider” or “CSP”** means cloud service provider empanelled with Deity, Govt. of India, providing IT infrastructure including but not limited to hardware, network, security items, hosting and software as a service.
- xiii. **“Deliverables”** means the products, infrastructure and services agreed to be delivered by the System Integrator in pursuance of the Agreement as elaborated in Volume I of the RFP in relation to the Implementation Phase(s) and the Operations and Maintenance Phase and includes all documents related to the solution, user manual, technical manual, business designs, the process documentations, the artifacts, the training materials, process and operating manuals, service mechanisms, policies and guidelines and source code and all their respective modifications;
- xiv. **“Effective Date”** means the date on which the Agreement is executed by both the Parties.
- xv. **“Equipment”** means the computer hardware, machinery and other tangible equipments used for the Project, pursuant to the Agreement.
- xvi. **“Intellectual Property Rights”** means rights as defined in Article 13 ;
- xvii. **“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 Agreement and/or (b) the legal validity, binding nature or enforceability of this Agreement.

- xviii. **“Material Breach”** means breach that has an effect on (a) the ability of System Integrator to perform/discharge any of its duties/obligations under and in accordance with the provisions of the Agreement; and/or (b) the legal validity, binding nature or enforceability of the Agreement;
- xix. **“OEM” or “Original Equipment Manufacturer”** means the original manufacturer and owner of the Intellectual Property Rights of any Software or Equipment to be used in the Project and to which CWC has been granted license to use.
- xx. **“Operative Period of Agreement” or “Term”** means the period of the Agreement commencing from the Effective Date and continuing till the last day of Operations and Maintenance Service, or the date of termination, in case of earlier termination of the Agreement.
- xxi. **“Performance Guarantee” and “Performance Bank Guarantee”** shall mean the guarantee provided by a Nationalized Bank/Scheduled Bank to CWC on behalf of the System Integrator for the amount specified in “Payment Terms and Schedule” of Volume II of the RFP;
- xxii. **“Project Assets”** means the assets procured and/or developed and supplied by the SI to CWC for the purpose of the Project, pursuant to this Agreement.
- xxiii. **“Project Data”** means all proprietary data of the PROJECT generated out of Project operations and transactions, documents and related information including but not restricted to user data which the System Integrator obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement and the SLA;
- xxiv. **“Project Location”** shall include all CWC sites that will require setup of IT and Non-IT infrastructure for smooth operations of the CWC-WMS solution.
- xxv. **“Project Implementation phase”** means Project Implementation phases as per the Volume I of the RFP;
- xxvi. **“Go-Live”** means the date on which the proposed CWC-WMS System is successfully implemented during Phase I, II and III (as applicable) at locations as specified in the Volume I of

the RFP and all the acceptance tests & certifications as defined in the Volume I of the RFP are successfully concluded to the satisfaction of CWC.

- xxvii. **“Stabilization Phase”** means the period after go-live of a particular phase and would last for a duration of three months as specified in the Volume I of the RFP subject to meeting the requirements of the RFP
- xxviii. **“Proprietary Information”** means processes, methodologies and technical and business information, including drawings, designs, formulae, flow charts, data and computer programs already owned by, or granted by third parties to a Party hereto prior to its being made available under this Agreement, or the SLA;
- xxix. **“Request for Proposal/(RFP)”** means the documents containing the general, technical, functional, commercial and legal specifications for the implementation of the WMS Project issued in three different volumes i.e. Volume I, II and III respectively and as different Annexures, Appendices and forms and includes the clarifications, explanations, minutes of the meetings, corrigendum’s and amendments issued from time to time during the bidding process and on the basis of which SI has submitted its Proposal.
- xxx. **“Replacement System Integrator ”** means any third party that CWC may appoint to replace the System Integrator upon expiry of the Term or otherwise termination of this Agreement or the SLA to undertake the Services or part thereof;
- xxxi. **“Service Level”** means the level of service and other performance criteria which will apply to the services by the SI as set out in Service Level Agreement Schedule X;
- xxxii. **“Service Level Agreement (SLA)”** means the Operation and Maintenance SLA, executed by and between System Integrator and CWC, in terms of the Service Level Requirements as per the model set out in Schedule X of this Agreement;
- xxxiii. **“Services”** means the services to be performed by the SI in pursuant to the Agreement more elaborately provided in the RFP using the tangible and intangible assets created, procured,

installed, managed and operated by the System Integrator including the tools of information and communications technology and mentioned in Article 3.1 of the Agreement.

- xxxiv. **“Solution”** means all the hardware, equipment, servers, third party tools, databases, and middleware software and the COTS software, provided by SI to meet the functional and technical requirements of CWC and required to make it work as complete WMS Solution.
- xxxv. **“Third Party Solution”** means Systems (or any part thereof) in which the Intellectual Property Rights are owned by a third party and to which System Integrator or CWC has been granted a license to use.
- xxxvi. **“Working Day”** means any day on which any of the office of CWC will be functioning, including gazetted Holidays, restricted holidays or other holidays, Saturdays and Sundays.

1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- (b) use of any gender includes the other genders;
- (c) references to a **‘company’** shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a **‘person’** shall be construed to include any individual, partnerships, firms, companies, public sector units, 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.
- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;

- (f) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- (g) references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which CWC Corporate office, Regional offices and other field units like warehouses, ICD/CFS etc. are generally open for business;
- (h) references to times are to Indian Standard Time;
- (i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (j) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- (k) System Integrator (SI) or Implementation Agency (IA) has been used for the same entity i.e. bidder selected for the project.
- (l) The words importing singular shall include plural and vice versa;
- (m) Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Article or Schedule. The words "include" and "including" shall not be construed as terms of limitation;
- (n) 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;
- (o) The headings and use of bold type in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement;
- (p) References to "installation" include investigation, design, engineering, procurement, delivery, installation, processing, testing, and commissioning;
- (q) References to "implementation" include investigation, design, engineering, procurement, delivery, installation, processing, testing, and commissioning;
- (r) Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument,

license or other document as amended, varied, supplemented, modified or novated at the time of such reference;

- (s) Any agreement, consent, approval, authorization, notice, communication, Information or report required under or pursuant to this Agreement 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;
- (t) 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;
- (u) 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;

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

1.4 Ambiguities and Discrepancies within Agreement

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

- (a) Between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- (b) Between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures; and
- (c) Between any value written in numerals and that in words, the value in words shall prevail.

- (d) Between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

1.5 Priority of documents

This Agreement, including its Schedules, Annexures and Appendices represents the entire agreement between the Parties as noted in this Clause. If in the event of a dispute as to the interpretation or meaning of this Agreement it should be necessary for the Parties to refer to documents forming part of the bidding process leading to this Agreement, then such documents shall be relied upon and interpreted in the following descending order of priority:

- (a) This Agreement along with the SLA agreement, NDA agreement, Schedules, Annexures and Appendices;
- (b) Request for Proposal and Addendum / Corrigendum to the Request for Proposal (if any).

For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures / Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexures / Schedules and Annexures / Schedules shall prevail over the contents and specifications of the RFP.

2 Article 2: Structure

2.1 Overview

This Agreement shall operate as a legally binding Agreement for the Project specifying the terms which apply to the Parties under this Agreement, including but not limited to terms in relation to operate and maintain the System with commitment for delivering the solution/software and services specified under this Agreement in accordance with roles and responsibilities set herein for maximum total consideration of Rs. <<amount>> inclusive of all taxes except service tax which will be payable at the applicable rate from time to time.

2.2 Service Level Agreement (SLA)

- (a) Service Level Agreement (SLA) shall be a separate Agreement in respect of this Agreement and shall be entered into concurrently with this Agreement between CWC and System Integrator. In relation to any future SLA entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein.
- (b) The SLA shall be a separate divisible Agreement in respect of this Agreement.
- (c) The Parties shall each ensure that the range of the Services under the SLA shall not be varied, reduced or increased except with the prior written agreement between CWC and SI in accordance with the Change Control Schedule set out in Schedule II of this Agreement.
- (d) Save for the express terms of the Terms of Payment Schedule set out as Schedule VI of this Agreement, Central Warehousing Corporation or its nominated agencies and its users may purchase any particular category of Services that may become necessary as per the Change Control Schedule set out in Schedule II of this Agreement, without the need to go for a separate procurement process.

2.3 Obligations under the SLA

- (a) The SLA shall be a separate agreement in respect of this Agreement and shall be entered into concurrently with this Agreement between Central Warehousing Corporation and System Integrator;

- (b) In relation to any future SLA entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein.

2.4 Change of Control

- (a) In the event of a change of control of the System Integrator during the Term, the System Integrator shall promptly notify Central Warehousing Corporation and/or its nominated agencies of the same.
- (b) In the event that the net worth of the surviving entity is less than that of System Integrator prior to the change of control, the Central Warehousing Corporation or its nominated agencies may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the System Integrator from a guarantor acceptable to the Central Warehousing Corporation or its nominated agencies (which shall not be System Integrator or any of its associated entities).
- (c) If such a guarantee is not furnished within 30 days of the Central Warehousing Corporation or its nominated agencies requiring the replacement, the Central Warehousing Corporation may exercise its right to terminate the SLA and/ or this Agreement within a further 30 days by written notice, to become effective as specified in such notice.
- (d) Pursuant to termination, the effects of termination as set out in Clause 9.2 of this Agreement shall follow.
- (e) For the avoidance of doubt, it is expressly clarified that the internal reorganization of the System Integrator shall not be deemed an event of a change of control for purposes of this Clause unless the surviving entity is of less net worth than the predecessor entity.

2.5 Term and duration of the agreement

This Agreement shall come into effect on <***> 20--- (hereinafter the 'Effective Date') and shall be valid during the following stages (unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties):-

- During implementation of Phase I till phase I go-live

- During phase I stabilisation
- During implementation of Phase II till phase II go-live
- During phase II stabilisation
- During operation and maintenance, which shall be for a period of five years post Phase II go-live

2.6 Extension of the Agreement:

The CWC has the option to extend the Agreement on expiry of the project period to two years on same rates, terms and conditions, to avail the services of SI without the need to go for a separate bid process. The decision on the extension will be mutually agreed by SI and CWC keeping in consideration a) Satisfactory Performance of the SI b) Time Constraints or Other Serious Impediments in Selection of Replacement SI c) Technological Reasons d) Where circumstances inescapably require taking recourse to this option.

2.7 Conditions precedent & effective date

2.7.1 Provisions to take effect upon fulfillment of Conditions Precedent

Subject to express terms to the contrary, the rights and obligations under this Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out below. However, Central Warehousing Corporation or its nominated agencies may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the System Integrator.

2.7.2 Conditions Precedent of the System Integrator

The System Integrator shall be required to fulfill the Conditions Precedent in which is as follows:

- (a) to provide a Performance Bank Guarantee (as defined in Article 5.3 of the Agreement) to the Central Warehousing Corporation or its nominated agencies; and
- (b) to provide the Central Warehousing Corporation or its nominated agencies certified true copies of its constitutional documents and board

resolutions authorizing the execution, delivery and performance of this Agreement by the System Integrator .

For the avoidance of doubt, it is expressly clarified that the obligations of the Parties except the financial obligations of Central Warehousing Corporation or its nominated agencies under this Agreement shall commence from the fulfillment of the Conditions Precedent as set forth above.

2.7.3 Extension of time for fulfillment of Conditions Precedent

- (a) The Parties may, by mutual agreement extend the time for fulfilling the Conditions Precedent and the Term of this Agreement.
- (b) For the avoidance of doubt, it is expressly clarified that any such extension of time shall be subject to imposition of penalties on the System Integrator linked to the delay in fulfilling the Conditions Precedent.

2.7.4 Non-fulfilment of the System Integrator’s Conditions Precedent

- (a) In the event that any of the Conditions Precedent of the System Integrator have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by Central Warehousing Corporation or its nominated agencies, this Agreement shall cease to exist;
- (b) In the event that the Agreement fails to come into effect on account of non fulfilment of the System Integrator’s Conditions Precedent, the Central Warehousing Corporation or its nominated agencies shall not be liable in any manner whatsoever to the System Integrator and the Central Warehousing Corporation shall forthwith forfeit the Performance Guarantee.
- (c) In the event that possession of any of the Central Warehousing Corporation or its nominated agencies facilities has been delivered to the System Integrator prior to the fulfilment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to Central Warehousing Corporation or its nominated agencies, free and clear from any encumbrances or claims.

2.8 Agreement Documents

- a) The following documents shall be deemed to form and be read and construed as part of the Agreement,
- i. This Agreement and all the attached Schedules.
 - ii. The Request for Proposal Document issued to short-listed bidders on XXXX, the addenda, corrigendum's and pre-bid clarifications issued subsequent to the release of Request for Proposal Document and attached as Annexure I.
 - iii. The undertakings submitted by the SI as part of the bid response and attached as Annexure II.
 - iv. 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 AnnexureIII.
 - v. The Commercial bid proposal submitted by the SI in response to the RFP dated XXXX and attached as AnnexureIV.
 - vi. Letter of Intent to Award of Offer for the SI No: XXXX and dated XXXX and Attached as AnnexureV.

In the event of any ambiguity or conflict between the Agreement Documents listed above, the order of precedence shall be the above chronological order in which the Agreement

- b) Documents are listed, provided the Terms of this Agreement and Schedules attached thereof take precedence over all other documents as listed above. For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures / Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexures / Schedules and Annexures / Schedules shall prevail over the contents and specifications of the RFP.

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

3.1 Scope of Work for the SI

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

The roles and responsibilities of the Parties under this Agreement have been set out in detail in the Volume I of this RFP.

For the avoidance of doubt, it is expressly clarified that this Agreement shall govern the provision of the contracted professional services under the SLA to the Central Warehousing Corporation and its nominated agencies. Any additional/optional- equipment/service/items supplied by SI-as per the SI's commercial proposal (on CWC's request) shall also be governed by the terms and conditions set out in this agreement.

It is anticipated that new or renewal agreements may be undertaken by creating a separate SLA, with schedules and annexures as required, under this Agreement for each additional engagement.

3.2 Scope of work (as defined in volume 1 of RFP)

Detailed scope of work for the selected bidder is as follows:

1. -----
2. -----
3. -----

3.3 Interpretation of the Scope of Work

- a) CWC retains the right of the final say in the interpretation of the scope of the Project. The possible variations to the processes from the way they are specified in the scope of work should not be considered as deviations or extensions to the original process specifications.
- b) Sign-off on the deliverables by CWC does not necessarily indicate the complete approval of the deliverables. Any gap that is found in a deliverable with respect to the above, even after the sign-off, will have to be addressed by the SI without any additional cost to CWC.

4 Article 4: Payment terms

4.1 Terms of Payment

- a. In consideration of the Services and subject to the provisions of this Agreement and of the SLA, the Central Warehousing Corporation shall pay the System Integrator for the Services rendered in pursuance of this agreement, in accordance with the Terms of Payment Schedule set out as Schedule VI of this Agreement.
- b. CWC is entitled to deduct following sums from the payments to be made to SI in pursuant to this Agreement:-
 - i. Penalties: If SI fails to meet minimum Service Levels for a particular Service Level, CWC shall deduct the amount of penalties related to the severity of violation, calculated as per Service Level Agreement.
- c. Save and except as otherwise provided for herein or as agreed between the Parties in writing, the Central Warehousing Corporation 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 VI of the Agreement read along with Service Level Agreement.
- d. For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.

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 VI of the Agreement read along with the Service Level Agreement.

- a. Subject to the specific terms of the SLA, the System Integrator shall submit its invoices in accordance with the following principles:

- (i) The Central Warehousing Corporation shall be invoiced by the System Integrator for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the System Integrator shall raise an invoice along with necessary approvals as per Schedule VI of this Agreement on < half yearly> basis; and
 - (ii) Any invoice presented in accordance with this Article shall be in a form agreed with the Central Warehousing Corporation.
- b. The System Integrator alone shall invoice all payments after receiving due approval from the competent authority.
- c. Invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in the Schedule VI of the Agreement shall be applied to the next payment invoice.
- d. The System Integrator shall waive any charge for a Service that is not invoiced within six months after the end of the month in which the change relating to such Service is authorized or incurred, whichever is later.
- e. The Central Warehousing Corporation shall be entitled to delay or withhold payment of any invoice or part of it delivered by the System Integrator under Schedule VI of this Agreement where the Central Warehousing Corporation disputes/withholds such invoice or part of it provided that such dispute is bona fide. The withheld amount shall be limited to that which is in dispute. The disputed / withheld amount shall be settled in accordance with the escalation procedure as set out in Schedule V of this Agreement. Any exercise by the Central Warehousing Corporation under this Clause shall not entitle the System Integrator to delay or withhold provision of the Services.
- f. The System Integrator shall be solely responsible to make payment to its sub-contractors.

4.3 Tax

- (a) The Central Warehousing Corporation or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the System Integrator wherever applicable as per the Applicable Law. The System Integrator shall pay for all

other taxes in connection with this Agreement, SLA, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.

- (b) The Central Warehousing Corporation or its nominated agencies shall provide System Integrator with the original tax receipt of any taxes deducted at source and paid for the Project on payments under this Agreement. The System Integrator agrees to reimburse and hold the Central Warehousing Corporation or its nominated agencies harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among the Central Warehousing Corporation or its nominated agencies, the System Integrator and third party subcontractors.
- (c) If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by the Central Warehousing Corporation for providing the services i.e. service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the IA in performing the Services, then the remuneration and reimbursable expense otherwise payable to the SI under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule VI. However, in case of any new or fresh tax or levy imposed after submission of the proposal the System Integrator shall be entitled to reimbursement on submission of proof of payment of such tax or levy.
- (d) Service tax or any other tax in lieu thereof levied by the central government from time to time on the services rendered by the SI to CWC shall be paid by CWC to the SI over and above the payment schedule, subject to the SI submitting his bills/ invoices therefor in the format prescribed under rule 4A(1) of the Service Tax Rules, 1994 or other relevant laws, as the case may be.

- (e) 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 the following:
 - (i) any resale certificates;
 - (ii) any relevant information regarding out-of-state or use of materials, equipment or services; and
 - (iii) any direct pay permits, exemption certificates or information reasonably requested by the other Party.

4.4 Liquidated damages

Time is the essence of the Agreement and the delivery dates are binding on the System Integrator. In the event of delay or any gross negligence, for causes attributable to the System Integrator, in meeting the deliverables or 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 Central Warehousing Corporation shall be entitled at its option to recover from the System Integrator as agreed, liquidated damages, a sum of 0.5% of the Agreement price of the corresponding milestone payment of 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 corresponding milestone payment of the delayed/undelivered services. This right to claim any liquidated damages shall be without prejudice to other rights and remedies available to CWC under the Agreement and/or any other law.

In case of delay in achieving any of the targets mentioned above solely not attributable to SI, CWC may consider condoning or reducing part of the liquidated damages. CWC has the exclusive right to exercise this provision.

5 Article 5: Representation and warranties

5.1 Representations and warranties of the System Integrator

The System Integrator represents and warrants to the Central Warehousing Corporation or its nominated agencies that:

- (a) It possesses and has the required professional skills, personnel and technical resources to deliver the Services and have offered to provide the Services, on the terms and conditions set forth in this Agreement.
- (b) 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 Agreement or matters arising there under including any obligation, liability or responsibility hereunder.
- (c) It has full power and authority to execute, deliver and perform its obligations under this Agreement.
- (d) This Agreement is executed by a duly authorized representative of the SI.
- (e) This Agreement constitutes the legal, valid and binding obligation of SI, enforceable against it in accordance with the terms hereof.
- (f) It is a competent provider of a variety of Information technology and business process management services;
- (g) It has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (h) From the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (i) In providing the Services, it shall use reasonable endeavours not to cause any unnecessary disruption to Central Warehousing Corporation's normal business operations

- (j) The information furnished in the tender documents and as updated on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as at the date of this Agreement;
- (k) The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (l) There are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- (m) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (n) 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 an Adverse Effect on its ability to perform its obligations under this Agreement. Further, System Integrator warrants that it will comply, at its cost, with all applicable laws, rules, regulations, ordinances, and codes (including identifying and procuring required permits, certificates, approvals, and inspections). System Integrator warrants that it will comply with all privacy and data protection laws, rules, and regulations that are or that may in the future be applicable to the Services or to information relating to customers and employees of CWC.

- (o) All its rights and interests in the Project Assets that are to be transferred to the CWC, pursuant to this Agreement shall pass to and vest in the CWC 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 CWC, and that none of the Project Assets that are acquired by CWC shall be acquired by it.
- (p) No representation or warranty by it contained herein or in any other document furnished by it to Central Warehousing Corporation or its nominated agencies in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
- (q) No sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of Central Warehousing Corporation or its nominated agencies in connection therewith.
- (r) SI warrants that it will provide full support in terms of operations and maintenance services during the Transition Period and such support shall continue till the Replacement SI solely takes charge of the Project. SI further warrants and undertakes that it will be responsible for the continuity of the Services throughout the Term of this Agreement and during the Transition Period.
- (s) It shall co-operate and co-ordinate with Replacement SI as per provisions of Schedule III of this Agreement.
- (t) It shall provide a monthly SLA Report, in the prescribed format to CWC 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 SLA Report will be deemed to be accepted by CWC upon review and signoff by both SI and CWC.
- (u) It must deploy an 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 at the end of every month which is to be shared with CWC on a monthly basis. The tools should also be capable of generating Service Level reports on a monthly/quarterly/half-yearly basis. As part of pre Go-Live audit the tools and the scripts shall also be audited.

- (v) It will achieve all the Service Levels within the time lines defined in Service Level Agreement and in its failure of achieving the same, it shall be liable to pay penalties to CWC.
- (w) SI shall comply with all the requirements of RFP.
- (x) Project Assets
 - i. SI warrants that the Project Assets supplied under this Agreement conform to technical specifications and functional requirement specifications prescribed in RFP and shall perform according to the said technical specifications.
 - ii. SI represents and warrants to CWC to supply to CWC the components that form the Bill of Materials proposed for the System. The commitment shall cover procurement costs (including multiple units of software licenses and all infrastructure associated with the deployment of the solution and its components) and the cost of ownership / maintenance.
 - iii. SI warrants that the Project Assets supplied under this Agreement 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 Agreement shall also be made available.
 - iv. 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.
 - v. SI warrants during the Agreement duration period, the Project Assets and/or services supplied under this Agreement and each component used in the software thereof shall be free from all types of defects / failures.

- vi. In case complete delivery of the Project Assets are delayed beyond the period stipulated in this Agreement, then SI undertakes that the annual maintenance period for such Project Assets shall be extended to that extent.
- vii. 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 is as per Service Levels described in Service Level Agreement.
- viii. SI warrants that it will maintain Equipment and Software to the extent that the System Integrator has maintenance responsibility for such assets so that they operate in accordance with their specifications, including (i) maintaining Equipment in good operating condition, subject to normal wear and tear; (ii) undertaking repairs and preventive maintenance on Equipment in accordance with the applicable Equipment manufacturer's recommendations; and (iii) performing Software maintenance in accordance with the applicable Software SI's documentation and recommendations.
- ix. SI hereby warrants that it will collect and maintain all the information collected from various offices of CWC. 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 Agreement.
- x. **Professional Services.** System Integrator warrants that it will provide the Services with promptness, diligence and in a workmanlike and professional manner, in accordance with the terms of the Agreement and with the practices and professional standards used in well-managed operations performing services similar to the Services.
- xi. **Personnel.** System Integrator warrants that it will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Services. SI shall be responsible for the acts of its employees, sub-contractors, or any other persons deployed by it for performing its obligations pursuant to the Project. CWC reserves its right to initiate criminal action against the agents/ employees of SI for fraud or misappropriation, besides stringent penalties. The management of SI should also be made liable for action in case of fraud, under the applicable laws.

- xii. **Viruses, Malware and/or Disabling Devices.** SI hereby warrants that it will use industry best practices to identify, screen, prevent and not introduce malware/viruses and/or disabling devices (that is, counter, time lock, worms or Trojan horses) into the environment.
- xiii. **Non-Infringement.** System Integrator warrants that it will perform its responsibilities under the Agreement in a manner that does not infringe any patent, copyright, trademark, trade secret, or other proprietary rights of CWC or any third party.
- xiv. System Integrator warrants that it will use commercially reasonable efforts to ensure that no forms of harmful surreptitious code or other contaminants, including commands, instructions, devices, techniques, bugs, or web bugs, or other Malware are introduced into any computer system, database, software, equipment, web site, or processes used to provide the Services. If a Malware program is found to have been introduced into any environment/system described above, the System Integrator promptly shall notify CWC in writing of the introduction and shall take all necessary steps in reducing the effects of the Malware program, and if the Malware program causes an interruption of the Services, a loss of operational efficiency or loss of data, SI shall mitigate and restore such losses.
- xv. For any Software used in the provision of the Services, the System Integrator warrants that it will not insert into such Software any code that would have the effect of disabling or otherwise shutting down all or any portion of the Services. With respect to any disabling code that may be part of Software, the System Integrator will represent and covenant that it shall not invoke such disabling code at any time without CWC's prior written consent.
- xvi. The SI represents and warrants to the CWC that the SI shall be bound by the undertakings submitted by the SI to CWC as part of the proposal submitted by the SI.
- xvii. SI hereby warrants that it will fulfill its entire obligations listed in all the volumes of RFP and the Agreement in pursuant to the Project.
- xviii. Compliance and Sizing of Infrastructure

- i. SI warrants that it has sized the infrastructure and all software (including all required licenses) based on the solution proposed and in accordance with the Service Level requirements and assure CWC that the sizing is for all the functionality envisaged in the RFP document and taken into consideration the indicative growth percentage projected by CWC as mentioned in the RFP.
 - ii. SI warrants that solution has been sized and synergised in consultation with the respective OEMs.
 - iii. SI warrants that the proposed storage at the Data Centre and Disaster Recovery Centre as per its sizing will be sufficient to meet the CWC Project's requirements during the Term of the agreement.
 - iv. SI warrants that it shall monitor, maintain, and comply with the service levels stated in the RFP to provide quality service to CWC.
 - v. SI warrants that any augmentation of the proposed solution or storage or sizing (software, hardware) or any additional component required or resources in order to meet the requirements and/or the requisite Service Level requirements given by CWC will be carried out at no additional cost to CWC.
- (y) The Project, including all the system(s) and other Services provided, shall be free from any defect or deficiency in the material, design, engineering, and performance/workmanship that prevent the Project and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the Project and/or any of its system(s) as per the performance guarantee / warranty period defined in the Schedule. If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services provided by the System Integrator , the System Integrator shall promptly, in consultation and agreement with Central Warehousing Corporation, and at the System Integrator 's sole cost repair, replace, or otherwise make good (as the System Integrator shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the Project caused by such default, defect or deficiency. If the Project or any of its System cannot be

used by reason of such default, defect or deficiency and/or making good of such default, defect or deficiency, the warranty period for the Project shall be extended by a period equal to the period during which the Project or any of its system could not be used by the Central Warehousing Corporation because of such defect and/or making good of such default, defect or deficiency.

- (z) **Implied Warranty:** The warranties provided herein are in lieu of all other warranties, both express and implied, and all other warranties, including without limitation that of merchantability or fitness for intended purpose is specifically disclaimed.

5.2 Representations and warranties of the Central Warehousing Corporation or its nominated agencies

Central Warehousing Corporation or its nominated agencies represent and warrant to the System Integrator that:

- (a) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- (b) It has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) It has the financial standing and capacity to perform its obligations under the Agreement;
- (d) It is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) This Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations

under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;

- (f) The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) There are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;
- (h) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on the Central Warehousing Corporation or its nominated agencies ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) It has complied with Applicable Laws in all material respects;
- (j) All information provided by it in the RFP in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- (k) Upon the System Integrator performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the System Integrator , in accordance with this Agreement.

5.3 Performance bank guarantee.

SI warrants providing bank guarantee for the Agreement as a whole, valued at 10% of value of the Agreement and should be valid till the entire term of the agreement and for an **additional period of one year** after the completion of term of agreement including warranty obligations.

5.4 Mutual covenants, representation and warranties of the CWC and SI

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

5.5 Insurance cover

Obligation to maintain insurance

1. The System Integrator shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the agreement, the insurance set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of the CWC, who should not unreasonably withhold such approval.
 - a. Cargo insurance during transport – as applicable, 110 percent of the price of the information technologies and other goods in a freely convertible currency, covering the goods from physical loss or damage during shipment through receipt at the project site.
 - b. Installation “All risks” insurance – as applicable, 110 percent of the price of the information technologies and other goods covering the goods at the site from all risks of physical loss or damage (excluding only perils commonly excluded under “all risks” insurance policies of this type by reputable insurers) occurring prior to go-live of the system.
 - c. Third-Party liability insurance – amount of insurance will be as required by the law of the land. The insurance shall cover the period from the agreement effective date until the agreement expiry / completion date. it shall cover bodily injury or death suffered by third parties (including the CWC’s personnel) and loss of or damage to property (including the CWC’s property and any subsystems that have been accepted by the CWC) occurring in connection with the supply and installation of the CWC WMS
 - d. Automobile liability insurance – in accordance with the statutory requirements prevailing in the country, covering use of all vehicles used by the System Integrator (whether or not owned by them) in connection with the execution of the agreement.

2. The CWC shall be named as co-insured under all insurance policies taken out by the System Integrator pursuant to point 1 of this clause, except for the third-Party liability, shall be named as co-insured under all insurance policies taken out by the System Integrator pursuant to point 3 of this clause except for cargo insurance during transport. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the agreement shall be waived under such policies.
3. The System Integrator shall deliver to the CWC certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect.
4. If the System Integrator fails to take out and/or maintain in effect the insurance referred to in this clause, the CWC may take out and maintain in effect any such insurance and may from time to time deduct from any amount due the System Integrator under the agreement any premium that the CWC shall have paid to the insurer or may otherwise recover such amount as a debt due from the System Integrator.

6 Article 6: Obligations and compliances

6.1 Statutory Obligations

- a) The Agreement shall be governed by and construed in accordance with the laws of the Republic of India.
- b) SI represents and warrants to CWC that the performance of obligations under this Agreement 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.

6.2 Compliance with Laws

- a) Each Party to this Agreement 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 Agreement 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 CWC 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 CWC 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 Agreement 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 Agreement 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 CWC 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.

6.3 Obligations of the central warehousing corporation or its nominated agencies

Without prejudice to any other undertakings or obligations of the Central Warehousing Corporation or its nominated agencies under this Agreement, the Central Warehousing Corporation or its nominated agencies shall perform the following:

- (a) To provide any support through personnel to test the system during the Term;
- (b) To provide any support through personnel and/or test data during development, rollout, stabilization phase, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- (c) Central Warehousing Corporation shall provide the data (including in electronic form wherever available) to be migrated.
- (d) To authorize the System Integrator to interact for implementation of the Project with external entities such as the all subsidiaries of Central Warehousing Corporation, Railways, Commodity exchange, Customs etc.

6.4 Obligations of the system integrator

- a. It shall provide to the Central Warehousing Corporation or its nominated agencies, the Deliverables as set out in Schedule I of this Agreement.

- b. It shall perform the Services as set out in Article 3 of this Agreement and in a good and workmanlike manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, and so as to comply with the applicable Service Levels set out with this Agreement.
- c. It shall ensure that the Services are being provided as per the Project Timelines set out as defined in Volume I of this RFP.

7 Article 7: Force majeure events and events of default

7.1 Definition of Force Majeure

The System Integrator or the Central Warehousing Corporation as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by an event of force majeure (*'Force Majeure'*).

7.2 Force Majeure events

A Force Majeure event means any event or circumstance or a combination of events and circumstances referred to in this Clause, which:

- a) is beyond the reasonable control of the affected Party;
- b) such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care;
- c) does not result from the negligence of such Party or the failure of such Party to perform its obligations under this Agreement;
- d) is of an incapacitating nature and prevents or causes a delay or impediment in performance; and
- e) may be classified as all or any of the following events:

Such events include:

Non-Political Events

- (A) act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions;
- (B) radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the System Integrator 's use of radiation or radio-activity or biologically contaminating material;
- (C) strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances as the case may be not arising on account of the acts or omissions of the System Integrator and which affect the timely implementation and continued operation of the Project; or

- (D) any event or circumstances of a nature analogous to any of the foregoing.

Political Events

- (A) Change in Law, other than any Change in Law for which relief is provided under this Agreement;
- (B) expropriation or compulsory acquisition by the Central Warehousing Corporation or any of their nominated agencies of any material assets or rights of the Implementing Partner;
- (C) unlawful or unauthorised revocation of, or refusal by Central Warehousing Corporation or any of their nominated agencies, Gol or any of its agencies to renew or grant any clearance or Required Consents required by the System Integrator to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the System Integrator 's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- (D) any judgment or order of any court of competent jurisdiction or statutory authority in India made against the System Integrator in any proceedings for reasons other than failure of the System Integrator to comply with Applicable Laws or Required Consents or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement;
- (E) expropriation or compulsory acquisition by the Central Warehousing Corporation or any of their nominated agencies of any material assets or rights of the System Integrator ;
- (F) unlawful or unauthorized revocation of, or refusal by any authority other than the Central Warehousing Corporation or any of their nominated agencies to renew or grant any Required Consents required by the System Integrator to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the System Integrator 's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;

- (G) any requisition of the Project by any other authority; or
- (H) any requisition of the Project by the Central Warehousing Corporation or any of their nominated agencies.
- (I) For the avoidance of doubt, suspension of the Project in accordance with the provisions of this Agreement shall not be considered a requisition for the purposes of Force Majeure event.

Other Events

- (a) an act of war (whether declared or undeclared), hostilities, invasion, armed conflict or act of foreign enemy, blockade, embargo, prolonged riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage, for a continuous period exceeding seven (7) days.

For the avoidance of doubt, it is expressly clarified that the failure on the part of the System Integrator under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking aren't the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure". In so far as applicable to the performance of Services, System Integrator will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability there from.

7.3 Notification procedure for Force Majeure

- (a) The affected Party shall notify the other Party of a Force Majeure event within seven (7) days of occurrence of such event. If the other Party disputes the claim for relief under Force Majeure it shall give the claiming Party written notice of such dispute within thirty (30) days of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in accordance with Clause

- (b) Upon cessation of the situation which led the Party claiming Force Majeure, the claiming Party shall within seven (7) days hereof notify the other Party in writing of the cessation and the Parties shall as soon as practicable thereafter continue performance of all obligations under this Agreement.

7.4 Allocation of costs arising out of Force Majeure

- (a) Upon the occurrence of any Force Majeure Event prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- Upon occurrence of a Force Majeure Event after the Effective Date, the costs incurred and attributable to such event and directly relating to the Project (*'Force Majeure Costs'*) shall be allocated and paid as follows:
 - upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
 - upon occurrence of an Other Event of Force Majeure, all Force Majeure Costs attributable to such Other Event, and not exceeding the Insurance Cover for such Other Event, shall be borne by the Implementing Partner.

Save and except as expressly provided in this Clause, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof.

7.5 Consultation and duty to mitigate

Except as otherwise provided in this Clause, the affected Party shall, at its own cost, take all steps reasonably required to remedy and mitigate the effects of the Force Majeure event and restore its ability to perform its obligations under this Agreement as soon as reasonably practicable. The Parties shall consult with each other to determine the reasonable measures to be implemented to minimize the losses of each Party resulting from the Force Majeure event. The affected Party shall keep the other Parties informed of its efforts to remedy the effect of the

Force Majeure event and shall make reasonable efforts to mitigate such event on a continuous basis and shall provide written notice of the resumption of performance hereunder.

8 Article 8: Governing law and dispute resolution

All disputes and differences arising out of or in any way touching or concerning this agreement, whatsoever (except as to any matter, the decision of which is expressly provided for in the agreement) shall be referred to the sole arbitration of any person appointed by the Managing Director, Central Warehousing Corporation, New Delhi. There will be no objection to any such appointment on the ground that the person so appointed is an employee of the Corporation, that he had to deal with the matters to which the agreement relates and that in the course of his duties as such employee of the Corporation he had expressed views on all or any of the matter in dispute or difference. The award of such arbitrator shall be final and binding on the parties to the agreement. It is a term of the agreement that in the event of such Arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act or resigning for any reason, the Managing Director, Central Warehousing Corporation at the time of such transfer, vacation of office or inability to act or resigning shall appoint another person to act as Arbitrator in accordance with the terms of this agreement. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this agreement that no person other than a person appointed by the Managing Director, Central Warehousing Corporation as aforesaid should act as Arbitrator. The Arbitrator shall give reasons for his award.

Provided further that any demand for arbitration in respect of any claim(s) of the bidder or of the Corporation under the agreement shall be in writing and made within one year of the date of termination or completion (expiry of the period) of the agreement and where this provision is not complied with, the claim(s) of the bidder shall be deemed to have been waived and absolutely barred and the Corporation shall be discharged and released of the liabilities under the agreement.

The venue of the Arbitration shall be at such place as may be fixed by the Sole Arbitrator in his sole discretion.

The work under the agreement shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable to the bidder shall be withheld on account of such proceedings.

The costs of arbitration shall be borne by the parties as per the decision of the Arbitrator.

The Arbitrator shall give separate award in respect of each dispute or differences referred to him and shall give reasons for his decision.

Subject as aforesaid the Arbitration and Conciliation Act, 1996 shall apply to the Arbitration proceedings under this clause.

9 Article 9: Termination and transfer

9.1 Material Breach

- (a) In the event that either Party believes that the other Party is in Material Breach of its obligations under this Agreement, such aggrieved Party may terminate this Agreement upon giving a one month's notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, the Central Warehousing Corporation as the case may be will have the option to terminate the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events and the termination will become effective:
- (i) If the System Integrator is not able to deliver the services as per the SLAs defined in Volume 3 of RFP which translates into Material Breach, then the Central Warehousing Corporation may serve a 30 days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the Central Warehousing Corporation will have the option to terminate this Agreement. Further, the Central Warehousing Corporation may after affording a reasonable opportunity to the System Integrator to explain the circumstances leading to such a delay.
 - (ii) If there is a Material Breach by the Central Warehousing Corporation or its nominated agencies which results in not providing support for effecting data migration or not providing the certification of User Acceptance, then the System Integrator will give a one month's notice for curing the Material Breach to the Central Warehousing Corporation. After the expiry of such notice period, the System Integrator will have the option to terminate the Agreement
- (b) The Central Warehousing Corporation may by giving a one month's written notice, terminate this Agreement if a change of control of the System Integrator has taken place. For the purposes of this Clause, in the case of System Integrator, change of

control shall mean the events stated in Clause 2.2.2, and such notice shall become effective at the end of the notice period as set out in Clause 2.2.2 (c).

- (c) In the event that System Integrator undergoes such a change of control, Central Warehousing Corporation may, as an alternative to termination, require a full Performance Guarantee for the obligations of System Integrator by a guarantor acceptable to Central Warehousing Corporation or its nominated agencies. If such a guarantee is not furnished within 30 days of Central Warehousing Corporation's demand, the Central Warehousing Corporation may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the System Integrator.
- (d) The termination provisions set out in this Clause shall apply *mutatis mutandis* to the SLA.

9.2 Effects of termination

- (a) In the event that Central Warehousing Corporation terminates this Agreement pursuant to failure on the part of the System Integrator to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by System Integrator shall be forfeited.
- (b) Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule III of this Agreement.
- (c) In the event that Central Warehousing Corporation or the System Integrator terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as Schedule VI of this Agreement.

9.3 Termination of this Agreement due to bankruptcy of System Integrator

The Central Warehousing Corporation may serve written notice on System Integrator at any time to terminate this Agreement with immediate effect in the event that the System Integrator reporting an apprehension of bankruptcy to the Central Warehousing Corporation or its nominated agencies

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 CWC or otherwise in procuring the Agreement or forbearing to do or for having done any act in relation to obtaining or execution of the Agreement or any other agreement with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Agreement 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 CWC to forthwith terminate the Agreement and all or any other Agreements with SI and recover from SI the amount of any loss arising from such cancellation. The decision of the CWC or its 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 CWC or to any other person in a position to influence any officer/employee of the CWC for showing any favour in relation to this or any other Agreement, shall render SI to such liability/ penalty as the CWC may deem proper, including but not limited to termination of the Agreement, imposition of penal damages, forfeiture of the bank guarantees (including Performance Bank Guarantee) and seek immediate refund of the amounts paid by the CWC .

11 Article 11: Non-disclosure of agreement documents

11.1 Undertaking by SI

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

12 Article 12: Assets and third party contracts

12.1 Purpose

- a) This Article sets out the provisions relating to management of Assets deployed or developed for the purpose of the Project, in terms of ownership, usage, maintenance and transfer.
- b) It sets out the provisions for transfer of assets on termination or expiration of the Agreement to allow the orderly and efficient transition of the Services to CWC or its nominee/Replacement SI, as the case may be, and CWC/Replacement SI, will be able to offer the services to its stake holders without interruptions.
- c) The provisions of this Article are applicable to all the assets related to the project both physical assets and assets of intellectual property.

12.2 The Assets Categories and Description

- a) For the purpose of administering this Agreement the assets under management include all kinds of physical assets like premises, buildings, computer hardware etc and all kinds of intangible assets like intellectual property viz. software and software tools.
- b) The third party contracts for works and services deployed for the purpose of this project are also governed by this Article.
- c) For the purpose of administering this Agreement the different assets both physical assets and intellectual property assets are grouped into the following categories based on the nature of ownership and usage.
 - i. Assets of CWC allowed to be used by the SI to deliver the services;
 - ii. Assets bought and deployed exclusively for the purpose of this Project by SI and has been paid by CWC;
 - iii. Assets bought or deployed for the project by SI but not the exclusively for the Project;
 - iv. Assets owned by the SI but deployed for the Project either for a fee or not;
- d) For the purpose of administering this Agreement, the provisions are applicable to assets irrespective of the time of deployment of the assets. It is applicable to

- i. Assets listed for deployment during the initial periods of the Agreement as committed in the proposal;
- ii. Assets deployed during the project duration to meet the service requirements or performance requirements or as requested by CWC.

12.3 CWC's Assets

- a) CWC will be the sole and exclusive owner of the following:
 - i. All Supplied assets owned by CWC as of the Effective Date;
 - ii. All assets acquired by CWC from Third Parties after the Effective Date;
 - iii. All assets developed by CWC after the Effective Date;
 - iv. All assets procured, replaced, deployed and developed by the System Integrator or its subcontractors under the Agreement, including foreign intellectual property rights in such assets and all modifications, enhancements, and derivative works of such assets;
- b) The System Integrator will cease use of CWC assets upon expiration or termination of the Agreement.

12.4 CWC Supplied Assets.

- a) CWC Supplied assets includes the office space, the physical assets associated with the office, computer hardware, software, internet domains, or any other intellectual property assets, belonging to CWC and earmarked by CWC for the purpose of the Project and used by SI for the Project are treated as the CWC Supplied assets for the Project.
- b) The ownership of the various offices and CWC Supplied assets shall always remain vested with the CWC. The SI shall neither assign, transfer, sublet, create any charge or encumbrance, nor shall the SI create or permit creation of any third party rights whatsoever, on whole or any part of the CWC Supplied assets or various offices. It is expressly agreed that the SI rights in the various offices and/or the CWC Supplied assets shall cease without the need for any action to be taken by the CWC upon the termination of this Agreement for any reason whatsoever.
- c) The SI shall not without the prior written consent or approval of the CWC or the designated agency use the CWC Supplied assets for any purpose other than for the purposes of the Project

and Services and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the CWC.

- d) The details of the assets earmarked by the CWC for the purpose of the Project and used by SI shall be listed in a register duly signed by the representatives of SI and CWC.
- e) SI is responsible for ensuring that the CWC supplied assets are used for the purpose of the Project only.
- f) If SI is found to be using the CWC supplied assets for any other activity other than, directly or indirectly, related to the Project, the CWC has the rights to terminate the Agreement forthwith, in addition to initiate appropriate proceedings and claim relief (including damages) against SI for the misuse of the CWC supplied assets.
- g) The CWC supplied assets shall not be transferred or moved by SI either within or outside the premises of CWC without the prior written consent of the CWC.
- h) The SI is not allowed to use the CWC/Project domain name for publicizing its own brand images or any other purpose other than the ones related to the Project.

12.5 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, COTS solution applications & other software applications, service contracts for warranty support, specialized services for audit/testing etc. will be assigned to CWC or its nominees and will indicate CWC as “End Users” as per the Agreement.
- d. SI will share these contracts and licenses in entirety with CWC.
- e. The CWC 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 Agreement, SI shall transfer/assign or cause to be transferred/assigned to the CWC or its nominee such third party contracts which are valid and subsisting and which the CWC has chosen to take over at its sole discretion as per Schedule III hereof.

12.6 Transfer of Project Assets.

- a. The Project Assets shall be transferred to the CWCs and when they are commissioned and all the Project Assets shall be transferred not later than the Go-Live coming into effect or termination of the Agreement prior to Go-Live, without any liabilities.
- b. The transfer of these assets means CWC will have the complete ownership of these assets.
- c. However SI will be responsible for maintaining Project Assets as per the warranty clauses and will be fully accountable for the warranty clauses.

12.7 USE OF ASSETS BY THE SYSTEM INTEGRATOR

During the Term the System Integrator shall:

- a) Take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the System Integrator exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the “**Project Assets**”) in proportion to their use and control of such Assets; and
- b) Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) and/or the intangible Assets suitably upgraded subject to the relevant industry standards (including those stated in Volume I of the RFP) as at the date the System Integrator takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- c) Ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the System Integrator will be followed by the System Integrator and any person who will be responsible for the use of the Assets;
- d) Take such steps as may be properly recommended by the manufacturer of the Assets and notified to the System Integrator or as may, in the reasonable opinion of the System Integrator, be necessary to use the Assets in a safe manner;
- e) Ensure that the Assets that are under the control of the System Integrator, are kept suitably housed and in conformity with Applicable Law;

- f) Procure permission from the Central Warehousing Corporation or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- g) Not, knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.

13 Article 13: Intellectual property rights

13.1 Products and fixes

All products and related solutions and fixes provided pursuant to this work order shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. System Integrator would be responsible for arranging any licenses associated with products. “**Product**” means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to Central Warehousing Corporation for license which is published by product owner or its affiliates, or a third party. “**Fixes**” means product fixes that are either released generally (such as commercial product service packs) or that are provided to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.

13.2 Bespoke development:

Subject to the provisions of Clause 13.3 and 13.4 below, the IPR rights for any bespoke development done during the implementation of the Project will lie with CWC.

13.3 Pre-existing work (customized source code of COTS):

All IPR including the source code and materials developed or otherwise obtained independently of the efforts of a party under this Agreement (“**pre-existing work**”) including any enhancement or modification thereto shall remain the sole property of that party. During the performance of the services for this agreement, each party grants to the other party (and their sub-contractors as necessary) a non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the System Integrator should grant Central Warehousing Corporation a non-exclusive, perpetual, fully paid-

up license to use the pre-existing work in the form delivered to Central Warehousing Corporation as part of the service or deliverables only for its internal business operations. Under such license, either of parties will have no right to sell the pre-existing work of the other party to a Third Party. Central Warehousing Corporation's license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that bidder leaves with Central Warehousing Corporation at the conclusion of performance of the services.

13.4 Residuals:

In no event shall System Integrator be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables, set-out in this Agreement or Annexure. In addition, subject to the confidentiality obligations, System Integrator shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services which either Party, individually or jointly, develops or discloses under the Agreement; except to the extent such use infringes the intellectual property rights of the other Party or Third Parties or breaches its confidentiality or other obligations under the Agreement or other agreements with the other Party or Third Parties.

13.5 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 Assets or any part thereof, supplied under this Agreement. SI shall indemnify the CWC 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 Asset or any part thereof by the CWC and persons authorised by the CWC, 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 CWC is enjoined from using such Asset or any part thereof or in is likely to be enjoined, SI, at its expense, shall (i) modify such 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 Asset with a functionally equivalent of the same, or (iii) obtain the right for the CWC to continue using such Assets.
- c. For a third party product supplied by SI, SI shall pass on to CWC all the indemnities offered by the third party.

13.6 Trademarks, Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that System Integrator may, upon completion, use the Project as a reference for credential purpose. Except as required by law or the rules and regulations of each stock exchange upon which the securities of one of the Parties is listed, neither Party shall publish or permit to be published either 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 Agreement, the SLA or the business of the Parties without prior reference to and approval in writing from the other Party, such approval not to be unreasonably withheld or delayed. Such approval shall apply to each specific case and relate only to that case.

14 Article 14: Audit, access and reporting

The System Integrator shall allow access to the Central Warehousing Corporation or its nominated agencies to all information which is in the possession or control of the System Integrator and which relates to the provision of the Services as set out in the Audit, Access and Reporting Schedule and which is reasonably required by the Central Warehousing Corporation to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule IV of this Agreement.

15 Article 15: Personnel

15.1 Supervision and Management.

1. The personnel assigned by System Integrator to perform the Services shall be employees of System Integrator or its subcontractor(s), and under no circumstances shall such personnel be considered employees of Central Warehousing Corporation or its nominated agencies.
2. SI agrees that no right of any employment with CWC shall accrue or arise, by virtue of engagement of employees, agents, contractors, subcontractors etc. by SI pursuant to this Agreement.
3. All remuneration, claims, wages, dues of such employees, agents, contractors, subcontractors of SI is agreed to be paid by SI alone and the CWC 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.
4. SI shall not be considered as a contractor to CWC as this agreement is between two parties.
5. SI should comply to Contract Labour(Regulation & Abolition) Act and other related statutory provisions.
6. The System Integrator shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, remittance of income taxes and social security taxes, workmen's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to applicable laws.
7. The System Integrator shall use its best efforts to ensure that sufficient System Integrator personnel are assigned to perform the Services and those personnel have appropriate qualifications to perform the Services.
8. Central Warehousing Corporation or its nominated agencies shall have the right to seek the removal or replacement of any System Integrator personnel or its subcontractor (in case of

gross misconduct, under performance, misbehavior, moral turpitude or any other reasons detrimental to the interest of the CWC) performing work under this Agreement. In the event that Central Warehousing Corporation or its nominated agencies requests that any System Integrator personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.

9. In the event that the Central Warehousing Corporation and System Integrator identify any personnel of System Integrator as “Key Personnel”, then the System Integrator shall not remove such personnel from the Project without the prior written consent of Central Warehousing Corporation or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.
10. Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of System Integrator to freely assign or reassign its employees; provided that System Integrator shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. Central Warehousing Corporation or its nominated agencies shall have the right to review and approve System Integrator’s plan for any such transfer. System Integrator shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.
11. SI shall define a succession plan for the key personnel and submit the same to CWC.
12. 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 CWC or its authorised representative. The CWC or its authorised representative will have the right to accept or reject these substitute profiles.
13. Each Party shall be responsible for the performance of all its obligations under this Agreement or the SLA as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.

14. Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.
15. 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.
16. SI 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 CWC.
17. 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.
18. In pursuance of the commitment made in the Agreement, SI undertakes to take the services of experts from the OEM for the specific activities as mentioned in the volume I of this RFP.
19. The OEM personnel and the services rendered by them will be paid by SI.
20. The OEM personnel will report directly to CWC on their work, observations and audit findings
21. CWC will seek the deployment of the OEM personnel through SI within the framework of this Agreement.
22. OEM personnel will not be treated as employees of CWC 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.
23. OEM Personnel will be bound by all the provisions of the Agreement including and not limited to the confidentiality provisions provided herein.

15.2 The Minimum Proficiency

The CWC has identified certain roles of the Project team being deployed by SI during the implementation of Project, as key roles defined in Volume I. This list is indicative and CWC may

identify more roles as key roles during the project implementation and operations phase. 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 of the already identified key roles in terms of expertise, skills and educational qualifications are listed in Volume I of this RFP.

15.3 Clearance for Personnel

- a) 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.

15.4 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 CWC a list of all employees (with job titles) of SI dedicated to providing the services at the commencement of the exit management period.
- b) On the termination of the Agreement during annual operations & maintenance phase, the CWC will have the right to identify SI personnel and demand their presence for knowledge transfer to the CWC or the Replacement SI.

If the CWC hires the services of another agency on the termination/expiry of the Agreement, 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 CWC shall have the right to demand the presence of the required personnel from SI for this purpose.

16 Article 16: Information security and audit rights

16.1 Information Security

- a) The System Integrator shall comply with the relevant security, safety and other requirements specified in the Information Technology Act (wherever applicable) and any other directions issued from time to time by the Central Warehousing Corporation or its nominated agencies and follow the industry standards related to safety and security (such as Information security standards like ISO 27001 and including those as stated in the RFP Volume I), insofar as it applies to the provision of the Services.
- b) Each Party to the SLA/Agreement shall also comply with Central Warehousing Corporation or the Government of India, and the respective State's security standards and policies in force from time to time at each location of which Central Warehousing Corporation or its nominated agencies make the System Integrator aware in writing insofar as the same apply to the provision of the Services.
- c) The Parties to the SLA/Agreement shall use reasonable endeavours to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Central Warehousing Corporation as the case may be or any of their nominees data, facilities or Confidential Information.
- d) The System Integrator shall upon reasonable request by the Central Warehousing Corporation as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- e) As per the provisions of the SLA or this Agreement, the System Integrator shall promptly report in writing to the Central Warehousing Corporation or its nominated agencies, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of Central Warehousing Corporation as the case may be.

- f) The Parties acknowledge that high level of security needs to be maintained. SI undertakes to treat information passed on to them under this Agreement as classified. Such Information will not be communicated/published/advertised by SI to any person without the express permission of the CWC.
- g) Any private, proprietary or classified Information which has to be made available by the receiving party (SI) to a third party for the execution of this Agreement, shall be submitted to such a third party with the same restrictions as included in this Article.
- h) SI undertakes to meet the laid down security requirements/stipulations. All the matters related to the Agreement will be treated as classified and highly confidential and shall not be communicated to anybody (except for the purpose of this Agreement) or published/advertised without the written consent of the CWC.

16.2 Confidentiality

- i. The Central Warehousing Corporation or its nominated agencies shall allow the System Integrator to review and utilize highly confidential public records and the System Integrator shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- ii. Additionally, the System Integrator shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.
- iii. The Central Warehousing Corporation or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the System Integrator regarding any forbidden disclosure.
- iv. The System Integrator shall ensure that all its employees, agents and sub-contractors execute individual non disclosure agreements, which have been duly approved by the Central Warehousing Corporation with respect to this Project.

For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:

- a. information already available in the public domain;
- b. information which has been developed independently by the System Integrator ;

- c. information which has been received from a third party who had the right to disclose the aforesaid information;
 - d. information which has been disclosed to the public pursuant to a court order.
- v. To the extent the System Integrator shares its confidential or proprietary information with the Central Warehousing Corporation for effective performance of the Services, the provisions of the Clause 16.2.1 to 16.2.3 shall apply mutatis mutandis on the Central Warehousing Corporation or its nominated agencies.

16.3 Confidential Information

- a) SI recognizes that during the term of the Agreement, 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 recognizes 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 CWC but also the Stakeholders whose data is used. SI, its subcontractors and agents shall demonstrate utmost care, sensitivity and strict confidentiality. SI, its sub contractors and agents shall strictly follow the provisions of IT Rules, 2011 especially with regard to sensitive information. Any breach of any confidentiality obligation set out in the Agreement including Articles will result in CWC 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 SP.
- 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.

16.4 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 :-
- i. 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 Agreement; or
 - ii. 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.
- b) 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 Agreement; 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.
- c) 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
- d) The restrictions in this clause 16.3 shall not apply to:
- i. 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 Agreement); or

- ii. 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
 - iii. Is identified in writing by the Discloser as no longer proprietary or confidential.
- e) The Receiving Party agrees that its obligation under this Section with respect to confidentiality will survive the termination of this Agreement.
- f) 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 license with respect to the other Party's Confidential Information otherwise than as is expressly set out in this Agreement.
- g) 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 CWC 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.
- h) In connection with the Project under this Agreement, the CWC 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 CWC 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 CWC 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 CWC related to this Agreement or the Project.

- i) SI agrees that all information processed, stored, or transmitted by SI equipment belongs to the CWC. 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.
- j) SI understands and agrees that civil, criminal, or administrative penalties may apply for failure to protect information appropriately.

16.5 Information Ownership

- a) CWC Data will be and remain the property of CWC. The System Integrator and its subcontractors, if any, will not utilize CWC Data for any purpose other than that of rendering the Services under the Agreement.
- b) All operational data developed, maintained, or otherwise used by the System Integrator in delivering the Services shall be considered CWC Data, except for information regarding the System Integrator's personnel and the System Integrator's costs. CWC shall have an unrestricted right to use, or to have Third Parties use on its behalf, such operational data.
- c) As requested by CWC at the end of Term or at termination of the Agreement (regardless of the type of termination), CWC Data shall be returned to CWC in a form acceptable to CWC or shall be destroyed as directed by CWC.
- d) System Integrator shall provide to CWC and its Affiliates access to the CWC Data in System Integrator's or System Integrator's contractors possession or control on demand.
- e) The System Integrator will (i) comply with all CWC security policies, information protection, and privacy policies, procedures, standards, requirements, and specifications provided to the System Integrator; (ii) provide appropriate Equipment and Software to implement security solutions; (iii) segregate all CWC Data from that of any other client; (iv) provide direct access to assets and information pertinent to CWC's investigations, compliance reviews, and audits and (v) be in line with ISO27001 standards.
- f) SI agrees that all information processed, stored, or transmitted by the SP's Project Assets or SI Assets for Own Use belongs to the CWC. 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.

- g) SI understands and agrees that civil, criminal, or administrative implications may arise for failure to protect information appropriately.
- h) SI agrees that:-
 - i. All customers', supplier's, associated organisations and process information related information of the CWC is considered as sensitive and will be protected from unauthorized disclosure, Modification or access.
 - ii. Any sensitive information of the CWC would be protected from unauthorized disclosure, Modification or access.
 - iii. The type of sensitive information that will be found on the CWC 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.

16.6 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 Agreement or existing at any of the CWC offices.
- 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 CWC information, data and sensitive application software.
- c) SI understands and agrees to the fact that very sensitive Confidential Information about the CWC 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 Agreement and pursuant to the Project.
- d) The System Integrator shall establish and maintain safeguards against the unauthorized access, destruction, loss, or alteration of CWC Data in the possession of the System Integrator or its subcontractors that are no less rigorous than the most rigorous practices of CWC or the System Integrator as of the Effective Date. CWC shall have the right to establish backup security for CWC Data and to keep backup and files for such data in its possession if it chooses. System

Integrator personnel and subcontractors will not attempt to access or allow access to CWC Data that is not required for the performance of the Services by such personnel. The System Integrator will promptly notify CWC of any breach or potential breach of security relating to CWC Data and will investigate and remediate the effects of such breach or potential breach.

Each Party's confidential information shall remain the property of that Party. Each Party shall use at least the same degree of care, but no less than a reasonable degree of care, to safeguard the confidential information of the other as it employs with respect to its own information of a similar nature. The System Integrator shall require that its employees, agents, and subcontractors comply with the confidentiality restrictions of the Agreement. In the event of unauthorized disclosure or loss of confidential information, the receiving Party shall immediately notify the furnishing Party in writing. These responsibilities shall survive the expiration or termination of the Agreement.

16.7 Access for audit

- a) SI shall be obliged to extend all co-operations to the CWC personnel or the experts appointed by the CWC 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 CWC.
- b) Additionally, SI shall upon prior intimation by the CWC provide the CWC personnel or the authorized representatives of the CWC access to the SI's 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 Agreement.
- 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 CWC 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 CWC access to various monitoring and performance measurement systems (both manual and automated). The CWC has the right to get the monitoring and performance measurement systems (both manual and automated) audited without prior approval / notice to SP.
- f) The audit, access, reporting and inspection rights of the CWC under this Article shall be governed by Schedule IX of the Agreement.

17 Article 17: Indemnification & limitation of liability

17.1 Third party claims

- a) System Integrator (the "Indemnifying Party") undertakes to indemnify CWC (the "Indemnified Party") 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 Indemnified Party) attributable to the Indemnifying Party's negligence or willful default in performance or non-performance under this Agreement. If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Indemnified Party. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by (a) Indemnified Party's misuse or modification of the Service; (b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party; (c) Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party; (d) Indemnified Party's distribution, marketing or use for the benefit of third parties of the Service; or (e) information, direction, specification or materials provided by Indemnified Party or any third party contracted to it. If any Service is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either (i) procure the right for Indemnified Party to continue using it, (ii) replace it with a noninfringing equivalent, (iii) modify it to make it noninfringing. The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.

- b) The indemnities set out in this Article shall be subject to the following conditions:-

- i. The Indemnified Party, as promptly as practicable, informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
- ii. The Indemnified Party may at its option at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the Defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such Defense;
- iii. if the Indemnifying Party does not assume full control over the Defense of a claim as provided in this Article, the Indemnifying Party may participate in such Defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses;
- iv. The Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
- v. All settlements of claims subject to indemnification under this Clause will:
 - a. be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and
 - b. include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
- vi. The Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favour of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
- vii. The Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings;

- viii. In the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and
- ix. if a Party makes a claim under the indemnity set out under Clause 17.1 above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).

17.2 Limitation of Liability.

- a) SI's aggregate liability for actual damages shall be capped at 100% of the value of the Agreement. However, in the following cases, the liability of the SI shall be as per actual damages:
 - 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 13.
- 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 Agreement nor the Services delivered by SI under this Agreement grants or creates any rights, benefits, claims, obligations or causes of action in, to or on behalf of any person or entity (including any third party) other than between the respective Parties to this Agreement, 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 CWC - after which it shall stand transferred to the CWC. 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.

18 Article 18: Miscellaneous

18.1 Independent Contractor

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

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

18.2 Sub-contractors

For any work to be subcontracted the SI needs to obtain prior written consent from Central Warehousing Corporation. However in no case, can the total value of the subcontracted work shall exceed 50% of the total agreement value. The IT infrastructure on cloud through CSP including software, database, hardware, networking, security components etc shall not qualify under subcontracting, however the System Integrator shall provide the list of all the other services planned to be sub contracted, within 15 days of signing the Agreement. It is clarified that the System Integrator shall be liable for all claims arising from the statutory liabilities or otherwise, concerning the sub-contractors. CWC shall not be liable for any claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The System Integrator undertakes to indemnify the Central Warehousing Corporation or its nominated agencies from any claims on the grounds stated hereinabove.

Note: Any software including WMS procured in the name of CWC by the SI and its annual support/warranty/maintenance etc. will not qualify as subcontracted work.

18.3 Assignment

- a. All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the Central Warehousing Corporation and their respective successors and permitted assigns.
- b. Subject to Clause 2.2.2, the System Integrator shall not be permitted to assign its rights and obligations under this Agreement to any third party.
- c. The Central Warehousing Corporation may assign or novate all or any part of this Agreement and Schedules/Annexures, and the System Integrator shall be a party to such novation, to any third party contracted to provide outsourced services to Central Warehousing Corporation or any of its nominees.

18.4 Notices

- a. Any notice or other document which may be given by either Party under this Agreement or under the SLA shall be given in writing in person or by pre-paid recorded delivery post, email or by facsimile transmission.
- b. In relation to a notice given under this Agreement, any such notice or other document shall be addressed to the other Party's principal or registered office address as set out below:

<Insert Address>

Tel:

Fax:

Email:

Contact:

With a copy to:

System Integrator

Tel:

Fax:

Email:

Contact:

- c. In relation to a notice given under the MSA / SLA, a Party shall specify the Parties' address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause.
- d. Any such 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) if delivered between the hours of 9.00 am and 5.00 pm 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, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter).
- e. Either Party to this Agreement or to the SLA 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.

18.5 Variations and Further Assurance

No amendment, variation or other change to this Agreement or the SLA shall be valid unless authorised in accordance with the change control procedure as set out in the Change Control Schedule set out in Schedule II of this Agreement. Such amendment shall be made in writing and signed by the duly authorised representatives of the Parties to this Agreement or the SLA.

Each Party to this Agreement or the SLA agrees to enter into or execute, without limitation, whatever other agreement, document, consent and waiver and to do all other things which shall or may be reasonably required to complete and deliver the obligations set out in this Agreement or the SLA.

18.6 Severability and Waiver

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

No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the SLA of any right, remedy or provision of this Agreement or the SLA shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision.

18.7 Compliance with Applicable Law

Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to its business like the System Integrator as an information technology System Integrator) at all times comply with all laws, rules and regulations of government and other bodies having jurisdiction over the area in which the Services are undertaken provided that changes in such laws, rules and regulations which result in a change to the Services shall be dealt with in accordance with the Change Control Schedule set out in Schedule II of this Agreement.

18.8 Professional Fees

All expenses incurred by or on behalf of each Party to this Agreement and the SLA, including all fees of agents, legal advisors, accountants and actuaries employed by either of the Parties in connection with

the negotiation, preparation and execution of this Agreement or the SLA shall be borne solely by the Party which incurred them.

18.9 Ethics

The System Integrator represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of Central Warehousing Corporation or its nominated agencies in connection with this agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of Central Warehousing Corporation standard policies and may result in cancellation of this Agreement, or the SLA.

18.10 Amendment

Any amendment to this Agreement shall be made in accordance with the Change Control Schedule set out in Schedule II of this Agreement by mutual written consent of all the Parties.

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

For and on behalf of CWC

For and on behalf of SI

An authorized signatory duly nominated pursuant to Board Resolution No.

(<<Name>>)

(<<Name>>)

<<Designation>>

<<Designation>>

Central Warehousing Corporation,

Public Sector Undertaking under GOI

<<Company Name>>

Date:

Date:

Place: New Delhi

Place: New Delhi

Witnessed by:

Witnessed by:

1.

1.

2.

2.

Schedules of the agreement

19 Schedule I: Deliverables and delivery schedule

<As per the Volume I of the RFP>

20 Schedule – II – Change control schedule

This Schedule describes the procedure to be followed in the event of any proposed change (whether in scope or out of scope) to the Scope of Work and SLA. Such change shall include, but shall not be limited to, changes in the scope of services provided by the System Integrator and changes to the terms of payment as stated in the Payment Terms & Schedule of volume II of this RFP.

The Central Warehousing Corporation 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. The SI will endeavour, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Terms of Payment Schedule and Central Warehousing Corporation or its nominated agencies will work with the System Integrator to ensure that all changes are discussed and managed in a constructive manner. This Change Control Schedule sets out the provisions which will apply to all the changes to this agreement and other documents except for the changes in SLAs for which a separate process has been laid out in Clause 28.7 of the SLA.

This Change Control Schedule sets out the provisions which will apply to changes to the MSA.

20.1 Change management process

20.1.1 CHANGE CONTROL NOTE ("CCN")

- i. Change requests in respect of the Agreement, 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 Project Manager 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 attached as Annexure A hereto. CCNs will be presented to the other Party's Project Manager who will acknowledge receipt by signature on the CCN.
- ii. The SI and the Central Warehousing Corporation or its nominated agencies 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 Agreement including ancillary and concomitant services required and as detailed in Volume I of the RFP and is suggested and applicable only after the testing, commissioning and certification of the Phase – I, II& III as set out in this Agreement.

- iii. It is hereby also clarified here that any change request suggested beyond 25 % of the value of this Project will be beyond the scope of the change control process and will be considered as the subject matter for a separate bid process and a separate agreement. It is hereby clarified that the 25% of the value of the Project as stated in herein above is calculated on the basis of bid value submitted by the System Integrator and accepted by the Central Warehousing Corporation or its nominated agencies or as decided and approved by Central Warehousing Corporation or it Nominated Agencies. For arriving at the cost / rate for change upto 25% of the agreement value, the payment terms as specified in *“Schedule VI – Terms of payment schedule”* shall apply.
- iv. It is hereby also clarified that the costs for the changes will be calculated on the basis of 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 CWC.

20.1.2 Quotation

- a) The SI shall assess the CCN and complete Part B of the CCN, in completing the Part B of the CCN. *“Cost related estimates and Charges for Implementation under Change Control Note”* are applicable only for out of scope changes. In completing Part B of the CCN,SI shall provide as a minimum :-
 - i. A description of the change. This should also provide Name of functionality / feature being changed, Current functionality / feature (prior to change), New functionality / feature (post 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.
 - x. Detailed break up of various categories of activities to be performed for implementing a proposed change along with details on where re-usable components are used to reduce the efforts
 - xi. Details on software change estimation method used for the calculation of change effort estimation to provide information on how change is classified in various categories, what all items that require efforts & how efforts are estimated
 - xii. Underlying Assumptions
 - xiii. Any other details that the CWC would require to assess the effort estimated provided by the SI
- b) Prior to submission of the completed CCN to the Central Warehousing Corporation, or its nominated agencies, the System Integrator will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the SI shall consider the materiality of the proposed change in the context of the Agreement, 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.

20.1.3 Reporting.

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

20.1.4 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 the SI meets the

obligations as set in the CCN. In the event the 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 the SI.

20.1.5 Obligations

The SI shall be obliged to implement any proposed changes once approval in accordance with above provisions has been given, with effect from the date agreed for implementation and within an agreed timeframe.

21 Schedule – III – Exit management schedule

21.1 Purpose

1.1 This Schedule sets out the provisions, which will apply prior to the expiry of the Agreement or when termination of the Agreement is initiated, or when CWC intends to facilitate an understanding of the operations and the systems for CWC or any of its nominees during the Project implementation and Operations & Maintenance phase of the project and management of SLA.

It sets out the provisions which will ensure that CWC will be able to offer the services to its Stakeholders without any interruptions on expiry or termination of the Agreement.

Continuity and performance of the Services at all times including the duration of the Agreement and post expiry of the Agreement is a critical requirement of the CWC. It is the prime responsibility of SI to ensure continuity of service at all times of the Agreement including exit management period and in no way any facility/service shall be affected/degraded. Further, SI is also responsible for all activities required to train and transfer the knowledge to the Replacement SI to ensure similar continuity and performance of the Services post expiry of the Agreement. SI will be required to carry out a gap analysis of the facilities and arrangements made by the Replacement SI and specifically inform CWC. It sets out the mechanisms for Exit Management Services the System Integrator is to provide on termination or prior to expiration

of the Agreement to allow the orderly and efficient transition of the Services to CWC or its nominee.

It sets out the mechanisms for managing the knowledge enablement services the System Integrator has to provide to allow the CWC to create an understanding of the operations and technology of the systems for itself or its nominees or any designated agencies.

- 1.2 The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Schedule.

21.2 Initiation

- a) The provisions for Exit Management Services are invoked at least six months prior to the expiry of the Agreement or on the day of notice of termination in case of termination till the time exit management services are executed to the satisfaction of the CWC.
- b) The CWC has the right to alter in consultation with the SI, the timelines mentioned here based on the circumstances prevailing at the time of availing the Exit Management Services.
- c) However if the CWC in the intervening period invokes the provisions of the Agreement and extends the term of the Agreement 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 of the Agreement shall apply.

21.3 Exit Management Services

The following are some of the key services which will be provided by the SI as part of the Exit Management Services

- a) Provide CWC or its nominee with the current media management or other storage media listing of inventory.
- b) Provide CWC or its nominee with all incident logs reporting back at least two (2) years before the Termination Date or Expiration End Date.

- c) Identify, record, and provide to CWC or its nominee control release levels for system Software.
- d) If requested by CWC, freeze all or any discretionary Software changes, other than modifications necessary to address processing problems.
- e) Provide and coordinate assistance in notifying System Integrator’s outside vendors of the procedures to be followed.
- f) Review all test, data and production Software libraries with CWC or its nominee’s operations staff.
- g) Provide reasonable assistance to CWC or its nominee in establishing or transferring naming conventions.
- h) Subject to the intellectual property provisions of this Agreement, document and deliver all tools and databases used to provide the Exit Management Services, including those for tracking projects and service information requests, and those used for knowledge transfer.
- i) Deliver technical specifications, materials, user documentation etc. for CWC-WMS solution to CWC or its nominee.

Transfer or right to use the hosting services of DC & DR to the Replacement SI or CWC or its nominee as the case may be.

Transfer or right to use the networking services to the Replacement SI or CWC or its nominee as the case may be.

- j) Assist CWC or its nominee in making arrangements for the physical de-installation, transportation, and relocation of equipment and physical assets.
- k) Provide documentation and diagrams, including IP addressing schema, architecture diagram, network diagram, managed device thresholds, and configurations.
- l) Provide copies of CWC data and offsite storage of production data and CWC-WMS application, as reasonably requested.

21.4 Duration of the Exit Management Services

- a) The exit management services will be available to CWC or its nominees or the Replacement SI till all tasks set out in the Exit Management Plan have been completed.
- b) The exit management services will be available to CWC or its nominees or the Replacement SI till the acceptance criteria set out in the Exit Management Plan have been met, as determined by CWC.

21.5 Transfer of assets

- a) Central Warehousing Corporation shall be entitled to serve notice in writing on the SI at any time during the exit management period as detailed hereinabove requiring the SI to provide the Central Warehousing Corporation with a complete and up to date list of all products not in CWC's name but bought or used by the SI in the project and which are required for continued operations within 30 days of such notice. Central Warehousing Corporation shall then be entitled to serve notice in writing on the SI at any time prior to the date that is 30 days prior to the end of the exit management period requiring the SI to transfer these Assets on book value as per CWC accounting policy.
- b) Transfer all rights, titles and interests in such Project Assets (as the CWC in its sole discretion may determine) to the CWC or its nominee and transfer information which are required to be transferred to the CWC in accordance with this Agreement 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 CWC 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 CWC or its nominee any OEM contracts which are valid and subsisting and those OEM contracts which the CWC has chosen to

- take over, and cancel or cause to be cancelled such OEM contracts not to be transferred/assigned to the CWC or its nominee. For this purpose, SI shall ensure that all OEM contracts are assignable in favor of the CWC 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 CWC .
- e) Transfer/assign all the warranties for the hardware and software, in favour of the CWC or its nominee, which are required by the CWC to continue to operate or use either during the design and development Stage or annual maintenance Stage.
- h) Third-Party Contracts
- i. If requested by CWC, System Integrator must assign, novate, or assist CWC or its nominee in negotiating new Third-Party contracts (other than Software licenses with a Third Party) including any Subcontracts, which it was wholly or substantially using in the provision of the Exit management Services immediately before termination or expiry.
- ii. System Integrator must use all reasonable endeavors to ensure that no charge to CWC will be due upon transfer and must notify CWC in writing where such transfer costs apply and detail the costs or the method of determining the costs as part of the Exit Management Plan.
- i) In case of agreement being terminated by Central Warehousing Corporation, Central Warehousing Corporation reserves the right to ask SI to continue running the project operations for a period of 6 months after termination orders are issued.
- j) Upon service of a notice under this Article the following provisions shall apply:
- (i) in the event, if the Assets to be transferred are mortgaged to any financial institutions by the SI, the SI shall ensure that all such liens and liabilities have been cleared beyond doubt, prior to such transfer. All documents regarding the discharge of such lien and liabilities shall be furnished to the Central Warehousing Corporation.

- (ii) All risk in and title to the Assets to be transferred / to be purchased by the Central Warehousing Corporation pursuant to this Article shall be transferred to Central Warehousing Corporation, on the last day of the exit management period.
- (iii) Central Warehousing Corporation shall pay to the SI on the last day of the exit management period such sum representing the Net Block (procurement price less depreciation as per provisions of CWC accounting policy) of the Assets to be transferred as stated in the Terms of Payment Schedule.
- (iv) Payment to the outgoing SI shall be made to the tune of last set of completed services / deliverables, subject to SLA requirements.
- (v) The outgoing SI will pass on to Central Warehousing Corporation and/or to the Replacement SI, the subsisting rights in any leased properties/ licensed products on terms not less favorable to Central Warehousing Corporation/ Replacement SI, than that enjoyed by the outgoing SI.

21.6 Cooperation and provision of information

6.1 During the exit management period:

- (i) The System Integrator will allow the Central Warehousing Corporation or its nominated agency access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the Central Warehousing Corporation to assess the existing services being delivered;
- (ii) The SI shall provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with this agreement relating to any material aspect of the services (whether provided by the System Integrator or sub contractors appointed by the System Integrator).
- (iii) The Central Warehousing Corporation shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other

performance data. The System Integrator shall permit the Central Warehousing Corporation or its nominated agencies to have reasonable access to its employees and facilities as reasonably required by CWC or its nominated agencies to understand the methods of delivery of the services employed by the System Integrator and to assist appropriate knowledge transfer.

21.7 Confidential information, security and data

7.1 The System Integrator will promptly on the commencement of the exit management period supply to the Central Warehousing Corporation or its nominated agency the following:

- (i) Information relating to the current services rendered and customer and performance data relating to the performance of sub contractors in relation to the services;
- (ii) Documentation relating to Computerization Project’s Intellectual Property Rights;
- (iii) Documentation relating to sub-contractors;
- (iv) all current and updated data of the Project as is reasonably required for purposes of Central Warehousing Corporation or its nominated agencies transitioning the services to its Replacement System Integrator in a readily available format nominated by the Central Warehousing Corporation or its nominated agency;
- (v) all other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable Central Warehousing Corporation or its nominated agencies, or its Replacement System Integrator to carry out due diligence in order to transition the provision of the Services to Central Warehousing Corporation or its nominated agencies, or its Replacement System Integrator (as the case may be).

7.2 Before the expiry of the exit management period, the System Integrator shall deliver to the Central Warehousing Corporation or its nominated agency all new or up-dated materials from the categories set out in Schedule above and shall not retain any copies thereof, except that the

System Integrator shall be permitted to retain one copy of such materials for archival purposes only.

- 7.3 Before the expiry of the exit management period, the Central Warehousing Corporation or its nominated agency shall deliver to the System Integrator all forms of System Integrator confidential information, which is in their possession.

21.8 Employees

- 8.1 Promptly on reasonable request at any time during the exit management period, the System Integrator shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the Central Warehousing Corporation or its nominated agency a list of all employees (with job titles) of the System Integrator dedicated to providing the services at the commencement of the exit management period.
- 8.2 Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the System Integrator to the Central Warehousing Corporation or its nominated agency, or a Replacement System Integrator ("**Transfer Regulation**") applies to any or all of the employees of the System Integrator, then the Parties shall comply with their respective obligations under such Transfer Regulations.
- 8.3 To the extent that any Transfer Regulation does not apply to any employee of the System Integrator, CWC, or its Replacement System Integrator may make an offer of employment or contract for services to such employee of the System Integrator and the System Integrator shall not enforce or impose any contractual provision that would prevent any such employee from being hired by CWC or its nominee or any Replacement System Integrator.
- 8.4 Ensure that all the employees who worked on the Project have followed the clauses in the ARTICLE 15 and ARTICLE 16 of this Agreement.
- 8.5 Ensure that the exiting employees have followed the security guidelines of the CWC's premises.

21.9 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 infrastructure at Data Center, Disaster recovery Center, the Network, Applications, customized solution, the design and operational characteristics of these systems are transferred to the CWC 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 walkthrough to explain design and characteristics.
 - ii. The code walkthrough 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. Walkthrough of 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.
- d) Some of the key activities/obligations for effective knowledge transfer will be
 - i. Participate in workshops, meetings, and “hands-on” activities where requested by CWC.
 - ii. Provide CWC or its nominee with information about the Services as necessary for CWC or its nominee to assume responsibility for continued performance of the Services in an orderly manner so as to minimize disruption to the operations of CWC
 - iii. Permit CWC and/or CWC’s nominee to bring laptops and recording devices to, and use other equipment and connectivity at System Integrator Sites to facilitate knowledge transfer.

- iv. Provide training to CWC or its nominee’s personnel in the performance of the Services that are to be transferred.
- v. Permit CWC to assign CWC Personnel or CWC’s nominee’s personnel to work with System Integrator Personnel to facilitate knowledge transfer from System Integrator to CWC or its nominee.
- vi. Provide access to System Integrator Personnel who have worked or are working on the CWC account (even if they are not dedicated to the CWC account).
- vii. If known, provide a contact listing of current potential alternative sources of resources, including skilled labour and spare equipment parts.
- viii. Provide a list of all Statements of Work and other “in-flight” work current at the commencement of the Exit Management Period with the list to be updated by System Integrator at the end of the Exit Management Period.

21.10 Transfer of certain agreements

On request by the Central Warehousing Corporation or its nominated agency the System Integrator shall effect such assignments, transfers, licenses and sub-licenses as CWC or its nominated agencies or its Replacement System Integrator in relation to any equipment lease, maintenance or service provision agreement between System Integrator and third party lease providers, vendors, and which are related to the services and reasonably necessary for the carrying out of replacement services by the Central Warehousing Corporation or its nominated agency or its Replacement System Integrator .

21.11 Rights of access to premises

11.1 At any time during the exit management period, where Assets are located at the System Integrator's premises, the System Integrator shall give reasonable rights of access to (or, in the case of Assets located on a third party's premises, procure reasonable rights of access to) the Central Warehousing Corporation or its nominated agency and/or any Replacement System Integrator in order to make an inventory of the Assets.

11.2 The System Integrator shall also give the Central Warehousing Corporation or its nominated agency(s), or any Replacement System Integrator right of reasonable access to the Implementation Partner's premises and shall procure the Central Warehousing Corporation or its nominated agency(s) and any Replacement System Integrator rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to the Central Warehousing Corporation or its nominated agency, or a Replacement System Integrator.

21.12 General obligations of the system integrator

- a. Within 7 days of initiation of Exit Management Services the SI shall provide an updated list of Assets being transferred to CWC and notify the core team.
- b. The System Integrator shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the Central Warehousing Corporation or its nominated agency or its Replacement System Integrator and which the System Integrator has in its possession or control at any time during the exit management period.
- c. For the purposes of this Schedule, anything in the possession or control of any System Integrator, associated entity, or sub contractor is deemed to be in the possession or control of the System Integrator.
- d. The System Integrator shall commit adequate resources to comply with its obligations under this Exit Management Schedule.
- e. The Exit Management Services as per the accepted plan, will come into effect when each party will appoint, and notify the other party of, a suitably qualified representative to act as its single point of contact for the Exit Management Services.
- f. The SI will deploy the right personnel with relevant background knowledge for Exit Management to ensure efficient and timely completion of the Exit Management activities.
- g. The task of SI with reference to the Exit Management is deemed to be complete only when the Project manager of the CWC issues a satisfactory completion certificate for the Exit Management Plan.

21.13 Exit management plan

- 13.1 The System Integrator shall provide the Central Warehousing Corporation or its nominated agency with a recommended exit management plan (EMP) which shall deal with at least the following aspects of exit management in relation to the MSA as a whole and in relation to the Project Implementation, and the Operation and Management SLA.
- (i) A detailed program of the transfer process that could be used in conjunction with a Replacement System Integrator 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;
 - (ii) plans for the communication with such of the System Integrator 's sub contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the Central Warehousing Corporation's operations as a result of undertaking the transfer;
 - (iii) (if applicable) proposed arrangements for the segregation of the System Integrator 's networks from the networks employed by Central Warehousing Corporation and identification of specific security tasks necessary at termination;
 - (iv) Plans for provision of contingent support to Central Warehousing Corporation, and Replacement System Integrator for a reasonable period after transfer.
- 13.2 The System Integrator shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date and make it available to CWC or its nominees.
- 13.3 Each Exit Management Plan shall be presented by the System Integrator to and approved by the Central Warehousing Corporation or its nominated agencies.
- 13.4 The terms of payment as stated in the Terms of Payment Schedule include the costs of the System Integrator complying with its obligations under this Schedule.

- 13.5 In the event of termination or expiry of MSA, and Project Implementation, each Party shall comply with the Exit Management Plan.
- 13.6 During the exit management period, the System Integrator shall use its best efforts to deliver the services.
- 13.7 Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.
- 13.8 This Exit Management plan shall be furnished in writing to the Central Warehousing Corporation or its nominated agencies within 90 days from the Effective Date of this Agreement.

22 Schedule – IV - Audit, access and reporting

22.1 Purpose

This Schedule details the audit, access and reporting rights and obligations of the Central Warehousing Corporation or its nominated agency and the System Integrator.

22.2 Audit notice and timing

- 2.1 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 Implementation Phase and the Operation and Management Phase. During the Term routine audits shall be conducted in accordance with such agreed timetable and shall not be required to give the System Integrator any further notice of carrying out such audits.
- 2.2 The Central Warehousing Corporation or its nominated agency may conduct non-timetabled audits at his/ her own discretion if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the System Integrator , a security violation, or breach of confidentiality obligations by the System Integrator , provided that the requirement for such an audit is notified in writing to the System Integrator 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.
- 2.3 The frequency of audits shall be yearly, provided always that such audits shall be conducted with the lowest levels of inconvenience and disturbance practicable being caused to the System Integrator . Any such audit shall be conducted by with adequate notice of 2 weeks to the System Integrator.
- 2.4 Central Warehousing Corporation will ensure that any 3rd party agencies appointed to conduct the audit will not be the competitor of CWC and will be bound by confidentiality obligations.

22.3 Access

The System Integrator shall provide to the Central Warehousing Corporation or its nominated agency reasonable access to employees, subcontractors, suppliers, agents and third party facilities as detailed in Volume I & II of the RFP including leased premises, Data 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. CWC or its nominated agency shall have the right to copy and retain copies of any relevant records. The System Integrator shall make every reasonable effort to co-operate with them.

22.4 Audit rights

- 4.1 The Central Warehousing Corporation or its nominated agency shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in Volume I of the RFP) including leased premises, Data centres, documents, records, procedures and systems relating to the project, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:
- (i) The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of Central Warehousing Corporation or its nominated agencies and its Users and documentation related thereto;
 - (ii) That the actual level of performance of the services is the same as specified in the SLA;
 - (iii) That the System Integrator has complied with the relevant technical standards, and has adequate internal controls in place; and
 - (iv) The compliance of the System Integrator with any other obligation under the MSA and SLA.
 - (v) Security audit and implementation audit of the system shall be done once each year, the cost of which shall be borne by the System Integrator.

- (vi) For the avoidance of doubt the audit rights under this Schedule shall not include access to the System Integrator's profit margins or overheads associated with any obligation under the MSA.

22.5 Audit rights of sub-contractors, suppliers and agents

- 5.1 The System Integrator 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. The System Integrator shall inform the Central Warehousing Corporation or its nominated agency prior to concluding any sub-contract or supply agreement of any failure to achieve the same rights of audit or access.
- 5.2 REPORTING: The System Integrator will provide half yearly reports to the CWC regarding any specific aspects of the Project and in context of the audit and access information as required by the Central Warehousing Corporation or its nominated agency.

22.6 Action and review

- 6.1 Any change or amendment to the systems and procedures of the System Integrator , 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.
- 6.2 Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the Central Warehousing Corporation or its nominated agency and the System Integrator Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the MSA.

22.7 Terms of payment

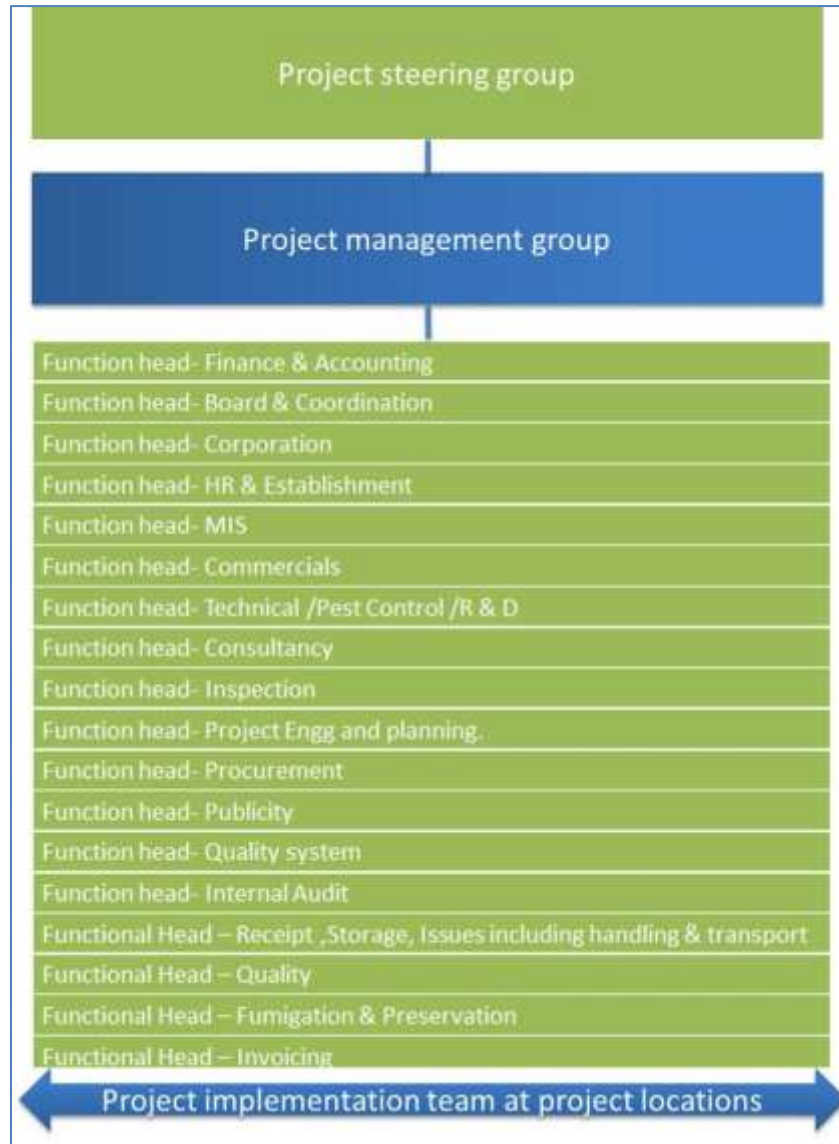
The System Integrator shall bear the cost of any audits and inspections. The terms of payment are inclusive of any costs of the System Integrator and the sub-contractor, for all reasonable assistance and information provided under the MSA, the Project Implementation, Operation and Management SLA by the System Integrator pursuant to this Schedule.

22.8 Records and information

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

23 Schedule – V - Governance schedule

23.1 Project governance structure



*Note: Functional head refers to Single Point of Contact for that function

23.2 Governance structure units and responsibilities

Committee / Unit / Team	Key Roles	Key Responsibilities
Project Steering Group (PSG)	<ul style="list-style-type: none"> • Owner(s) of the Project • PSG would be responsible for taking all decisions related to overall vision and policy matters • PSG shall hold meetings at least once every month to review the progress made in relation to the CWC WMS Project during the implementation period and once every three months during the operation period. 	<ul style="list-style-type: none"> • Project approval including process for program implementation • Approve major changes to Project components • Finalize funding strategy and fund management principles • Fund allocation • Monitor project progress • Resolve issues that might occur during implementation, which are relevant to PSG (if any) • Facilitate policy changes for effective implementation, if required.
Project Management Group (PMG)	<ul style="list-style-type: none"> • Time bound implementation of the Program and adherence to its objectives • Responsible for Day 	<ul style="list-style-type: none"> • Co-ordinate with SI Committee and functional heads • Oversee and monitor the work performed by System Integrator • Coordinate with all Project locations for implementation

Committee / Unit / Team	Key Roles	Key Responsibilities
	<p>to Day monitoring of the project</p>	<ul style="list-style-type: none"> • Project coordination • Financial monitoring • Progress monitoring of all the project sites. • Provide inputs to PSG members on Project status • Manage and monitor SLAs • Quality assurance and oversight • Manage Risks • Resolve Technical Issues • Sign off on DC, DR and central level deliverables like DC & DR commissioning, DC & DR hardware etc • Any other responsibility as assigned by MD(CWC)
<p>Functional head</p>	<ul style="list-style-type: none"> • Functional heads • Process Owner • Business Process re-engineering in respective functional areas. • Finalising and signing off FRS and SRS for Respective Services Module • They may further constitute a sub- 	<ul style="list-style-type: none"> • Define processes involved in the respective functional areas. • Finalise and signoff FRS • Finalise and signoff SRS • Work closely with PMG Group towards achievement of the above. • Interact with System Integrator and Provide Implementation assistance for the respective Services module • Monitor User acceptance testing for respective Services Module and signoff • Approve changes / modifications to the

Committee / Unit / Team	Key Roles	Key Responsibilities
	<p>group to assist him/her in the activities</p>	<p>respective Service module</p> <ul style="list-style-type: none"> Any other responsibility as assigned by MD(CWC)
<p>Project Implementing Team</p>	<ul style="list-style-type: none"> Project location head to lead the Project Implementation Administrators may further constitute a group to assist him/her in the activities 	<ul style="list-style-type: none"> Formation of Implementation Team at project location. Facilitate Implementation of WMS at project location level. Procurement of Local Infrastructure to support WMS usage. Ensure training of end users at project location on WMS via trainers (of CWC). Liaison and coordination with PMG / Functional Heads. Sign off on project location level completion of digitization, migration, go-live, LAN establishment, WAN establishment etc Any other responsibility as assigned by MD(CWC)

Note: PMG is primarily Delhi based while the other teams are multi-locational.

23.3 Purpose of this schedule

- a) The purpose of this Schedule is to (i) establish and maintain the formal and informal processes for managing the CWC /SI relationship (including the outputs from other Schedules to this Agreement; (ii) define the principles that both Parties wish to follow to ensure the delivery of the Services; (iii)

ensure the continued alignment of the interests of the Parties; (iv) ensure that the relationship is maintained at the correct level within each Party; (v) create the flexibility to revise and maintain the relationship and this Agreement during the Term; (vi) set out the procedure for escalating disagreements; (vii) enable Agreement administration and performance management and (viii) facilitate smooth implementation and operations of the entire project.

23.4 Governance procedures

4.1 The System Integrator shall document the agreed structures in a procedures manual.

Meetings will be held at various levels (as per the Governance structure) between the SI and CWC to facilitate smooth implementation and operations of the entire project.

4.2 The agenda for each meeting shall be set to reflect the discussion items referred to above and extraordinary items may be added either with the agreement of the Parties or at the request of either Party. Copies of the agenda for meetings along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.

4.3 All meetings and proceedings will be documented; such documents to be distributed to the Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.

4.4 The Parties shall ensure as far as reasonably practicable that the PMG shall resolve the issues and resolve the objectives placed before them and that 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.

4.5 Any unresolved issue(s) would be escalated to the next higher level as per the Project governance structure.

24 Schedule – VI- Terms of payment schedule

24.1 Performance Bank Guarantee

- a) A Performance Bank Guarantee (“PBG”) will be issued in the form of a bank guarantee by (.....SI’s BANK.....) through a Nationalized/Scheduled Bank for a sum equal to 10% of the Agreement value. The PBG should be valid till the entire term of the agreement and for an additional period of one year after the completion of term of agreement including warranty obligations.
- b) In case any claims or any other Agreement obligations are outstanding, the System Integrator will extend the Performance Bank Guarantee as asked by CWC till such time the System Integrator settles all claims and completes all Agreement obligations.
- c) The Performance Bank Guarantee will be subject to encashment by CWC, in case, conditions regarding adherence to delivery schedule, settlement of claims and other provisions of the Agreement are not fulfilled by the SI.
- d) In case the Agreement is extended, the Performance Bank Guarantee has to be valid for one year beyond the extended period.

(Note : The specimen of the Performance Bank Guarantee is provided in the Volume II of RFP)

24.2 Payment Schedules and Milestones

Total payment to be made to SI pursuant to the Project will be XXXX.

a) General

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

b) Payments in event of the expiry of this Agreement

- i. In the event of the expiry of this Agreement, the CWC shall retain the Performance Bank Guarantee till its validity period. During this period the Performance Bank Guarantee will be released provided CWC accepts the satisfactory handing over procedure as stated in Exit Management Schedule and has been duly complied with.

In the event that the compliance is not completed, the Performance Bank Guarantee shall be invoked and the amount forfeited.

- ii. CWC will not pay any costs of System Integrator's conduct of business.
- iii. There will be no payments by CWC to SI to compensate for loss of business or wrong calculations in the work with CWC.

c) Payments in event this Agreement is extended beyond the Term of the project

In case CWC decides to extend the project duration by additional 2 years, the payment terms would be decided through negotiation between CWC & SI.

25 Schedule VII: Bill of materials

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

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

26 Schedule VIII: Costs and pricing

- Component wise cost
- Tables: Unit Rates for Optional Work / Services/ Resources:
- <<To be filled up after the finalization of the bidder>>

27 Schedule IX: Non-disclosure agreement

THIS AGREEMENT is made on this the <***> day of <***> 20--- at <***>, India.

BETWEEN

Central Warehousing Corporation having its office at **Warehousing Bhawan, 4/1, Siri Institutional Area, August Kranti Marg, HauzKhas, New Delhi 110016, India** hereinafter referred to as '**Central Warehousing Corporation**' or '**CWC**', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the *Companies Act, 1956*, having its registered office at <***> (hereinafter referred to as '**the System Integrator**' which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

1. Central Warehousing Corporation (CWC) intends to implement a WMS for the modernization and computerization of the operations of its warehouses, Regional offices and the Corporate office.
2. The Central Warehousing Corporation and System Integrator have entered into a Master Services Agreement dated <***> (the "**MSA**") as well as a Service Level Agreement dated <***> (the "**SLA**") in furtherance of the Project.
3. Whereas in pursuing the Project (the "**Business Purpose**"), a Party ("Disclosing Party) recognizes that they will disclose certain Confidential Information (*as defined hereinafter*) to the other Party ("Receiving Party").
4. Whereas such Confidential Information (*as defined hereinafter*) belongs to Receiving Party as the case may be and is being transferred to the Disclosing Party to be used only for the Business

Purpose and hence there is a need to protect such information from unauthorized use and disclosure.

NOW THEREFORE, in consideration of the mutual covenants, promises, assurances, representations and provisions set forth herein, the Parties hereto agree as follows:

27.1 Definitions and interpretation

27.2 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the same meanings set out in Article I of MSA.

27.3 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- (b) use of any gender includes the other genders;
- (c) references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a '**person**' shall be construed to include any individual, partnerships, firms, companies, public sector units, 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.
- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;

- (f) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- (g) references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which CWC Corporate office, Regional offices and other field units like warehouses, ICD/CFS etc. are generally open for business;
- (h) references to times are to Indian Standard Time;
- (i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (j) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- (k) System Integrator (SI) or Implementation Agency (IA) has been used for the same entity i.e. bidder selected for the project.
- (l) The words importing singular shall include plural and vice versa;
- (m) Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Article or Schedule. The words "include" and "including" shall not be construed as terms of limitation;
- (n) 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;
- (o) The headings and use of bold type in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement;
- (p) References to "installation" include investigation, design, engineering, procurement, delivery, installation, processing, testing, and commissioning;
- (q) References to "implementation" include investigation, design, engineering, procurement, delivery, installation, processing, testing, and commissioning;
- (r) 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 novated at the time of such reference;

- (s) Any contract, consent, approval, authorization, notice, communication, Information or report required under or pursuant to this Agreement 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;
- (t) 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;
- (u) 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;

27.3.1 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

27.3.2 Ambiguities within Agreement

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

- (a) Between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- (b) Between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures; and
- (c) Between any value written in numerals and that in words, the value in words shall prevail.

- (d) Between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

27.3.3 Priority of agreements

The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the MSA and this Agreement shall be read together and construed harmoniously. In the event of any conflict between the MSA and this Agreement, the provisions contained in the MSA shall prevail over this Agreement.

27.4 Term

This Agreement will remain in effect during the entire project period, however from the date of the last disclosure of Confidential Information , at which time it will terminate, unless extended by the disclosing party in writing.

27.5 Scope of the agreement

- (a) This Agreement shall apply to all confidential and proprietary information disclosed by Disclosing Party to the Receiving Party and other information which the disclosing party identifies in writing or otherwise as confidential before or within (30) thirty days after disclosure to the Receiving Party (“Confidential Information”). Such Confidential Information consists of certain specifications, documents, software, prototypes and/or technical information, and all copies and derivatives containing such Information that may be disclosed to the Disclosing Party for and during the Business Purpose, which a party considers proprietary or confidential.
- (b) Such 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 the Receiving Party.

27.6 Obligations of the receiving party

The Receiving Party shall:

- (e) use the Confidential Information only for the Business Purpose and shall hold the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, taking into account the nature of the Confidential Information, and
- (f) grant access to Confidential Information only to its employees on a 'need to know basis' and restrict such access as and when not necessary to carry out the Business Purpose.
- (g) cause its employees to comply with the provisions of this Agreement;
- (h) reproduce Confidential Information only to the extent essential to fulfilling the Business Purpose, and
- (i) prevent disclosure of Confidential Information to third parties;
- (j) disclose the Confidential Information to its consultants/contractors on a need to know basis; provided that by doing so, the Receiving Party agrees to bind such consultants/contractors to terms at least as restrictive as those stated herein. The Receiving Party upon making a disclosure under this Clause shall:
 - advise the consultants/contractors of the confidentiality obligations imposed on them by this Clause.
- (k) upon the Disclosing Party's request, the Receiving Party 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.
 - Provided, however, that an archival copy of the Confidential Information may be retained in the files of the Receiving Party's counsel, solely for the purpose of proving the contents of the Confidential Information.
- (l) not to remove any of the other Party's Confidential Information from the premises of the Disclosing Party without prior written approval.
- (m) exercise extreme care in protecting the confidentiality of any Confidential Information which is removed, only with the Disclosing Party's prior written approval, from the

Disclosing Party's premises. Each Party 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 date communicated by CWC, and that no copies are to be made off of the premises.

- (n) Upon the Disclosing Party's request, the Receiving Party shall promptly return to the Disclosing Party all tangible items containing or consisting of the disclosing party's Confidential Information all copies thereof.

27.7 Exceptions to confidential information

The foregoing restrictions on each party's use or disclosure of Confidential Information shall not apply to the Confidential Information that the Receiving Party can demonstrate that such Confidential Information:

- (o) was independently developed by or for the Receiving Party without reference to the Information, or was received without restrictions; or
- (p) has become generally available to the public without breach of confidentiality obligations of the Receiving Party; or
- (c) was in the Receiving Party's possession without restriction or was known by the Receiving Party without restriction at the time of disclosure; or
- (d) is the subject of a subpoena or other legal or administrative demand for disclosure; provided, however, that the Receiving Party has given the disclosing party prompt notice of such demand for disclosure and the Receiving Party reasonably cooperates with the disclosing party's efforts to secure an appropriate protective order; or
- (e) is disclosed with the prior consent of the disclosing party; or
- (f) 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 the Receiving Party from the disclosing party under an obligation of confidence; or

- (g) the Receiving Party obtains or has available from a source other than the disclosing party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the disclosing party.

27.8 Ownership of the confidential information

- (a) Each Party recognizes and agrees that all of the disclosing Party's Confidential Information is owned solely by the Disclosing Party (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.
- (b) By disclosing the Confidential Information or executing this Agreement, Disclosing Party 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. The Disclosing Party disclaims all warranties regarding the information, including all warranties with respect to infringement of intellectual property rights and all warranties as to the accuracy or utility of such information.
- (c) Access to Confidential Information hereunder shall not preclude an individual who has seen such Confidential Information for the purposes of this Agreement from working on future projects for the Disclosing Party 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. Furthermore, nothing contained herein shall be construed as imposing any restriction on the Receiving Party's disclosure or use of any general learning, skills or know-how developed by the Receiving Party's personnel under this Agreement.
- (d) Execution of this Agreement and the disclosure of Confidential Information pursuant to this Agreement 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.

27.9 Dispute resolution

All disputes and differences arising out of or in any way touching or concerning this agreement, whatsoever (except as to any matter, the decision of which is expressly provided for in the agreement) shall be referred to the sole arbitration of any person appointed by the Managing Director, Central Warehousing Corporation, New Delhi. There will be no objection to any such appointment on the ground that the person so appointed is an employee of the Corporation, that he had to deal with the matters to which the agreement relates and that in the course of his duties as such employee of the Corporation he had expressed views on all or any of the matter in dispute or difference. The award of such arbitrator shall be final and binding on the parties to the agreement. It is a term of the agreement that in the event of such Arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act or resigning for any reason, the Managing Director, Central Warehousing Corporation at the time of such transfer, vacation of office or inability to act or resigning shall appoint another person to act as Arbitrator in accordance with the terms of this agreement. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this agreement that no person other than a person appointed by the Managing Director, Central Warehousing Corporation as aforesaid should act as Arbitrator and if for any reason that is not possible, the matter is not to be referred to arbitration at all. The Arbitrator shall give reasons for his award.

Provided further that any demand for arbitration in respect of any claim(s) of the bidder or of the Corporation under the agreement shall be in writing and made within one year of the date of termination or completion (expiry of the period) of the agreement and where this provision is not complied with, the claim(s) of the bidder shall be deemed to have been waived and absolutely barred and the Corporation shall be discharged and released of the liabilities under the agreement.

The venue of the Arbitration shall be at such place as may be fixed by the Sole Arbitrator in his sole discretion at Delhi.

The work under the agreement shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable to the bidder shall be withheld on account of such proceedings.

The costs of arbitration shall be borne by the parties as per the decision of the Arbitrator.

The Arbitrator shall give separate award in respect of each dispute or differences referred to him and shall give reasons for his decision.

Subject as aforesaid the Arbitration and Conciliation Act, 1996 shall apply to the Arbitration proceedings under this clause.

27.10 Variation

This Agreement may only be varied in writing and signed by both Parties.

27.11 Waiver

Waiver including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

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

27.12 Exclusion of implied warranties

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

27.13 Entire agreement

This Agreement and the Annexure together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

27.14 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the dispute resolution procedure set forth under this Agreement or otherwise.

27.15 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as expressly provided under the terms of this Agreement.

27.16 Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

27.17 Successors and assigns

The Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

27.18 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by hand delivery, recognized courier, registered post, email or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Central Warehousing Corporation:

Attn: <***>

Tel:

Fax:

Email:

Contact:

With a copy to:

If to the System Integrator :

Attn. <***>

Phone: <***>

Fax No. <***>

Email:

27.19 Language

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

27.20 Counterparts

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

27.21 Mitigation

Without prejudice to any express provisions of this Agreement on any mitigation obligations of the Parties, each of the Central Warehousing Corporation and the System Integrator shall at all times take all reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

27.22 Removal of difficulties

The Parties acknowledge that it is conceivable that the Parties may encounter difficulties or problems in the course of implementation of the Project envisaged under this Agreement. The Parties agree and covenant that they shall mutually discuss such difficulties and problems in good faith and take all reasonable steps necessary for removal or resolution of such difficulties or problems.

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

For and on behalf of CWC

For and on behalf of SI

An authorized signatory duly nominated pursuant to Board Resolution No.

(<<Name>>)

(<<Name>>)

<<Designation>>

<<Designation>>

Central Warehousing Corporation,
Public Sector Undertaking under GOI

<<Company Name>>

Date:

Date:

Place: New Delhi

Place: New Delhi

Witnessed by:

Witnessed by:

1.

1.

2.

2.

28 Schedule X: Service level agreement

THIS AGREEMENT is made on this the <***> day of <***> 20---- at <***>, India.

BETWEEN

Central Warehousing Corporation having its office at **Warehousing Bhawan, 4/1, Siri Institutional Area, August Kranti Marg, HauzKhas, New Delhi 110016, India** hereinafter referred to as '**Central Warehousing Corporation**' or '**CWC**', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the *Companies Act, 1956*, having its registered office at <***> (hereinafter referred to as '**the System Integrator**' which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

1. Central Warehousing Corporation is desirous to implement the project of-----.
2. The CWC and System Integrator have entered into a Master Services Agreement dated <***> (the "**MSA**").

NOW THEREFORE, in consideration of the mutual covenants, promises, assurances, representations and provisions set forth herein, the Parties hereto agree as follows:

28.1 Definitions and interpretation

28.1.1 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out in Article 1.

28.1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- (b) use of any gender includes the other genders;
- (c) references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a '**person**' shall be construed to include any individual, partnerships, firms, companies, public sector units, 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.
- (e) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (f) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- (g) references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which CWC Corporate office, Regional offices and other field units like warehouses, ICD/CFS etc. are generally open for business;
- (h) references to times are to Indian Standard Time;
- (i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- (j) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- (k) System Integrator (SI) or Implementation Agency (IA) has been used for the same entity i.e. bidder selected for the project.
- (l) The words importing singular shall include plural and vice versa;

- (m) Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Article or Schedule. The words "include" and "including" shall not be construed as terms of limitation;
- (n) 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;
- (o) The headings and use of bold type in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement;
- (p) References to "installation" include investigation, design, engineering, procurement, delivery, installation, processing, testing, and commissioning;
- (q) References to "implementation" include investigation, design, engineering, procurement, delivery, installation, processing, testing, and commissioning;
- (r) 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 novated at the time of such reference;
- (s) Any contract, consent, approval, authorization, notice, communication, Information or report required under or pursuant to this Agreement 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;
- (t) 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;
- (u) 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;

28.1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

28.1.4 Ambiguities within Agreement

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

- (a) Between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- (b) Between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures; and
- (c) Between any value written in numerals and that in words, the value in words shall prevail.
- (d) Between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

28.1.5 Priority of agreements

The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the MSA and this Agreement shall be read together and construed harmoniously. In the event of any conflict between the MSA and this Agreement, the provisions contained in the MSA shall prevail over this Agreement.

28.2 Structure

This SLA shall operate as a legally binding services agreement specifying terms which apply to the Parties in relation to the provision of the Services by the System Integrator to the CWC and its nominated agencies under this Agreement and the MSA.

28.2.1 SCOPE OF SLA

This Agreement has been executed in relation to the scope of the Project between the Parties. The detailed Service Levels have been set out in Annexure B to this volume of RFP.

This Agreement shall ensure the following:

- (a) Establishment of responsibilities and accountability of the SI;
- (b) Definition of each Party’s expectations in terms of services;
- (c) Establishment of the relevant performance measurement criteria;
- (d) Definition of the availability expectations;
- (e) Definition of the escalation process;
- (f) Definition of resolution time for various level of incidents/queries/errors/bugs (as defined in ‘Helpdesk resolution time’ of Annexure B to this volume of RFP
- (g) Establishment of trouble reporting single point of contact; and
- (h) Establishment of the framework for SLA change management

The following parties are obligated to follow the procedures as specified by this Agreement:

- (a) CWC
- (b) System Integrator

28.2.2 AGREEMENT OWNERS

The following personnel shall be notified to discuss the Agreement and take into consideration any proposed SLA change requests:

	Title	Telephone	Email
(i) CWC	(j) Authorized Representative, Central Warehousing Corporation	(k) <***>	(l) <***>
System Integrator	(m) <***>	(n) <***>	(o) <***>

28.3 Contact list

In the event that there is any change in the listed contacts, the same shall be communicated and updated prior to such change occurring. The Single Point of Contact (“**POC**”) for the System Integrator shall be <***> and will be available 24X7.

Name	Title	Location	Telephone
CWC	Authorised Representative, Central Warehousing Corporation	(p) <***>	(q) <***>
System Integrator	(r) <***>	(s) <***>	(t) <***>

28.4 Principal contacts

The CWC and the System Integrator will nominate a senior staff member to be the principal contact regarding operation of this Agreement. At the date of signing of this Agreement, the nominated principal contacts are:

CWC principal contact: _____

System Integrator principal contact: _____

28.5 Commencement and duration of this agreement

Agreement shall commence on the date on which it is executed by CWC and the System Integrator (hereinafter the “**Effective Date**”) and shall, unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties, expire on the date on which this Agreement expires or terminates, which shall be a period Five years starting from the date of Phase-II go-live.

28.6 Terms of payment and penalties

- (a) In consideration of the Services and subject to the provisions of the MSA and this Agreement, the CWC shall pay the amounts in accordance with the Terms of Payment Schedule of the MSA.

- (b) For the avoidance of doubt, it is expressly clarified that the CWC and/or its nominated agencies may also calculate a financial sum and debit the same against the terms of payment as defined in the Terms of Payment Schedule of the MSA as a result of the failure of the System Integrator to meet the Service Levels set out as Annexure B of this Agreement, such sum being determined in accordance with the terms of the set out as Annexure B of this Agreement.

28.7 Updating of this agreement

- (a) The Parties anticipate that this Agreement shall need to be re-evaluated and if required modified to account for changes in work environment and technology from time to time. Hence they hereby agree to review the terms of the Agreement once on an annual basis or as and when required.
- (b) The Parties hereby agree upon the following procedure for revising this Agreement:
 - (i) Any and all changes to this Agreement will be initiated in writing between the CWC and the System Integrator , The service levels in this Agreement shall be considered to be standard for the CWC and shall only be modified if both Parties agree to an appended set of terms and conditions;
 - (ii) Only the CWC or the System Integrator may initiate a review of this Agreement;
 - (iii) In case the representation of review is admitted, then a notice of the proposed revision (“**SLA Change Request**”) shall be served to the CWC or the System Integrator as the case may be;
 - (iv) The SLA Change request would be deemed to be denied in case it is not approved within a period of 30 (thirty) days. CWC shall update and republish the agreement and circulate to all parties within “15” days.
 - (v) In the event that CWC/System Integrator approves of the suggested change(s), then the change(s) shall be communicated to all the Parties and the SLA Change request would be appended to the Agreement;

- (vi) The CWC shall update and republish the text of Agreement annually to include all the SLA Change Requests that have been appended to the Agreement during the course of the year. Such republished Agreement shall be circulated to all the Parties within <***> days of such change taking place.

28.8 Document history

All revisions made to this Agreement shall be listed in chronological order as per the format set out below and a copy of the same shall be provided to the Parties:

Version	Date	Description of changes
<***>	<***>	<***>

28.9 Scope of services

- (a) The System Integrator shall ensure that Services are available at various locations as per the requirements of the project;
- (b) The System Integrator shall provide support services through the “Centralized Helpdesk” as detailed in volume I of RFP.
- (c) The System Integrator guarantees that he shall achieve the Service Levels setout for the Project;
- (d) The System Integrator shall be liable to penalties in case of failure to comply with the setout Service Levels. However any delay not attributable to the System Integrator shall not be taken into account while computing adherence to the Service Levels.

28.10 Performance review

The POC’s of both the CWC and the System Integrator shall meet on a quarterly basis to discuss priorities, service levels and system performance. Additional meetings may be held at the request of either the System Integrator or the CWC. The agenda for these meetings shall be as follows:

- (a) Service performance;

- (b) Review of specific problems/exceptions and priorities; and
- (c) Review of the operation of this Agreement and determine corrective action to overcome deficiencies.

28.11 Indemnities

The Parties agree to indemnify each other under this Agreement in accordance with the terms and principles set out in the MSA.

28.12 Dispute resolution

Any dispute, difference or claim arising out of or in connection with the Agreement which is not resolved amicably shall be decided in accordance with the dispute resolution procedure as set out in the MSA.

28.13 Miscellaneous

(a) Assignment and charges

This Agreement shall be binding on and enure for the benefit of each Party's successors in title. No Party shall assign, or declare any trust in favour of a third party over, all or any part of the benefit of, or its rights or benefits under, this Agreement.

(b) Governing law and jurisdiction

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

(c) Waiver of sovereign immunity

The Parties unconditionally and irrevocably:

- (i) agree that the execution, delivery and performance by them of the Agreement constitute commercial acts done and performed for commercial purpose;
- (ii) agree that, should any proceedings be brought against a Party or its assets, property or revenues in any jurisdiction in relation to the Agreement or any transaction contemplated by the Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of such Party with respect to its assets;

- (iii) waive any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (iv) consent generally to the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

(d) Variation

This Agreement may only be varied in writing and signed by both Parties.

(e) Waiver

- (i) Waiver including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-
 - shall be in writing
 - shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
 - shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
 - shall not affect the validity or enforceability of this Agreement in any manner.

(f) Exclusion of implied warranties

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

(g) Survival

- (i) Termination or expiration of the Term shall:
 - not relieve the System Integrator or the CWC, as the case may be, of any obligations hereunder which expressly or by implication survive hereof; and
 - except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or

liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or expiration or arising out of such termination or expiration.

- (ii) All obligations surviving termination or expiration of the Term shall only survive for a period of 1 year following the date of such termination or expiration of the Term.

(h) Entire Agreement

This Agreement and the Annexure together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

(i) Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the dispute resolution procedure set forth under this Agreement or otherwise.

(j) No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as expressly provided under the terms of this Agreement.

(k) Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

(l) Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by hand delivery, recognized courier, registered post, email or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Central Warehousing Corporation:

Attn: <***>

Tel:

Fax:

Email:

Contact:

With a copy to:

If to the System Integrator :

Attn. <***>

Phone: <***>

Fax No. <***>

(m) Language

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

(n) Counterparts

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

(o) Mitigation

Without prejudice to any express provisions of this Agreement on any mitigation obligations of the Parties, each of the CWC and the System Integrator shall at all times take all reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

(p) Removal of Difficulties

The Parties acknowledge that it is conceivable that the Parties may encounter difficulties or problems in the course of implementation of the Project and the transactions envisaged under this Agreement. The Parties agree and covenant that they shall mutually discuss such difficulties and problems in good faith and take all reasonable steps necessary for removal or resolution of such difficulties or problems.

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

For and on behalf of CWC

For and on behalf of SI

An authorized signatory duly nominated pursuant to Board Resolution No.

(<<Name>>)

(<<Name>>)

<<Designation>>

Central Warehousing Corporation,
Public Sector Undertaking under GOI

<<Designation>>

<<Company Name>>

Date:

Place: New Delhi

Witnessed by:

- 1.
- 2.

Date:

Place: New Delhi

Witnessed by:

- 1.
- 2.

29 Annexure A: Format for change control notice

Change Control Note		CCN Number:
Part A: Initiation		
Title:		
Originator:		
Sponsor:		
Date of Initiation:		
Details of Proposed Change		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)		
Authorised by Central Warehousing	Date:	
Name:		
Signature:	Date:	
Received by the IA		
Name:		
Signature:		
Change Control Note		CCN Number:
Part B : Evaluation		
(Identify any attachments as B1, B2, and B3 etc.)		
Changes to Services, charging structure, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue.		
Brief Description of Solution:		

Impact:	
Deliverables:	
Timetable:	
Charges for Implementation: (including a schedule of payments)	
Other Relevant Information: (including value-added and acceptance criteria)	
Authorised by the System Integrator	Date:
Name:	
Signature:	

Change Control Note	CCN Number :
Part C : Authority to Proceed	
Implementation of this CCN as submitted in Part A, in accordance with Part B is: (tick as appropriate)	
Approved	

Rejected Requires Further Information (as follows, or as Attachment 1 etc.)	
For Central Warehousing Corporation and its nominated agencies	For the System Integrator
Signature	Signature
Name	Name
Title	Title
Date	Date

30 Annexure B: Service Levels

<<Published as a separate document>>