



**GOVERNMENT OF HARYANA**  
**DIRECTORATE OF URBAN LOCAL BODIES**

Request for proposal for Selection of Comptroller and Auditor General (CAG) empanelled Chartered Accountant Firms for Implementation of Accrual Based Double Entry Accounting System (ABDEAS) in all the Municipal Corporations / Councils / Committees of Gurugram Cluster of HARYANA

**Request for Proposal**

<b>NIT No.1/REFORM(ABDEAS)/IT/DULB/2019</b>	<b>15/09/2019</b>
<b>Sale/Download of RFP document</b>	<b>15/09/2019 to 13/11/2019</b>
<b>Pre-Bid Meeting</b>	<b>10/10/2019</b>
<b>Submission of Proposal document</b>	<b>15/09/2019 to 13/11/2019</b>
<b>Opening of Proposals</b>	<b>13/11/2019</b>

Volume III: Master Service Agreement

**Released by**

**Directorate of Urban Local Bodies, Haryana**  
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## Disclaimer

1. This Request for Proposal ("RFP") is issued by Directorate of Urban Local Bodies, Haryana (DULB).
2. The information contained in this Request for Proposal ("RFP") or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of Directorate of Urban Local Bodies (DULB) or any of its employees or advisors, is provided to Bidders on the terms and conditions set out in this RFP and all other terms and conditions subject to which such information is provided.
3. This Request for Proposal ("RFP") is not a contract and is neither an offer nor invitation by Directorate of Urban Local Bodies (DULB) to the prospective Bidders or any other person. Whilst the information in this Request for Proposal ("RFP") has been prepared in good faith, it is not and does not purport to be comprehensive or to have been independently verified. Neither Directorate of Urban Local Bodies (DULB), nor any of its officers or employees, nor any of their advisors nor consultants accept any liability or responsibility for the accuracy, reasonableness or completeness of, or for any errors, omissions or misstatements in the information or makes any representation or warranty, express or implied, with respect to the information contained in this Request for Proposal ("RFP") or on which this Request for Proposal ("RFP") is based or with respect to any written or oral information made or to be made available to any of the recipients or their professional advisors and, so far as permitted by law and liability therefore is hereby expressly disclaimed.
4. The purpose of this Request for Proposal ("RFP") is to provide the Bidder(s) with information that may be useful to them in the formulation of their Proposals in pursuant to this Request for Proposal ("RFP"). The information contained in this Request for Proposal ("RFP") is selective and is subject to updating, expansion, revision and amendment at the sole discretion of Directorate of Urban Local Bodies (DULB). This Request for Proposal ("RFP") document is not exhaustive and does not purport to contain all the information that a Bidder may require for the purpose of making a decision for participation in this bidding process. Neither Directorate of Urban Local Bodies (DULB) nor any of its officers, employees nor any of its advisors nor consultants undertakes to provide any Bidder with access to any additional information or to update the information in this Request for Proposal ("RFP") or to correct any inaccuracies therein which may become apparent. Each Bidder should conduct its own analysis of the information contained in this Request for Proposal ("RFP"), to correct any inaccuracies therein and is advised to carry out its own investigations in the project, the regulatory regime which applies thereto and by and all matters pertinent to Directorate of Urban Local Bodies (DULB) and to seek its own professional advice on the legal, financial and regulatory consequences of entering into an agreement or arrangement relating to the project.
5. Directorate of Urban Local Bodies (DULB) accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Bidder upon the statements contained in this Request for Proposal ("RFP").

## **MASTER SERVICE AGREEMENT**

This Master Service Agreement (herein after "MSA") is made on this day of \_\_\_\_\_ 2019 ("Effective Date") by and between:

**Directorate of Urban Local Bodies, Haryana**, having its registered office at Bays No. 11-14, Sector-4, Panchkula (hereinafter referred to as the '**Directorate of Urban Local Bodies (DULB)**/' '**Client**' which expression shall, unless excluded by, or repugnant to the context shall mean and include its successors-in office and assigns) of the FIRST PART;

### **AND**

\_\_\_\_\_, Sole Proprietorship Firm/ Partnership firm registered under Indian Partnership Act, 1932 or Amended/ Limited Liability Partnership Firm registered under the Limited Liability Partnership Act, 2008 having its registered office at \_\_\_\_\_ (hereinafter referred to as "**Selected Agency**", which term or expression shall, unless excluded by or repugnant to the subject or context shall mean and include its successors-in-office and assigns), of the SECOND PART. Each of the parties mentioned above are collectively referred to as the '**Parties**' and individually as a '**Party**'.

### **WHEREAS:**

- A. The **Directorate of Urban Local Bodies, Haryana** issued the Request for Proposal (RFP) inviting bids for the purpose of "Selection of Comptroller and Auditor General (CAG) Empanelled Chartered Accountant (CA) Firms to provide the services for implementation of accrual based double entry accounting system with training and handholding support to Urban Local Bodies Staff "across urban local bodies in **GURUGRAM** Cluster, Haryana;
- B. The Selected Agency, being desirous of executing the works contained under the Request for Proposal (RFP), submitted its technical and commercial bids on \_\_\_\_\_ to the Directorate of Urban Local Bodies, Haryana;
- C. The Client has pursuant to the submission of technical and commercial bids of the Bidder awarded the works under the Request for Proposal (RFP) to the Successful Bidder (Here is called Selected Agency) vide the Letter of Intent (LoI);
- D. The Client has further issued the work order dated \_\_\_\_\_ bearing reference number \_\_\_\_\_ in favour of the Selected Agency;
- E. The Selected Agency has for the purpose of carrying out the works envisaged in this Agreement, furnished performance bank guarantee to the Directorate of Urban Local



Bodies (DULB) \_\_\_\_\_

- F. The Selected Agency is very well aware that the whole Project is to be completed according to the terms and conditions mentioned in the Request for Proposal (RFP) document, where the Selected Agency shall complete the works for the period specified in request for proposal Volume -II as divided in the following stages-
- a. Survey & listing out fixed Assets & inventory;
  - b. Up to date Books of accounts, entered all transaction in selected software
  - c. Preparation of Balance Sheet (Including transition period Balance Sheet), Receipt & Payment Account, Income & Expenditure Account, etc. with all schedules.
  - d. Training and Handholding support to Urban Local Bodies (ULBs)
- G. The Parties, superseding the remaining conditions precedent to the execution of this Agreement, now wish to enter into this Agreement (as defined below) to govern the manner and terms under which the Service Provider shall implement accrual based double entry accounting systems with handholding support in all the Municipal Corporations / Councils / Committees of Gurugram Cluster and deliver related services to the Directorate of Urban Local Bodies (DULB) specified under this Agreement in accordance with the roles and responsibilities of the Bidder firms, Directorate of Urban Local Bodies (DULB) or their nominated agencies.

**NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND  
BETWEEN THE PARTIES HERETO AS FOLLOWS:**

- a. The Client has accepted the tender of Selected Agency for the provision and execution of the said works for the sum of Indian Rupee (INR) \_\_\_\_\_, including all taxes and levies as applicable under respective statutes, prevailing from time to time upon the terms laid out in this **Request for Proposal (RFP)**.
- b. Selected Agency hereby agrees to provide Services to Client, conforming to the specified Service Levels and conditions set out hereunder.
- c. The following documents attached hereto shall be deemed to form an integral part of this Contract:

<b>Complete Request for Proposal (RFP) Document</b>	
<b>The Selected Agency Technical &amp; Financial Proposal</b>	
<b>The Client's Letter of Intent dated _____</b>	
<b>The Negotiation offer Letter (If Any)</b>	
<b>The Client's Work order dated</b>	

- d. The mutual rights and obligations of the "Client" and Selected Agency shall be as set forth in the Contract, in particular:
  - Selected Agency shall carry out and complete the Services in accordance with the provisions of the Contract; and
  - The "Client" shall make payments to Selected Agency in accordance with the provisions of the Contract.

In pursuance of the Work Order, the parties have agreed to enter into this Agreement now therefore, the parties hereto hereby agree as follows:

## **A. General Conditions of Contract (GCC)**

### **1. Definitions and Interpretation**

#### **1.1. Definitions**

The words and expressions beginning with capital letters and defined in this Master Service Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:

**1.1.1. “Adverse Effect”** shall mean material impact -on:

- (a) the ability of the Selected Agency to exercise any of its rights or 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;

**1.1.2. “Agreement” / “Master Service Agreement (MSA)”** means this master service agreement and the Service Level Agreement (SLA) (as defined below), including its Schedules, entered into by and between the Parties. In the event of a conflict between the body of the Agreement and the Schedules, the terms inscribed in the body of the Agreement shall prevail;

**1.1.3. “Annexures”** means any of the annexures, appendices, supplements or documents annexed to this Agreement and as amended from time to time;

**1.1.4. “Affiliate”** means, with respect to any Party, any other entity that, directly or indirectly: (a) Controls such Party; (b) is Controlled by such Party; (c) is Controlled by the same person who, directly or indirectly, Controls such Party; and “Control” with respect to any person, shall mean: (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person whether through the ownership of voting share capital, by agreement or otherwise or the power to elect more than one-half of the directors, partners or other individuals exercising similar authority with respect to such person; (b) the possession, directly or indirectly, of a voting interest of more than 50%; and the terms “Controlling” and “Controlled by” shall be construed accordingly.

**1.1.5. “Applicable Law(s)”** shall mean any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant Party and as may be in effect on the Execution Date of this Agreement and during the subsistence thereof, applicable to the Project (as defined below);

**1.1.6. “Bid(s)”** Offer by the Bidder to fulfil the requirement of the client for an agreed price. It shall be a comprehensive technical and commercial response to the RFP dated -----;

**1.1.7. “Confidential Information”** means all information of the Parties including Directorate of Urban Local Bodies (DULB) and their nominated agencies’ data and Selected Agency’s data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how,

plans, budgets and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement);

- 1.1.8. “Appointed Date”** means the date of signing of this Concession Agreement;
- 1.1.9. “Assignment”** means the work assigned by the Client to the Selected Agency in pursuance of this Agreement and to be performed by the Selected Agency in accordance with the terms hereof;
- 1.1.10. “Deliverable(s)”** means the services agreed to be delivered by the Selected Agency in pursuance of this Master Service Agreement and Request for Proposals (RFPs) for implementation of Accrual based double entry accounting systems across the Urban Local Bodies of Gurugram Cluster of Haryana
- 1.1.11. “Letter of Intent” or “Lol”** means the formal letter notifying award of tender by Directorate of Urban Local Bodies (DULB) in favour of the Selected Agency
- 1.1.12. “Person”** includes a natural person, company, society, a partnership firm, trust or any other entity or organization or other body whatsoever;
- 1.1.13. “Project”** means project for Implementation of accrual based double entry accounting systems with training and handholding support in all the Municipal Corporations / Councils / Committees of Gurugram Cluster;
- 1.1.14. “Project Implementation Phase”** shall mean the period commencing from the Effective Date of the Agreement to the date of final acceptance & certification as set out in this Agreement;
- 1.1.15. “Request for Proposal (RFP)”** means request for proposal bearing reference no: \_\_\_\_\_ dated \_\_\_\_\_ issued by the Directorate of Urban Local Bodies (DULB),
- 1.1.16. “Services”** means the services to be delivered to Directorate of Urban Local Bodies (DULB) in relation to the Project, as specified in the scope of work in volume II of Request for Proposal (RFP)
- 1.1.17. “Service Level”** means the level of Services and other performance criteria which shall apply to the Services and as set out in the Service Level Agreement (SLA) (as defined below);
- 1.1.18. “SLA” or “Service Level Agreement”** Performance and Maintenance Service Level Agreement executed as part of this Master Service Agreement;
- 1.1.19. “Stakeholders”** shall include the Persons as inscribed in the Request for Proposal (RFP);
- 1.1.20. “Total Contract Value”** means the value specified in the Letter of Intent (Lol), subject to such addition thereto or deduction there from as may be made under the provisions hereinafter contained;
- 1.1.21. “Accounting Year”** means the financial year commencing on 1<sup>st</sup> April in each year and ending on 31<sup>st</sup> March in the next year;
- 1.1.22. “Client”** means the Directorate of Urban Local Bodies (ULB), **Haryana** and described in the recitals of this Agreement;

- 1.1.23. "Effective Date"** means the date on which this Agreement comes into force and effect pursuant to Clause;
- 1.1.24. "Government"** means the Government for the State of Haryana;
- 1.1.25. "Local Currency"** means the Indian Rupee;
- 1.1.26. "Party"** means the Client or the Selected Agency, as the case may be, and Parties means both of them;
- 1.1.27. "Personnel"** mean persons including Key Personnel, assigned/ deputed by the Selected Agency for performance of the Services or any part thereof.
- 1.1.28. "Professional Fee"** means the fee/ amount payable to the Selected Agency by the Client for performance of the Services by the Selected Agency as per the payment schedule specified in this Master Service Agreement.
- 1.1.29. "Selected Agency"** means the consulting firm selected by the Client to provide the Services under this Agreement and is described in the recitals of this Agreement;
- 1.1.30. "C.A Firm"** means chartered accountant firm within the meaning of Chartered Accountant Act 1949.
- 1.1.31. "CAG Empanelled"**: means Comptroller and Auditor General of India, an authority which is established under Article 148 of the constitution of India

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the Request for Proposal (RFP) & Corrigendum for selection of Selected Agency.

## **1. 2. Interpretation**

In this Agreement, unless otherwise specified:

- 1.2.1** Where the context so requires, words importing the singular shall also mean the plural and *vice versa*.
- 1.2.2** Words importing the masculine gender shall also include the feminine gender.
- 1.2.3** References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it.
- 1.2.4** Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Clause or Schedule. The words "include" and "including" shall not be construed as terms of limitation. The word "day" mean "regular working days of Government" unless otherwise stated. The words "writing" and "written" mean "in documented form", whether electronic or physical copy, unless otherwise stated.
- 1.2.5** 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.
- 1.2.6** In case of any ambiguity in the interpretation of any of the Clauses/Schedules in this Agreement, the interpretation shall be done as per Dispute Resolution procedure outlined in this Agreement
- 1.2.7** Any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight
- 1.2.8** References to a 'business day' shall be construed as a reference to a day (other than a Sunday) on which Directorate of Urban Local Bodies (DULB) is generally open for business
- 1.2.9** 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
- 1.2.10** all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- 1.2.11** Selected Agency (Selected Agency), or Implementation Agency (IA) or successful Bidder has been used for the same entity i.e. bidder selected for the project.
- 1.2.12** Time shall be of the essence in the performance of the service deliverable by Selected Agency, if any time period specified herein is extended, such extended time shall also be of the essence of contract.

## **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

#### **1. 4. Structure**

- i. This Agreement shall operate as a legally binding master services agreement specifying the master terms which apply to the Parties under this Agreement and to the provision of the Services by the Selected Agency to the Project under the terms of this Agreement.
- ii. In case of any conflict between the Request for Proposal (RFP) and this Agreement, the terms of this Agreement shall prevail over the terms of the Request for Proposal (RFP). The terms of the Request for Proposal (RFP) shall be read in consonance with this Master Service Agreement (MSA) so as to give full force and effect to the intention of the terms of this Master Service Agreement (MSA).

#### **1. 5. Ambiguities within Agreement**

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

- i. as between two Clauses of this Agreement, the provisions of a specific clause relevant to the issue under consideration shall prevail over those in a general clause;
- ii. as between the provisions of Request for Proposal (RFP) and any corrigenda issued thereafter, the provisions of corrigenda shall, to that extent only, prevail over the corresponding earlier provision of Request for Proposal (RFP);
- iii. as between the provisions of this Agreement and the Schedules, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules.

#### **1. 6. Priority of agreements, Articles and annexures**

**1.6.1.** This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and unless otherwise expressly provided else wherein this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, being the following order:

- i. this Agreement; and
- ii. all other agreements and documents forming part hereof or referred to herein;

**1.6.2.** Subject to the provisions of Article 1.6.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- i. Between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- ii. Between the Articles of this Agreement and the Annexures, the Articles shall prevail;

- iii. Between any two Annexures, the Annexure relevant to the issue shall prevail;
- iv. Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail; and
- v. Between any value written in numerals and that in words, the latter shall prevail.

## **2. Conditions Precedent & Effective Date**

### **2.1 Provisions to take effect upon fulfilment of Conditions Precedent**

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

### **2.2 Conditions Precedent of the Selected Agency**

The Selected Agency shall be required to fulfil the Conditions Precedent in which is as follows:

- a) To provide an unconditional, irrevocable and continuing Performance Security/Guarantee for an amount equal to 10% of the contract value of the Project from any Nationalised /Scheduled bank in the format prescribed by Client within Fifteen (15) days of receipt of Letter of Award/Letter of Intent by the Selected Agency; and
- b) To provide the Client or its nominated agencies or respective Urban Local Bodies certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Implementation Agency.

### **2.3 Non-fulfilment of the Selected Agency's Conditions Precedent**

- a) In the event that any of the Conditions Precedent of the Selected Agency have not been fulfilled within Fifteen (15) days of signing of this Agreement, and the same have not been waived fully or partially by Client or its nominated agencies or respective Urban Local Bodies, this Agreement shall cease to exist.
- b) In the event that this Agreement fails to come into effect on account of non-fulfilment of the Selected Agency's Conditions Precedent, Client or its nominated agencies or respective Urban Local Bodies shall not be liable in any manner whatsoever to the Selected Agency and the Directorate of Urban Local Bodies (DULB) shall forthwith forfeit the Performance Guarantee.
- c) In the event that possession of any of the Client or its nominated agencies or respective Urban Local Bodies facilities has been delivered to the Selected Agency are prior to the fulfilment of the Conditions Precedent, upon the termination of this Agreement such facilities shall immediately revert to Client or its nominated agencies or Urban Local Bodies, free and clear from any encumbrances or claims.



## 2.4 Authorized Representatives

2.4.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Client or the Selected Agency, as the case may be taken or executed by the officials specified in this Clause.

2.4.2 The Client may, from time to time, designate one of its officials as the Client Representative. Unless otherwise notified, the Client Representative shall be:

**Name: -**

\_\_\_\_\_

**Designation:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

**Mobile: +91** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

2.4.3 The Selected Agency may designate one of its employees as Representative. Unless otherwise notified, the System Integrator Representative shall be:

**Name:** \_\_\_\_\_

**Designation:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

**Mobile: +91** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

### **3. Scope of Work and Provision of the Services & Deliverables**

- 3.1** The Selected Agency shall provide Services for Implementation of Accrual Based double entry accounting systems for all the Municipal Corporations / Councils / Committees of Gurugram cluster of Haryana with technical handholding support and other related services within the scope mentioned in the Volume II – Scope of Work in the Request for Proposal (RFP).
- 3.2** Directorate of Urban Local Bodies (DULB) and Respective Urban Local Bodies shall use the Services and Deliverables in accordance with any instructions or procedures as per the acceptance criteria as set out in the Service Level Agreement (SLA) or this Agreement or any agreement that may be entered into between the Parties from time to time.
- 3.3** The Parties hereby agree that any change in the Scope of Work or Deliverables in relation to which Services are to be provided by the Selected Agency and or Service Level Agreement (SLA) shall only be as per the process agreed upon under Schedule V of this Agreement. Where Directorate of Urban Local Bodies (DULB) decides to increase the Scope of Work or deliverables specified in this Agreement, in such case, Directorate of Urban Local Bodies (DULB), as the case may be, shall offer first right to Service Provider to provide such services and / or components at mutually agreed prices. In case the Selected Agency refuses to accept such offer, Directorate of Urban Local Bodies (DULB), as the case may be, shall have the right to approach a third party for the same, without any commercial implication to Selected Agency.
- 3.4** During the subsistence of this Mater Service Agreement (MSA), Directorate of Urban Local Bodies (DULB) and respective Urban Local Bodies shall not appoint any other Person for providing Services in relation to Scope of Work and Deliverables Which Selected Agency is obligated to perform under this Mater Service Agreement (MSA).
- 3.5** Save for the express terms of the Payment Terms set out as Schedule I under this Agreement, Directorate of Urban Local Bodies (DULB) and its users may purchase any particular category of services from Selected Agency that may become necessary as per the Change Control Schedule set out in Schedule II under this Agreement, without the need to go for a separate procurement process.
- 3.6** The Selected Agency shall provide Services as per the timelines set out in the Request for Proposal (RFP) or as are extended by mutual agreement.

#### **4. Management Phase**

The review and management process of the Project shall be carried out in accordance with the Governance Schedule (Schedule IV) set out in of this Agreement and shall cover all the management aspects of the Project.

#### **5. Approvals and Required Consents**

- 5.1** The Parties shall co-operate to procure, maintain and observe all relevant regulatory / government licenses, clearances, internal clearances, applicable approvals (hereinafter the “Approvals”) necessary for the Selected Agency to provide the Services.
- 5.2** Parties shall give each other all co-operation and information reasonably required to meet their respective obligations under this Agreement.
- 5.3** In the event that any approval other than delivery sign-off / completion certificate is not obtained from the respective Urban Local Bodies , then the selected agency and the Directorate of Urban Local Bodies (DULB) or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the Directorate of Urban Local Bodies (DULB) or its nominated agencies to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such approval is obtained, provided that the selected agency shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the approvals are obtained if and to the extent that the Selected agency ’s obligations are not dependent upon such approvals.
- 5.4** Except as otherwise provided elsewhere in this Agreement or the Service Level Agreement (SLA), each Party (“Providing Party”) to this Agreement or to the Service Level Agreement (SLA) undertakes promptly to provide the other Party (“Receiving Party”) with all such information and co-operation which the Receiving Party reasonably requests, provided that such information and co-operation:
- i. Does not require material expenditure by the Providing Party to provide the same;
  - ii. Is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement or the Service Level Agreement (SLA);
  - iii. Cannot be construed to be Confidential Information; and is capable of being provided by the Providing Party.
- 5.5** Further, each Party agrees to co-operate with the contractors, agents, personnel of the other Party as reasonably requested in order to accomplish the purposes of this Agreement.

## **6. Service Level Agreement**

- 6.1** The Service Level Agreement (SLA) shall govern the Service Levels for the entire Project. The Service Level Agreement (SLA) shall commence from the Effective Date or any other mutually agreed date, as the case may be, and shall, unless terminated earlier in accordance with the terms of the Master Service Agreement (MSA), expire on the date on which the Master Service Agreement (MSA) expires. The envisaged in Schedule V to this Agreement,
- 6.2** The Service Level Agreement's (SLA's) shall form a part of this Agreement and shall be guided by the terms of this Agreement. In case of any conflict between the terms of the Service Level Agreement's (SLA's) and this Agreement, the terms of this Agreement shall be effective with overriding effect.
- 6.3** The Parties shall each ensure that the range of the Services under the Service Level Agreement (SLA) shall not be increased except with the prior written agreement between the Parties in accordance with the change management procedure set out in Schedule II of this Agreement.

## **7. Term and Duration of the Agreement**

This Agreement shall come into effect on <\*\*\*> 201- (hereinafter the 'Effective Date') and shall continue till the date of the completion of implementation of accrual based double entry accounting system as defined in the scope of work of Request for Proposals (RFPs) Volume -II. Client or its nominated agencies, unless terminated earlier (as per clause xx), in which case the contract will get terminated on fulfillment of all obligations mentioned as per clause xx and Schedule-VI.

The Term, for the purposes of any payments to Selected Agency, does not include:

- (a) Any extension arising out of breach of any obligations solely attributable to Selected Agency; or
- (b) Unless the implementation of exit management is delayed due to reasons not solely attributable to the Selected Agency, time duration for implementation of exit management plan.

### 7.1. Timelines/Deliverables:

The duration of this assignment shall be 24 (Twenty-four) months unless any corrigendum issued in this favour, to the Terms of Reference mentioned in request for proposal Volume-II. The assignment is output based. The expected outputs/ deliverables for the Selected Agency would be as below during the period of assignment:

SN.	Deliverable/output	Timeline (from signing date of Agreement)
1.	<ul style="list-style-type: none"> <li>i. Survey and listing out of moveable and immovable Assets, inventory, liabilities, and carrying out valuation of fixed assets &amp; liabilities of Urban Local Bodies as per government notifications/Municipal accounting code.</li> <li>ii. Approval of legacy data listing in the House meeting of elected members of concerned Urban Local Bodies.</li> </ul>	4 Months
2.	<ul style="list-style-type: none"> <li>i. Preparation and approval of Opening Balance Sheet of Urban Local Bodies as on 01-04-2016 including Income &amp; Expenditure Account &amp; other relevant schedule as per Haryana Municipal Accounts Code/National Municipal Accounts Manual.</li> <li>ii. Handholding support to Urban Local Bodies accounts related staff and upload on the website of concerned Urban Local Body and Directorate of Urban Local Bodies.</li> </ul>	1 Month
3.	<ul style="list-style-type: none"> <li>i. Up to date Books of accounts, entered all transaction in selected accounting software, Preparation and approval of Balance Sheet of Urban Local Bodies as on 31-03-2017. Including Income &amp; Expenditure Accounts &amp; other relevant schedule as per Haryana Municipal Account Code/National Municipal Accounts Manual.</li> <li>i. Handholding support to Urban Local Bodies Accounts related staff and upload on the website of concerned Urban Local Body and Directorate of Urban Local Bodies.</li> </ul>	1 Month

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SN.	Deliverable/output	Timeline (from signing date of Agreement)
4.	<ul style="list-style-type: none"> <li>i. Up to date Books of accounts, entered all transaction in selected accounting software, Preparation and approval of Balance Sheet of Urban Local Bodies as on 31-03-2018. Including Income Expenditure Account &amp; other relevant schedule as per Haryana Municipal Accounts Code/National Municipal Accounts Manual.</li> <li>ii. Handholding support to Urban Local Bodies Accounts related staff and upload on the website of concerned Urban Local Bodies and Directorate of Urban Local Bodies.</li> </ul>	1 Month
5.	<ul style="list-style-type: none"> <li>i. Up to date Books of accounts, entered all transaction in selected accounting software, Preparation and approval of Balance Sheet of Urban Local Bodies as on 31-03-2019. Including Income Expenditure, A/c &amp; other relevant schedule as per Haryana Municipal Accounts Code/National Municipal Accounts Manual.</li> <li>i. Handholding support to Urban Local Bodies Accounts related staff and upload on the website of concerned Urban Local Bodies and Directorate of Urban Local Bodies.</li> </ul>	1 Months
6.	<ul style="list-style-type: none"> <li>i. Training and Handholding support to Urban Local Bodies with day to day accounting entries from the Financial Year 2019-20 to till the exit date of Chartered Accountant Firms.</li> <li>i. All the balance services as per detailed scope mentioned in Request for Proposal Volume -II</li> </ul>	14 Months
7.	<ul style="list-style-type: none"> <li>i. Preparation of Handholding Support Financial Statements for the Financial Year 2019-20</li> <li>ii. Approval of Financial Statements and upload on the website of concerned Urban Local Body and Directorate of Urban Local Bodies</li> </ul>	1 Month

SN.	Deliverable/output	Timeline (from signing date of Agreement)
8.	i. Preparation of Handholding Support Financial Statements for the Financial Year 2020-21 ii. Approval of Financial Statements and upload on the website of concerned Urban Local Body and Directorate of Urban Local Bodies	1 Month

## 8. Change Management Process

**8.1** Change requests in respect of the Master Service Agreement (MSA), the Project Implementation Plan, the operation, the Service Level Agreement (SLA), Services, Scope of Work, Deliverables and functional requirement specifications shall be upon mutual agreement.

**8.2** The change management shall be as per Schedule II to this Agreement.

## 9. Final Service Level Agreement (SLA), Acceptance & Certification

**9.1** The Project shall be governed by the mechanism of final acceptance of Service Level Agreement (SLA) to be put into place by the Directorate of Urban Local Bodies (DULB) and the Selected Agency. The final Service Level Agreement (SLA) criteria shall lay down a set of guidelines to be followed by all Project stakeholders during the Project period.

**9.2** Final acceptance shall be given on completion of the following:

- i. Approved Financial Statements available on Urban Local Body/ Directorate of Urban Local Bodies on their portal for all the period specified in the Request for Proposal (RFP)
- ii. Fixed Assets and Inventory Register are updated as on 31<sup>st</sup> March 2021 or on the date mutually agreed by both parties till final acceptance of the project (whichever later)
- iii. Training and Handholding support to Urban Local Bodies Staff for the period specified in the Request for Proposal (RFP)

## **10. Obligations**

### **10.1. Obligations of Directorate of Urban Local Bodies (DULB) and respective Urban Local Bodies**

Without prejudice to any other undertakings or obligations of the Directorate of Urban Local Bodies (DULB) and respective Urban Local Bodies or its nominated agencies under this Agreement, the Directorate of Urban Local Bodies (DULB) and respective Urban Local Bodies or its nominated agencies shall perform the following:

- a) To provide support required by Selected Agency through their personnel for implementation of Accrual Based Double Entry Accounting Systems (ABDEAS) in all the Municipal Corporations / Councils / Committees of Gurugram Cluster of Haryana within the scope mentioned in the Volume II – Scope of Work of the Request for Proposal (RFP) during the Term of this Agreement;
- b) To promptly provide all the data, information, approvals, documents, details, personnel and to ensure the prompt delivery of data, information, approvals, documents, details etc. from other Stakeholders of the Project as and when required by the Selected Agency for performance of its Services.
- c) To make available the details of all the municipal corporation and municipal council/Committee of GURUGRAM Cluster from Directorate of Urban Local Bodies (DULB) for the smooth functioning of the project
- d) To coordinate amongst each other and between all the divisions of their own offices for providing necessary information for the study and implementation of Accrual Based Double Entry Accounting Systems and other related services mentioned in the Request for Proposal.
- e) To hold meetings of the steering committee and the project monitoring committee;
- f) To ensure sign-offs/acceptance and timely responses from the Stakeholders and urban local bodies;
- g) Coordinate with Selected Agency for conducting workshops for the Stakeholders and other representatives of Urban Local Bodies.
- h) Issuing the necessary certification including completion certificate with mutually agreed between the Urban Local bodies and Selected Agency for the implementations of project and for other components of the Scope of Work (wherever required).



- i) To create internal capacity for execution of the Project after takeover from the Selected Agency after the termination of this Agreement.
- j) Ensuring the staff members of Urban Local Bodies and other Stakeholders attend the training programs as per the schedule defined by the Selected Agency and agreed upon by respective Urban Local Bodies
- k) Ensuring the staff members and other Stakeholders including Directorate of Urban Local Bodies (DULB) / Municipal Corporations / Municipal Councils/ Committees) provide data, information, replies etc. in a timely manner.
- l) Performing its obligations under the Request for Proposal (RFP) within the stipulated time and in case of there being no stipulated time, within reasonable time and without any unnecessary delay;
- m) Selected Agency will, on completion of a milestone, furnish the final deliverable to the respective Urban Local Body. Selected Agency shall also intimate Directorate of Urban Local Bodies (DULB) regarding completion of the milestone and submission of deliverable to respective Urban Local Body. Respective Urban Local Body shall provide its acceptance and/or objection and/or rejection and/or seek clarifications on non-compliance part of such delivery as per the checklist provided by Selected Agency within Fifteen (15) working days after the milestone completion letter submitted by Selected Agency.
- n) Release of timely payment to Selected Agency on submission of invoices after approval from Project Monitoring Committees (PMC).
- o) Directorate of Urban Local Bodies and respective Urban Local Bodies shall provide to Selected Agency with only sitting space and basic infrastructure not including, stationery and other consumables at the Urban Local Bodies' office locations.

## **10.2. Obligations of the Selected Agency**

- a) Selected Agency's obligations shall include all the activities as specified by the Client in the Scope of Work and other sections of the Request for Proposal (RFP) and Contract and changes thereof to enable Directorate of Urban Local Bodies (DULB) and respective Urban Local Bodies to meet the objectives and operational requirements. It shall be Selected Agency's responsibility to ensure the proper and successful implementation, performance and continued

operation of the proposed solution in accordance with and in strict adherence to the terms of his Bid, the Tender and this Contract.

- b) It shall provide to respective Urban Local Bodies or its nominated agencies, the Deliverables as agreed between the Parties. It shall also intimate Directorate of Urban Local Bodies (DULB) regarding completion of the milestone and submission of deliverable to respective Urban Local Body.
- c) It shall perform the Services as set out in Volume II – Scope of Work of Request for Proposal (RFP) in a good and workmanlike manner commensurate with industry and technical standards which are generally in effect for such 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.
- d) It shall ensure that the Services are being provided as per the Project Timelines as set out this Agreement.
- e) It shall migrate the existing data to the new developed accounting application database and preparation of financial statements and reporting with handholding support to Urban Local Bodies.
- f) The Selected Agency shall be responsible for and shall ensure that all activities /services are performed in accordance with this Agreement, Scope of Work and that the Selected agency 's team complies with such specifications and all other standards, terms and other stipulations/conditions set out hereunder.
- g) Client reserves the right to interview the personnel proposed that shall be deployed as part of the project team. If found unsuitable, the Client may reject the deployment of the personnel. But ultimate responsibility of the project implementation shall lie with Selected Agency.
- h) The Selected agency shall perform the activities /services and carry out its obligations under this Agreement with due diligence, efficiency and economy, in accordance with generally accepted accounting policies as per Haryana Accounts Code/ National Municipal Accounting Manual. The Selected Agency shall always act, in respect of any matter relating to this Agreement, as faithful advisors to the respective Urban Local Bodies and Directorate of Urban Local Bodies (DULB) and shall, at all times, support and safeguard the respective Urban Local Bodies and Directorate of Urban Local Bodies legitimate interests in any dealings with third parties

**10.3. Access to locations of respective Urban Local Bodies and Directorate of Urban Local Bodies (DULB)**

- a) For so long as the Selected Agency provides services to respective Urban Local Bodies and Directorate of Urban Local Bodies or its nominated agencies from their location, as the case may be, on a non-permanent basis and to the extent necessary, respective Urban Local Bodies and Directorate of Urban Local Bodies as the case may be or its nominated agencies shall, subject to compliance by the Selected Agency with any safety and security guidelines which may be provided by respective Urban Local Bodies and Directorate of Urban Local Bodies as the case may be or its nominated agencies and notified to the Selected Agency in writing, provide the Selected Agency with:
  - a) Reasonable access, in the same manner granted to respective Urban Local Bodies and Directorate of Urban Local Bodies or its nominated agencies / employees, as the case may be;
  - b) Reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at any other locations of respective Urban Local Bodies and Directorate of Urban Local Bodies as the case may be location, if any, as may be reasonably necessary for the Selected Agency to perform its obligations hereunder and under the Service Level Agreement (SLA).
- b) Access to locations, office equipment and services shall be made available to the Selected Agency on an “as is, where is” basis by respective Urban Local Bodies and Directorate of Urban Local Bodies (DULB) as the case may be or its nominated agencies. The Selected Agency agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in Request for Proposal (RFP) for the following purposes:
  - a) For the transmission of any material which is defamatory, offensive or abusive or of and obscene or menacing character; or
  - b) In a manner which constitutes a violation or infringement of the rights of any Person, firm or company (including but not limited to rights of copyright or confidentiality).

**10.4. Coordination for enabling installation of Accounting Application**

Selected Agency shall co-ordinate with Directorate of Urban Local Bodies, System integrator and Urban Local Bodies to enabling commencement of installation of accounting application in the allotted Urban Local Bodies (ULBs) for the purpose specified in Request for Proposal

### 10.5. Reporting Progress

- a) Selected Agency shall monitor progress of all the activities related to the execution of this contract and shall submit to the Directorate of Urban Local Bodies and respective Urban Local Bodies, progress reports with reference to all related work, milestones and their progress during the implementation phase.
- b) Formats for all above mentioned reports and their dissemination mechanism shall be discussed and finalized along with project plan. The Directorate of Urban Local Bodies /Urban Local Bodies on mutual agreement between both parties may change the formats, periodicity and dissemination mechanism for such reports.
- c) Periodic meetings shall be held between the representatives of the client or Urban Local Bodies and Selected Agency once in every Fifteen (15) days during the initial phase of implementation of accrual based double entry accounting systems in Urban Local Bodies and ensure the progress of implementation. After that the meeting shall be held as an ongoing basis, as desired by client, to discuss the performance of the contract.
- d) Selected Agency shall ensure that the respective teams involved in the execution of work are part of such meetings.
- e) Project Monitoring Committee (PMC) shall be formed as defined in Schedule IV – Governance Process. This Project Monitoring Committee (PMC) shall meet at intervals, as decided by the Client later, to oversee the progress of the project.
- f) The Client reserves the right to inspect and monitor/ assess the progress/ performance of the work / services at any time during the course of the Contract. The Client may demand and upon such demand being made, Selected Agency shall provide documents, data, material or any other information which the Client/respective urban local body may require, to enable it to assess the progress/ performance of the work / service.
- g) At any time during the course of the Contract, the Client shall also have the right to conduct, either itself or through another agency as it may deem fit, an audit to monitor the performance by Selected Agency of its obligations/ functions in accordance with the standards committed to or required by the Client and Selected Agency undertakes to cooperate with and provide to the Client/ any other agency appointed by the Client, all Documents and other details as may be required by them for this purpose. Such audit shall not include Selected Agency's books of accounts.
- h) The submission seeking approval by the Client or Client's representative of such plan shall not relieve Selected Agency of any of his duties or responsibilities under the Contract.
- i) In case during execution of works, the progress falls behind schedule or does not meet the Tender requirements, Selected Agency shall deploy extra

manpower/ resources to make up the progress or to meet the Request for Proposal (RFP) requirements. Plan for deployment of extra man power/ resources shall be submitted to the Client for its review and approval. All time and cost effect in this respect shall be borne, by Selected Agency within the contract value.

#### **10.6. Project Plan**

- a) Within Fifteen (15) calendar days of effective date of the Kick-off meeting, Selected Agency shall submit to the Client for its approval a detailed Project Plan as per format provided with details of the project showing the sequence, procedure and method in which Selected Agency proposes to carry out the works. The Plan so submitted by Selected Agency shall conform to the requirements and timelines specified in the Contract. The Client and Selected Agency shall discuss and agree upon the work procedures to be followed for effective execution of the works, which Selected Agency intends to deploy and shall be clearly specified. The Project Plan shall include but not limited to project organization, communication structure, proposed staffing, roles and responsibilities, processes and tool sets to be used for quality assurance, security and confidentiality practices in accordance with industry best practices, project plan and delivery schedule in accordance with the Contract, Risk and Mitigation plan. Approved Project plan shall be intimated to respective Urban Local bodies by the selected Agency.  
Approval by the Client's Representative of the Project Plan shall not relieve Selected Agency of any of his duties or responsibilities under this Contract.
- b) If Selected Agency's work plans necessitate a disruption/ shutdown in Client's operation, the plan shall be mutually discussed and developed so as to keep such disruption to the barest unavoidable minimum. Any time and cost arising due to failure of Selected Agency to develop/adhere such a work plan shall be to Selected Agency's account.
- c) On submission of the project plan by Selected Agency, the Steering Committee/Project Management Unit (PMU) will reply/accept the plan within Fifteen (15) days of submission date,
- d) Any change in requirement/ process / expectations of Project Monitoring Committees (PMC) / Directorate of Urban Local Bodies (DULB) or any of Urban Local Bodies (ULB) under this Project that may require change in Selected Agency's Process / development work, then in such case, the earlier approved Project Plan shall be updated time to time by Selected Agency and will submit it to Steering committee for approval
- e) In case, the Steering committee does not issue the Acceptance or do not give a list of compliances to be achieved by Selected Agency within fifteen (15) days from the date of Selected Agency's intimation, then in such case, the deliverable done by Selected Agency will be treated as the "Completed

deliverable as per the agreed scope of work”

- f) In the event of deemed completion of a milestone, Selected Agency will proceed with the steps for achieving next milestone till completion of the project

## **11. Payments**

- 11.1.** Payment shall be made Urban Local Body-wise and by the concerned Urban Local Bodies as per the terms and conditions set out in the Request for Proposal
- 11.2.** Urban Local Bodies shall make payments to Selected Agency at the times and in the manner set out in the Payment schedule as specified in Payment Milestones in Request for Proposal (RFP) Volume -I and related corrigendum, if any. Urban Local Bodies shall make all efforts to make payments to Selected Agency within forty five (45) days of receipt of invoice(s) and all necessary supporting documents.
- 11.3.** All payments agreed to be made by Urban Local Bodies to Selected Agency in accordance with the Bid shall be inclusive of all applicable taxes under or in relation to this Contract and/or the Services as agreed during contract signing.
- 11.4.** No invoice for extra work/change order on account of change order shall be submitted by Selected Agency unless the said extra work /change order has been authorized/approved by the Client in writing in accordance with Change Control Note.
- 11.5.** In the event of Client / respective Urban Local Body noticing at any time that any amount has been disbursed wrongly to Selected Agency or any other amount is due from Selected Agency to the Client / respective Urban Local Body, the Client / respective Urban Local Body may without prejudice to its rights recover such amounts by other means after notifying Selected Agency or deduct such amount from any payment falling due to Selected Agency. The details of such recovery, if any, shall be intimated to Selected Agency. Selected Agency shall receive the payment of undisputed amount under subsequent invoice for any amount that has been omitted in previous invoice by mistake on the part of the Client / respective Urban Local Body or Selected Agency.
- 11.6.** All payments to Selected Agency shall be subject to the deductions of tax at source under Income Tax Act, and other taxes and deductions as provided for under any law, rules or regulation. All costs, damages or expenses which respective Urban Local Body may have paid or incurred, for which under the provisions of the Contract, Selected Agency is liable, the same shall be deducted by respective Urban Local Body from any dues to Selected Agency. All payments to Selected Agency shall be made after making necessary deductions as per terms of the Contract and recoveries towards facilities, if any, provided by the respective Urban Local Body to Selected Agency on chargeable basis.
- 11.7.** The following schedule would be followed for payment during the Project implementation in line with scope of work:

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S.N.	Deliverable/output	Payment Schedule (% of Total fees)
1	<ul style="list-style-type: none"> <li>i. Survey and listing out of moveable and immovable Assets, inventory, liabilities, and carrying out valuation of fixed assets &amp; liabilities of Urban Local Bodies as per government notifications/Municipal accounting code.</li> <li>ii. Approval of legacy data listing in the House meeting of elected members of concerned Urban Local Bodies.</li> </ul>	20%
2	<ul style="list-style-type: none"> <li>i. Preparation and approval of Opening Balance Sheet of Urban Local Bodies as on 01-04-2016 including Income &amp; Expenditure Account &amp; other relevant schedule as per Haryana Municipal Accounts Code/National Municipal Accounts Manual.</li> <li>ii. Handholding support to Urban Local Bodies accounts related staff and upload on the website of concerned Urban Local Body and Directorate of Urban Local Bodies.</li> </ul>	10%
3	<ul style="list-style-type: none"> <li>i. Up to date Books of accounts, entered all transaction in selected accounting software, Preparation and approval of Balance Sheet of Urban Local Bodies as on 31-03-2017. Including Income &amp; Expenditure Accounts &amp; other relevant schedule as per Haryana Municipal Account Code/National Municipal Accounts Manual.</li> <li>ii. Handholding support to Urban Local Bodies Accounts related staff and upload on the website of concerned Urban Local Body and Directorate of Urban Local Bodies.</li> </ul>	10%

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S.N.	Deliverable/output	Payment Schedule (% of Total fees)
4	<ul style="list-style-type: none"> <li>i. Up to date Books of accounts, entered all transaction in selected accounting software, Preparation and approval of Balance Sheet of Urban Local Bodies as on 31-03-2018. Including Income Expenditure Account &amp; other relevant schedule as per Haryana Municipal Accounts Code/National Municipal Accounts Manual.</li> <li>ii. Handholding support to Urban Local Bodies Accounts related staff and upload on the website of concerned Urban Local Bodies and Directorate of Urban Local Bodies.</li> </ul>	10%
5	<ul style="list-style-type: none"> <li>i. Up to date Books of accounts, entered all transaction in selected accounting software, Preparation and approval of Balance Sheet of Urban Local Bodies as on 31-03-2019. Including Income Expenditure, A/c &amp; other relevant schedule as per Haryana Municipal Accounts Code/National Municipal Accounts Manual.</li> <li>ii. Handholding support to Urban Local Bodies Accounts related staff and upload on the website of concerned Urban Local Bodies and Directorate of Urban Local Bodies.</li> </ul>	10%
6	<ul style="list-style-type: none"> <li>i. Training and Handholding support to Urban Local Bodies with day to day accounting entries from the Financial Year 2019-20 to till the exit date of Chartered Accountant Firms.</li> <li>ii. All the balance services as per detailed scope mentioned in Request for Proposal Volume -II</li> </ul>	20%
7	<ul style="list-style-type: none"> <li>i. Preparation of Handholding Support Financial Statements for the Financial Year 2019-20</li> <li>ii. Approval of Financial Statements and upload on the website of concerned Urban Local Body and Directorate of Urban Local Bodies</li> </ul>	10%



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S.N.	Deliverable/output	Payment Schedule (% of Total fees)
8	i. Preparation of Handholding Support Financial Statements for the Financial Year 2020-21 ii. Approval of Financial Statements and upload on the website of concerned Urban Local Body and Directorate of Urban Local Bodies	10%

Note:

1. Training and Handholding payment shall be made on quarterly basis as per the reports and deliverables (workshop, training materials and Attendance Sheet of Participant etc.) submitted by the Selected Agency.
2. Selected Agency is expected to submit their invoice for work undertaken at respective ULBs separately.
3. Payment shall be made by respective ULBs upon verification of work undertaken by the Selected Agency.

## **12. Taxes**

- 12.1.** Selected Agency shall bear all personnel taxes levied or imposed on its personnel, or any other member of Selected Agency's Team, etc. on account of payment received under this Contract. Selected Agency shall bear all corporate taxes, levied or imposed on Selected Agency on account of payments received by it from the Client for the work done under this Contract.
- 12.2.** Selected Agency shall bear all taxes and duties etc. levied or imposed on Selected Agency under the Contract including but not limited to Goods and Service Tax (GST), Sales Tax, Customs duty, Excise duty, Octroi, , Value Added Tax (VAT), Works Contracts Tax and all Income Tax levied under Indian Income Tax Act – 1961 or any other compliance of taxes and amendments thereof during the entire contract period, i.e., on account of material supplied and services rendered and payments received by him from the respective Urban Local Bodies under the Contract. It shall be the responsibility of Selected Agency to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. Selected Agency shall also provide the Client / respective Urban Local Bodies such information, as it may be required in regard to Selected Agency's details of payment made by the respective Urban Local Bodies under the Contract for proper assessment of taxes and duties. The amount of tax withheld by the respective Urban Local Bodies shall at all times be in accordance with Indian Tax Law and the respective Urban Local Bodies shall promptly furnish to Selected Agency original certificates for tax deduction at source and paid to the Tax Authorities.
- 12.3.** Selected Agency agrees that he shall comply with the Indian Income Tax Act in force from time to time and pay Indian Income Tax, as may be imposed/ levied on them by the Indian Income Tax Authorities, for the payments received by them for the works under the Contract
- 12.4.** Selected Agency shall fully familiarize themselves about the applicable domestic taxes (such as Goods and Service taxes, value added or sales tax, , income taxes, duties, fees, levies, etc.) on amounts payable by the Client under the Contract. All such taxes must be included by Selected Agency in the financial proposal. (Selected Agency to find out applicable taxes for the components being proposed.)
- 12.5.** Should Selected Agency fail to submit returns/pay taxes in times as stipulated under applicable Indian/State Tax Laws and consequently any interest or penalty is imposed by the concerned authority, Selected Agency shall pay the same. Selected Agency shall indemnify Client / respective Urban Local Bodies against any and all liabilities or claims arising out of this Contract for such taxes including interest and penalty by any such Tax Authority may assess or levy against the Client / respective Urban Local Bodies / Selected Agency.
- 12.6.** In case of introduction of new taxes imposed by the Governments during the scheduled or extended tenure of the contact, any decision on compensation to Selected Agency in this regard would be taken by the High Powered Committee (HPC), Government of Haryana. The Selected Agency shall submit detailed computation of the incremental tax payable on account of new tax rules (tax payable as per new tax rules minus tax payable as per existing rules) as applicable in the state of Haryana to the respective Urban Local

Bodies. The decision of the High Powered Committee (HPC), in this regard would be final and binding on the Selected Agency. The Selected Agency shall indicate the tax component in all the invoices and changes in the same shall be indicated to Directorate of Urban Local Bodies (DULB) and respective Urban Local Bodies immediately after the changes in the structure are announced by the appropriate authorities.

- 12.7.** Respective Urban Local Bodies shall if so required by applicable laws in force, at the time of payment, deduct income tax payable by Selected Agency at the rates in force, from the amount due to Selected Agency and pay to the concerned tax authority directly.
- 12.8.** Respective Urban Local Bodies shall be responsible for withholding taxes from the amounts due and payable to the Selected Agency wherever applicable.
- 12.9.** Respective Urban Local Bodies shall provide Selected Agency with the original tax receipt of any withholding taxes paid by the Urban Local Body or its nominated agencies on payments under this Agreement. Selected Agency agrees to reimburse and hold the respective Urban Local Bodies 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 Directorate of Urban Local Bodies (DULB), respective Urban Local Bodies or its nominated agencies, the Selected Agency.
- 12.10.** No amount towards security deposit shall be deducted from running bills of the Selected Agency. However, respective Urban Local Bodies shall be responsible for deducting taxes from the amounts due and payable to the Selected Agency wherever applicable. The Selected Agency shall pay for all other taxes, duties or levies in connection with this Agreement, and Service Level Agreements (SLAs) but not limited to, value-added, goods and services tax, consumption and other applicable taxes, duties or levies etc.

### **13. Warranty**

#### **13.1. 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. Selected agency shall have no liability in the case of breach of this warranty due to:

- a) use of the Deliverables on any software recommended or approved by the client.
- b) the defects and deficiencies which could be reasonably known to Directorate of Urban Local Bodies (DULB) which shall occur due to decisions taken by the Directorate of Urban Local Bodies (DULB), or any of the committees formed hereunder.
- c) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the Service Provider.
- d) the deliverables having been tampered with, altered or modified by Directorate of Urban Local Bodies (DULB) or any other person not under control of the Selected Agency without the written permission of the Selected Agency, or
- e) Use of the deliverables otherwise than in terms of the relevant documentation.

### **14. Conflict of interest**

Selected Agency shall disclose to the Client in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for Selected Agency or Selected Agency's Team) in the course of performing the Services as soon as practical after it becomes aware of that conflict.

### **15. Commencement and Completion of Agreement**

#### **15.1. Effectiveness of Agreement**

The agreement is effective from the date of signing of this Agreement.

#### **15.2. Tenure of the Agreement**

The tenure of this Agreement shall be valid for the period specified in the Request for proposal on agreed terms and conditions.

Directorate of Urban Local Bodies (DULB) reserves the right to extend the contract on the same terms and conditions and on the contract prices decided pursuant to this Request for Proposal (RFP)

### **16. Exit Management**

The Parties shall finalize the exit plan as per the Schedule VI to this Master Service Agreement (MSA).

## **17. Force Majeure**

**17.1.** As used in this Agreement, the expression “Force Majeure” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Political Event and other Event, as defined in Clause 18.2, 18.3 and 18.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party and (b) such Party could not have prevented or reasonably overcome with the exercise or reasonable skill and care and (c) does not result from the negligence of such Party or the failure of such Party to perform its obligations under this Agreement and (d) is of an incapacitating nature and prevents or causes a delay or impediment in performance.

### **17.2. 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 Service Provider’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 Service Provider 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.

### **17.3. Political Events**

- a) Change in Applicable Laws, other than any change in law for which relief is provided under this Agreement.
- b) Expropriation or compulsory acquisition by the Directorate of Urban Local Bodies (DULB) or any of their nominated agencies of any material assets or rights of the Service Provider.
- c) Unlawful or unauthorized revocation of, or refusal by Directorate of Urban Local Bodies (DULB) or any of their nominated agencies, Government of India, Stakeholders or any of its agencies to renew or grant any clearance or Approval, information, data required by the Service Provider to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider’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 Service Provider in any proceedings for reasons other than failure of the Service Provider to comply with Applicable Laws or Approvals 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 Directorate of Urban Local Bodies (DULB) or any of their nominated agencies of any material assets or rights of the Service Provider.
- f) Unlawful or unauthorized revocation of, or refusal by any authority other than the Directorate of Urban Local Bodies (DULB) or any of their nominated agencies to renew or grant any Required Consents required by the Service Provider to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider'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 Directorate of Urban Local Bodies (DULB) 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.

#### **17.4. 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.
- b) For the avoidance of doubt, it is expressly clarified that the failure on the part of the Service Provider under this Agreement or the Service Level Agreement (SLA) to implement any agreed disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the Service Level Agreement (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, Service Provider will be solely responsible to complete the risk assessment and ensure

implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).

**17.5. 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 specified in this Agreement.
- 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.

**17.6. Consultation and duty to mitigate**

Except as otherwise provided in this Clause, the affected Party shall 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.

**18. Insurance Cover**

**18.1. Obligation to maintain insurance**

In connection with the provision of the Services, the Selected Agency must have and maintain for this Agreement Period, valid and enforceable insurance coverage for:

- a) public liability;
- b) either professional indemnity or errors and omissions;
- c) workers' compensation as required by law;

**18.2. Certificates of currency**

The Selected Agency must, on request by Client, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 18. The Selected Agency agrees to replace any coverage prior to the date of expiry/cancellation.

**18.3. Non-compliance**

Client may, at its election, terminate this Agreement upon the failure of Selected Agency, or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve Selected Agency of its obligations under this Agreement.

## **19. Transfer of Ownership**

- 19.1.** Selected Agency must transfer all titles to the assets and goods procured for the purpose of the project to the Client/ Respective Urban Local Body at the time of Acceptance, subject to release of approved payment as per Request for Proposal (RFP) payment terms. This includes soft copy of the financial statements from software along with all licenses, titles, certificates, hardware, devices, equipment's, data etc. (if any) related to the system installed and maintained by Selected Agency for this project.
- 19.2.** Forthwith upon expiry or earlier termination of the Contract and at any other time on demand by the Client, Selected Agency shall deliver to the Client all Documents provided by or originating from the Client and all Documents produced by or from or for Selected Agency in the course of performing the Services, unless otherwise directed in writing by the Client at no additional cost. Selected Agency shall not, without the prior written consent of the Client and respective Urban Local Bodies store, copy, distribute or retain any such Documents.



**B. Special Conditions of Contract (SCC)**

**20. Performance Bank Guarantee (PBG)**

The Selected Agency shall at his own expense, deposit with Client, prior to signing of the Master Service Agreement (MSA), unconditional and irrevocable Performance bank guarantees ('PBG') from scheduled Bank for the performance of the obligations contained herein.

- 20.1.** The Performance Bank Guarantee (PBG) shall be discharged/ returned by Client, after the completion of the entire contract period as specified above, upon being satisfied that there has been due performance of the obligations of Selected Agency under the Master Service Agreement (MSA) and the procedure mentioned in the Request for Proposal.
- 20.2.** The Performance security shall be kept valid and enforce for the entire duration of the contract and six (6) month after the completion of the contract. If the contract period is to be extended due to any reason, the selected agency shall renew the Performance Bank Guarantee atleast one month prior to the expiry of the subsisting performance security. In the event the Selected Agency fails to provide the renewed (extended) Performance Bank Guarantee at least one month prior to the expiry of subsisting Performance Security, so as to maintain the performance security valid throughout the term of the Agreement, The Directorate of Urban Local Bodies shall have the right to forfeit and appropriate the subsisting Performance Bank Guarantee i.e. Failure of the Selected Agency to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute Selected Agency Event of Default in terms hereof.
- 20.3.** In the event, the Selected Agency is in default or breach of the due, faithful and punctual performance of its obligations under this Agreement, in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Directorate of Urban Local Bodies for or against the Selected Agency under this Agreement or against the Directorate of Urban Local Bodies in respect of this Agreement, the Directorate of Urban Local Bodies shall, without prejudice to its rights and remedies hereunder or in law, be entitled to appropriate the relevant amount from the Performance Bank Guarantee as damage such default, or loss suffered due to non-completion of services within the time period specified herein, or in respect of any dues, demands damages or claims against the Selected Agency.
- 20.4.** Nothing in this Master Service Agreement (MSA) shall prevent Selected Agency from seeking adequate reliefs in accordance with Dispute Resolution Clause of this Master Service Agreement (MSA) including injunction in case of revocation of Performance bank guarantees (PBG) by Client.

**21 Advance Bank Guarantee**

Within fifteen (15) days of the issuance of the Letter of Intent (LOI), the successful Bidder shall at his own expense submit unconditional and irrevocable Advance bank Guarantee (ABG) to Directorate of Urban Local Bodies (DULB) if the bidder opted for mobilization advance. The Advance Bank Guarantee (ABG) shall be from a Nationalised Bank or a scheduled Commercial Bank in the format as described in Request for proposal Volume-I. The Advance Bank Guarantee (ABG) shall be for an amount equivalent to the mobilization advance paid. Directorate of Urban Local Bodies (DULB) shall invoke the Advance Bank guarantee in case the selected Vendor fails to discharge their contractual obligations during the period or Directorate of Urban Local Bodies (DULB) incurs any loss due to bidder's negligence in carrying out the project implementation as per the agreed terms & conditions. The Bank Guarantee must be valid for a period of 6 months after the successful completion of contract and any extensions, if any.

## 22 Liquidated Damages

In the event of failure of the implementation of the project by the Selected Agency as per the provision mentioned in the agreement, the Directorate of Urban Local Bodies reserves the option to recover liquidated damages, and not by way of penalty, for late implementation from the Selected Agency in the following manner:

S. No.	Details of delay	Liquidated Damage to be charged
(i)	For delay upto 25% of the implementation period	2.5% of the Proposal price
(ii)	For delay of more than 25% and upto 50% of the implementation period	5% of the Proposal price
(iii)	For delay of more than 50% and upto 75% of the implementation period.	7.5% of the Proposal price
(iv)	For the delay more than 75% of the implementation period	10% of the Proposal price (maximum)

The aforesaid chargeable liquidated damages, if not paid by the Selected Agency, would be recoverable under the relevant provisions of Public Damage Recovery Act' 1914 by the Directorate of Urban Local Bodies.

## 23 Events of Default

### 23.1. Defaults by Selected Agency

The failure on the part of the Selected Agency to perform any of its obligations or comply with any of the terms of this Agreement or the Service Level Agreement (SLA) which is solely attributable to the Selected Agency shall constitute an Event of Default on the part of the Selected Agency

- I. The Selected Agency/ Selected Agency's Team has failed to perform any instructions or directives issued by the Directorate of Urban Local Bodies (DULB) and respective Urban Local Bodies which it deems proper and necessary to execute the scope of work or provide services under the Contract, or
- II. The Selected Agency/ Selected Agency's Team has failed to adhere to any amended direction, instruction, modification or clarification as issued by the Client /Respective Urban Local Bodies during the term of this Contract and which the Client deems proper and necessary for the execution of the scope of work under this Contract
- III. The Selected Agency/ Selected Agency's Team has failed to demonstrate or sustain any representation or warranty made by it in this Contract, with respect to any of the terms of its Bid, the Request for Proposal (RFP) and this Contract

- IV. There is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to the Selected Agency.
- V. The Selected Agency/Selected Agency's Team has failed to comply with or is in breach or contravention of any applicable laws.
  - a. Where there has been an occurrence of such Event of Default, the Directorate of Urban Local Bodies (DULB) shall issue a notice of default to the Service Provider, setting out specific defaults / deviances / omissions / non-compliances / non-performances and provide a notice of Sixty (60) days to enable such defaulting party to remedy the default committed.
  - b. Where despite the service of a default notice to the Selected Agency by the Directorate of Urban Local Bodies (DULB), due to the reasons solely attributable to the Selected Agency, the Selected Agency fails to remedy the such Event of Default, the Directorate of Urban Local Bodies (DULB) may, where it deems fit, issue to the defaulting party another default notice or proceed to adopt such remedies as may be available to the Directorate of Urban Local Bodies (DULB).

**23.2. Default by Directorate of Urban Local Bodies and Urban Local Bodies**

- I. Directorate of Urban Local Bodies (DULB) repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement
- II. Urban Local Bodies fails to make any payments due to the Selected Agency as per the Payment Terms in this Agreement without any valid or bona fide reason
- III. If Directorate of Urban Local Bodies (DULB) and Urban Local Bodies fails to fulfil its obligations under this Agreement.

**24 Consequences of Event of Default**

Where an Event of Default subsists or remains uncured, the Directorate of Urban Local Bodies (DULB) shall be entitled to:

- 24.1.** Impose any such obligations and conditions and issue any clarifications as may be necessary to inter alia ensure smooth continuation of Project and the Services which the Selected Agency shall be obliged to comply with which may include re-determination of the consideration payable to the Selected Agency as agreed mutually by Directorate of Urban Local Bodies (DULB) and Selected Agency or through a third party acceptable to both Parties. The Selected Agency shall in addition take all available steps to minimize loss resulting from such event of default.
- 24.2.** Suspend payments to be made to the Service Provider in relation to the Deliverable, Service Level Agreement (SLA) or milestone regarding which Event of Default has occurred under this Agreement by a prior [30] days written notice of suspension to the Service Provider, provided that such notice of suspension:

- a. shall specify the nature of the failure; and
- b. shall request the Selected Agency to remedy such failure within a reasonable period from the date of receipt of such notice of suspension by the Selected Agency.

**24.3.** Request replacement of any of the Selected Agency's Team member(s) on a reasonable ground with another suitable member(s) where the Client deems necessary. The Selected Agency shall in such case find suitable replacement for such outgoing member(s) with another member(s) to the satisfaction of the Client. Failure on the part of the Selected Agency to find a suitable replacement for such member(s), shall be dealt as per Schedule V - Service Level Agreement (SLA) defined in this agreement.

## **25. Termination**

**25.1.** This Agreement shall not be terminated except in accordance of the terms of this Termination Clause. It is expressly agreed between the Parties that the first intention of the Parties shall not be termination of this Agreement in case alternate remedies under this Agreement or Request for Proposal (RFP) are available to the Parties.

**25.2.** Directorate of Urban Local Bodies (DULB) may, terminate this Agreement in whole or in part by giving Selected Agency a prior written notice of at least 3 months in advance indicating its intention to terminate this Agreement under the following circumstances:

- I. Where there has been such Event of Default solely attributable to the Selected Agency and the where such defect is not cured within the time stipulated in this Agreement which would make it proper and necessary to terminate this Selected Agency and may include failure on the part of Service Provider to respect any of its commitments with regard to any part of its obligation under this Agreement, which failure is solely attributable to the Service Provider.
- II. Where it comes to the Directorate of Urban Local Bodies (DULB) attention that Service Provider is in a position of actual conflict of interest with the interests of the Directorate of Urban Local Bodies (DULB) Where Service Provider's ability to survive as an independent corporate entity is threatened or is lost owing to any reason whatsoever, including inter-alia the filing of any bankruptcy proceedings against Service Provider or the order of winding up is passed against Service Provider or the happening of any such events that are averse to the commercial viability of the Service Provider. In the event of the happening of any of any events of the above nature, Directorate of Urban Local Bodies (DULB) shall reserve the right to take any steps as are necessary, to ensure the business continuity.

### **25.3. Termination for insolvency**

Directorate of Urban Local Bodies (DULB) may at any time terminate this Agreement by giving prior written notice of thirty [30] days to Service Provider, if Service Provider becomes bankrupt or otherwise insolvent, provided that such termination shall not

prejudice or affect any right of action or remedy which has accrued or shall accrue thereafter to Directorate of Urban Local Bodies (DULB).

- 25.4.** Service Provider subject to approval by Client, may terminate this Agreement before the expiry of the Term by giving Directorate of Urban Local Bodies (DULB) a prior and written notice, at least 3 months in advance indicating its intention to terminate this Agreement

**26. Consequence of Termination**

- 26.1.** In the event of termination of this Agreement prior to Term, due to any cause whatsoever, Directorate of Urban Local Bodies (DULB) shall be entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective business continuity of the Project which Service Provider shall be obliged to comply with and take all available steps to minimise loss resulting from that termination/ breach, and further allow and provide all such assistance to Directorate of Urban Local Bodies (DULB) and/ or the successor service provider, as may be required, to take over the obligations of the Service Provider in relation to the execution/ continued execution of the requirements of this Agreement.

- 26.2.** Where the termination of the contract is prior to its Term on account of the default on part of Service Provider or due to the fact that the survival of Service Provider as an independent corporate entity has ceased, Directorate of Urban Local Bodies (DULB)/Respective Urban Local Bodies through mutual redetermination of the consideration payable to Service Provider, shall pay Service Provider for that part of the services which have been authorized by Directorate of Urban Local Bodies (DULB) and satisfactorily performed by Service Provider up to the date of termination. Without prejudice to any other rights, Urban Local Bodies may retain such amount from the payment due and payable to Service Provider as may be required to offset any losses caused to Urban Local Bodies as a sole, direct and unpreventable result of any act/ omissions of Service Provider. In case of any loss or damage due to default attributable solely on the part of Service Provider in performing any of its obligations with regard to executing the Scope of Work under this Agreement, Service Provider shall compensate Directorate of Urban Local Bodies (DULB)/ Respective Urban Local Bodies for any such direct and unpreventable loss, damages or other costs, incurred by Directorate of Urban Local Bodies (DULB)/ Respective Urban Local Bodies. Additionally, members of its team shall all its obligations and responsibilities under the contract in an identical manner as were being performed before the collapse of Selected Agency as described above in order to execute an effective transition and to maintain business continuity. All third parties shall continue to perform all/ any functions as stipulated by Client and as may be proper and necessary to execute the Scope of Work under the contract in terms of Selected Agency's bid, the bid document and the contract

- 26.3.** Nothing herein shall restrict the right of Directorate of Urban Local Bodies (DULB) to invoke the relevant bank guarantee and other guarantees furnished hereunder in the

manner and conditions prescribed under this Agreement and perceived such other rights and/ or remedies that may be available to Directorate of Urban Local Bodies (DULB) under law.

- 26.4.** The termination hereof shall not affect any accrued right or liability of either party nor affect the operation of the provisions of the contract that are expressly or by implication intended to come into or continue in force on or after such termination.

## **27. Representation & Warranties**

### **27.1. Representations and warranties of the Selected Agency**

The Selected Agency represents and warrants to the Directorate of Urban Local Bodies (DULB) that:

- I. it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- II. it is a competent provider of business process management services and implementation strategy of Accrual Based Double Entry Accounting Systems
- III. 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;
- IV. it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement from the effective date;
- V. During the course providing the Services, it shall use reasonable endeavours not to cause any unnecessary disruption to Directorate of Urban Local Bodies (DULB) normal business operations;
- VI. This Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- VII. the information furnished in the Request for Proposal (RFP) 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;
- VIII. the execution, delivery and performance of this Agreement shall not conflict with result;
- IX. there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any

material impairment of its ability to perform any of its material obligations under this Agreement;

- X. 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;
- XI. 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;
- XII. No representation or warranty by it contained herein or in any other document furnished by it to Directorate of Urban Local Bodies (DULB) or its nominated agencies in relation to the Approval (as defined in this Agreement) 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 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 Directorate of Urban Local Bodies (DULB) or its nominated agencies in connection therewith.

**27.2. Representations and warranties of the Directorate of Urban Local Bodies (DULB) or its nominated agencies**

Directorate of Urban Local Bodies (DULB) represent and warrant to Service Provider that:

- I. 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; they have taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise their rights and perform their obligations under this Agreement;
- II. It has the financial, structural and technical standing and capacity to perform their obligations under this Agreement; 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; this Agreement has been duly executed by it and constitutes



a legal, valid and binding obligation enforceable against them 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;

- III. 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 they or any of their properties or assets is bound or affected;
- IV. There are no actions, suit or proceeding pending or, to their knowledge, threatened against them 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;
- V. It is not in 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 their ability to perform their 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;
- VI. It has complied with Applicable Laws in all material respects; all information provided by them in the Request for Proposal (RFP) in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and upon the Service Provider performing the covenants herein, they shall not at any-time during the Term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Service Provider, in accordance with this Agreement.

**28. Use of Assets by the Selected Agency**

During the Term the Selected Agency shall:

- 28.1.** Take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Implementation Project of accrual based double entry and other facilities leased / owned / operated by the Selected Agency exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the “Assets”) in proportion to their use and control of such Assets;
- 28.2.** Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Selected Agency takes control of and/or first uses the Assets and during the entire Term of this Agreement;
- 28.3.** Ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Service Provider will be followed by the Service Provider and any Person who is made responsible for the use of the Assets by the Service Provider.
- 28.4.** Take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Service Provider or as may, in the reasonable opinion of the Service Provider, be necessary to use the Assets in a safe manner;
- 28.5.** Ensure that the Assets that are under the control of the Service Provider, are kept suitably housed and in conformity with Applicable Law;
- 28.6.** Procure permission from the Directorate of Urban Local Bodies (DULB) 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;
- 28.7.** 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;
- 28.8.** Use best efforts to ensure that no lien, mortgage, hypothecation or any other charge is created over the Assets. Service Provider agrees that they will inform Directorate of Urban Local Bodies (DULB) immediately if Service Provider feels or comes to know that a charge may be / has been created over any Asset(s). In the event a charge is created over any of the Assets / goods which are owned by Directorate of Urban Local Bodies (DULB) by the Service Provider, Directorate of Urban Local Bodies (DULB) shall have the right to get the charge removed at the risk, cost, expense of the Service Provider and Service Provider shall make good all losses, damages, costs, fees, cess, duties, etc. borne or suffered by Directorate of Urban Local Bodies (DULB) or its nominated agencies due to creation of such charge and/or in removal of such charge and/or in discharging the obligations for removal of such charge.

## **29. Security & Safety**

- 29.1.** Each Party to the Service Level Agreement (SLA)/ Agreement shall also comply with the rules laid down by the Government of India, and the respective State's security standards and policies in force from time to time at each location of which Directorate of Urban Local Bodies (DULB) or its nominated agencies make the Service Provider aware in writing insofar as the same apply to the provision of the Services.
- 29.2.** The Parties to the Service Level Agreement (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 a Party's data, facilities or Confidential Information.
- 29.3.** Each party shall upon reasonable request by the other party as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- 29.4.** As per the provisions of the Service Level Agreement (SLA) or this Agreement, the Service Provider shall promptly report in writing to Directorate of Urban Local Bodies (DULB) 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 Directorate of Urban Local Bodies (DULB) as the case may be.

## **30. Indemnification & Limitation of Liability**

- 30.1.** Subject to Clause 31.2 below, Each Party (the 'Indemnifying Party') undertakes to indemnify the other Party (the 'Indemnified Party') from and against all Losses 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 wilful 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:
- I. Indemnified Party's misuse or modification of the Service;
  - II. Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party;
  - III. Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party;
  - IV. Indemnified Party's distribution, marketing or use for the benefit of third parties of the Service; or 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

- A. procure the right for Indemnified Party to continue using it, or
- B. replace it with a non-fringing equivalent, or
- C. Modify it to make it non-fringing. The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.

**30.2.** The Indemnifying Party shall indemnify the Indemnified Party against all losses (including loss of business, reputation, profits, revenue etc.), claims, damages, compensation, charges (including attorney fees) etc. arising out of data loss, data theft, data misuse, data tempering, unauthorized use or disclosure of Confidential Information etc. attributable to the Indemnifying Party's negligence, wilful default, lack of due care or breach of terms of this Agreement.

**30.3.** The indemnities set out in Clause 31 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; the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the defence 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 defence;
- II. If the Indemnifying Party does not assume full control over the defence of a claim as provided in this Article, the Indemnifying Party may participate in such defence 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;
- III. 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;
- IV. All settlements of claims subject to indemnification under this Clause will 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 include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;

- V. 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; 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 ;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 defences of the Indemnified Party with respect to the claims to which such indemnification relates; and if a Party makes a claim under the indemnity set out 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).
- 30.4.** The liability of Selected Agency (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event in the aggregate exceed the consideration payable to the Selected Agency for services.
- 30.5.** In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) nor for any third party claims (other than those set- forth in Clause 14.2) even if it has been advised of their possible existence.
- 30.6.** The allocations of liability in this Clause represent the agreed and bargained-for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.
- 31. Confidentiality**
- 31.1.** Directorate of Urban Local Bodies (DULB) or its nominated agencies shall allow the Service Provider to review and utilize any confidential public records and the Service Provider shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- 31.2.** Additionally, the Service Provider shall keep confidential all the details and information with regard to the Project implementations, including systems, facilities, operations, management and maintenance of the systems/facilities.
- 31.3.** Directorate of Urban Local Bodies (DULB) or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Service Provider regarding any forbidden disclosure.

**31.4.** Service Provider shall endeavour that all its employees, agents and execute individual non-disclosure agreements, which have been duly approved by Directorate of Urban Local Bodies (DULB) 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:

- i. Information already available in the public domain;
- ii. Information which has been developed independently by the Service Provider;
- iii. Information which has been received from a third party who had the right to disclose the aforesaid information;
- iv. Information which has been disclosed to the public pursuant to a court order.

**31.5.** To the extent the Service Provider shares its confidential or proprietary information with Directorate of Urban Local Bodies (DULB) for effective performance of the Services, the provisions of this Clause shall apply mutatis mutandis on Directorate of Urban Local Bodies (DULB) or its nominated agencies.

**32. Audit, Access & Reporting**

The Service Provider shall allow access to Directorate of Urban Local Bodies (DULB) or its nominated agencies to all information which is in the possession or control of the Service Provider 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 Directorate of Urban Local Bodies (DULB) to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule III of this Agreement.

**33. Governing Laws & Jurisdiction**

This Agreement and all matters regarding the interpretation and/or enforcement hereof, will be governed exclusively by the laws of India. The courts of Panchkula alone and no other courts shall be entitled to entertain and try any dispute or matter relating to or arising out of this Agreement.

### **34. Miscellaneous**

#### **34.1. Personnel**

- 34.1.1.** The personnel assigned by Selected Agency to perform the Services shall be employees or agents of Selected Agency and under no circumstances shall such personnel be considered employees of Directorate of Urban Local Bodies (DULB) or its nominated agencies. The Selected Agency 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, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.
- 34.1.2.** The Selected Agency shall use its best efforts to ensure that sufficient Selected Agency personnel are assigned to perform the Services and that, such personnel have appropriate qualifications to perform the Services. After discussion with Selected Agency, Directorate of Urban Local Bodies (DULB) or its nominated agencies shall have the right to require the removal or replacement of any Selected Agency personnel performing work under this Agreement based on bonafide reasons. In the event that Directorate of Urban Local Bodies (DULB) or its nominated agencies requests that any Selected Agency personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon decisions.
- 34.1.3.** In the event that the Directorate of Urban Local Bodies (DULB) and Selected Agency identify any personnel of Selected Agency as "**Key Personnel**", then the Selected Agency shall not remove such personnel from the Project without the prior written consent of Directorate of Urban Local Bodies (DULB) or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, death etc.
- 34.1.4.** Except as stated in this Clause, nothing in this Agreement or the Service Level Agreement (SLA) will limit the ability of Selected Agency to freely assign or reassign its employees; provided that Selected Agency shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. Directorate of Urban Local Bodies (DULB) or its nominated agencies shall have the right to review and approve Selected Agency's plan for any such knowledge transfer. Selected Agency shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.
- 34.1.5.** Each Party shall be responsible for the performance of all its obligations under this Agreement or the Service Level Agreement (SLA) as the case may be and shall be

liable for the acts and omissions of its employees and agents in connection therewith.

**34.1.6.** 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.

**34.2. Sub-Contractors**

Bidder can sub-contract and outsource the work to the extent of survey and listing of movable and immovable assets of ULBs.

**34.3. Joint Venture and Consortium**

Joint venture and consortium shall not be allowed for part or whole of project

**34.4. Assignment**

- I. All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of Directorate of Urban Local Bodies (DULB) and their respective successors and permitted assigns.
- II. The Selected Agency shall not be permitted to assign its rights and obligations under this Agreement to any third party under whatsoever conditions, If the Selected Agency is found to assign its rights and obligations under this agreement to any third party, the Selected Agency is liable for penalties as imposed by Directorate of Urban Local Bodies.
- III. The Directorate of Urban Local Bodies (DULB) may assign or novate all or any part of this Agreement and Schedules/ Annexures, and the Selected Agency shall be a party to such novation, to any third party contracted to provide outsourced services to Directorate of Urban Local Bodies (DULB) or any of its nominees.

**34.5. Trademarks & Publicity**

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that Selected Agency 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 Service Level Agreement (SLA) or the business of the Parties without prior reference to and approval in writing from the other Party, such approval not to be unreasonably withheld or delayed provided however



that Selected Agency may include Directorate of Urban Local Bodies (DULB) or its client lists for reference to third parties subject to the prior written consent of Directorate of Urban Local Bodies (DULB) not to be unreasonably withheld or delayed. Such approval shall apply to each specific case and relate only to that case.

#### **34.6. Notices**

- I. Any notices or other document, which may be given by either Party under this Agreement, shall be given in writing in person or by pre-paid recorded delivery arrangements, post, by facsimile transmission or by email.
- II. 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:

<b>In case of Directorate of Urban Local Bodies (DULB)</b>	<b>In case of Selected Agency</b>
Name:	Name:
Designation: Director General Urban Local Bodies, Haryana	Designation:
Address: Bays No. 11-14, Sector-4, Panchkula	Address:
Phone/ Fax: 0172-2570020,	Phone/ Fax:
Email: <a href="mailto:dulbhry@hry.nic.in">dulbhry@hry.nic.in</a>	Email:

- III. Either Party to this Agreement may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable written notice of the new information and its effective date.

#### **34.7. Amendment**

No amendment, variation or other change to this Master Service Agreement (MSA) or the Service Level Agreement (SLA) shall be valid unless made in writing and signed by the duly authorized representatives of the Parties to this Agreement or the Service Level Agreement (SLA).

#### **34.8. Severability & Waiver**

- I. If any provision of this Agreement or the Service Level Agreement (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 Service Level Agreement (SLA) or the remainder of the provisions 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.

- II. No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the Service Level Agreement (SLA) of any right, remedy or provision of this Agreement or the Service Level Agreement (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.

**34.9. Compliance with Applicable Law**

Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to Chartered Accountant Firm in India) 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.

**34.10. Entire Agreement**

- I. This Agreement and the Service Level Agreement (SLA) with all Schedules & Annexures appended thereto, Letter of Intent (LoI), work order, Bid and the contents and specifications of the Request for Proposal (RFP) constitute the entire agreement between the Parties with respect to their subject matter, and as to all other representations, understandings or agreements which are not fully expressed herein, provided that nothing in this Clause shall be interpreted so as to exclude any liability in respect of fraudulent misrepresentation.
- II. This Agreement shall consist of this Contract Form and the following documents and the exhibits, specifications and other documents referred to therein (hereinafter the 'Contract Documents'), all of which by this reference are incorporated herein and made part hereof:
  1. Work order
  2. Letter of Intent (LoI)
  3. Complete Request for Proposal (RFP)
  4. Document and Corrigendum (If any)
  5. The Selected Agency Technical and Financial Proposal
- III. This Agreement sets forth the entire contract and agreement between the Parties pertaining to "Selection of Comptroller and Auditor General (CAG) Empanelled Chartered Accountant (CA) Firms/ Agency for implementation of Accrual Based Double Entry Accounting System (ABDEAS) in all the Municipal Corporations / Councils / Committees of Gurugram Cluster of Haryana" including training and Handholding support to the Urban Local Bodies staff. This Agreement shall prevail over all other Contract Documents. In the event of any discrepancy or inconsistency within the contract documents, then the documents shall prevail in the order listed above.

**34.11. No Claim Certificate**

Neither Party shall be entitled to make any claim, whatsoever against the other Party, under or by virtue of or arising out of, this Agreement, if made by the other Party after it has signed a "No claim" certificate in favour of the other Party in such forms as shall be required by such Party after the works are finally accepted.

**34.12. Place of Service**

The Selected Agency shall provide Services from Panchkula, Haryana. Selected Agency's representatives may have to travel outside Panchkula, within Haryana in relation to the services to be performed under this Agreement.

### **35. Dispute Resolution**

- 35.1.** If any dispute arises between the Parties hereto during the subsistence of this Agreement of thereafter, in connection with this Agreement or the Service Level Agreement (SLA) shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as Schedule IV of this Agreement.
- 35.2.** In case the escalations do not result in resolution of the dispute within time stipulated for escalation, then the same shall be referred to the Arbitration as stated below in settlement of dispute clause.
- 35.3.** During the term of escalation or arbitration no punitive steps, including but not limited to termination of this Agreement, shall be taken by the Directorate of Urban Local Bodies (DULB) against the Selected Agency. Any legal dispute will come under Panchkula Civil Court jurisdiction only. The Panchkula civil court has exclusive jurisdiction to try and adjudicate the dispute arising out of this agreement.

### **36. Settlement of Dispute**

#### **36.1. Amicable settlement**

The parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof. In the event a dispute, differences or claim arises in connection with the interpretation or implementation of this agreement, the aggrieved party shall issue a written notice setting out the Dispute/differences or claim to the other party, parties shall first attempt to resolve such dispute through mutual consultation. If the dispute is not resolved as aforesaid within Sixty (60) days from the date of receipt of written notice, the matter shall be referred for Arbitration.

#### **36.2. Arbitration**

The arbitral proceedings shall be referred to the sole arbitrator to be designated by Principle Secretary Urban Local Bodies. Arbitration proceedings shall be conducted in and the award shall be made in English language. Arbitration proceedings shall be conducted in Panchkula.

- i) Notwithstanding anything contrary contained in any other law enforce in India, no proceeding other than Arbitration shall be carried out in any dispute arising between parties from or out of any provision of the Agreement.
- ii) No Court of Law has any right to entertain and try any proceeding except Arbitration proceeding arising from or out of any provision of the Agreement.

### **36.3. Place of Arbitration**

The Place of arbitration shall ordinarily be Panchkula, however by mutual agreement of both the parties, the arbitration proceeding if required, may be held elsewhere.

### **36.4. Enforcement of Award**

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the parties and shall be enforceable in accordance with the provision of the arbitration and conciliation Act 1966.

### **36.5. Jurisdiction**

The Panchkula Civil Court shall have the exclusive jurisdiction to try and adjudicate the dispute arising out of this agreement. No other Court can entertain the dispute arising out of this agreement.

SIGNED, SEALED AND DELIVERED for and on behalf of Governor, Haryana acting through Director General, Urban Local Bodies, Haryana	SIGNED, SEALED AND DELIVERED For and on behalf of Selected Agency:
Signature	Signature
Name	Name
Address	Address
Contact Details	Contact Details

**IN WITNESS WHEREOF** the Parties have by duly authorized representatives set their respective hands and seal on the date herein mentioned below:

<b>For and on behalf of</b>	<b>For and on behalf of</b>
Directorate of Urban Local Bodies, Haryana	Selected Agency
Signature and Official Seal	Signature and Official Seal
Name:	Name:
Designation: Director General, Urban Local Bodies, Haryana	Designation:
Office: Bays No. 11-14, Sector-4, Panchkula  Phone No: 0172-2570020, Office Phone No: 0172-2560075, 0172-2560082,  Fax: 2570021  E-mail: <a href="mailto:dulbhry@hry.nic.in">dulbhry@hry.nic.in</a>	
<b>Witness</b>	<b>Witness</b>
1. Signature: Name: Designation: Address:	1. Signature: Name: Designation: Address:
2. Signature: Name: Designation: Address:	2. Signature: Name: Designation: Address:

### **37. Schedule – I: Project Cost & Process of release of Payment**

#### **37.1. Total Cost of Project**

The total payment to be made to Selected Agency under this Project is Indian Rupee (INR)\_\_\_\_\_, which is inclusive of all taxes and levies as applicable under respective statutes, prevailing from time to time upon the terms laid out in this **Request for Proposal (RFP)**.

The project cost summary is reproduced herein:

**(The detailed cost breakup of the above consideration shall be as per the Financial Bid of the Selected Agency)**

**37.2.** The payments terms will be in accordance with the payment terms mentioned in Request for Proposal (RFP) volume -I payment milestone.

**37.3.** The amount of consideration payable under this Contract shall become due immediately on completion of the milestones as specified in this Agreement. There shall be no adjustment or deduction to the consideration payable under this contract, on account of non – usage of Services by Directorate of Urban Local Bodies (DULB) or any of Urban Local body (ULB) under this project

#### **37.4. Process of release of payment to Selected Agency**

- 37.4.1.** On completion of a payment milestone, Selected Agency will inform the Project Monitoring committee about completion of a payment milestone and submit the respective invoice to respective Urban Local Bodies.
- 37.4.2.** On receipt of such intimation mentioning completion of a payment milestone by Selected Agency, the Project Monitoring committee will verify the claim made by Selected Agency and issue the necessary sign-off / completion certificate to Selected Agency within Fifteen (15) days from Selected Agency's such intimation. The approval given by project Monitoring committee members will be considered as sign-off issued for respective milestone.
- 37.4.3.** It is very important that Selected Agency deliver the project as per the scope mentioned in this agreement. Hence Selected Agency will prepare the checklist mentioning achievement of a particular milestone as per the scope of work mentioned in this agreement and the same will be made available to the Project Monitoring committee by Selected Agency.
- 37.4.4.** In case, the Project Monitoring committee find deliverable not completed by Selected Agency as per the agreed scope of work within Fifteen (15) days, then the project Monitoring committee will inform Selected Agency the non-completion part of such delivery & will mention the one single & complete list of compliance to be achieved by Selected Agency which will be based on the checklist prepared by Selected Agency.
- 37.4.5.** Selected Agency will then complete the milestone based on this list of compliance given by the project Monitoring committee only, without re-visiting checklist parameters that complied earlier and then Selected Agency will intimate The Project Monitoring Committee the compliances of the same in writing, then the process of completion of milestone within seven (07) days by the project Monitoring committee will become applicable as mentioned above.
- 37.4.6.** The Project Monitoring committee will then either issue the requisite sign-off / completion certificate or inform Selected Agency the list of compliance to be achieved within Seven (07) days from the date of Selected Agency's intimation.
- 37.4.7.** Based on this sign-off certificate, respective Urban Local Bodies will release the payment to Selected Agency within 45 days from the date of sign off.

#### **37.5. Financial Matters**

##### **Terms of Payment and Service Credits and Debits**

In consideration of the Services and subject to the provisions of this Agreement and of the Service Level Agreement (SLA), respective Urban Local Bodies shall pay the Service Provider for the Services rendered in pursuance of this Agreement, in accordance with the Terms of Payment Schedule set out in Volume-I of the Request for Proposal (RFP) and subsequent Corrigendum subject always to the fulfilment by the Selected Agency of the obligations herein.

- I. All payments are subject to deductions of applicable liquidated damages as provided



for in the Service Level Agreement (SLA) section of the Request for Proposal (RFP). For the avoidance of doubt, it is expressly clarified that respective Urban Local Bodies will calculate a financial sum as a result of the failure of the Service Provider to meet the Timelines and/or Service Level Requirements if any and debit the same against the terms of payment as set out in Payment Schedule in Volume -I of the Request for Proposal (RFP) and subsequent Corrigendum.

- II. Save and except as otherwise provided for herein or as agreed between the Parties in writing, respective Urban Local Bodies shall not be required to make any payments in respect of the Services (or without limitation to the foregoing, in respect of the Service Provider performance of any obligations under this Agreement or the Service Level Agreement) other than those covered in Payment Schedule in Volume-I of the Request for Proposal (RFP) and subsequent Corrigendum.
- III. All payments agreed to be made by respective Urban Local Bodies to the Service Provider in accordance with the Project shall be inclusive of all statutory levies, duties, taxes and other charges whenever levied/applicable including costs of maintenance, if any and Directorate of Urban Local Bodies (DULB) / respective Urban Local Bodies shall not be liable to pay any such levies/other charges under or in relation to this Agreement and/or the Services.
- IV. Payment shall be paid at the times and in the manner set out in the Payment schedule as specified in the volume -I of the Request for Proposal (RFP) and respective corrigendum, against value of contract. However, all the applicable taxes shall be reimbursed against submission of payment proofs. Works contract taxes, if any applicable, shall be reimbursed against actual and against submission of payment proofs.
- V. No invoice for extra work/change order on account of change order will be submitted by the Service Provider unless the said extra work /change order has been authorized/approved by the Directorate of Urban Local Bodies (DULB) / respective Urban Local Bodies in writing in accordance with Clause on Change order.
- VI. In the event of Client / respective Urban Local Body noticing at any time that any amount has been disbursed wrongly to Selected Agency or any other amount is due from Selected Agency to the Client / respective Urban Local Body, the Client / respective Urban Local Body may without prejudice to its rights recover such amounts by other means after notifying Selected Agency or deduct such amount from any payment falling due to Selected Agency. The details of such recovery, if any, shall be intimated to Selected Agency. Selected Agency shall receive the payment of undisputed amount under subsequent invoice for any amount that has been omitted in previous invoice by mistake on the part of the Client / respective Urban Local Body or Selected Agency.

### **37.6. Invoicing and Settlement**

Subject to the specific terms of the Service Level Agreement, the Service Provider shall submit its invoices in accordance with the following principles:

- 37.6.1.** Respective Urban Local Bodies shall be invoiced by the Service Provider for the Services. Generally, and unless otherwise agreed in writing between the Parties or expressly set out in the Service Level Agreement, the Selected Agency shall raise an invoice as per Payment Schedule in Volume 1 of the Request for Proposal (RFP) and respective corrigendum.
- 37.6.2.** Any invoice presented in accordance with this Clause shall be in a form agreed with Directorate of Urban Local Bodies (DULB).
- 37.6.3.** Selected Agency shall be solely responsible to make payment to personnel and third parties, etc.
- 37.6.4.** Payment shall be made within Forty-Five (45) working days of the receipt of invoice along with supporting documents by respective Urban Local Bodies subject to penalties. The penalties are imposed on the vendor as per the Service Level Agreement criteria specified in the Request for proposal. Directorate of Urban Local Bodies (DULB) / respective Urban Local Bodies shall not be liable for any additional payment as late charges/ delay charges/ penalty charges etc. for any delayed payments under any conditions whatsoever.
- 37.6.5.** Client / respective Urban Local Bodies shall be entitled to delay or withhold payment of any invoice or part of it delivered by the Selected Agency where Client / respective Urban Local Bodies 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. Any exercise by Client / respective Urban Local Bodies under this Clause shall not entitle the Selected Agency to delay or withhold provision of the Services.

### **37.7. Professional Fees**

All expenses incurred by or on behalf of each Party to this Agreement and the Service Level Agreement (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 Service Level Agreement (SLA) shall be borne solely by the Party which incurred them.

### **38. Schedule – II: Change Management Process**

This Schedule describes the procedure to be followed in the event of any proposed change to the Master Service Agreement (“MSA”), Project Implementation Phase, Service Level Agreements (SLAs), Scope of Work and Functional Requirement in this Request for Proposal. Such change shall include, but shall not be limited to, changes in the scope of services provided by the Selected Agency and changes to the terms of payment as stated in the Terms of Payment Schedule. Directorate of Urban Local Bodies (DULB) and Selected Agency recognize that occasional and reasonable 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 Selected Agency will endeavour, wherever reasonably practical, to effect change without an increase in the terms of payment as stated in the Terms of Payment schedule. Directorate of Urban Local Bodies (DULB) or its nominated agencies will work together to ensure that such changes are discussed and managed in a constructive manner. However, in case such changes are of a nature that the Selected Agency has to bear significant additional costs, then the Selected Agency shall be compensated for such costs. This Change Control Schedule sets out the provisions which will apply to all the changes to this Master Service Agreement (MSA).

#### **38.1. Change Orders/Alteration/Variation**

- 38.1.1.** The Selected Agency agrees that the requirements/ / specifications and Service requirements given in the Request for Proposal (RFP) documents are minimum requirements and are in no way exhaustive and guaranteed by the Directorate of Urban Local Bodies (DULB).
- 38.1.2.** The Directorate of Urban Local Bodies (DULB) may at any time, by a written change order given to the Selected Agency, make changes within the general scope of the Contract.
- 38.1.3.** The written advice to any change shall be issued by Directorate of Urban Local Bodies (DULB) to the Selected Agency up to four (4) weeks prior to the due date of commencement of services.
- 38.1.4.** In case of increase in Specifications or Service requirements or in case of additional requirement, the Selected Agency agrees to carry out / provision for such additional requirement at the rate and terms and conditions as provided in this Agreement. In case of decrease in Service requirements, the Selected Agency shall give a reduction in price at the rate given in this Agreement corresponding to the said decrease.
- 38.1.5.** In case applicable rates for the increase/decrease in question are not available in this Agreement then the rates as may be mutually agreed shall apply. The Selected Agency shall not be entitled to any claim by way of change of price, damages, losses, etc.

## **38.2. Conditions for Change Order**

### **38.2.1.** The change order will be initiated only in case

- a. The Directorate of Urban Local Bodies (DULB) directs, in writing, the Selected Agency to incorporate changes to the deliverables requirements already covered in this Agreement.
- b. The Directorate of Urban Local Bodies (DULB) directs, in writing, the Selected Agency to include any addition to the scope of work or services covered under this Agreement or delete any part thereof,
- c. Selected Agency requests to delete any part of the work which will not adversely affect the operational capabilities and functioning of the system and if the deletions proposed are agreed to by the Directorate of Urban Local Bodies (DULB) and for which cost and time benefits shall be passed on to the Directorate of Urban Local Bodies (DULB).

### **38.2.2.** Any change order comprising an alteration which involves change in the cost of the services (which sort of alteration is hereinafter called a "Variation") shall be the Subject of an amendment to this Agreement by way of an increase or decrease in the Contract Value and adjustment of the implementation schedule if any.

### **38.2.3.** If there is a difference of opinion between the Selected Agency and Directorate of Urban Local Bodies (DULB) Representative on whether a particular item, work or part of the work constitutes a change order or not, the matter shall be handled in accordance with the procedures set forth in the section 37.3.

## **38.3. Procedures for Change Order**

### **38.3.1.** Upon receiving any revised requirement/ advice, in writing, from the Directorate of Urban Local Bodies (DULB), the Selected Agency would verbally discuss the matter with Directorate of Urban Local Bodies (DULB) Representative.

### **38.3.2.** In case such requirement arises from the side of the Selected Agency, he would also verbally discuss the matter with Directorate of Urban Local Bodies (DULB) Representative giving reasons thereof.

In either of the cases as explained in Clauses above, the representatives of both the parties will discuss on the revised requirement for better understanding and to mutually decide whether such requirement constitutes a change order or not. Such representation will also be discussed and validated by Project Monitoring Committee (PMC).

### **38.3.3.** If it is mutually agreed that such Requirement constitutes a "Change Order" then a joint memorandum will be prepared and signed by the Selected Agency

and Directorate of Urban Local Bodies (DULB) to confirm a “Change Order” and basic ideas of necessary agreed arrangement.

- 38.3.4.** Selected Agency will study the revised requirement in accordance with the joint memorandum and assess subsequent schedule and cost effect, if any.
- 38.3.5.** Upon completion of the study referred to above, the results of this study along with all relevant details including the estimated time and cost effect thereof with supporting documents would be submitted to the Directorate of Urban Local Bodies (DULB) to enable the Directorate of Urban Local Bodies (DULB) to give a final decision. Such decision will be provided with due approval of the steering committee whether Selected Agency should proceed with the change order or not in the best interest of the works.
- 38.3.6.** The estimated cost and time impact indicated by Selected Agency shall be considered as a ceiling limit and shall be provisionally considered for taking a decision to implement change order. The costs can be further negotiated by Directorate of Urban Local Bodies (DULB).
- 38.3.7.** A Change Control Note (CCN) would be required to be prepared.
- 38.3.8.** The time impact applicable to the Contract shall be mutually agreed, subsequently, on the basis of the detailed calculations supported with all relevant back up documents.
- 38.3.9.** In case Selected Agency fails to submit all necessary substantiation/ calculations and back up documents, the decision of the Directorate of Urban Local Bodies (DULB) regarding time and cost impact shall be final and binding on the Selected Agency.
- 38.3.10.** If Directorate of Urban Local Bodies (DULB) accepts the implementation of the change order in writing, which would be considered as change order, then Selected Agency shall commence to proceed with the enforcement of the change order pending final agreement between the parties with regard to adjustment of the Contract Value and the schedule.
- 38.3.11.** In case, mutual agreement, i.e. whether new requirement constitutes the change order or not, is not reached, then Selected Agency in the interest of the works, shall take up the enforcement of the change order, if advised in writing to do so by Directorate of Urban Local Bodie’s (DULB) Representative pending settlement between the two parties to the effect whether such requirement constitutes a change order or not as per the terms and conditions of Contract documents. The time and cost effects in such a case shall be mutually verified

and recorded. Should it establish that the said work constitutes a change order, the same shall be compensated taking into account the records kept in accordance with the Contract.

**38.3.12.** The Selected Agency shall submit necessary back up documents for the change order showing the break- up of the various elements constituting the change order for the Directorate of Urban Local Bodie's (DULB) review. If no agreement is reached between the Directorate of Urban Local Bodie's (DULB) and Selected Agency within Sixty (60) days after Directorate of Urban Local Bodie's (DULB) instruction in writing to carry out the change concerning the increase or decrease in the Contract Value and all other matters described above, either party may refer the dispute to arbitration.

#### **38.4. Change Control Note ("CCN")**

**38.4.1.** Change requests in respect of the Master Service Agreement (MSA), the Project Implementation, the operation, the Service Level Agreement (SLA), Scope of work and Functional Requirement 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 Change Control Note as attached in Volume 1 of Request for Proposal (RFP). Change Control Notes will be presented to the other Party's Project Manager who will acknowledge receipt by signature of the Change Control Note.

**38.4.2.** The Selected Agency and the Directorate of Urban Local Bodies (DULB) or its nominated agencies, during the entire Project Implementation Phase and the Directorate of Urban Local Bodies (DULB) or its nominated agencies during the Handholding Phase and while preparing the Change Control Note, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in the Request for Proposal (RFP) and is suggested and applicable in the Project Implementation Phase as set out in this Agreement.

**38.4.3.** It is hereby also clarified here that any change of control 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 contract. 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 Selected Agency and accepted by the Directorate of Urban Local Bodies (DULB) or its nominated agencies or as decided and approved by Directorate of Urban Local Bodies (DULB) or it Nominated Agencies. For arriving at the cost / rate for

change up to 25% of the project value, the payment terms specified in the Request for Proposal Volume 1 shall apply.

### **38.5. Conditions for revised work / change order**

The provisions of the Contract shall apply to revised work / change order as if the revised work / Change order has been included in the original Scope of work. However, the Contract Value shall increase / decrease, and the schedule shall be adjusted on account of the revised work / Change orders as may be mutually agreed in terms of provisions set forth in Clause 37 of this section. The Selected Agency's obligations with respect to such revised work / change order shall remain in accordance with the Contract.

### **38.6. Proposed Categories of Change**

The change categories will be as per the Volume II of the Request for Proposal (RFP)

### **38.7. Quotation**

**38.7.1.** The Selected Agency shall provide as part of Change Control Note a minimum:

- a. a description of the change
- b. a list of deliverables required for implementing the change;
- c. a time table for implementation;
- d. an estimate of any proposed change
- e. any relevant acceptance criteria
- f. an assessment of the value of the proposed change;
- g. material evidence to prove that the proposed change is not already covered within this Agreement and the scope of work.

**38.7.2.** Prior to submission of the completed Change Control Note to Directorate of Urban Local Bodies (DULB), or its nominated agencies, the Selected Agency will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the Selected Agency shall consider the materiality of the proposed change in the context of the Master Service Agreement (MSA) and the Project Implementation affected by the change and the total effect that may arise from implementation of the change.

### **38.8. Obligations**

The Selected Agency 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. Selected Agency will not be obligated to work on a change until the parties agree in writing upon its scope, price and/or schedule impact.

### **39. Schedule – III: Audit, Access and Reporting**

#### **39.1. Purpose**

This Schedule details the audit, access and reporting rights and obligations of the Directorate of Urban Local Bodies (DULB) or its nominated agency and the Selected Agency.

#### **39.2. Audit Notice and Timing**

**39.2.1.** As soon as reasonably practicable after the Effective Date of signing of this Agreement, the Parties shall use their best endeavour's to agree to a timetable for routine audits during the entire Project Implementation Phase. Such timetable during the Implementation Phase, Directorate of Urban Local Bodies (DULB) or its nominated agency and thereafter during the Handholding Phase, Directorate of Urban Local Bodies (DULB) or its nominated agency shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Selected Agency any further notice of carrying out such audits.

**39.2.2.** The Directorate of Urban Local Bodies (DULB) 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 Selected Agency, a security violation, or breach of confidentiality obligations by the Selected Agency, provided that the requirement for such an audit is notified in writing to the Selected Agency a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the Selected Agency considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Governance Schedule.

**39.2.3.** The frequency of audits shall be a (maximum) half yearly, provided always that the Directorate of Urban Local Bodies (DULB) or its nominated agency shall endeavour to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Selected Agency. Any such audit shall be conducted by with adequate notice of 2 weeks to the Selected Agency.

**39.2.4.** Directorate of Urban Local Bodies (DULB) will ensure that any 3rd party agencies (except Comptroller and Auditor General 'CAG') appointed to conduct the audit will not be the competitor of Selected Agency and will be bound by confidentiality obligations.



### **39.3. Access**

The Selected Agency shall provide to the Directorate of Urban Local Bodies (DULB) or its nominated agency reasonable access to employees, suppliers, agents and third party facilities as detailed in the Request for Proposal (RFP), documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The Steering Committee/ Project Management unit shall have the right to copy and retain copies of any relevant records. The Selected Agency shall make every reasonable effort to co-operate with them.

### **39.4. Audit Rights**

The Directorate of Urban Local Bodies (DULB) or its nominated agency shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in the Request for Proposal 'RFP'), data centers, documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:

- 39.4.1.** The security, integrity and availability of all data processed, held or conveyed by the Partner on behalf of Directorate of Urban Local Bodies (DULB) and documentation related thereto;
- 39.4.2.** That the actual level of performance of the services is the same as specified in the Service Level Agreement (SLA).
- 39.4.3.** That the Selected Agency has complied with the relevant technical standards, and has adequate internal controls in place; and
- 39.4.4.** The compliance of the Selected Agency with any other obligation under the Master Service Agreement (MSA) and Service Level Agreement (SLA).
- 39.4.5.** Task verification audit of the project shall be done once each year, the cost of which shall be borne by the Selected Agency.
- 39.4.6.** For the avoidance of doubt the audit rights under this Schedule shall not include access to the Selected Agency's profit margins or overheads, any confidential information relating to the Selected Agency's employees, or minutes of its internal Board or Board committee meetings including internal audit, or such other information of commercial-in-confidence nature which are not relevant to the Services associated with any obligation under the Master Service Agreement (MSA).

### **39.5. Action and Review**

- 39.5.1.** Any change or amendment to the systems and procedures of the Selected Agency, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- 39.5.2.** Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the Directorate of Urban Local Bodies (DULB) or its nominated agency and the Selected Agency Project Manager who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the Master Service Agreement (MSA).
- 39.5.3. REPORTING:** The Selected Agency will provide quarterly reports to the PMU or Steering Committee regarding any specific aspects of the Project and in context of the audit and access information as required by the Directorate of Urban Local Bodies (DULB) or its nominated agency.

### **39.6. Records and Information**

For the purposes of audit in accordance with this Schedule, the Selected Agency shall maintain true and accurate records in connection with the provision of the services and the Selected Agency shall handover all the relevant records and documents upon the termination or expiry of the Master Service Agreement (MSA).

#### **40. Schedule IV: Governance Schedule**

##### **40.1. Purpose**

The purpose of this Schedule is to:

- a) Establish and maintain the formal and informal processes for managing the relationship between the Directorate of Urban Local Bodies (DULB) and the Selected Agency (including the outputs from other Schedules to this Agreement;
- b) define the principles that both Parties wish to follow to ensure the delivery of the Services
- c) Ensure the continued alignment of the interests of the Parties;
- d) Ensure that the relationship is maintained at the correct level within each Party;
- e) Create the flexibility to revise and maintain the relationship and this Agreement during the Term;
- f) Set out the procedure for escalating disagreements; amenable contract administration and performance management.

##### **40.2. Governance Structure**

###### **40.2.1. Steering Committee**

A Steering Committee under the chairmanship of Hon'ble Chairman, Directorate of Urban Local Bodies (DULB) will be formed and will govern the project till the completion of accrual based double entry accounting system in the Urban Local Bodies of Haryana and would consist of following members:

#	Designation	Position
1.	Administrative Secretary, Directorate of Urban Local Bodies (DULB)	Chairman
2.	Representative from Urban Development Department (UDD)	Member
3.	Project Manager, Directorate of Urban Local Bodies (DULB)	Member
4.	Financial Advisor, Directorate of Urban Local Bodies (DULB) or nominated agency	Member
5.	Project Manager, Selected Agency	Member
6.	Project Consultant	Member

The Steering committee members will meet at least once a month or as required based on the time and location agreed between them. These meetings will cover as a minimum agenda:

- 1) Hold the kick-off meeting on the project with all stakeholders within Seven (7) days of contract sign-off
- 2) Provide overall leadership, vision, and direction for the implementation of the project
- 3) Overall planning, co-ordination, monitoring and progress review of the project
- 4) Overall strategic control and take decision on regulatory matters and provide guidance for successful execution of the project
- 5) Approval of the detailed project work plan (including Gannt chart representation) initially, as well as approvals to any subsequent changes necessary to be made in the plan. Post Steering Committee's approvals, the plan's adherence monitoring will be the responsibility of the Project Monitoring Committee (PMC).
- 6) Creating a supporting environment for the success of the project
- 7) Consideration of matters arising out of the change control note and approval of the same
- 8) Resolution of disputes if any between Selected Agency and Project Monitoring Committee (PMC)
- 9) Review of budgetary requirements and financial monitoring of the allocated funds

#### **40.2.2. Project Monitoring Committee (PMC)**

- I. The Parties shall, in addition to the purposes mentioned in the Clause 3, form a committee to be called as the project Monitoring committee for the purpose of day to day decision making and representation to complete the Project within fifteen (15) days of contract signing
- II. The above referred project Monitoring committee shall hold project review meetings chaired by Director General of Directorate of Urban Local Bodies (DULB). The Monitoring committee shall comprise of following members and would meet formally on a fortnightly / monthly / quarterly, as required, basis at a time and location to be agreed between them.
- III. Roles & Responsibilities of Project Monitoring Committee shall be as follows:
  - a. Review & Validate Selected Agency milestone / deliverables report and provide recommendation in consultation with Directorate of Urban Local

- Bodies (DULB) /, with a copy to steering committee
- b. Resolve and provide directions on the operational matters
  - c. Monitor the project work schedule / plan as per the format provided in the specified in the proposal to be submitted by Selected Agency on a regular basis to ensure its implementation as agreed between Selected Agency and Directorate of Urban Local Bodies (DULB). Ensure progress on training and capacity building activities to Urban Local Bodie's, and concerned stakeholders as per the agreed scheduled
  - d. Conducting regular meetings with key project stake holders for issue resolution
  - e. Coordination between different stake holders as per the guidance of steering committee
  - f. Any other issues to be discussed pertaining to the project
  - g. To issue acceptance / Sign – off certificate to Selected Agency as per their request during the Project period. The approval given by Project Monitoring Committee (PMC) shall be treated as sign-off issued by the Client for the respective milestone to Selected Agency during the Project period
  - h. To approve the release of payment to Selected Agency during the Project period

The Project Monitoring Committee (PMC) will comprise of the following members

<b>Composition</b>	
Director General, of Urban Local Bodies (DULB)	Chairman
Project Director – Directorate of Urban Local Bodies (DULB)	Member Secretary
Chief officer of one municipal council from each category (A, B, & C)	Member
Commissioner / Dy. Commissioner of one Municipal corporation	Member
Representatives of Urban Development Dept.	Member
Project Manager – Selected Agency	Member
Project Manager, Project Management Unit (PMU)	Member
Other invitees, as per approval of Chairman	Member

- i. The relationship under this Agreement will be managed by the Project Managers appointed by each Party, who will provide the

interface between the executive management of the respective Parties.

- ii. Within Seven (7) days following the Effective Date, Directorate of Urban Local Bodies (DULB) or its nominated agencies and the Special Investigation Branch (SIB) shall each appoint a Project Manager. In the event that either Party wishes to substitute its Project Manager it will do so in manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within Seven (7) days of the substitution.
- iii. The Project Managers shall have responsibility for maintaining the interface and communication between the Parties.
- iv. In the event that there is any material factor which affects the delivery of Services or the terms of payment as stated in the Terms of Payment Schedule, the Parties agree to discuss with the Project Monitoring Committee (PMC), any appropriate amendment to this Agreement or any Service Level Agreements (SLA) or Statement of Works (including any variation to the terms of payment as stated in the Terms of Payment Schedule). Any variation so agreed shall be implemented through the change control procedure as set out in the Change Control Schedule and should be put up to steering committee for approval.

#### **40.3. Governance Procedures**

- I. The Selected Agency shall document the agreed structures in a procedure's manual.
- II. The agenda for each meeting of the Project Monitoring Committee (PMC) 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 of the Project Monitoring Committee (PMC), along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.
- III. 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.
- IV. The Parties shall ensure as far as reasonably practicable that the Project Monitoring Committee (PMC) 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.
- V. In order formally to submit a Disputed Matter to the aforesaid for a, one Party ("Claimant") shall give a written notice ("Dispute Notice") to the other Party. The Dispute Notice shall be accompanied by
- VI. A statement by the Claimant describing the Disputed Matter in reasonable detail and

- VII. Documentation, if any, supporting the Claimant's position on the Disputed Matter.
- VIII. The other Party ("Respondent") shall have the right to respond to the Dispute Notice within Seven (7) days after receipt of the Dispute Notice. In the event that the parties are unable to resolve the Disputed Matter within a further period of Seven (7) days, it shall refer the Disputed Matter to next level of the dispute resolution for action.
- IX. All negotiations, statements and / or documentation shall be without prejudice and confidential (unless mutually agreed otherwise).
- X. If the Disputed Matter is having a material effect on the operation of the Services (or any of them or part of them) the Parties will use all their respective reasonable endeavours to reduce the elapsed time in reaching a resolution of the Disputed Matter.

#### **40.4. Escalation Procedure for Issue Resolution**

- I. If any issue arises between the parties hereto during the subsistence of this Agreement of thereafter, in connection with the validity Interpretation implementation or alleged breach of any provision of this Agreement or the SLA shall in the first instance be dealt in the Project Monitoring Committee (PMC) meetings. This would be the first level of escalation.
- II. In the event that the Project Monitoring Committee (PMC) is unable to resolve the issue within Fifteen (15) days of it being referred to it, then either Party may refer the dispute for resolution to the Steering Committee. This would be the second level of escalation.
- III. However, if the issue/s still remains unsolved, they would be further escalated as per the procedure listed in Dispute Resolution Clause of this agreement.

#### **41. Schedule – V: Service Level Agreement**

##### **41.1. Purpose of the Service Level Agreement (SLA)**

- I. The purpose of this Service Level Agreement (hereinafter referred to as SLA) is to clearly define the Service Levels which shall be provided by the Selected Agency to respective Urban Local Bodies for the duration of this contract. The benefits of this SLA are to:
  - a) Make Directorate of Urban Local Bodies' (DULB) and Urban Local Bodies' expectations from the Selected Agency explicit with respect to performance and outcomes.
  - b) Help Directorate of Urban Local Bodies (DULB) and Urban Local Bodies monitor the levels of performance of the Selected Agency during the duration of the contract.
  - c) Trigger a process that applies to Directorate of Urban Local Bodies' (DULB), Urban Local Bodies' and Selected Agency's attention to any aspect of performance when that aspect drops below an agreed upon threshold or target.
- II. The Selected Agency, Directorate of Urban Local Bodies (DULB) and Urban Local Bodies shall maintain monthly contact to monitor the performance of the services being provided by the Selected Agency and effectiveness of this Service Level Agreement (SLA).
- III. During the contract period, under normal circumstances, any changes to the Service Level Agreement (SLA) will be discouraged. However, under exceptional/ contingent circumstances, on representation made by the Selected Agency, there may be changes to the Service Level Agreement (SLA). The decision of Directorate of Urban Local Bodies (DULB) and respective Urban Local Body in this regard shall be final and binding on the Selected Agency.



- IV. This Service Level Agreement (SLA) document provides for minimum level of services required as per contractual obligations based on performance indicators and measurements thereof, which will be reviewed on monthly basis before releasing payments to the Selected Agency.
- V. The Selected Agency shall ensure provisioning of all required services while monitoring the performance of the same to effectively comply with the performance levels. The liquidated damages recoverable from the Selected Agency will be in addition to the penalty on the Service Level Agreements (SLAs). It is expressly agreed that in case some Service Level is not achieved by the Selected Agency and such non-achievement is not solely attributable to the Selected Agency then no penalty shall be imposed upon on Selected Agency.
- VI. The Selected Agency and the respective Urban Local Body / Directorate of Urban Local Bodies (DULB) may expressly or impliedly agree not to levy any penalty upon Selected Agency for non-performance.
- VII. The Service Level Agreement (SLA) shall be entered into concurrently with this Agreement between Directorate of Urban Local Bodies (DULB) and Selected Agency.

#### 41.2. Definitions

For purposes of this Service Level Agreement, the definitions and terms as specified in the contract along with the following terms shall have the meanings set forth below:

- 1) **"Availability"** shall mean the time for which the services and facilities offered by the Selected Agency are available for conducting operations from the implemented solution.
- 2) **"Technical Support"** shall mean the support provided by the Technical Support Team set up by the Selected Agency's – including but not limited to Fault reporting, Trouble Ticketing and related enquiries during this contract.
- 3) **"Incident"** refers to any event / abnormalities in the functioning of the solution / Services that may lead to disruption in normal operations.
- 4) **Severity for Problem Requests/Defect Fixes:** The severity of a problem request or defects fixes would be based on the business impact of the problem.

#### **41.3. Description of Services Provided**

The required scope and boundaries of solution and services provided as part of this Agreement are detailed in Volume II – Scope of Work of this Request for Proposal (RFP) document

#### **41.4. Breach Clause**

- I. This Service Level Agreement (SLA) document provides for minimum level of system characteristics and services required as per contractual obligations based on performance indicators and measurements thereof. The Selected Agency shall ensure provisioning of all required services while monitoring the performance of the same to effectively comply with performance levels.
- II. Service Level Agreement (SLA) parameters shall be monitored on a monthly/quarterly basis (or as specified below) as per the individual Service Level Agreement (SLA) parameter requirements. In case the service levels cannot be achieved at service levels defined in the tables below, it shall result in a breach of contract and shall invoke penalty.
- III. A Service Level breach will occur if the Selected Agency fails to meet Minimum Service Levels on a monthly basis (or periodicity defined in this Request for Proposal) for a particular Service Level.
- IV. However, penalty will be imposed as specified below, Availability and performance report provided to the respective Urban Local Body and Directorate of Urban Local Bodies (DULB) shall contain the summary of all incidents reported and associated performance measurement for that period. The maximum penalty shall be capped at 10% of the total Project Value. If the penalty during these phases exceeds 10% of the Total project value, then Directorate of Urban Local Bodies (DULB) reserves the right to take appropriate action including termination of the contract and forfeiting of Performance Bank Guarantee.
- V. In case there are successive breaches of SLA's for two milestones, Directorate of Urban Local Bodies (DULB) can issue show cause notice to the Selected Agency to explain their non-performance. Also Steering Committee meeting may be called wherein Selected Agency needs to explain the action taken to prevent such recurrences in future. This is without prejudice to other rights of Directorate of Urban Local Bodies (DULB).
- VI. The services provided by the Selected Agency shall be reviewed by Directorate of Urban Local Bodies (DULB) in terms of, but not limited to, the following:
  - a) Check Performance of the Selected Agency against this Service Level Agreement (SLA) every quarter and consider any key issues of the past period's performance statistics including major incidents
  - b) Discuss escalated problems, new issues and matters still outstanding for resolution
  - c) Increase Service Level Agreement (SLA) penalties if Selected

Agency is found to be defaulting on certain parameters repeatedly

- d) Review of statistics related to rectification of outstanding faults and agreed changes
  - e) Obtain suggestions for change to improve the services levels
  - f) Penalties shall be imposed on immediate next payment milestone etc.
- VII.** In case desired, Directorate of Urban Local Bodies (DULB) may initiate an interim review to check the performance and the obligation of the Selected Agency. The Service Level Agreement (SLA) may be reviewed and revised in accordance to the procedures detailed in Schedule II, Change Control Schedule.
- VIII.** For the purpose of recovery of penalty imposed, the penalty amount will be adjusted against payment made to the Selected Agency by respective Urban Local Bodies for the respective milestones. In case the penalty amount exceeds the payment being made to Selected Agency by Urban Local Bodies for that milestones, it may be adjusted against performance bank guarantee.
- IX.** Urban Local Bodies shall not make any payments for Production support requests/tickets during the lifecycle of the project.
- X.** It is expressly agreed that in case some Service Level is not achieved by the Selected Agency and such non-achievement is not solely attributable to the Selected Agency then no penalty shall be imposed upon on Selected Agency.
- XI.** The Selected Agency, respective Urban Local Bodies and the Directorate of Urban Local Bodies (DULB) may expressly or impliedly agree not to levy any penalty upon Selected Agency for non-performance.

#### **41.5. SLA Monitoring**

- I.** SLA monitoring will be carried out by the respective Urban Local Bodies and Directorate of Urban Local Bodies (DULB) based on Service Level Agreement (SLA) compliance report and Service Level Agreement (SLA) monitoring tool. Service Level Agreement (SLA) monitoring tool will be put in place by the Selected Agency which will collate information as per defined Service Level Agreement (SLA) parameters. Reports of Service Level Agreement (SLA) compliance in the tool will be updated as per agreed updated frequency and available for review by respective Urban Local Bodies and Directorate of Urban Local Bodies (DULB) designated authority.
- II.** Every bill raised by the Selected Agency needs to be accompanied with a compliance report against applicable Service Level Agreement (SLA) depending on the phase and should also include self-declaration of compliance / non-compliance by the Selected Agency. Bills need to include any other documents required by respective Urban Local Bodies / Directorate of Urban Local Bodies (DULB).

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Sr. No.	Measurement	Definition	Service Level Target	Penalty
A	PROJECT INITIATION			
A.1	Team Mobilization on commencement of work	Selected Agency is expected to mobilize its team at the initiation of the project for enabling Commencement of work for this project. For the purpose of this metric, commencement of work would mean reporting of resources of the Selected Agency at locations designated by Directorate of Urban Local Bodies (DULB), Haryana for this project.	Within Thirty (30) calendar days from the date of release of Work Order.	No Penalty
			After Thirty (30) calendar days from the date of release of Work Order.	Termination of Contract
B	IMPLEMENTATION OF ACCRUAL BASED DOUBLE ENTRY ACCOUNTING SYSTEM (ABDEAS) IN THE URBAN LOCAL BODIES OF GURUGRAM CLUSTER			
B.1	Adherence to submission of Project Deliverables	Selected Agency shall submit the following deliverables as part of this stage of the project as per the agreed project plan: <ul style="list-style-type: none"><li>Survey and listing out of moveable and immovable Assets, inventory, liabilities, and carrying out valuation of fixed assets &amp; liabilities of Urban Local Bodies as per government notifications/Municipal accounting code.</li><li>Preparation and Approval of Opening Balance Sheet of Urban Local Bodies as on 01-04-2016 including Income &amp; Expenditure Account &amp; other relevant schedule as per Haryana Municipal Accounts Code/National Municipal Accounts Manual.</li><li>Up to date Books of accounts, entered all transaction in selected accounting software, Preparation and Approval of Balance Sheet of Urban Local Bodies as on 31-03-2017. Including Income &amp; Expenditure Account &amp; other relevant schedule as per Haryana Municipal Account Code/National Municipal Accounts Manual</li><li>Up to date Books of accounts, entered all transaction in selected accounting software, Preparation and Approval of Balance Sheet of Urban Local Bodies as on 31-03-2018.</li></ul>	0 calendar days of delay in submission for each individual deliverable	No Penalty
			> 0 calendar days to <=Thirty (30) calendar days of delay in submission for each individual deliverable	2% of the payment corresponding to applicable milestone
			> Thirty (30) calendar days to <= Sixty (60) calendar days of delay in submission for each individual deliverable	5% of the payment corresponding to applicable milestone
			> Sixty (60) calendar days to <= Ninety (90) calendar days of delay in submission for each individual deliverable	10% of the payment corresponding to applicable milestone
			>Ninety (90) calendar days of delay in submission for each	Termination of Contract

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		<p>Including Income Expenditure, Account &amp; other relevant schedule as per Haryana Municipal Accounts Code/National Municipal Accounts Manual</p> <ul style="list-style-type: none"> <li>Up to date Books of accounts, entered all transaction in selected accounting software, Preparation and Approval of Balance Sheet of Urban Local Bodies as on 31-03-2019. Including Income Expenditure, Account &amp; other relevant schedule as per Haryana Municipal Accounts Code/National Municipal Accounts Manual</li> <li>Handholding support to Urban Local Bodie's Staff and Up to date Books of accounts, entered all transaction in Accounting application, Preparation of Balance Sheet of Urban Local Bodies for the Financial Year 2019-20 and 2020-21, Including Income Expenditure Account &amp; other relevant schedule as per Haryana Municipal Accounts Code/National Municipal Accounts Manual &amp; all balance services as per detailed scope mentioned in the Request for Proposal Volume -II</li> </ul>	individual deliverable	
C	TRAINING PROGRAMME MANAGEMENT			
C.1	Satisfaction level of the training sessions conducted by Selected Agency for staff members & stakeholders	<p>The feedback shall be received by the officials of Directorate of Urban Local Bodies (DULB), Haryana after each training session. Directorate of Urban Local Bodies (DULB), Haryana may decide to use the Service Level Agreement (SLA) in case insufficient training sessions are conducted by the Selected Agency.</p> <p>Measurement tool: Feedback ratings received from Training participants, no. of participants and no. of Trainings delivered.</p> <p>Measurement Interval: Quarterly</p>	<p>Feedback ratings <math>\geq 7</math></p> <p>Feedback ratings <math>\geq 6</math> but <math>&lt; 7</math></p> <p>Feedback ratings <math>&lt; 6</math></p>	<p>No penalty</p> <p>0.05% of the payment corresponding to applicable milestone</p> <p>0.1% of the payment corresponding to applicable milestone</p> <p>Feedback rating of less than 6 by 25% of the trainees of a batch will be considered as the Breach of the</p>

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				Agreement and DULB, Haryana reserves the Right to terminate the agreement Selected Agency will be solely responsible for conducting additional training sessions for the staff members providing the rating less than 6.
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III. Penalty will be imposed as per the below table if the error consists in Survey and listing of Assets of Urban Local Bodies:

Sr. No	Service Level	Penalty
1.	For submitted survey data of any land/ asset property, if there is up to 5% of error identified by the Audit Agencies	No penalty imposed. The Successful Bidder(s) is required to perform re-survey of the identified properties and correct the erroneous data entries. No additional payment would be made for re-survey.
2.	For submitted survey data of any land/ asset property, if there is an error of >5% - 10% is identified by the Audit Agencies	2* 'X'  Where X= Price Quoted by the Bidder for property survey. The bidder will be penalized 2 times the rate quoted for the number of properties in which errors were identified by the audit agencies. The Successful Bidder(s) shall be required to perform re-survey of the identified properties and correct the erroneous data entries. No additional payment would be made for re-survey.
3.	For submitted survey data of any land/ asset property, if there is >10 % - 15% of error	4* 'X'  Where X= Price Quoted by the Bidder for property survey. The bidder will be penalized 4 times the rate quoted for the number of properties in which errors were identified by the

Sr. No	Service Level	Penalty
	identified by the Audit Agencies	audit agencies. The Successful Bidder(s) shall be required to perform re-survey of the identified properties and correct the erroneous data entries. No additional payment would be made for re-survey.
4.	For submitted survey data of any land/ asset property, if there is > 15 % - 20% of error identified by the Audit Agencies	8 * 'X'  Where X= Price Quoted by the Bidder for property survey. The bidder will be penalized 8 times the rate quoted for the number of properties in which errors were identified by the audit agencies. The Successful Bidder(s) shall be required to perform re-survey of the identified properties and correct the erroneous data entries. No additional payment would be made for re-survey.
5.	For submitted survey data of any land/ asset property, if there is > 20 % of error identified by the Audit Agencies	Termination of Contract without clearing any of the pending invoices
6.	For completion of survey and listing in the defined timelines as per the time schedule given in Request for Proposal	In case the survey is not completed in the defined timelines as specified in the Request for Proposal (RFP) the bidder will be charged 1% per month penalty on the balance amount to be paid for survey maximum upto 10%, beyond which the contract will be terminated without clearing any of the pending invoices

**Note:**

Penalty will be levied at the time of the next applicable payment as defined in the payment schedule of this Request for Proposal (RFP).

**41.6. Error Definitions:**

In the above table error shall mean any one of the following:

- I. Errors in capturing internal measurements such as carpet area and Plot area etc. This shall be validated against the data captured by validation/audit agencies.

Differences in the measurements upto 10% can be ignored. But for more than 10% it shall be considered as an error.

- II. Data Captured for all mandatory fields shall be validated by the audit agencies for all the fields other than those mentioned in (a).
- III. Discrepancies between the data captured by survey agencies and audit agencies shall be analysed and accordingly errors will be calculated.
- IV. Maximum Penalty applicable to the bidder shall not exceed 10% of the Total Work Order value till the completion of property survey. If the total Penalty exceeds beyond 10%, it would be considered as non-conformance to the Quality of Services and may lead to termination of the Contract and DULB may on their sole discretion cancel the order and go afresh with the entire property survey exercise without clearing any of the pending payment of the bidder and forfeiting the performance bank guarantee submitted by the bidder after receiving the order.

#### **41.7. Issue Management Procedures**

##### **I. General**

- a) Issue Management process provides for an appropriate management structure towards orderly consideration and resolution of business and operational issues in the event of a quick consensus not reached between respective Urban Local Body, Directorate of Urban Local Bodies (DULB) and Selected Agency.
- b) Implementing such a process at the commencement of services shall significantly improve the probability of successful issue resolution. It is expected that this pre- defined process will only be used on an exception basis if issues are not resolved at operational levels.

##### **II. Issue Management Procedures**

- a) Either respective Urban Local Body / Directorate of Urban Local Bodies (DULB) or Selected Agency may raise an issue by documenting the business or technical problem, which presents a reasonably objective summary of both points of view and identifies specific points of disagreement with possible solutions.
- b) Respective Urban Local Body, Directorate of Urban Local Bodies (DULB) and the Selected Agency will determine which committee or executive level should logically be involved in resolution.
- c) A meeting or conference call will be conducted to resolve the issue in a timely manner. The documented issues will be distributed to the participants at least 24 hours prior to the discussion if the issue is not an emergency requiring immediate attention.
- d) The respective Urban Local Body, Directorate of Urban Local Bodies (DULB) and the Selected Agency shall develop an interim solution, if required, and subsequently the permanent solution for the problem at hand. The Selected Agency will then communicate the resolution to all interested parties.
- e) In case the issue is still unresolved, the arbitration procedures described in the Contract will be applicable.



#### **41.8. SLA Change Control**

##### **I. General**

1. It is acknowledged that this Service Level Agreement (SLA) may change as Directorate of Urban Local Bodies (DULB's) business needs evolve over the course of the contract period. This document also defines the following management procedures:
  - a. A process for negotiating changes to the Service Level Agreement (SLA) An issue management process for documenting and resolving difficult issues.
  - b. Urban Local Bodies, Directorate of Urban Local Bodies (DULB), Haryana and Selected Agency management escalation process to be used in the event that an issue is not being resolved in a timely manner by the lowest possible level of management.
2. Any changes to the levels of service provided during the term of this Agreement will be requested, documented and negotiated in good faith by both parties. Either party can request a change. Changes will be documented as an addendum to this Service Level Agreement (SLA) and subsequently to the contract.
3. If there is any confusion or conflict between this document and the contract, the Request for Proposal (RFP) and its addenda, the Contract will supersede.

##### **II. SLA Change Process**

1. The parties may amend this Service Level Agreement (SLA) by mutual agreement in accordance with terms of this contract.
2. Changes can be proposed by either party. The Selected Agency can initiate an SLA review with the Directorate of Urban Local Bodies (DULB) / selected Urban Local Bodies; if required. Normally, the forum for negotiating SLA changes will be Directorate of Urban Local Bodies' (DULB) monthly meetings. Unresolved issues will be addressed using the issue management process in this document.
3. The Selected Agency shall maintain and distribute current copies of the SLA document as directed by Directorate of Urban Local Bodies (DULB). Additional copies of the current SLA will be made available at all times to authorized parties.

##### **III. Version Control**

All negotiated Service Level Agreement (SLA) changes will require changing the version control number. As appropriate, minor changes may be accumulated for periodic release (e.g. every quarter) or for release when a critical threshold of change has occurred.

#### **41.9. Responsibilities of the Parties with respect to Service Level Agreement (SLA)**

##### **I. Selected Agency**

1. Selected Agency is responsible for executing this contract and delivering the services, while maintaining the specified performance targets.
2. Additionally, the Selected Agency is responsible for:
  - a) Reporting problems to respective Urban Local Body and Directorate of Urban Local Bodies (DULB) as soon as possible
  - b) Assisting respective Urban Local Body and Directorate of Urban Local Bodies (DULB) in management of the Service Level Agreement (SLA)
  - c) Providing early warning of any organizational, functional or technical changes that might affect Selected Agency's ability to deliver the services.
  - d) Assisting respective Urban Local Body and Directorate of Urban Local Bodies (DULB) to address and resolve issues from time to time.
3. Selected Agency shall take immediate action to identify problems and follow up with appropriate action to fix them as quickly as possible

##### **II. Respective Urban Local Bodies and Directorate of Urban Local Bodies (DULB), Haryana**

Respective Urban Local Bodies and Directorate of Urban Local Bodies (DULB), Haryana is responsible for:

1. Reporting defects and problems to the Selected Agency as soon as possible
2. Assisting Selected Agency in management of the Service Level Agreement (SLA)
3. Providing early warning of any organizational, functional/ technical changes that might affect Selected Agency's ability to deliver services described in Service Level Agreement (SLA).
4. Assisting Selected Agency to address and resolve issues from time to time

#### **41.10. Penalties**

1. The total deduction should not exceed 10% of the applicable fee.
2. Two consecutive deductions of more than 10% of the applicable fee on account of any reasons will be deemed to be an event of default and termination.

#### **41.11. Quality Standards**

- I. Standards:** The Selected Agency under this agreement shall conform to the accounting standards shall be maintained.
- II. Standard of Performance:** The Selected Agency shall carry out the services and carry out its obligations under the agreement with due diligence, efficiency and economy in accordance with generally accepted norms.

#### **41.12. Corrupt Practices**

- I.** Directorate of Urban Local Bodies is a public service department and Urban Local Bodies are the third tier of Government operations. They require service with honesty, diligence and timeliness. The Selected Agency would be the assisting agency of the Directorate of Urban Local Bodies /Urban Local Bodies; therefore, he is also required to maintain highest standards of honesty and ethics.
- II.** The Selected Agency is advised to refrain from the corrupt and fraudulent practices during the execution of the contract. Corrupt and fraudulent practices are defined as follows: -
- III.** “Corrupt Practice” means behaviour of the Firm including his personnel by which they improperly and unlawfully enrich themselves and/or those close to them,

or

Induce others to do so, by misusing the position in which they are placed, and it includes the Proposing, giving, receiving, or soliciting of anything of value.

- IV.** “Fraudulent Practice” means a misrepresentation of facts in order to influence, and collusive practices of the Organization.

#### **41.13. Management Escalation Procedures & Contact Map**

The purpose of this escalation process is to provide a quick and orderly method of notifying both parties that an issue is not being successfully resolved at the lowest possible management level. Implementing this procedure would mean that managements of respective Urban Local Bodies, Directorate of Urban Local Bodies (DULB) and Selected Agency are communicating at appropriate levels.

#### 41.14. Escalation Procedure

Escalation should take place on an exception basis and only if successful issue resolution cannot be achieved in a reasonable time frame.

- a) Either Directorate of Urban Local Bodies (DULB), respective Urban Local Body or Selected Agency can initiate the procedure
- b) The “moving party” should promptly notify the other party that management escalation will be initiated
- c) Management escalation will be defined as shown in the contact map below
- d) Escalation will be one level at a time and concurrently

#### 41.15. Contact Map

Details of representatives and contact details	Escalation Level		
	Level 1: Project Manager	Level 2: Project Director	Level 3: Steering Committee
Municipal Corporation Gurugram Representative with contact Details			
Municipal Council Sohna Representative with contact Details			
Municipal Council Rewari Representative with contact Details			
Municipal Council Narnaul Representative with contact Details			
Municipal Committee Haily Mandi Representative with contact Details			
Municipal Committee Pataudi Representative with contact Details			
Municipal Committee Farukh Nagar Representative with contact Details			

Details of representatives and contact details	Escalation Level		
	Level 1: Project Manager	Level 2: Project Director	Level 3: Steering Committee
Municipal Committee Bawal Representative with contact Details			
Municipal Committee Dharuhera Representative with contact Details			
Municipal Committee Mohinderagarh Representative with contact Details			
Municipal Committee Kanina Representative with contact Details			
Municipal Committee Ateli Mandi Representative with contact Details			
Municipal Committee Nangal Chaudhary Representative with contact Details			
Directorate of Urban Local Bodies Representative with contact Details			
Selected Agency* Representative with contact Details			

**\*Selected Agency shall provide information for the following:**

- a) Chief Executive Officer
- b) Project Manager
- c) Team Members

**41.16. Notes**

1. Annual review or as required, Service Level Agreement (SLA) will be done by Directorate of Urban Local Bodies (DULB) or by a Third Party Auditor appointed by Directorate of Urban Local Bodies (DULB) and appropriate modifications/amendments to the Service Level Agreements (SLAs) shall be carried out.
2. Cascading effect (effect on multiple Service Level Agreement (SLA) criterions) of failure or non-performance of a particular project component on Service Level Agreements (SLAs) shall be avoided.
3. "Additional Day" shall mean Calendar Day.
4. The business hours are 9 AM to 6 PM (of same day) on any calendar day the Directorate of Urban Local Bodies (DULB) / respective Urban Local Body is operational. The Selected Agency however recognizes the fact that the offices will require to work beyond the business hours and holidays on need basis
5. 24 \* 7 shall mean round the clock on all days of the year.
6. Service Level Agreement (SLA) will be monitored on a quarterly basis as per individual parameter requirements. However, if the performance of the system/services is degraded significantly at any given point during the tenure of the contract and if immediate measures are not implemented and issues are not rectified to the satisfaction of Directorate of Urban Local Bodies (DULB) / respective Urban Local Body, then Directorate of Urban Local Bodies (DULB) (in consultation with respective Urban Local Body) has the rights to take disciplinary action including termination of contract.
7. However, if any additional hardware, software etc. is required for maintaining the Service Level Agreement's (SLA) & uptimes, then the same will be the responsibility of the Selected Agency.
8. Service Levels should be complied with irrespective of any change requests implemented during the tenure of the Contract
9. Incident refers to any event/abnormalities in services that may lead to disruption in delivery of services.

## **42. Schedule – VI: Exit Management Schedule**

### **42.1. Purpose**

- I. This Schedule sets out the provisions, which will apply on expiry or termination of the Master Service Agreement (MSA), the Project Implementation, Implementation and Handholding Support for the terms defined in Service Level Agreement (SLA).
- II. In the case of termination of the Project Implementation and/or Handholding Support, the Parties shall agree at that time whether, and if so during what period, the provisions of this Schedule shall apply.
- III. The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Schedule.

### **42.2. Transfer of Assets**

- I. Directorate of Urban Local Bodies (DULB) shall be entitled to serve notice in writing on the Selected Agency at any time during the exit management period as detailed hereinabove requiring the Selected Agency to provide the Directorate of Urban Local Bodies (DULB) with a complete and up to date list of the Assets within Thirty (30) days of such notice. Directorate of Urban Local Bodies (DULB) shall then be entitled to serve notice in writing on the Selected Agency at any time prior to the date, that is Thirty (30) days prior to the end of the exit management period requiring the Selected Agency to sell the Assets, if any, to be transferred to Directorate of Urban Local Bodies (DULB) or its nominated agencies at book value as determined as of the date of such notice in accordance with the provisions of relevant laws.
- II. In case of contract being terminated by Directorate of Urban Local Bodies (DULB), Directorate of Urban Local Bodies (DULB) reserves the right to ask Selected Agency to continue running the project operations for a period of 6 months after termination orders are issued.
- III. Upon service of a notice under this Article the following provisions shall apply:
  - a) In the event, if the Assets to be transferred are mortgaged to any financial institutions by the Selected Agency, the Selected Agency 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 Directorate of Urban Local Bodies (DULB).
  - b) All risk and title to the Assets to be transferred / to be purchased by the Directorate of Urban Local Bodies (DULB) pursuant to this Article shall be transferred to Directorate of Urban Local Bodies (DULB), on the last day of the exit management period.
  - c) Directorate of Urban Local Bodies (DULB) shall pay to the Selected Agency on the last day of the exit management period such sum representing the Net Block (procurement price less depreciation as per provisions of

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Companies Act) of the Assets to be transferred as stated in the Terms of Payment Schedule.

- IV. Payment to the outgoing Selected Agency shall be made to the tune of last set of completed services /deliverables, subject to Service Level Agreement (SLA) requirements.
- V. The outgoing Selected Agency will pass on to Directorate of Urban Local Bodies (DULB) and/ or to the Replacement Selected Agency, the subsisting rights in any leased properties/ licensed products on terms not less favourable to Directorate of Urban Local Bodies (DULB)/ Replacement Selected Agency, than that enjoyed by the outgoing Selected Agency.

#### **42.3. Cooperation and Provision of Information**

During Exit Management period:

- I. The Selected Agency will allow the Directorate of Urban Local Bodies (DULB) 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 Directorate of Urban Local Bodies (DULB) to assess the existing services being delivered;
- II. Promptly on reasonable request by the Directorate of Urban Local Bodies (DULB), the Selected Agency 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 (provided by the Selected Agency). Directorate of Urban Local Bodies (DULB) shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data.
- III. Selected Agency shall permit the Directorate of Urban Local Bodies (DULB) or its nominated agencies to have reasonable access to its employees and facilities as reasonably required by the Chairman or DULB project management Unit to understand the methods of delivery of the services employed by the Selected Agency and to assist appropriate knowledge transfer.

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

Selected Agency will promptly on the commencement of the exit management period supply to the Directorate of Urban Local Bodies (DULB) or its nominated agency the following:

- I. Information relating to the current services rendered and customer and performance data relating to the performance of Selected Agency in relation to the services;
- II. All current and updated data as is reasonably required for purposes of Directorate of Urban Local Bodies (DULB) or its nominated agencies transitioning the services to its Replacement Selected Agency.
- III. All required data and information in a readily available format nominated by the Directorate of Urban Local Bodies (DULB) or its nominated agency
- IV. All other information (including but not limited to documents, records and agreements)



- V. Related to the services reasonably necessary to enable Directorate of Urban Local Bodies (DULB) or its nominated agencies, or its Replacement Selected Agency to carry out due diligence in order to transition the provision of the Services to Directorate of Urban Local Bodies (DULB) or its nominated agencies, or its Replacement Selected Agency (as the case maybe).
- VI. Before the expiry of the exit management period, the Selected Agency shall deliver to the Directorate of Urban Local Bodies (DULB) or its nominated agency all new or updated materials as required by DULB and mentioned in the schedule and shall not retain any copies thereof, except that the Selected Agency shall be permitted to retain one copy of such materials for archival purposes only.
- VII. Before the expiry of the exit management period, unless otherwise provided under the Master Service Agreement (MSA), the Directorate of Urban Local Bodies (DULB) or its nominated agency shall deliver to the Selected Agency all forms of Selected Agency confidential information, which is in the possession or control of Directorate of Urban Local Bodies (DULB), or its users.

#### **42.5. Employees**

- I. Promptly on reasonable request at any time during the exit management period, the Selected Agency shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the Directorate of Urban Local Bodies (DULB) or its nominated agency a list of all employees (with job titles) of the Selected Agency dedicated to providing the services at the commencement of the exit management period.
- II. Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the Selected Agency to the Directorate of Urban Local Bodies (DULB) or its nominated agency, or a Replacement Selected Agency ("Transfer Regulation") applies to any or all of the employees of the Selected Agency, then the Parties shall comply with their respective obligations under such Transfer Regulations.

#### **42.6. Transfer of Certain Agreements**

On request by the Directorate of Urban Local Bodies (DULB) or its nominated agency, the Selected Agency shall effect such assignments, transfers, licenses and sub-licenses as Directorate of Urban Local Bodies (DULB) may require in relation to any equipment lease, maintenance or service provision agreement between Special Investigation Branch (SIB) and third party lessors, vendors, and which are related to the services and reasonably necessary for the carrying out of replacement services by the Directorate of Urban Local Bodies (DULB) or its nominated agency or its Replacement Selected Agency.

#### **42.7. Rights of Access to Premises**

- I. At any time during the exit management period, where Assets are located at the Selected Agency's premises, the Selected Agency will be obliged to 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 Directorate of Urban Local Bodies (DULB) or its nominated agency and/or any Replacement Selected Agency in order to make an inventory of the Assets.
- II. The Selected Agency shall also give the Directorate of Urban Local Bodies (DULB) or its nominated agency or its nominated agencies, or any Replacement Selected Agency right of reasonable access to the Selected Agency's premises and shall procure the Directorate of Urban Local Bodies (DULB) or its nominated agency or its nominated agencies and any Replacement Selected Agency 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 Master Service Agreement (MSA) as is reasonably necessary to migrate the services to the Directorate of Urban Local Bodies (DULB) or its nominated agency, or a Replacement Selected Agency.

#### **42.8. General Obligations of the Implementation Agency/Selected Agency/ Selected Agency**

- I. The Selected Agency shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the Nodal Agency or its nominated agency or its Replacement Selected Agency and which the Selected Agency has in its possession or control at any time during the exit management period.
- II. For the purposes of this Schedule, anything in the possession or control of any Selected Agency or associated entity is deemed to be in the possession or control of the Selected Agency.
- III. The Selected Agency shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

#### **42.9. Exit Management Plan**

- I. The Selected Agency shall provide the Directorate of Urban Local Bodies (DULB) or its nominated agency with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the Master Service Agreement (MSA) as a whole and in relation to the Project Implementation, and the Implementation and Operations & Maintenance SLA.
  - a) A detailed program of the transfer process that could be used in conjunction with a Replacement Selected Agency 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.
  - b) Plans for the communication with such of the Selected Agency's staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the Directorate of Urban Local Bodies (DULB) operations as a result of undertaking the transfer;
  - c) (if applicable) proposed arrangements for the segregation of the Selected Agency's networks from the networks employed by Directorate of Urban Local Bodies (DULB) and identification of specific security tasks necessary at termination;
  - d) Plans for provision of contingent support to Directorate of Urban Local Bodies (DULB) and Replacement Selected Agency for a reasonable period after transfer.
- II. The Selected Agency shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- III. Each Exit Management Plan shall be presented by the Selected Agency and shall be approved by the Directorate of Urban Local Bodies (DULB) or its nominated agencies.
- IV. The terms of payment as stated in the Terms of Payment mentioned in the volume 1 of this Request for Proposal (RFP) include the costs of the Selected Agency complying with its obligations under this Schedule.
- V. In the event of termination or expiry of Master Service Agreement (MSA), and Project Implementation, each Party shall comply with the Exit Management Plan.
- VI. During the exit management period, the Selected Agency shall use its best efforts to deliver the services.
- VII. Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.
- VIII. This Exit Management plan shall be furnished in writing to the Directorate of Urban Local Bodies (DULB) or its nominated agencies within Ninety (90) days from the Effective Date of this Agreement.

#### 43. **Schedule – VII: Sign-Off Format**

After successful Implementation of Accrual based double entry accounting system in the urban local bodies of Haryana by the Selected Agency, following format in triplicate (Each for Directorate of Urban Local Bodies, Selected Agency and Office record of Urban Local Bodies) needs to be filled by the Concerned Urban Local Bodies in order to provide the validation of the successfully implementation in the sign-off form for release of payment to Selected Agency.

<b>Sr. No.</b>	<b>Particulars</b>	<b>Details</b>
1	Approved Financial Statements available on Urban Local Body/ Directorate of Urban Local Bodies on their portal for the period specified in the Request for Proposal (RFP)	
2	Fixed Assets and Inventory Register are updated for the period specified in the Request for Proposal (RFP)	
3	Training and Handholding support to Urban Local Bodies Staff for the period specified in the Request for Proposal (RFP)	
4	Balance Services as per scope of work mentioned in Request for Proposal	
5	Comments/Recommendations	

Authorised Officer

Municipal Corporation / Council / Committee\_\_\_\_\_

Memo no.

Dated:

Sign Off certificate is forwarded in original to Director General, Urban Local Bodies, Haryana, Panchkula for further necessary action.

Commissioner/Executive Officer/Secretary  
Municipal Corporation / Council / Committee

\* This page has been left blank intentionally

