



Industry-wide Fraud Analytics System

Part – 2 :: Terms and Conditions of RFP (TCRFP)

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List of Abbreviations used:

Abbreviation	Description
IRDA	Insurance Regulatory and Development Authority
IIB	Insurance Information Bureau of India
FAS	Industry wide Fraud Analytics System
TPA	Third Party Administrators
MSA	Master Services Agreement
SLA	Service Level Agreement

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1. Method:

IRDA/IIB and the IA shall Complete an appropriate contractual agreement (also known as Master Services Agreement/MSA) defining the obligations and rights of each party in performing work to complete the project including the terms and conditions. The following sections describe the various clauses of the Master Services Agreement that will need to be signed between the IRDA/IIB and the IA.

2. Master Services Agreement

2.1. Initialization phase

2.1.1. Definitions

- a. In this Agreement, unless the context requires otherwise:
 - i. **"Agreement"** means this Master Services Agreement together with all the Schedules and the contents and specifications of all the volumes, parts including SLAs and annexures of the RFP;
 - ii. **"Project"** means FAS Project involving the Design, Development, Implementation, Operations, and Maintenance of FAS system as per the requirements, terms and conditions laid down in the RFP and provision of related services in conformance to the SLA;
 - iii. **"FAS Application Software"** means the software designed, developed, tested and deployed by the Implementation Agency for the purposes of rendering the services to the stakeholders of the project and includes the source code along with associated documentation, which is the work product of the development efforts involved in the project including the improvements and enhancements effected during the term of the project, customization applied to third party products, proprietary software components and tools of the Implementation Agency, and which, i.e., the FAS Application Software, shall be solely owned by the IRDA/IIB;
 - iv. **"Breach"** occurs when the lower service level specification limit for a metric in the service level agreement is not being met.
 - v. **"Confidential Information"** means all information including Project Data (whether in writing, oral, electronic or other format) which relates to the technical, financial and business affairs, customers, suppliers, products, developments, operations, processes, data, trade

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secrets, design rights, knowhow and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party (whether a Party to this Agreement) 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);

- vi. **"Project Data"** means all proprietary data of the project generated during and as a result of project work, operations and transactions, documents and related information including but not restricted to user data which the Implementation Agency obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement;
- vii. **"Deliverables"** means the products, infrastructure and services agreed to be delivered by the Implementation Agency in pursuance of the scope of work defined in the Section on Scope of Work and set of deliverables listed in the Section on Project Deliverables of the Part 1, Part 2 and all Annexures of the RFP and includes all documents related to the solution, user manual, technical manual, design, process and operating manuals, standard operating procedures, policies and guidelines and source code and all versions of these;
- viii. **"Effective Date"** means the date on which this Agreement becomes effective that is the date of its signing by the Parties;
- ix. **"Intellectual Property Rights"** means and includes all rights in the FAS Application Software, its improvements, upgrades, enhancements, modified versions that may be made from time to time, database generated, compilations made, source code and object code of the software, the said rights including designs, copyrights, trademarks, patents, trade secrets, moral and other rights therein;
- x. **"Performance Guarantee"** and **"Performance Bank Guarantee"** shall mean the guarantee provided by a Nationalized Bank to IRDA on behalf of the Implementation Agency as per the requirements specified in the Section on Performance Bank Guarantee of Part 1 of the RFP;
- xi. **"Project Implementation"** means Project Implementation as per the scope of IA' s work specified in Part 1 of the RFP;
- xii. **"Project Implementation Completion date" or "Go-Live"** means the date on which the proposed FAS System is completely ready for starting operations as per the functional, technical and operational requirements specified in the Part 1 of the RFP and all the acceptance tests & certifications as stated in the part 1 of the RFP are successfully concluded to the satisfaction of IRDA/IIB.

- xiii. **"Proprietary Information"** means processes, methodologies and technical and business information, including drawings, designs, formulae, flow charts, data and computer programs already owned by, or granted by third parties to, a Party hereto prior to its being made available under this Agreement;
- xiv. **"RFP"** or **"Request for Proposal"** means the documents containing the Functional, Technical, Operational, Commercial and Legal Specifications governing the execution of the Project, issued by IRDA in Parts 1 & 2 and includes the clarifications, explanations, errata, addenda, annexures, and amendments thereof issued by IRDA from time to time till IRDA completed the bid process that was undertaken to select the IA;
- xv. **"Replacement Implementation agency"** means an agency that the Project Director, IRDA/IIB may appoint to replace the Implementation Agency upon expiry of the IA's contract term or otherwise termination of this Agreement to undertake the Services or part thereof;
- xvi. **"Service Level"** means the level of service and other performance criteria which will apply to the Services delivered by the IA in the manner set out in the SLA, in Part1 of the RFP;
- xvii. **"Service Level Agreement (SLA)"** means the Operation and Maintenance SLA, executed by and between Implementation Agency/OEM and IRDA/IIB, with respect to the Service Level Requirements and related aspects as set out in Part 1 of the RFP;
- xviii. **"Services"** means the services delivered to the Stakeholders of project, namely, the insurers and the intermediaries, TPAs, the employees of IRDA/IIB and other stakeholders including those listed in the Section on Stakeholders of the envisioned System of Part 1 of the RFP, using the tangible and intangible assets created, procured, installed, managed and operated by the Implementation agency including the tools of information and communications technology and includes but is not limited to the list of services specified in the article herein;
- xix. **"Stakeholders"** means IRDA, IIB, Insurers, intermediaries, and other related Agencies, and departments of Government (center and states) and their employees and includes those listed in the Section on Stakeholders of the envisioned System of Part 1 of the RFP;
- xx. **"Third Party Systems"** means Systems (or any part thereof) in which the Intellectual Property Rights are owned by a third party and to which Implementation Agency has been granted a license to use and which are used in the provision of Services under the Project;
- xxi. **"Project Director, IRDA"**, means an officer, appointed by IRDA/IIB, to be responsible for discharging all the responsibilities under the FAS Project on behalf of IRDA.

- b. 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.
- c. Words denoting the singular shall include the plural and vice versa and words denoting persons shall include firms and corporations and vice versa.
- d. Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Article, Schedule or section. The term Articles, refers to Articles of this Agreement. The words "include" and "including" shall not be construed as terms of limitation. The words "day" and "month" mean "calendar day" and "calendar month" unless otherwise stated. Where, because of a difference in time zone, the calendar day or calendar month in one Country differs from another Country, then the calendar day or calendar month shall be deemed to be the calendar day or calendar month applicable to India. The words "writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated. Any reference to attorneys' fees shall include reasonable fees of the professional assistants of such attorneys.
- e. 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.

2.1.2. Scope of the Contract

This Agreement shall govern the provision of the professional services listed hereunder and more fully described in Part 1, Part 2, annexure documents of the RFP, in conformance with the SLA to all the stakeholders of the Project. Subject to the requirements specified in the RFP, IA will be responsible for providing the following services under the contract:

- 2.1.2.1. Requirements gathering and SRS preparation
- 2.1.2.2. Design, development and testing of the application
- 2.1.2.3. Migration of existing data
- 2.1.2.4. Set up and host the data center and disaster recovery center, provide the necessary infrastructure and all other hardware and network related components associated, through managed services
- 2.1.2.5. Procurement, installation, configuration and commissioning of server side hardware
- 2.1.2.6. Procurement, installation, configuration and commissioning of network
- 2.1.2.7. Implementation of the Solution and Go-Live
- 2.1.2.8. Support for acceptance testing and certification
- 2.1.2.9. Implementation of various change management initiatives

- 2.1.2.10. Operations and Maintenance (O&M) of the entire set-up
- 2.1.2.11. Post 'Go-Live ' Support, Warranty and Annual Maintenance Service

2.1.3. Scope and Provision of the Services

- 2.1.3.1. The provision of Services to the Stakeholders with certainty and speed is the essence of the Agreement between the Parties.
- 2.1.3.2. The IA represents that it is a competent and efficient provider of a variety of Information Technology and Fraud detection/prediction services and will keep abreast of the relevant technical, managerial and operational requirements applicable to the provision of the Services and best practices in this area and will share their knowledge with the IRDA/IIB, regarding matters which would assist the IRDA/IIB, in its use of the Services, provided that IA shall not be obligated to share other client information or Confidential Information that is not relevant to this Agreement.
- 2.1.3.3. The Services shall be performed by the IA/OEM pursuant to terms under the SLA clauses of the RFP.
- 2.1.3.4. The IA shall perform the Services (a) in a good professional manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, (b) so as to comply with the applicable Service Levels, in accordance with the terms set out in this Agreement.
- 2.1.3.5. No Party to this Agreement will at any time perform, or omit to perform, any act which they are aware, at the time of performance, will place the other Party in default under any insurance policy, mortgage or lease, governing activities at any location of the project.

2.1.4. Project Site:

The proposed Project site is – IRDA/IIB Premises, Hyderabad and the IA might have to travel to such a location as may be prescribed by the IRDA/IIB as a part of the project requirement. The cost of such travel and related expenses will be borne by the IA them self.

2.1.5. Exclusivity:

The IA shall work at the IIB premises in Hyderabad for development, testing and deployment of the solution. In consideration of IRDA/IIB data privacy and confidentiality, IIB will provide the working environment for the IA resources and also provide insurance industry data access only at the IIB facility in Hyderabad. IRDA/IIB shall not allow remote access of the insurance industry data.

2.1.6. Tenure of the Contract:

The initial contract shall be for five years from the date of phase 2 'GO-LIVE' (unless terminated by IRDA/IIB before that date). However, after completion of initial contract, IRDA/IIB reserves its right to extend the contract on the terms and conditions mutually agreed between IRDA/IIB and the IA. The IA shall provide necessary help and necessary training to IRDA/IIB's staff for running the solution without any additional cost.

2.1.7. Future Arrangement

At the end of five years of O & M period executed by the IA, the IRDA/IIB will find and appoint a replacement agency for the future. Prior to selection of the replacement agency, IRDA/IIB would carry out a replacement requirement assessment. The replacement requirement assessment will enable IRDA/IIB to identify modification needed in assets, SLA, role and responsibility of the IA, and other aspects of operational and financial arrangement in the FAS eco-system. IRDA/IIB, if it desires so, may continue with the outgoing agency on mutually agreed terms and conditions for the extended term.

2.1.8. Award of contract:

The successful bidder shall be invited to do a detailed presentation giving the solution approach covering the following:

- 2.1.8.1. Justification for the commercials quoted with a detailed statement of work and hardware/software solutions including sizing of the solutions.
- 2.1.8.2. Mapping of the solutions, both hardware and software, to the business and technical requirements item-wise and the rationale for choosing the solution suggested (For example, a solution may work in one kind of environment)

IRDA/IIB reserves the right to negotiate the contract price and to modify the stack where the business or/and Technical requirements can be better met with the modification mutually agreed.

2.1.9. Performance Bank Guarantee:

Within 21 days of the receipt of notification of award from IRDA, the successful bidder shall furnish the performance security in the nature of Bank Guarantee in the Performance Security Form provided herein or in another form acceptable to IRDA for an amount that is 10% of the total cost of the project for a minimum period until:

- Two years from the date of expiry of the contract or
- Two years from earlier termination of the contract

In case, IRDA/IIB decides to extend the contract at the discretion of IRDA/IIB, the performance bank guarantee shall be extended for a minimum period until two years from the expiry of such extended period. Failure of the successful bidder to comply with the requirement shall constitute sufficient

grounds for the annulment of the award and forfeiture of the bid security, in which event IRDA may make the award to the next lowest evaluated bidder.

2.1.10. Acceptance of Order:

The bidder shall give acceptance within ten working days from the date of order. IRDA has a right to cancel the order, if the same is not accepted within a period of ten working days from the date of the order.

2.1.11. Signing of Contract:

The successful bidder shall be required to enter into a Master Services Agreement as provided by IRDA within thirty days of the award of the work or within such extended period as may be specified by IRDA. The agreement shall include system & procedure to be adopted by IA as desired by IRDA. The Firm/organization is also required to enter into a Non-Disclosure Agreement with IRDA for confidentiality/secretcy of data/system and processes.

2.1.12. Prices:

Prices payable to the Bidder as stated in the Contract shall be fixed at the time of finalization of the contract.

2.1.13. Escalation of Costs:

The Bidder shall in no circumstance be entitled to any escalation of costs or price of any material / items supplied or services tendered under the contract.

2.1.14. Non-Disclosure Agreement:

All information which is marked as "confidential" or if disclosed orally will be identified as "confidential". The Purchaser and the bidding IA shall keep confidential and shall not, without the written consent of the either party hereto, divulge to any third party. The bidding bidder may use in its business activities the ideas, concepts and know-how contained in the confidential information which are retained in the memories of bidding party's employees who have had access to the confidential under this contract. The bidding bidder shall take all necessary steps to ensure confidential handling of all information developed or acquired by the party form IRDA/IIB. The IA (and its employees) shall not, unless the IRDA/IIB gives permission in writing, disclose any part or whole of this RFP document, of the proposal and/or contract, or any specification, plan, drawing, pattern, sample or information furnished by the IRDA/IIB (including the users), in connection therewith to any person other than a person employed by the IA in the performance of the proposal and/or contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance. The IA shall ensure that its employees or any of its agents who would be engaged by the IA in connection with above maintains strict confidentiality. In case of consortium proposals, all members of the consortium

shall ensure the above. The IA, its employees and agents shall not without prior written consent from the IRDA make any use of any document or information given by the user, except for purposes of performing the contract award. In case of breach, the IRDA/IIB shall take such legal action as it may be advised. The solution developed in respect of the fraud analytics will be crucial for the smooth functioning of the insurance industry. As such, the complete solution, big data analytics and the source code for the customized part of any software, application, middleware and complete hardware shall be the property of the IRDA/IIB. As such, the IA shall establish systems and shall assure at all times that the solution developed shall not be used in part/full elsewhere without an explicit consent from the IRDA/IIB.

2.1.15. Misrepresentation:

Any material deviation in delivery or any willful misrepresentation of material facts generally and in respect of Qualification criteria/Insurance fraud solution implementation experience/capability specifically will lead to the rejection of the bid without prejudice to other actions that IRDA may take. In case, a material misrepresentation is made in the bid submitted by a consortium, bidder(s) will be individually and severally liable from risk and cost point of view. An undertaking from the bidder that the bidder is complying with all the conditions of the Contract and Technical Specifications of the Bidding Document as no deviation will be acceptable to the IRDA/IIB. An item-by-item commentary, on the IRDA's scope and requirements, demonstrating substantial responsiveness of the proposed solution to those specifications is required to be submitted as an Annexure to Technical Bid. As a part of the commentary, the Annexure should clearly specify the complete solution stack that includes database solution, middle layers such as ETL, DQ, etc., the logical data model, reporting tools and any other component by mapping to both the functional and technical requirements. Any deviations or exceptions to the provisions of the Technical Specifications will not be accepted.

2.1.16. Use and Acquisition of assets:

During the Term of the AMS, the IA shall:

- 2.1.16.1. Take all reasonable and proper care of the entire hardware and software, network or any other IT and non-IT infrastructure components used for the Project and other facilities leased / owned by the Bidder exclusively in terms of the delivery of the Services as per this Agreement (hereinafter the "Assets") in proportion to their use and control of such Assets which will include all upgrades/ enhancements and improvements to meet the current needs of the Project; and
- 2.1.16.2. Keep all the tangible Assets in as good and serviceable condition and/or the intangible Assets suitably upgraded subject to the requirements stated in the RFP as at the date the Bidder takes control of and/ or first uses the Assets and during the entire Term of the Agreement; and

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- 2.1.16.3. ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and provided to the Bidder will be followed by the Implementation agency and by any person who will be responsible for the use of the Assets; and
- 2.1.16.4. take such steps as may be recommended by the manufacturer of the Assets and notified to the Bidder or as may, in the reasonable opinion of the Bidder, be necessary to use the Assets in a safe manner; and
- 2.1.16.5. to the extent that the Assets are under the control of the Bidder, keep the Assets suitably housed and in conformity with any statutory requirements from time to time applicable to them; and
- 2.1.16.6. provide permission to the Project Director, IRDA/IIB and any persons duly authorized by him/ her 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; and
- 2.1.16.7. not knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or contrary to law; and
- 2.1.16.8. use the Assets exclusively for the purpose of providing the Services as appropriate; and
- 2.1.16.9. not sell, offer for sale, assign, mortgage, pledge, sub-let or lend out any of the Assets;
- 2.1.16.10. use the Assets only in accordance with the terms of this Agreement including those contained in the SLA;
- 2.1.16.11. transfer the ownership rights of all the titles, licenses, sub-licenses, proprietary right, patches and releases related to the software for this project and
- 2.1.16.12. obtain and/ or maintain standard forms of comprehensive insurance policy including liability insurance, system and facility insurance and any other insurance for the personnel, assets, data, software, etc.; and
- 2.1.16.13. transfer the ownership of all the Assets (not already under the ownership of the IRDA), including but not limited to the project documentation which is the work product of the development efforts involved in the project, within 30 days of the acceptance of the same by the IRDA/IIB upon testing and/ or audit and/ or certification as per the requirements specified in the RFP, to the Project Director, IRDA/IIB in accordance with the terms of this agreement; and
- 2.1.16.14. ensure the integration of the software with hardware to be installed and the current Assets in order to ensure the smooth operations of the entire system to provide services to all the Stakeholders of the project in an efficient and speedy manner; and

- 2.1.16.15. ensure the compatibility and scalability of the software with hardware and the existing assets in order to avoid issues of platform dependency and future capacity building.

Take an approval (i.e. sign off) from the Project Director, IRDA/IIB at each stage to close each of the above considerations

2.1.17. Inspection and Tests :

Following broad test procedure will generally be followed for inspection and testing of the Systems that are commissioned for this project (at the project site or any alternate site). –

- 2.1.17.1. The Bidder will dispatch the systems to the Project site after internal inspection testing along with the Bidder's inspection report and manufacturer's warranty certificate. The IRDA will test the equipment after completion of the installation and commissioning at the project site. Complete hardware and software as specified in the Bidders proposal should be supplied, installed and commissioned properly by the Bidder prior to commencement of performance tests.
- 2.1.17.2. Acceptance of the system will be based on the following criteria and to the IRDA/IIB's satisfaction:
- Successful test of all required and proposed functions with no defects.
 - Successful demonstration that the system performance is as required and proposed
 - Successful completion of all required training; and Delivery of the complete documentation set to the IRDA.
 - Successful conduct of security audit and Disaster recovery drill (Costs related to these shall be borne by the IA).
- 2.1.17.3. The acceptance-testing period must be mutually agreed upon with the Prime Proponent, but cover no less than thirty (30) trouble free days. Should hardware or software failures occur during this period, the Bidder must take any necessary actions to correct the failure, and then the thirty (30) day trouble free period gets restarted. More than three failures of the same type may be deemed a total failure, and may terminate the acceptance test and cancel the recommendation for purchase. The acceptance test period will be part of the implementation plan. The Bidder must agree that failure on the part of the Bidder to correct a functional or technical deficiency in the Bidder's specified solution shall be deemed to be a total failure, and the IRDA, at its option, may terminate the acceptance test and cancel the recommendation for purchase.
- 2.1.17.4. The acceptance test will be conducted by the IRDA/IIB, with the help of their consultant or any other person nominated by the IRDA/IIB, at its option and in the presence of the IA. The successful conclusion of the acceptance test for the installed systems and equipment shall be the sole responsibility and at the cost of the Bidder. There shall not be any additional charges for carrying out acceptance tests.

- 2.1.17.5. The inspections and tests may be conducted at the premises of the Bidder and/or at the Project site. If conducted at the premises of the Bidder, all reasonable facilities and assistance shall be furnished to the IRDA/IIB's authorized representatives at no charge to the IRDA. Bidder shall intimate to the IRDA/IIB indicating that the system is ready for inspection and the IRDA can send their authorized representatives for inspection at project premises. After receipt of such intimation from the Bidder, the IRDA/IIB shall arrange for pre-dispatch inspection and test. After the computer system passes in the inspection and tests, the Bidder shall deliver and install the system at the Project site.
- 2.1.17.6. Should any inspected or tested systems fail to conform to the specifications, the IRDA may reject the systems and the Bidder shall either replace the rejected systems or make alterations necessary to meet specification requirements free of cost to the IRDA/IIB.
- 2.1.17.7. The Purchaser's rights to inspect, test and, where necessary, reject the systems after the systems' arrival at Project Site shall in no way be limited or waived by reason of the systems having previously been inspected, tested and passed by the IRDA/IIB or its officials prior to the systems shipment.

2.1.18. Packing:

The IA shall provide packing of systems in such a manner as to prevent their damage or deterioration during transit to the project site. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposures to extreme temperatures, humidity, sleet and precipitation during transit and open storage. The IA will be held responsible for all damages due to improper preparation in packing.

2.1.19. Insurance :

The Bidder is solely responsible to comprehensively insure all the Goods under this contract against all risks of loss and damage from the place of origin or shipment, as the case may be, till their installation at the Sites and thereafter, it shall be the responsibility of the IRDA/IIB to insure the Goods.

2.1.20. Transportation:

Where the Bidder is required under the Contract to transport the systems to a specified place of destination within India defined as Project site, transport to such place of destination in India including insurance, as shall be specified in the Contract, shall be arranged by the Bidder and the related cost shall be included in the Contract Price.

2.1.21. Incidental Services:

The following services shall be furnished and the cost shall be included in the contract price:

- 2.1.21.1. Performance of the on-site assembly, commissioning and start-up of the equipment
- 2.1.21.2. Furnishing the detailed operation and maintenance manuals for each items of supply at the Project site
- 2.1.21.3. Training of the IRDA/IIB personnel at the Bidder's or IRDA/IIB office, in the installation and operation of the computer hardware utilities and all contract software
- 2.1.21.4. Maintenance and repair of the equipment at the sites during the warranty period including supply of all spares.

This shall not relieve the Bidder of any warranty obligations under this contract.

2.1.22. Spare Parts:

Bidder shall carry sufficient inventories to assure ex-stock supply of consumables and spares. Bidder shall ensure the availability of after sale service for a period of at least **10 years** including the warranty period.

2.1.23. Warranty for hardware/software:

- 2.1.23.1. The System Integrator (who is the prime bidder) shall be solely responsible for supply, integration and warranty of all the systems (Hardware/Software/Middleware etc.,). The Bidder warrants that the systems supplied under this Contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Bidder further warrants that all systems supplied under this Contract shall have no defect arising from design materials or workmanship (except when the design and/or material is required by the Purchaser's Specifications) or from any act or omission of the Bidder, that may develop under normal use of the supplied systems in the conditions prevailing in Hyderabad, India.
- 2.1.23.2. The hardware/software warranty shall be comprehensive for the entire period of contract. The Bidder shall in addition comply with the performance guarantees specified under the contract. If for reasons attributable to the Bidder, these guarantees are not attained in whole or in part, the Bidder shall, make such changes, modifications and or additions to the systems, software or any part thereof as may be necessary in order to attain the contractual guarantees specified in the Contract at its own cost and expense and to carry out further performance tests.

- 2.1.23.3. The IRDA/IIB shall promptly notify the Bidder in writing of any claims arising under this warranty.
- 2.1.23.4. In the event of any correction of defects or replacement of defective material (hardware and Software) during the warranty period, the warranty for corrected /replaced material shall be extended to a further period of 36 months from the time they are corrected/ replaced or the duration of the contract, whichever is later.
- 2.1.23.5. Period for correction of defects in the warranty period is 48 hrs
- 2.1.23.6. The Bidder shall guarantee a 99.5% uptime of computer systems/peripherals. Uptime is the amount of time the system (software and hardware where appropriate) is fully operational measured over a 24 hours period.
- 2.1.23.7. If any computer system gives continuous trouble say six times in one month during the warranty period, the Bidder shall replace the system with new system without any additional cost to IRDA/IIB.

2.1.24. Site Preparation and Installation:

The IA shall be responsible for all the work related to the site preparation, installation and the maintenance.

2.1.25. Hardware Installation:

The Bidder is responsible for all unpacking, assemblies, wiring, installations, cabling between hardware units and connecting to power supplies. The Bidder will test all hardware operations and accomplish all adjustments necessary for successful and continuous operation of the hardware at all installation sites. In addition, the IA shall also be responsible to establish a fool proof fire-wall mechanism to protect the systems from virus, intrusions or any other threats.

2.1.26. Administration, Management and Maintenance

- 2.1.26.1. The Administration, Management and Maintenance of the Systems, Software, Data, Applications, Network and Security during the contract period shall be responsibility of the IA. The IA shall deploy appropriate tools and competent manpower to handle these responsibilities.
- 2.1.26.2. The IA shall setup a helpdesk at the project site which is the premises of IIB/IRDA to attend/handle any request for maintenance 7 days a week and 24 hours a day with appropriate escalation suiting the demands of the project. The maximum response time for maintenance complaint (i.e. time required from Bidder's maintenance engineer to

report at the installation after a request call/fax is made or letter is written) shall not exceed 24 hours.

- 2.1.26.3. It is expected that the average downtime of the item/ system will be less than half the maximum downtime (i.e. defined as number of days for which an item or equipment or solution component is not useable because of inability of the Bidder to repair it) as mentioned in the form of technical details. In case an item is not usable beyond the stipulated maximum downtime the Bidder will be required to arrange for immediate replacement of the same till it is repaired. Failure to arrange for the immediate repair/replacement, the Prime Bidder will be liable for a penalty of 0.1% of the Total Contract amount for each Phase per Day. The amount of penalty will be recovered from the Performance Security guarantee during warranty period.

2.1.27. Hardware Maintenance:

The Bidder will accomplish preventive and breakdown maintenance activities to ensure that all Hardware execute without defect or interruption for at least 99.5% up time for 24 hours a day, 7 days of the week of operation of the machine worked on a monthly basis. If any critical component of the entire configuration is out of service for more than three days, the Bidder shall either immediately replace the defective unit or replace it at its own cost. The Bidder will respond to a site visit and commence repair work on the equipment within 24 hours of being notified of equipment malfunction

2.1.28. Delays in Delivery & Installation of the systems and Services by the Bidder

- 2.1.28.1. **Time Lines** – The Bidder must deliver & install the hardware and the System and Application software needed for development within 60 days from the date of award of contract. If the Bidder fails to do so, the IRDA shall take action as required. The actual statement of work will be decided at the time of contract finalization taking into account the timelines for installation and customization of all modules.
- 2.1.28.2. If at any time during performance of the Contract the Bidder should encounter conditions impeding timely delivery of the systems and performance of Services, the Bidder shall promptly notify the IRDA/IIB in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Bidder's notice the IRDA/IIB shall evaluate the situation and may, at its discretion, extend the Bidder's time for performance with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.

A delay by the Bidder in the performance of its delivery obligations or non-performance of the contract in whole or part for whatsoever reason shall render the Bidder liable to the imposition of liquidated damages pursuant to conditions of Contract unless an extension of time is agreed upon pursuant to conditions of Contract without the application of liquidated damages.

2.1.29. Commencement and Duration of This Agreement

This agreement shall come into effect on signing of the Master Services Agreement by and between the Parties (hereinafter called the “Effective Date”) and shall be for a period of five years from the date of phase 2 Go-Live and continue to be effective till the completion of the Operations and Maintenance period, subject to fulfillment of the rights and obligations of the Parties under the Agreement

2.1.30. Approvals and Required Consents

- 2.1.30.1. The Parties will cooperate reasonably to obtain, maintain and observe all relevant and customary regulatory and governmental licenses, clearances and applicable approvals (hereinafter the “Approvals”) necessary for the Implementation Agency to provide the Services. The costs of such Approvals shall be borne by the Implementation Agency.
- 2.1.30.2. Both parties will give each other all co-operation and information reasonably required to meet their respective obligations under this Agreement.
- 2.1.30.3. The Implementation Agency shall be responsible for obtaining the Approvals and the Project Director, IRDA/IIB shall use reasonable endeavors to assist Implementation Agency to obtain the Approvals. In the event that any Approval is not obtained, the Implementation Agency and the Project Director, IRDA/IIB will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the IA, provided that the IA 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 the Implementation Agency's obligations are dependent upon such Approvals

2.1.31. Access to Implementation agency Or Its Nominated Agencies to IRDA Location

- 2.1.31.1. For so long as the Implementation agency provides Services from any IRDA location on a non-permanent basis and to the extent necessary for the Implementation agency to provide the Services and at no cost to the Implementation agency, the Project Director, IRDA shall, subject to compliance by the Implementation agency with any safety and security guidelines applicable to the location which may be notified by the Project Director, IRDA to the Implementation agency in writing, provide the Implementation agency with:
 - reasonable access, in the same manner granted to IRDA/IIB employees, to IRDA locations twenty-four hours a day, seven days a week; and
 - Reasonable access to office equipment as mutually agreed and other related support

services in such location as may be reasonably necessary for the Implementation agency to perform its obligations hereunder including the SLA.

2.1.31.2. Locations and items shall be made available to the Implementation agency on an "as is, where is" basis by the Project Director, IRDA/IIB. The Implementation agency agrees to ensure that its employees, agents and contractors do not use the location, services and items :

- for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
- In a manner which constitutes a violation or infringement of the rights of any person, firm, company, or organization (including but not limited to rights of copyright or confidentiality).

2.2. Management phase

2.2.1. Governing Language:

The Contract shall be written in English language. All correspondence and other documents pertaining to the Contract, which are exchanged by the parties, shall be written in the same language.

2.2.2. Governance

The review and management process of this Agreement shall be carried out in accordance with the Governance Schedule (Schedule 4) and shall cover all the management aspects as set out in the RFP. It shall be mandatory for the IA to deploy resources with domain and analytics expertise on a continuous basis at the IRDA/IIB during the entire tenure of the contract.

2.2.3. Approval/Signoff:

Every deliverable shall undergo an approval/signoff process. IRDA/IIB shall review the deliverable and provide approval/signoff as may be necessary.

2.2.4. Coordination:

The IA shall at all times co-operate with IRDA/IIB with respect to Technical Assistance and IRDA/IIB shall provide suitable contact point to co-operate with and assist the personnel in carrying out the services.

2.2.5. Changes

Unless expressly dealt with elsewhere in this Agreement, any changes under or to this Agreement or

under or to the SLA shall be dealt with in accordance with the Change Control Schedule (Schedule 1).

2.2.6. Extension of time:

Delivery of the services shall be made by IA in accordance with the work schedule. However, the IA may claim extension of time limits as set forth in the work schedule in case of:

- 2.2.6.1. Changes ordered by IRDA/IIB
- 2.2.6.2. Delay in providing any material, drawing or services, which are to be provided by IRDA.
- 2.2.6.3. Force Majeure (as per clause 2.5.5) and
- 2.2.6.4. Delay in performance of work caused by orders issued by the IRDA/IIB relevant to but not included in the contract.

The IA shall submit to IRDA/IIB a notice of a claim for an extension of the time for achieving Operational Acceptance, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. After receipt of such notice and supporting particulars of the claim, the purchaser and the IA shall agree in writing upon the period of such extension.

2.2.7. Security and Safety

- 2.2.7.1. The Implementation agency will comply with the directions issued from time to time by the Project Director, IRDA and the standards related to the security and safety as per best practices and standards prevalent in the industry and those stated in the RFP, in so far as it applies to the provision of the Services.
- 2.2.7.2. Each Party to the Agreement shall also comply with Project's information technology security standards and policies in force from time to time at each location of the project, in so far as the same apply to the provision of the Services.
- 2.2.7.3. The Parties to the Agreement shall use reasonable endeavors to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the project's data, assets, facilities or Confidential Information.
- 2.2.7.4. The Implementation agency shall upon reasonable notice by the IRDA or its designated agency participate in regular meetings when safety and information technology security matters are reviewed.
- 2.2.7.5. The Parties under the Agreement shall promptly report in writing to each other 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 project's locations.

2.2.8. Assignment:

The IA shall not assign to anyone, in whole or in part, its obligations to perform under the contract, except with IRDA's prior written consent.

2.2.9. Solution, Technical and Development reviews:

This review helps to determine whether the design and implementation adheres to proven standards, such as upward compatibility where custom developments or enhancements to the systems are planned. The scope of this review is to study programs and applications that have been developed explicitly for IRDA/IIB. The feedback provided will mainly deal with ways and means of optimizing the custom developments to achieve better performance. The IA shall perform a solution review covering the application design, business process parameters, software, hardware and databases. To review the business model proposed and configured in the system. In addition, a technical review of components and operational procedures, such as security, backup, performance management, printing, desktop operations etc., shall also be performed.

2.2.10. Performance Review:

IRDA/IIB reserves the right to conduct end-to-end half-yearly audit of analysis & reporting of industry-wide fraud trends, through internal/external Auditor. IRDA/IIB can engage a third party for the same. The IA has to provide all the necessary support for the same. The IA has to comply with the audit report submitted by the auditors within a maximum period of one month from the date of submission of the Audit report. If the services are not found satisfactory IRDA/IIB may take recourse to terminate the contract, impose penalties (as mentioned in this RFP) and invoke Bank guarantee. The decision of IRDA/IIB in this regard would be final and binding on the IA.

2.2.11. Training:

For each hardware and software component installed, the Bidder is required to provide hands-on-training to the designated technical and end-user personnel of the IRDA/IIB at its cost to enable them to effectively operate the total system. Both parties will agree upon the training schedule and place of training during the performance of the contract.

2.2.12. Technical Documentation:

The Technical Documentation involving detailed instruction for operation and maintenance is to be delivered with every unit of the equipment supplied. The language of the documentation shall be English. Such manuals will include illustrated catalogues, reference manuals, technical manuals and

operation manuals for the purpose of operating the Solution. Complete documentation of the Solution must include the following:

- 2.2.12.1. Hardware manuals
- 2.2.12.2. Operating System/s manuals
- 2.2.12.3. Utilities and general software reference manuals
- 2.2.12.4. Language reference manuals
- 2.2.12.5. Manuals for every software package including Third Party software
- 2.2.12.6. On-line tutorials, CBTs and help documentation

Any level/version changes, addenda, explanation and/or clarifications or corrections in the above mentioned documentation, made during the currency of the Agreement, shall be supplied by the Bidder free of cost, as and when such changes are generally made available. The sets of documents and manuals, supplied and delivered by the proponent, shall be in reasonable detail; and be current at the time of delivery; be in English language; include system operations, operating system and the Third Party software products; include error recovery instructions; include hardware and software debuggers/diagnostics/listing; include ready reference; and include illustrated parts and catalogues.

2.2.13. Restraint to undertake similar projects with Conflict of Interest:

During the tenure of the contract, the IA shall refrain from executing projects on similar themes (fraud detection and analytics) with any regulated insurance entity (Insurers/Reinsurers/Intermediaries) in India. In case, any such engagement during the period of the contract comes to the notice of the IRDA/IIB at any time, the IA shall be liable for a penalty of Rs. 10 crores.

2.2.14. Cooling Off Period:

From the date of expiry of the contract or from date of earlier termination of the contract, whichever is earlier, the IA shall refrain from executing projects on similar themes (fraud detection and analytics) with any insurance entity (Insurers/Reinsurers/Intermediaries) in India regulated by IRDA till a period of twelve months have elapsed as the case may be. Where any such engagement during the period of the contract is entered into by the IA with any such entity regulated by IRDA and comes to the notice of the IRDA/IIB at any time, the IA shall be liable for a penalty of Rs. 10 crores.

2.2.15. Notices:

- 2.2.15.1. Any notice given by one party to the other pursuant to this Contract shall be sent to other party in writing or email or by Fax and confined in writing to the other Party's address. Right to use defective equipment If after delivery, acceptance and installation and within the guarantee and warranty period, the operation or use of the equipment proves to be unsatisfactory, the IRDA shall have the right to continue to operate or use such equipment

until rectification of defects, errors or omissions by repair or by partial or complete replacement is made.

- 2.2.15.2. 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.
- 2.2.15.3. Any notice or other document shall be deemed to have been given to the other Party (or, if relevant, its associated company) when delivered, if delivered in person, between the hours of 10.00 am and 5.00 pm on a working day at the address of the other Party set forth above, or if sent by fax, provided the fax copy is accompanied by a confirmation of transmission, or if sent by email, provided email sent copy is accompanied by a confirmation of delivery or on the next working day thereafter if delivered outside such hours, and if sent by post, 5 days from the date of posting as recorded on the certificate of posting.
- 2.2.15.4. Either Party to this Agreement may change its address, telephone number, facsimile number and email for notification purposes by giving the other Party reasonable prior written notice of the new information and its effective date.

2.2.16. Bidder Integrity:

The Bidder is responsible for and obliged to conduct all contracted activities in accordance with the contracts using state-of-the-art methods and economic principles and exercising all means available to achieve the performance specified in the contract.

2.2.17. Bidder's Obligations:

The Bidder is obliged to work closely with the IRDA/IIB's staff, act within its own authority and abide by directives issued by the IRDA/IIB from time to time for the implementation activities. The Bidder is responsible for managing the activities of its personnel and will hold itself responsible for any mis-demeanours. The Bidder will treat as confidential all data and information about the IRDA/IIB, obtained in the execution of his responsibilities, in strict confidence and will not reveal such information to any other party without the prior written approval of the IRDA/IIB. The Bidder shall adhere to the provisions of 'Non Disclosure' in the same manner as is applicable to IAs as explained under 'Non Disclosure Clause' elsewhere in this document. In case of breach the IRDA/IIB shall take such legal action as it may be advised. In the event of termination of the agreement for any reason whatsoever, the Bidder is required to forthwith return all documentation and information relating to the IRDA/IIB in its possession or custody. Alternatively it would be required to destroy any such information in its possession as may be instructed by the IRDA/IIB

2.2.18. Components of the Contract:

The Contract will be based on this RFP, and the conditions of the Contract that will be executed at the time of award of contract; the Bidder(s) response to the questions in the RFP; clarifying questions raised in writing by IRDA and the response in writing to those questions; clarifying questions raised in writing by the bidder(s) and the responses in writing to those questions. If any of the terms and conditions under this Contract is held invalid, illegal or unenforceable, this will not affect the validity, legality or enforceability of the other terms and conditions under this Contract.

2.3. Financial issues

2.3.1. Deliverables and payment milestones:

Payment would be linked to delivery and acceptance of each area as explained below:

- 2.3.1.1. **Hardware** : Payments for supply of hardware shall be made 100% against supply, installation of the equipments and submission of BG as per clause 2.1.9
- 2.3.1.2. **Software licenses procurement**: Payment for procuring Software Licenses will happen as and when a license is procured. 50% of the license fees will be paid on procurement of the license against the submission of supportive documents and rest 50% will be paid after completion of installation and configuration of the software. The IA should share a detailed project plan at the beginning of the project with the details of software license procurement plan. Project plan signoff by IRDA is prerequisite for any payment towards software procurement and IRDA will make payment to the IA/prime proponent only.
- 2.3.1.3. **Software Development and Implementation Costs:**

S.No.	Accomplishment	Payment
1	Signing of the agreement and submission of BG as per clause 2.1.9	10%
2	Signing of Project plan/charter including: <ul style="list-style-type: none">a. Timetable for the projectb. Written inventory of the key resources specifically earmarked to be provided by each partyc. Functional and System requirements and design specificationsd. Traceability matrix for all the phases signed off by IRDA/IIB	10%
3	GO LIVE – Phase 1	25%

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	<ul style="list-style-type: none">○ UAT and Go Live of Complete functionality as covered within the Phase 1 part of scope of work	
4	GO LIVE – Phase 2 <ul style="list-style-type: none">a. UAT and Go Live of Complete functionality as covered within the Phase 2 part of scope of workb. Load and performance testingc. DR drilld. Security audit	25%
5	Other deliverables <ul style="list-style-type: none">a. Capacity Building<ul style="list-style-type: none">○ Handing over of source code and manuals○ Training○ Knowledge management portal○ Other deliverables as defined elsewhere in RFP not included in payment terms	10%
6	Yearly Payments <ul style="list-style-type: none">a. After every completion of 12 months from the date of phase 2 “GO-LIVE” and until the duration of the contract at the rate of 4% for each year payable at the end of completed year	20%

2.3.1.4. **Hosting:** For hosting , payment will be made on a quarterly basis at the end of each quarter

2.3.1.5. **AMC and Warranty:** All payments related to support and maintenance, payment will be made on a quarterly basis at the end of every quarter

2.3.2. Incentive Scheme

In addition to what is stated in clause 2.3.1 above, the IA shall be eligible for an incentive scheme which shall be based on four parameters, each capped at 5% and stated as part of Annexure 10. The maximum amount payable as incentive shall be 20% of the total project cost. These amounts shall be payable based on a yearly evaluation of the performance of the IA. For the purposes of the evaluation, it shall be the responsibility of the IA to maintain and furnish data as may be required for IRDA/IIB to analyze the performance and process the payment.

2.3.3. Terms of Payment

The FAS project shall follow a model wherein IA will be required to finance all the expenses, capital and operational, with prior approval of IRDA/IIB, related to their scope of work in this project. IRDA/IIB shall pay them back all the above expenditure subject to certain terms and conditions described below:

The entire cost of design, development, implementation, operation and maintenance of the project shall be borne by the IA.

IA would be paid by IRDA/IIB for the above expenditure strictly as per the rates and amounts quoted by the IA in their commercial proposal and agreed by the IRDA/IIB.

- 2.3.3.1. Payment related with Go-Live shall be made only after successful Go-Live
- 2.3.3.2. Payment will be subject to strict adherence to SLA agreed between IRDA/IIB and IA and subject to SLA credit/ debit points calculated by the team designated by IRDA/IIB for every quarter as per the agreed methods, processes and tools.
- 2.3.3.3. Payment shall be subject to penalty adjustment, if any, revealed during the SLA. Following conditions (2.3.3.4 to 2.3.3.11) for penalty would be applicable in case for not meeting the timelines as mentioned in this RFP:
- 2.3.3.4. IRDA/IIB shall have the right to levy separate penalty of Rs. 2.0 lakh per week of delay in the milestones.
- 2.3.3.5. Delay and its magnitude shall be assessed by IRDA/IIB and conveyed to IA for necessary action.
- 2.3.3.6. IRDA/IIB shall not penalize the IA for a delay attributable to IRDA/IIB.
- 2.3.3.7. Delay in two or more milestones which do not have a direct consequential relationship shall be treated separately.
- 2.3.3.8. Delay in two or more milestones which do have a direct consequential relationship shall be treated together only to the extent of time duration provided above.
- 2.3.3.9. Credit/ debit calculation or otherwise.
- 2.3.3.10. Cost of third party audits, if any, shall be borne by IRDA/IIB.
- 2.3.3.11. IRDA/IIB shall have the ability to change payment terms in line with progress of the Project. In view of any weak governance on the part of the IA, view milestones directly related or one having consequential relationship on the other. And, one related payment could be viewed as payment related with Go-Live which should be made only after successful Go-Live

2.3.4. Taxes:

The prices are exclusive of all Taxes, Statutory levies etc. No other charges are payable by the IRDA/IIB.

2.3.5. Go Live:

The Bidder is required to demonstrate to the satisfaction of IRDA/IIB the following:

- 2.3.5.1. A dashboard containing the functionalities from Part 1
- 2.3.5.2. Successful data exchange between Insurers, other stakeholders and the solution
- 2.3.5.3. Successful completion of the UAT, security audit, performance and load testing and DR drill.
- 2.3.5.4. Other conditions as prescribed in Parts 1 and 2.

2.3.6. Invoicing and Settlement Schedule

- 2.3.6.1. In respect of its remuneration for the Services the Implementation agency shall be eligible to receive payments in accordance with the Deliverables and payment mile stones section. Subject to the specific terms of the Service Level Agreement, the Implementation agency has to submit its invoices in accordance with the following principles:
 - The Project Director, IRDA shall be invoiced by the Implementation agency for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the Service Level Agreement, the Implementation agency shall raise an invoice as per the terms of payment as stated in Deliverables and payment mile stones section.
 - Any invoice presented in accordance with this Article shall be in a form agreed with the Project Director, IRDA.
- 2.3.6.2. Invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in the Terms of Payment clause shall be applied to the next payment invoice. The Implementation agency shall waive any charge for a Service that is not invoiced within six months after the end of the month in which the terms of payment as stated in the Terms of Payment clause relating to such Service are authorized or incurred, whichever is later.
- 2.3.6.3. Payments invoiced shall be made within 45 days of the receipt of invoice by the Project Director, IRDA subject to adjustments if any for the previous performance or penalty.
- 2.3.6.4. The Project Director, IRDA shall be entitled to delay or withhold payment of any invoice or

part of it delivered by the Implementation agency under this clause where the Project Director, IRDA disputes 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 amount shall be settled in accordance with the escalation procedure as set out in the Governance Schedule. Any exercise by the Project Director, IRDA/IIB under this Article shall not entitle the Implementation agency to delay or withhold provision of the Services.

2.3.7. Payment:

The payment for support and maintenance will be released after completion of the Quarter within three weeks of the submission of the bill after deducting applicable taxes.

2.3.8. Final Acceptance:

The final acceptance would be based on adherence to required response time, the integrity of the software after installation with no operational bugs. This would include fine tuning of the software, ensuring all required, related component software are installed and no debugging is required. The acceptance tests should be carried out within a month of Go-live for each major module and after a report is submitted on the successful conclusion of these tests. The commissioning/ implementation of the software shall be deemed complete only after the satisfactory acceptance by the IRDA/IIB management.

2.4. Disputes, amendments, breach Rectification and termination

2.4.1. Disruption of progress:

The IA shall give notice to IRDA/IIB whenever planning or execution of the Works is likely to be delayed or disrupted.

2.4.2. Dispute Resolution

Any dispute arising out of or in connection with this Agreement including the SLA shall in the first instance be dealt by the Project Steering Committee/Project Management Unit. Any dispute or difference whatsoever arising between the parties to this Agreement out of or relating to the construction, meaning, scope, operation or effect of this Agreement or the validity of the breach thereof, which cannot be resolved, shall be dealt in accordance with the provisions set forth herein.

2.4.3. Scope of Dispute Resolution

Except where otherwise provided in the agreement, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the agreement, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the services and deliverables or the execution or failure to execute the same whether arising during the progress of the Project or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

2.4.3.1. Dispute Resolution Board

If any dispute arises between IRDA/IIB and the IA in connection with, or arising out of, the agreement or the execution of the project, whether during the execution of the project or after its completion and whether before or after the repudiation or other termination of the agreement, including any disagreement by either party with any action, inaction, opinion, instruction, determination, certificate or valuation, the matter in dispute shall, in the first place, be referred to the Dispute Resolution Board here in after called "the Board." For purposes of this agreement, the Steering Committee referred to in part 1 of the RFP, shall act as the Board. The Board at its discretion may co-opt any other officer if in its opinion it may help in resolving the dispute. Either party may refer a dispute to the Board. The Board shall give a decision in writing within 30 days of reference of dispute. Either party may refer a written decision of the board to arbitration. If neither party refers the disputes to arbitration within 30 days of the date of such decision, the Board's decision will be final and binding. IRDA/IIB at its discretion may change any of the members of the board.

2.4.3.2. Arbitration

Any dispute or difference whatsoever arising between the parties out of in course of or relating to, the construction, meaning and operation or effect of the contract or the breach thereof shall be raised within two months from the date of occurrence shall be settled through arbitration in India by a Sole Arbitrator from the panel of Indian Council of Arbitration and in accordance with its Rules under the provision of Arbitration and Conciliation Act 1996 and all statutory modification thereof shall be governed such arbitration proceedings. The arbitration will be conducted in English language and Indian law will be applicable. The venue of such arbitration shall be at Hyderabad only. During the arbitration proceedings the successful bidder shall continue to work under the contract unless otherwise directed in writing by IRDA/IIB or unless the matter is such that the work cannot possibly be continued until the decision of the arbitrator or the umpire, as the case may be, is obtained. However in such contingency, IRDA/IIB shall be entitled to make alternative arrangements to tackle the situation in the manner it deems fit, at the cost of the IA, so that the business of IRDA/IIB continues without any disruption.

2.4.4. Amendments:

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refer to the Contract, and is signed by a duly authorized representative of each party hereto.

2.4.5. Variations and Further Assurance

- 2.4.5.1 No amendment, variation or other change to this Agreement shall be valid unless authorized in accordance with the change control procedure as set out in the Change Control Clause and made in writing and signed by the duly authorized representatives of the Parties to this Agreement.
- 2.4.5.2 Each Party to this Agreement agrees to enter into or execute, without limitation, whatever other agreement, document, consent and waiver and to do all other things which shall or may be reasonably required to complete and deliver the obligations set out in this Agreement.

2.4.6. Use of Contract Document and Information:

The IA shall not, without IRDA/IIB's prior written consent, make use of any document, data or information provided by IRDA/IIB in Bid document or otherwise except for purpose of performing contract.

2.4.7. Severability and Waiver

- 2.4.7.1 If any provision of this Agreement, 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 remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.
- 2.4.7.2 No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement of any right, remedy or provision of this Agreement 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.

2.4.8. Compliance with Laws and Regulations

Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to it) at all times comply with all applicable laws, rules and regulations. For the avoidance of doubt, the obligations of the Parties to this Agreement are subject to their respective compliance with all applicable laws and regulations.

2.4.9. Ethics

Implementation agency represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of IRDA/IIB, or its nominated agencies in connection with this Agreement and acknowledges that the giving of any such commitment, payment, gift, kickback, entertainment, or other things of value is strictly in violation of IRDA's standard policies and may result in cancellation of this Agreement.

2.4.10. Entire Agreement

This Agreement, all schedules appended thereto and the contents and specifications of all the parts of the RFP (including the clarifications, explanations, errata, addenda, annexures, schedules and amendments thereof issued by IRDA from time to time) 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.

2.4.11. Survivability

The termination or expiry of this Agreement for any reason shall not affect or prejudice any terms of this Agreement, or the rights of the Parties under them which are either expressly or by implication intended to come into effect or continue in effect after such expiry or termination.

2.4.12. Terms and Conditions for Breaches

In the event that either Party is in Breach of its obligations under this Agreement, the aggrieved Party may terminate this Agreement upon notice to the other Party. Any notice served pursuant to this Article shall give reasonable details of the Breach, which could include the following events and the termination will become effective:

- 2.4.12.1 If there is Breach which translates into default in providing Services by the Implementation agency as per this Agreement, continuously for more than one week, then the Project Director, IRDA, will serve a seven days notice for curing such Breach. In

case the Breach continues after the notice period, the Project Director, IRDA/IIB will have the option to terminate the Agreement.

- 2.4.12.2 Because time is the essence of the contract, in case, for reasons prima facie attributable to the Implementation agency, there is a delay of more than 4 weeks in the Project Implementation Completion or Go-Live, the Project Director, IRDA/IIB may terminate this contract after affording a reasonable opportunity to the Implementation agency to explain the circumstances leading to such a delay. Further, the Project Director, IRDA/IIB may also invoke the Performance Guarantee of the Implementation agency.
- 2.4.12.3 If there is a Breach which results out of IRDA/IIB not handing over the site, if any, that was to be handed over by IRDA /IIB under this Agreement to IA for exercise of the latter's obligations under this Agreement, IA not being provided with requisite access to the IT systems of the other departments/ agencies that need to be integrated with FAS system as required by this Agreement , or IRDA/IIB not providing the certification of the Project Implementation Completion i.e. declaration of "Go-Live" without any valid reason, then IRDA/IIB will be held responsible for the Breach. Unless provided otherwise in this Agreement, in the event of such a Breach IA may give one month's notice to IRDA/IIB for curing the Breach. In the event the Breach continues, the Implementation agency will have the option to terminate the Agreement subject to provisions of the 2.4.17 (Termination clause) and 2.4.21 (Effects of termination clause) and the Exit management Schedule (Schedule II) of this Agreement.

2.4.13. Liquidated damages for delay in completion:

If the IA fails to deliver and successfully implement the proposed solution within the stipulated time schedule framed by IRDA or by the date extended by IRDA, it will be considered as breach of contract. In such case, the IA shall be liable to pay liquidated damages (LD), which would be mutually agreed at the time of signing of the contract. However, no such Liquidated Damages shall be levied where the delay is attributable to IRDA or due to Force Majeure.

2.4.14. Liability of IA:

In case any defect or inadequacy appear in the services rendered by the IA prior to the date of final acceptance of the work by IRDA/IIB, the IA shall perform at his own initiatives and free of any cost to IRDA/IIB, all such services as shall be necessary to remedy the identified defect or inadequacy.

2.4.15. Change in Control for IA

Where a change of Control of the IA has occurred whereby the IA has merged into, amalgamated with or been taken over by another entity, due to which the majority shareholding of the IA has been transferred to another entity, the Project Director, IRDA/IIB can by a sixty days written notice, terminate this Agreement and such notice shall become effective at the end of the notice period.

2.4.16. Change Orders:

The IRDA/IIB may at any time, by written order given to the Bidder make changes within the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, the Bidder's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended. Any claims by the Bidder for adjustment under this clause must be asserted within 15 days from the date of the Bidder's receipt of the IRDA/IIB's change order.

2.4.17. Termination:

In case the successful bidder fails to fulfill the contractual obligation within stipulated time frame without any valid reason, IRDA/IIB reserves the right to terminate the contract by giving 30 days notice provided the failure is not cured within such 30 days notice period. Upon receipt of such notice, the IA will terminate all tasks in an orderly manner, as soon as practical or in accordance with a schedule agreed to by the parties. In the event of termination, the IA shall surrender all the information, documents, material gathered during the course of the work to the Authority.

- 2.4.17.1. In the event there is any material breach of any of the terms and conditions of this Agreement by any party to this Agreement the other Party may terminate this Agreement provided that the party shall serve a non-compliance one month notice to the defaulting party to rectify the breach or restore the same within the said notice period. After the expiry of said notice period the Agreement shall come to end if the material breach is not rectified or restored by the defaulting party within the said notice period and thereafter IRDA/IIB shall pay to Bidder all payments due as of the termination date stated in the notice on pro rata basis including those for the proportion of work completed in the on-going stage and to the extent the deliverables supplied and the services rendered upto the date of termination.
- 2.4.17.2. Either Party shall be entitled to terminate this Agreement forthwith in the event of the other Party: going into compulsory or voluntary liquidation or winding up; or assigning its property and/or assets for the benefit of its creditors materially affecting its abilities to perform this Agreement.
- 2.4.17.3. By giving a 3 months' notice in writing to the other upon situations arising due to non-compliance of the stipulations of this contract or for any other reason.
- 2.4.17.4. Any termination of this Agreement howsoever caused, shall not affect any accrued rights or liabilities of either party nor shall it effect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. Upon the termination of the Agreement:
 - IA shall hand-over of all the necessary documents and other materials obtained by it in relation to the managed services during the term of this Agreement.

- IA shall ensure that the hosting arrangements, if any are transferred (with no cost to IRDA) smoothly to the service provider identified by IRDA/IIB

2.4.18. Termination for Insolvency:

The IRDA/IIB may at any time terminate the Contract by giving written notice to the Bidder, if the Bidder becomes bankrupt or otherwise adjudged insolvent. In this event termination will be without compensation to the Bidder, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the IRDA/IIB.

2.4.19. Termination for Convenience:

The IRDA/IIB, by written notice sent to the Bidder may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the IRDA/IIB's convenience, the extent to which performance of the Bidder under the Contract is terminated, and the date upon which such termination becomes effective.

The systems that are complete and ready for shipment within 30 days after the Bidder's receipt of notice of termination shall be accepted by the Purchase at the Contract terms and prices. For the remaining systems, the IRDA/IIB may elect to have any portion completed and delivered at the Contract terms and prices; and/or to cancel the remainder and pay to the Bidder an agreed amount for partially completed systems and for materials and parts previously procured by the Bidder.

2.4.20. Termination owing to reasons attributable to IA

2.4.20.1 The Project Director, IRDA may serve written notice on Implementation agency at any time to terminate this Agreement with immediate effect in the event of a reasonable apprehension of bankruptcy of the Implementation agency:

- Implementation agency shall in the event of an apprehension of bankruptcy immediately inform the Project Director, IRDA well in advance (at least 3 months or as soon as its governing body comes to know of it) about such a development;
- Conversely if the Project Director, IRDA apprehends a similar event regarding the Implementation agency, he/ she can exercise the right of termination in the manner stated hereinabove

2.4.20.2 On termination of this Agreement for any reason, the SLA shall automatically terminate forthwith and the Project Director, IRDA will decide the appropriate course of action.

- 2.4.20.3 The termination provisions set out in this Agreement shall apply to the SLA and for this purpose “this Agreement” shall be deemed to include reference to the SLA.

2.4.21. Effects of Termination

- 2.4.21.1 In the event that the IRDA/IIB or the Implementation agency terminates this Agreement as per the provisions stated in this agreement or the RFP and depending on the event of default, compensation will be decided in accordance with the Terms of Payment clause.
- 2.4.21.2 Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule (Schedule II) of this Agreement.

2.4.22. Switching over:

It is highly desirable that the offered solution is such that it should be easy for IRDA/IIB to switch over to another IA or solution in future either on termination or expiry of the contract, should it so decide. This involves adherence to open industry standards. In such a case, the IA should guarantee all support necessary to ensure smooth transition to a different solution/ IA. Any specific requirements of the IA in this respect should be clearly spelt out in the proposal. In addition, at the time of the switching over, the IA shall provide his full support in ensuring a smooth transition to the new IA/IRDA/IIB. The IA shall design and adhere to a comprehensive Knowledge transfer mechanism in the form of documentation, training and other support as may be required and to the utmost satisfaction of the IIB/IRDA. The ownership of all the hardware, software, networking and all equipment shall be with IRDA/IIB and IRDA/IIB reserves all rights over complete hardware, networking and software stack. The IA shall be responsible for adherence with the Exit Management Schedule drawn in this regard (Schedule II).

2.4.23. Technology Transfer

While the IA will strive to assist IRDA/IIB, through various interventions as mentioned elsewhere in the RFP, to enhance capability in terms of people, process and Technology to manage the application, the IA will work for transfer the Technology to IRDA/IIB, learnings and knowledge of the application and identified opportunity for improvement. A technology transfer plan shall be devised for this purpose and shared with IRDA/IIB. The IA needs to create knowledge assets and hand over to IRDA/IIB for reuse. Upon the completion of the period of contract or upon termination prior to the expiry of the period of contract, IA shall also transfer all the rights with respect to the technology, solution, hardware, networking and software completely and unconditionally to IRDA/IIB as per the technology transfer plan stated above. The IA shall do this along with a written inventory of all the assets and under a proper

acknowledgement of IRDA/IIB official. IRDA/IIB may direct the IA to facilitate the transfer to any other agency as defined in the switching over clause of the RFP.

2.4.24. Fraud by IA's personnel

IRDA/IIB reserves its right to initiate criminal action against the agents and employees of the IA for fraud or misappropriation in the project, besides levying stringent penalties on the IA. The management of the IA would also be made liable for action in case of aforesaid fraud or misappropriation, under the applicable laws, and IRDA/IIB may call for termination of the contract if IRDA/IIB deems it necessary to do so.

2.4.25. Applicable Law and Jurisdiction of Courts:

The Contract shall be interpreted in accordance with the laws of the Union of India and subject to the jurisdiction of Courts in India.

2.4.26. Risk and cost:

Without prejudice to any of its legal rights, IRDA/IIB shall have the power to recover the amount due to damage, from any money due or likely to become due to IA from any contractual value pending or liable to be pending at IRDA/IIB. The payment or deduction of such compensation shall not relieve the IA from its obligation to complete the work or from any of other obligations/ liabilities under the contract. In case of failure of bidder to complete the work, IRDA/IIB will have the right to order some other agency to complete the work after issuance of a notice in writing of minimum ten days by IRDA/IIB. The IA will be liable to bear the cost of work by the other agency to the extent of the value of the contract.

2.5. Protection and Limitations

2.5.1. Post go-live stabilization for the solution:

The IA shall provide post Go-Live stabilization support for a period of six months from the date of phase 2 'GO-LIVE', by deputing technical consultants at IRDA/IIB at no additional cost. It may be noted that the AMS and post go-live stabilization stated here are mutually exclusive and run in parallel. The post 'GO-LIVE' stabilization shall address issues/bugs/discrepancies pertaining to the delivered functionality that was assured/assumed to be working at the time of 'GO-LIVE'. The consultants with required competency shall provide quick solution to all related issues/ complaints. During the stabilization period, the IA shall help IRDA/IIB and all authorized users to troubleshoot transactions and reports, update user manuals and configuration manuals.

2.5.2. Change Management:

IRDA/IIB expects the IA to create and maintain effective communication and facilitate change thereby ensuring the successful adoption of the new system. The IA will provide communication strategy and relevant material to support communication as part of change management initiative. The IA needs to understand the functional and technical requirements before the SRS sign-off and design the application appropriately.

2.5.3. Change Controls:

The IA shall be required to deliver all ancillary and concomitant services required as per the requirements stated in the part1 of the RFP at a cost that is quoted in the Commercial bid. Any other requirement shall be addressed in the form of change controls.

- All Change controls shall be executed by the IA at no cost to IRDA/IIB until one year from the date of the phase 2 “GO–LIVE”.
- Changes warranted due to inflexibility in design shall be carried out by the IA without any additional cost to IRDA/IIB.
- Changes to the envisioned system may take place due to changes in regulations and circulars issued by IRDA. Thus, IA should consider the activities in light of those changes. Thus, any change as agreed between the Parties to be within the scope of services need to be provided by the IA and before project ‘phase-2 Go-Live’ shall not entitle the IA to ask for any additional amount to be paid by the IRDA. Further, the payment for the changes brought in after one year from project certification and ‘phase 2 Go Live’ date will be calculated on the basis of man-month rate quoted by the Implementation agency in its commercial proposal submitted by the IA in response to the RFP and estimated man-month effort to be submitted by the Implementation agency prior to taking up the change of control event and accepted by the Project Director, IRDA. Further, IRDA has the right to levy penalty of 2.0.lakh per week of delay

Any further Change controls that are of a less than 10 man-day effort shall be as part of the AMS and those beyond shall be as per the cost estimate as per Annexure 8 and as per the procedure laid out in Change Control Schedule (Schedule 1).

2.5.4. Annual maintenance support (AMS):

The IA shall provide, support and maintenance of the entire solution designed, developed, implemented and operationalized as part of this project for the contract period (from the date of phase 2 GO-LIVE). This shall include maintenance of the application and all other standard third party software wherever applicable as a solution for the contract period. The periodicity of the AMS charges payment shall be quarterly.

- 2.5.4.1. The AMS shall be provided by trained and experienced personnel of the bidding parties. The service level for IRDA/IIB's problem resolution shall be defined by the response time and time taken for successful resolution.
- 2.5.4.2. Apart from the above, the IA will also be required to generate ad-hoc/on-demand report/query, data on system configuration, upgrades and performance in general, as and when required by IRDA/IIB within a period of 24 hours from the time of receipt of the request from IRDA or released by an OEM.
- 2.5.4.3. Non-adherence of these service levels shall amount to a breach of contract, which may initiate the appropriate liquidating damage.
- 2.5.4.4. Any change in report /formats /portal software which requires an estimated effort of not more than 10 man days during the maintenance period, shall be executed by the IA without any charge to IRDA/IIB. Effort estimation more than 10 man-days during the maintenance shall attract the change control cost and IRDA/IIB shall pay to IA for the change order as per the charges accepted for change control.

2.5.5. Force Majeure:

- 2.5.5.1. Neither IRDA/IIB nor the IA shall be liable to the other for any loss or damage which may be suffered by the other due directly to the extent and for the duration of Force Majeure events such as but not limited to acts of God not confined to the premises of the Party claiming Force Majeure, flood, drought, lightning or fire, earthquakes, strike, lock-outs beyond its control, labour disturbance not caused at the instance of the Party claiming Force Majeure, acts of government or other competent authority, war, terrorist activities, military operations, riots, epidemics, civil commotions etc. No failure, delay or other default of any contractor to either Party shall entitle such Party to claim Force Majeure under this Article.
- 2.5.5.2. The Party seeking to claim Force Majeure shall promptly, within two days of the event being noticed by the Party, notify the other Party of the occurrence of a Force Majeure event as a condition precedent to the availability of this defense with particulars detailed in writing to the other Party and shall demonstrate that it has taken and is taking all reasonable measures to mitigate the events of Force Majeure.
- 2.5.5.3. In the event the Force Majeure substantially prevents, hinders or delays the Bidder's performance of Services necessary for project's implementation or the operation of project's critical business functions for a period in excess of 5 days, IRDA/IIB may declare that an emergency exists. When the situation arising out of Force Majeure comes to an end in the assessment of Project Director, IRDA, the following conditions shall apply:
- 2.5.5.4. **Prior to commencement of operations:** If the event of Force Majeure had occurred prior to commencement of operations i.e. prior to "Go-Live", then upon its coming to an end the

Bidder shall resume normal activities under this agreement immediately. IRDA/IIB, if it considers necessary, may grant an extension of time to the Bidder for resuming normal activities under this agreement. If the Bidder does not resume normal activities immediately or within the extended period, if any, granted, IRDA/IIB will have the option to levy penalties of Rupees One lakh per day of delay, invoke the Performance Guarantee, obtain substitute performance from an alternate agency at the cost of Bidder and/or terminate this Agreement.

- 2.5.5.5. **Post commencement of operations:** If Force Majeure had occurred post commencement of operations i.e. post “Go-Live”, then upon its coming to an end, the Bidder shall resume normal services under this agreement immediately. IRDA/IIB, if it considers necessary, may grant an extension of time to the Bidder for resuming normal services under this agreement. However, IRDA/IIB will deduct for each day of the extension period 1% of the EQI payable to the IA from the next actual amount payable to the IA. If normal services are not resumed immediately or within the extended time, IRDA/IIB will have the option to invoke the Performance Guarantee and/or terminate the Agreement.

All payments pursuant to termination due to Force Majeure event shall be in accordance with the Payment terms clause of this agreement. Notwithstanding the terms of this Article, the failure on the part of the Bidder under the SLA or terms under the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of the SLA or this Agreement against natural disaster, fire, sabotage or other similar occurrence shall not be an event of Force Majeure.

2.5.6. Indemnity:

The Bidder shall indemnify the IRDA against all third-party claims of infringement of patent, trademark, copy right or industrial design rights arising from use of the Solution or any part thereof in India. In the event of any claim asserted by a third party of infringement of copy right, patent, trademark or industrial design rights arising from the use of the systems or any parts thereof in the IRDA's country, the Bidder shall act expeditiously to extinguish such claim. If the Bidder fails to comply and the IRDA/IIB is required to pay compensation to a third party resulting from such infringement, the Bidder shall be responsible for the compensation including all expenses (court costs and lawyer fees). The IRDA/IIB will give notice to the Bidder of such claim, if it is made without delay as when received.

2.5.7. Third Party Claims

- 2.5.7.1. Subject to Clause 2.5.7.2 of this Article, IA (the "Indemnifying Party") undertakes to indemnify the IRDA/IIB (the "Indemnified Party") from and against all losses, claims or

damages on account of bodily injury, death or damage to tangible personal property arising in favor of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's performance or nonperformance under this Agreement.

2.5.7.2. The indemnities set out in Clause 2.5.7.1 of this Article shall be subject to the following conditions:

- 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 to the Indemnifying Party;
- the Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnifying Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such defense;
- if the Indemnifying Party does not assume full control over the defense of a claim as provided in this Article, the Indemnified Party may participate in such defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in Losses as provided in Clause 2.5.7.1 of this Article;
- 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;
- all settlements of claims subject to indemnification under this Article will: (a) be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant for all liability in respect of such claim; and (b) include an appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement;
- the Indemnifying Party shall account to the Indemnified Party for all awards settlements, damages and costs (if any) finally awarded in favor of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
- the Indemnified Party shall take legally permissible steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings; and
- in the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this Article, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates;

2.5.8. Limitation of Liability

- 2.5.8.1. Notwithstanding what has been stated elsewhere in this Agreement, there shall be no limitation of liability in case of any damages for bodily injury, death or damage to tangible personal property and willful fraud.
- 2.5.8.2. In all other cases not covered by Clause 2.5.8.1 above, the total financial liability of the IA shall be limited to the total value of the contract i.e. the Total Solution Cost (TC) quoted by the IA in its commercial proposal to IRDA in response to the RFP.
- 2.5.8.3. Neither this Agreement grants or creates any rights, benefits, claims, obligations or causes of action in, to or on behalf of any person or entity (including any third party) other than between the respective Parties to this Agreement as the case may be.
- 2.5.8.4. Any claim or series of claims arising out or in connection with this Agreement shall be time barred and invalid if legal proceedings are not commenced by the relevant Party against the other Party within such period as may be permitted by applicable law without the possibility of contractual waiver or limitation.
- 2.5.8.5. The Project Director, IRDA/IIB shall be entitled to claim the remedy of specific performance under this Agreement.

2.5.9. Data Protection

- 2.5.9.1. IRDA/IIB will be the absolute owner of all project related data. In the course of providing the Services the Bidder may be compiling, processing and storing proprietary project data relating to the users.
- 2.5.9.2. The IA and each user are responsible for complying with its respective obligations under the applicable data protection laws and regulations governing the project data and its privacy.
- 2.5.9.3. As a processor of project data, the IA will process project data in accordance with the terms of this Agreement ensuring compliance to all the applicable laws.
- 2.5.9.4. The IA shall not transfer any project data unless otherwise authorized by the IRDA/IIB in this regard.
- 2.5.9.5. Upon reasonable written request from a Party to the Agreement, the other Party will provide the requesting Party with such information that it has regarding the project data and its processing which is necessary to enable the requesting party to comply with its obligations under the applicable data protection law or regulation.

2.5.10. Security Policy:

The IA shall have and share its IT security policy for the project and shall ensure to take all steps for security of the data of the process. The data created will be the exclusive property of IRDA/IIB and IA shall not be authorized to utilize/share with any third party/sell the same to any third party except to the extent necessary for the performance of its obligations under the Agreement through appropriate approval from IRDA/IIB. The IA shall have to enter into a non-disclosure agreement. Also, the IA has to comply with the IRDA/IIB's IT security policy.

2.5.11. Confidentiality of Information

- 2.5.11.1. The IRDA/IIB may permit the IA to come into possession of confidential public records as per the needs of the project and the IA shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- 2.5.11.2. Additionally, the IA shall keep confidential all the details and information with regard to the project, including systems, facilities, operations, management and maintenance of the systems/ facilities.
- 2.5.11.3. The IA shall be prohibited from using the insurance-related data in whatever manner, for purposes other than handling transactions through the FAS system. Bidder/IA shall undertake, on behalf of its agents and employees, that no insurance related data shall be copied in any manner (paper, electronic, or human memory) and transferred to any entity (human or machine) other than that being through the FAS system for delivering job responsibilities defined for each individual.
- 2.5.11.4. The IRDA/IIB shall retain all rights to prevent, stop and if required take the necessary punitive action against the IA regarding any forbidden disclosure.
- 2.5.11.5. The IA shall ensure that all its employees, agents and others execute individual non-disclosure agreements, which have been duly approved by the IRDA/IIB, with respect to this project.
- 2.5.11.6. The aforesaid provisions shall not apply to the information:
 - already in the public domain; and
 - disclosed to the public due to a court order or under the Right to Information Act; and
 - information required to be furnished to the Parliament and/or its Committees

2.5.12. Audit, Access and Reporting

IRDA/IIB may conduct scheduled/un-scheduled audits at their own discretion if it is reasonably believed that such audits are necessary as a result of an act of fraud by the IA, a security violation, or breach of confidentiality obligations by the IA, provided that the requirement for such an audit is notified in writing to the IA with a reasonable period of 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.

The IA shall, on such a request, allow access to the IRDA/IIB and its nominees to all information which is in the possession or control of the IA, which relates to the provisions of the MSA. In addition, audits may be conducted by statutory bodies like CAG to which the IA shall provide complete access and support. Please also refer to Schedule III.

2.6. Intellectual property

2.6.1. Intellectual Property Rights:

The IA shall after due inspection and testing get the solution redesigned for the IRDA registered with the Registrar of Trademarks, copy right and patent registry (as may be applicable) in India as a trademark/copyright, industrial design, for the use of the IRDA at no extra cost.

- 2.6.1.1. All Intellectual Property and Materials including the design, tools and coding prepared and developed by the IA whether or not used by IRDA/IIB, shall be the sole and exclusive property of IRDA/IIB.
- 2.6.1.2. Bidder shall promptly deliver to IRDA/IIB all Materials related to the Intellectual Property including any Materials, inputs etc. provided by IRDA/IIB.
- 2.6.1.3. Bidder shall undertake to:
 - Disclose to IRDA/IIB all Intellectual Property which is prepared, conceived or developed by them pursuant to any agreement;
 - Assign all their right, title and interest, in and to the Intellectual Property and the Materials to IRDA/IIB, waive their moral rights in such Intellectual Property and Materials;

- Do all things and execute all documents reasonably required to vest in IRDA/IIB the right, title and interest referred elsewhere in this clause to IRDA/IIB at its own expense.

For the purpose of additional clarity, it may be noted that all pre-packaged applications shall go the license route and customization part shall be the propriety of IRDA/IIB.

2.6.2. Assignment

All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of IRDA/IIB and Bidder and any assignment or transfer of this Agreement or any rights hereunder by either Party shall be strictly prohibited.

2.6.3. Trademarks, Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party. Except as required by law or the rules and regulations of each stock exchange upon which the securities of one of the Parties is listed, neither Party shall publish or permit to be published either alone 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 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.

2.7. Miscellaneous

2.7.1. Personnel

- 2.7.1.1. Personnel assigned by Implementation agency to perform the Services shall be employees of Implementation agency, and under no circumstances will such personnel be considered employees of IRDA/IIB. Implementation agency shall have the sole responsibility for supervision and control of its personnel and for payment of such personnel's entire 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 employer obligations under all applicable laws.
- 2.7.1.2. Implementation agency shall use its best efforts to ensure that sufficient Implementation agency personnel are employed to perform the Services, and also that such personnel have appropriate qualifications and experience to perform the Services. The IRDA/IIB shall have the right to require the removal or replacement of any Implementation agency personnel performing work under this Agreement. In the event

that the Project Director, IRDA/IIB requests that any Implementation agency personnel be removed or replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule but not later than 3 working days.

- 2.7.1.3. The Implementation agency shall also be responsible to train certain employees of IRDA /IIB with regard to the Services being provided by the Implementation agency as and when required by IRDA/IIB during the Term of this project. The parameters of the training required for these employees of IRDA/IIB shall be communicated by the Project Director, IRDA/IIB to the Implementation agency periodically and shall be in accordance with the latest procedures and processes available in the relevant areas of work.
- 2.7.1.4. In the event the IRDA/IIB identifies any personnel of Implementation agency as "Key Personnel", then the Implementation agency shall not remove such personnel without the prior written consent of the Project Director, IRDA/IIB under the applicable terms of this Agreement.
- 2.7.1.5. Except as stated in this Article, nothing in this Agreement will limit the ability of Implementation agency freely to assign or reassign its employees; provided that Implementation agency shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. The Project Director, IRDA/IIB shall have the right to review and approve Implementation agency's plan for any such knowledge transfer. Implementation agency shall maintain the same standards for skills and professionalism among replacement personnel as in personnel being replaced.
- 2.7.1.6. Each Party shall be responsible for the performance of all its obligations under this Agreement and shall be liable for the acts and omissions of its employees and agents in connection therewith.

2.7.2. Sub-contracting:

The IA shall not engage into any sub-contracting for any part of the hardware/software design/solution/infrastructure including DC and DR arrangements /implementation process.

2.7.3. Responsibility In Case Of Consortium

- 2.7.3.1. The sole responsibility under the contract will be that of the prime bidder
- 2.7.3.2. Prime bidder's business relationships with the consortium partners will be his responsibility solely and
- 2.7.3.3. Any conflict or disagreement within the consortium, at any point of time during the currency of the project, shall be resolved by Prime bidder in such a way that the project work is not

affected in any manner with respect to any deliverable, milestone, operations, and SLA as per the provisions of the contract. Any such conflict or disagreement shall not be invoked by the Prime Bidder to justify non- fulfillment of any of the obligations under this contract.

- 2.7.3.4. Notwithstanding anything contained in this agreement, all the members of the Consortium, entrusted with the responsibilities of the project, shall be jointly and severally responsible to IRDA/IIB in respect of meeting the financial liabilities of the IA arising out of the Project.

2.7.4. Disclaimer:

Subject to any law to the contrary, and to the maximum extent permitted by law, IRDA and its Directors, officers, employees, contractors, agents, and advisers disclaim all liability from any loss or damage suffered by any person acting or refraining from acting because of any information including forecasts, statements, estimates, or projections contained in this RFP document or conduct ancillary to it whether or not the loss or damage arises in connection with any negligence, omission, default, lack of care or misrepresentation on the part of IRDA/IIB or any of its officers, employees, contractors, agents, or advisers.

2.7.5. Schedule 1 : Change Control Schedule

2.7.5.1 Purpose

This Schedule applies to and describes the procedure to be followed in the event of any proposed change to the MSA, Project Implementation, Operation and Maintenance including the SLA. Such change shall include, but shall not be limited to, changes in the scope of services provided by the bidder.

The IRDA/IIB and the bidder recognize that change is an inevitable part of delivering services asked of the bidder 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 bidder will endeavor, wherever reasonably practicable, to effect change without an increase in the amount payable to the bidder and the Project Director, IRDA/IIB will work with the bidder to ensure that all changes are discussed and managed in a constructive manner.

2.7.5.2 Change Control Note ("CCN")

- a. Change requests in respect of the MSA, the Project Implementation, the Operation and Maintenance or the SLA will emanate from the Parties' respective Project Director who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN given below. CCNs will be presented to the other Party's Project Director who will acknowledge receipt by signature of the CCN.
- b. The bidder and the IRDA/IIB while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required and as detailed in Sections 2 through 7 of part 1 of the RFP and is suggested and applicable only after the testing, commissioning and certification of the FAS project implementation as set out in this Agreement.
- c. It is hereby also clarified that any change as agreed between the Parties to be within the scope of services defined above to be provided by the bidder and before project „'Go-Live' shall not entitle the bidder to ask for any additional amount to be paid by the IRDA. Further, the payment for the changes brought in after project certification and „Go Live date will be calculated on the basis of man-month rate quoted by the bidder in its commercial proposal submitted by the bidder in response to the RFP and estimated man-month effort to be submitted by the bidder prior to taking up the change of control event and accepted by the Project Director, IRDA.

2.7.5.3 Quotation

- a. The bidder shall assess the CCN and complete Part B of the CCN. In completing Part B of the CCN the Implementation agency shall provide as a minimum:
- i. a description of the change;
 - ii. a list of deliverables required for implementing the change;
 - iii. a timetable for implementation;
 - iv. an estimate of the proposed change effort;
 - v. any relevant acceptance criteria;
 - vi. an assessment of the value of the proposed change;
 - vii. Material evidence to prove that the proposed change is not already covered within the scope of the project, MSA.
- b. Prior to submission of the completed CCN to the IRDA/IIB, or its nominated agencies, the bidder will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the bidder shall consider the materiality of the proposed change in the context of the MSA, the Project Implementation, the Operation and Maintenance affected by the change and the total effect that may arise from implementation of the change.

Part 2 :: Terms and Conditions of RFP (TCRFP)

c. Materiality criteria will be established by the Project Director, IRDA and the bidder's Project Director. Changes requiring no escalation of authority can be implemented.

2.7.5.4 Costs

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

2.7.5.5 Reporting

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

2.7.5.6 Obligations

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

2.7.5.7 Change Control Notice

Change Control Note	CCN Number:
Part A: Initiation	
Title:	
Originator:	
Sponsor:	
Date of Initiation:	
Details of Proposed Change	
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)	

Part 2 :: Terms and Conditions of RFP (TCRFP)

Authorized by IRDA:	Date:
Name:	
Signature:	
Received by the Implementation agency	Date:
Name:	
Signature:	
Change Control Note	CCN Number:
Part B: Evaluation	
(Identify any attachments as B1, B2, and B3 etc.) Changes to Services, charging structure, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue.	
Brief Description of Solution:	
Impact:	
Deliverables:	
Timetable:	
Charges for Implementation: (including a schedule of payments)	
Other Relevant Information: (including value-added and acceptance criteria)	
Authorized by the Implementation agency	Date:
Name:	

Part 2 :: Terms and Conditions of RFP (TCRFP)

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

2.7.6. Schedule 2: Exit Management

2.7.6.1 Purpose

- This Schedule sets out the provisions, which will apply on expiry or termination of the MSA
- In the case of termination of the MSA due to illegality, the Parties shall agree at that time whether, and if so during what period, the provisions of this Schedule shall apply.
- The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Schedule.

2.7.6.2 Transfer of Assets

- a. The Project Director, IRDA/IIB shall be entitled to serve notice in writing to the bidder at any time during the exit management period as detailed hereinabove requiring the bidder and/or its sub contractors to provide the Project Director, IRDA/IIB with a complete and up to date list of the Assets within 30 days of such notice. The Project Director, IRDA/IIB shall then be entitled to serve notice in writing on the bidder at any time prior to the date that is 30 days prior to the end of the exit management period requiring the Bidder to sell to the IRDA/IIB any of the Assets of the project not already owned by the IRDA/IIB and to be transferred to the IRDA/IIB under this agreement at book value as determined as of the date of such notice in accordance with the provisions of relevant laws net of payments already made by the IRDA/IIB to the bidder for those assets.
- b. In case of contract being terminated by IRDA/IIB or by bidder, IRDA/IIB reserves the right to ask bidder to continue running the project operation for a period of 6 months after termination notice is issued.
- c. Upon service of a notice under this Article the following provisions shall apply:
 - i. in the event, if the Assets to be transferred are mortgaged to any financial institutions by the bidder, the bidder 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 Project Director, IRDA/IIB
 - ii. All risk in and title to the Assets to be transferred to the IRDA/IIB pursuant to this Article shall be transferred to the IRDA/IIB on the last day of the exit management period.
 - iii. The Project Director, IRDA/IIB shall pay to the Bidder on the last day of the exit management period such sum representing the Net Block i.e. procurement price quoted by the bidder in its commercial proposal less depreciation as per provisions of relevant laws, of the Assets to be transferred as stated in the Payment terms Schedule.
 - iv. Payment to the outgoing bidder shall be made to the tune of last set of completed transactions, subject to SLA terms and requirements and for any Capex component that has been accepted by IRDA/IIB but is pending for payment.
 - v. The outgoing bidder will pass on to the IRDA/IIB or to the Replacement agency if the IRDA/IIB requires so, the subsisting rights in any leased properties/ licensed products on terms not less favorable to IRDA/IIB or Replacement agency, than that enjoyed by the

outgoing bidder.

2.7.6.3 Cooperation and Provision of Information

During the exit management period:

- a. the bidder will allow the IRDA/IIB access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the IRDA/IIB to assess the existing services being delivered;
- b. promptly on reasonable request by the IRDA/IIB, the Bidder shall provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with the MSA, the Project Implementation, the Operation and Maintenance and the SLA relating to any material aspect of the services whether provided by the bidder or sub contractors appointed by the bidder. The IRDA/IIB shall be entitled to copy all such information. Such information shall include details pertaining to the services rendered and other performance data. The bidder shall permit the IRDA and/or any Replacement agency to have reasonable access to its employees and facilities as reasonably required by the IRDA/IIB to understand the methods of delivery of the services employed by the Implementation agency and to assist appropriate knowledge transfer.

2.7.6.4 Confidential Information, Security and Data

- a. The Bidder will promptly on the commencement of the exit management period supply to the Project Director, IRDA the following:
 - i. information relating to the current services rendered and customer satisfaction surveys and performance data in relation to the various services;
 - ii. documentation relating to Project's Intellectual Property Rights;
 - iii. project data and confidential information;
 - iv. all current and updated project data as is reasonably required for purposes of transitioning the services to its Replacement agency in a readily available format specified by the IRDA/IIB;
 - vi. all other information including but not limited to documents, records and agreements relating to the services reasonably necessary to enable IRDA or its nominated agencies, or its Replacement agency to carry out due diligence in order to transition the provision of the Services to IRDA or its nominated agencies or its Replacement agency as the case may be.
- b. Before the expiry of the exit management period, the Bidder shall deliver to the Project

Director, IRDA/IIB all new or up-dated materials from the categories set out in Article above and shall not retain any copies thereof.

- c. Before the expiry of the exit management period, unless otherwise provided under the MSA, the IRDA/IIB shall deliver to the Bidder all forms of Bidder Confidential Information, which is in the possession or control of IRDA/IIB or its users.

2.7.6.5 Employees

- a. Promptly on reasonable request at any time during the exit management period, the bidder shall, subject to applicable laws, restraints and regulations including in particular those relating to privacy provide to the IRDA/IIB a list of all employees with job titles of the bidder dedicated to providing the services at the commencement of the exit management period;
- b. To the extent that any Transfer Regulation does not apply to any employee of the bidder, IRDA/IIB or its Replacement agency may make an offer of employment or contract for services to such employee of the bidder and the bidder shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the IRDA/IIB or Replacement agency.

2.7.6.6 Transfer of Certain Agreements

On request by the IRDA/IIB the bidder shall effect such assignments, transfers, licenses and sub-licenses as the Project Director, IRDA/IIB may require in favor of the IRDA/IIB or its Replacement agency in relation to any equipment, lease, maintenance or service provision agreement between Bidder and third party lessors and vendors, and which are related to the services and reasonably necessary for the carrying out of services by the IRDA/IIB or its Replacement agency.

2.7.6.7 Rights of Access to Premises

- a. At any time during the exit management period, where Assets are located at the bidder's premises, the bidder will be obliged to give reasonable rights of access to, or in the case of Assets located at a third party's premises, procure reasonable rights of access to the IRDA/IIB and/or any Replacement agency in order to make an inventory of the Assets.
- b. The Bidder shall also give the IRDA or its nominated agencies or Replacement agency right of reasonable access to the Bidder's premises and shall procure the IRDA/IIB or its nominated agencies or Replacement agency's rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to

the IRDA/IIB or its nominated agencies or Replacement agency.

2.7.6.8 General Obligations of the Implementation Agency

- a. The Bidder shall provide all such information as may reasonably be necessary to affect as seamless a handover as practicable in the circumstances to the IRDA/IIB or its nominated agencies or its Replacement agency and which the bidder has in its possession or control at any time during the exit management period.
- b. For the purposes of this Schedule, anything in the possession or control of Bidder, its associated entity, or sub contractor shall be deemed to be in the possession or control of the Bidder.
- c. The Bidder shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

2.7.6.9 Exit Management Plan

- a. An Exit Management plan shall be furnished by Bidder in writing to the IRDA/IIB or its nominated agencies within 90 days from the Effective Date of this Agreement, which shall deal with at least the following aspects of exit management in relation to the MSA and the SLA.
 - i. A detailed program of the transfer process that could be used in conjunction with a Replacement Bidder including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
 - ii. plans for the communication with such of the Bidder's sub contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on project's operations as a result of undertaking the transfer;
 - iii. (if applicable) proposed arrangements for the segregation of the Bidder's networks from the networks employed by project and identification of specific security tasks necessary for an effective termination;
 - iv. Plans for provision of contingent support to IRDA/IIB and its Replacement agency for a reasonable period after transfer.
- b. The Bidder/IA shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- c. Each Exit Management Plan shall be presented by the Bidder to and approved by the IRDA/IIB or its

nominated agencies.

- d. The payment terms are deemed to include the costs of the Bidder complying with its obligations under this Schedule.
- e. In the event of termination or expiry of the MSA, each Party shall comply with the Exit Management Plan.
- f. During the exit management period, the Bidder shall use its best efforts to deliver the services as before the onset of exit management period.
- g. Payments during the Exit Management period shall be made in accordance with the Payment terms Schedule.

2.7.7. Schedule 3: Audit, Access and Reporting Schedule

2.7.7.1 Purpose

This Schedule details the audit, access and reporting rights and obligations of the IRDA and the Implementation agency under the MSA.

2.7.7.2 Audit Notice and Timing

- a. As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavors to agree to a timetable for routine audits during the Project Implementation Phase and the Operation and Maintenance Phase. During the Implementation Phase, and thereafter during the Operations and Maintenance Phase, the IRDA/IIB or its nominated agency shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Implementation agency any further notice of carrying out such audits.
- b. The Project Director, IRDA/IIB may conduct non-timetabled audits at his/ her own discretion if he/ she reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Implementation agency, a security violation, or breach of confidentiality obligations by the Implementation agency, provided that the requirement for such an audit is notified in writing to the Implementation agency a reasonable period of 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 Implementation

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 (Schedule IV) of this Agreement.

c. The frequency of routine audits shall be 6 monthly or as agreed between the Parties. The Project Director, IRDA/IIB shall endeavor to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Implementation agency.

d. In addition to the above, there will be audits conducted by statutory bodies (e.g. CAG) as and when they are required to do it. Notwithstanding any condition given in the MSA, Implementation agency will have to provide these statutory bodies access to all the facilities, infrastructure, documents and artifacts of the Project as required by them and approved by the Project Director, IRDA/IIB, in writing.

2.7.7.3 Access

The Implementation agency shall provide to the Project Director, IRDA/IIB or his/her appointed nominees / nominated agencies, reasonable access to employees, suppliers, agents and third party facilities, 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 auditors appointed by the Project Director, IRDA/IIB shall have the right to copy and retain copies of any relevant records. The Implementation agency shall make every reasonable effort to co-operate with the auditors.

2.7.7.4 Audit Rights

a. The Project Director, IRDA/IIB shall have the right to audit and inspect suppliers, agents and third party facilities, 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:

i. The security, integrity and availability of all project data processed, held or conveyed by the Implementation agency on behalf of IRDA and documentation related thereto;

ii. That the actual level of performance of the services is the same as specified in the SLA;

iii. That the Implementation agency has complied with the relevant technical standards, and has adequate internal controls in place; and

iv. The compliance of the Implementation agency with any other obligation under the MSA and/or the SLA.

b. For the avoidance of doubt the audit rights under this Schedule shall not include access to the Implementation agency's profit margins or overheads associated with any obligation under the MSA.

2.7.7.5 Audit Rights of Suppliers and Agents

- a. The Implementation agency shall use reasonable endeavors to achieve the same audit and access provisions as defined in this Schedule with suppliers and agents who supply labor, services, equipment or materials in respect of the services. The Implementation agency shall inform the Project Director, IRDA/IIB prior to concluding any supply agreement of any failure to achieve the same rights of audit or access.
- b. **REPORTING:** The Implementation agency will provide quarterly reports to the Project Director, IRDA/IIB regarding any specific aspects of the project and in context of the audit and access information as required by the Project Director, IRDA/IIB.

2.7.7.6 Action and Review

- a. Any change or amendment to the systems and procedures of the Implementation agency arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.
- b. Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the Project Director, IRDA/IIB and the Implementation agency Project Director who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the MSA.

2.7.7.7 Terms of Payment f or Cost of Audit

The IRDA/IIB and the Implementation agency shall bear their own costs of any audits and inspections. The terms of payment clause are inclusive of any costs of the Implementation agency providing all reasonable assistance and information to the IRDA pursuant to this Schedule.

2.7.7.8 Records and Information

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

2.7.8. Schedule 4: Governance Schedule

2.7.8.1 Purpose

The purpose of this Schedule is to (i) establish and maintain the formal and informal processes for managing the relationship between the IRDA/IIB and the Implementation agency including the outputs from other Schedules to this Agreement; (ii) define the principles that both Parties wish to follow to ensure the delivery of the Services; (iii) ensure the continued alignment of the interests of the Parties; (iv) ensure that the relationship is maintained at the correct level within each Party; (v) create the flexibility to revise and maintain the relationship and this Agreement during the Term; (vi) set out the procedure for escalating disagreements; and (vii) enable contract administration and performance management.

2.7.8.2 Governance Structure

a. The Program Governance Structure to be put in place by IRDA/IIB will have the following units:

i. Steering Committee

ii. Program Management Unit

b. **Project Directors:** The relationship under this Agreement will be operated by the Project Directors appointed by each Party, who will provide the interface between the executive management of the respective Parties.

c. Before the signing of this agreement, the IRDA and the Implementation agency shall each appoint a Project Director. In the event that either Party wishes to substitute its Project Director it will notify the other Party of such substitution as soon as reasonably practicable but at the latest within seven days of the substitution.

d. The Project Directors shall have responsibility for maintaining the interface and communication between the Parties.

e. **Steering Committee:** IRDA will appoint a Steering Committee before the signing of this agreement.

f. The Steering Committee will meet formally on, at least, a monthly basis at a time and location to be agreed within the Committee. These meetings will cover, as a minimum, the following agenda items: (i) consideration of monthly Performance Reports; (ii) consideration of matters arising out of the Change Control Schedule; (iii) issues escalated in accordance with the escalation procedure as set out in this Schedule; (iv) matters to be brought before the Steering Committee in accordance with the MSA and the Schedules; (v) any matter brought before the Steering Committee by the Implementation agency under this Article; and (vi) any other issue which either Party wishes to add to the agenda.

g. In the event that there is any material factor which affects the delivery of the Services or the terms of payment as stated in the Terms of Payment, the Parties agree to discuss in the Steering Committee

meeting any appropriate amendment in the MSA or the SLA or Scope of work 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.

2.7.8.3 Governance Procedures

- a. The Implementation agency shall document the agreed structures in a procedures manual.
- b. The agenda for each meeting of the Steering Committee 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 Steering Committee, along with relevant pre-reading material, shall be distributed at least one week in advance of the relevant meeting.
- c. All meetings and proceedings will be documented; such documents to be distributed to both Parties and copies shall be kept as a record. All actions, responsibilities and accountabilities arising out of any meeting shall be tracked and managed.

The Parties shall ensure as far as reasonably practicable that the Steering Committee shall resolve the issues and resolve the objectives placed before them and that members representing each Party are empowered to make relevant decisions or have easy access to empowered individuals for decisions to be made to achieve this.