

GOVERNMENT OF INDIA
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE
DIRECTORATE GENERAL OF SYSTEMS AND DATA MANAGEMENT
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
4TH AND 5TH FLOOR, HOTEL SAMRAT
NEW DELHI

REQUEST FOR PROPOSAL



Request for Proposal for running of Customs Service Centres at select EDI sites of Indian Customs

RFP Number: F.No. IV(26)/43/2003- Systems Part III

Volume 3

Agreement

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[To be executed on stamp paper of 100 Rupee value]

THIS AGREEMENT (“Agreement”) is made on this the <***> day of <***> 2020 at New Delhi, India

BY AND BETWEEN

The President of India, acting through the Directorate General of Systems and Data Management, Central Board of Indirect Taxes and Customs, Government of India, having its office located at 4th and 5th Floor, Hotel Samrat, New Delhi (herein after referred to as “Department”, which expression shall unless excluded by or repugnant to the context deemed to include its successor/s in office or assign) of the First Part;

AND

<***>, a Company incorporated under the Companies Act, 1956, having its registered office at <***> (hereinafter referred to as ‘**Service Provider**’ or ‘**SP**’ or ‘**Lead Bidder**’ which expression shall, unless the context otherwise requires, include its successors and permitted assigns) of the Second Part;

AND

<***>, a Company incorporated under the Companies Act, 1956, having its registered office at <***> (hereinafter referred to as ‘**Consortium Partner**’ which expression shall, unless the context otherwise requires, include its successors and permitted assigns) of the Third Part.

Each of the parties mentioned above are collectively referred to as the ‘Parties’ and individually as a ‘Party’. The Service Provider - Lead Bidder and Consortium Partner are together referred to as Consortium.

WHEREAS:

- i. The Department had invited bids vide its RFP “**Request for Proposal for running of Customs Service Centres at select EDI sites of Indian Customs**” (hereinafter referred to as ‘RFP’, which term shall include all corrigendum, addendums and modifications issued by the Department with reference to the RFP) for Appointment of _____ for “**Running of Customs Service Centres at select EDI sites of Indian Customs**”;
- ii. The Service Provider had submitted its proposal dated _____ (hereinafter referred to as the ‘Proposal’, which term shall include all clarifications and additional documents submitted by Service Provider with reference to the Proposal) for the _____;
- iii. The Department has accepted the Proposal and has agreed to appoint the Service Provider for the _____ and has issued a letter of award notifying the Service Provider of its selection as successful bidder dated _____ (‘Letter of Award’);

iv. In consideration of the foregoing and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties intend to be bound legally by the terms and conditions agreed in this Agreement, for implementation of the Project.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

Terms and expressions used in this Agreement shall have the meanings set out as below in this Agreement or as defined in other volumes of the RFP. Other terms used in this Agreement are defined where they are used and have the meanings there indicated. Unless otherwise specifically defined, those terms, acronyms and phrases in this Agreement that are utilized in the Information Technology services industry shall be interpreted in accordance with their generally understood meaning in such industry.

1.1. Definitions

- a. **“Project”** means running Customs Service Centre’s at Select EDI sites of Indian Customs under the scope of the RFP.
- b. **“The Department”** means the President of India acting through Directorate General of Systems and Data Management, CBIC, Ministry of Finance, Government of India).
- c. **“CBIC”** means Central Board of Indirect Taxes and Customs which also includes all the offices under Central Board of Indirect Taxes and Customs across India and includes Commissioner or any authorized officer.
- d. The term **Commissioner** includes Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner of Customs and Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner of Central Excise and Service Tax.
- e. **Adverse Effect** means material adverse effect on
 - (a) the ability of the Service Provider to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or
 - (b) the legal validity, binding nature or enforceability of this Agreement;
- f. **“Contract / Agreement / Contract Agreement”** means the Master Services Agreement, Operational Threshold Agreement and Non-Disclosure Agreement to be signed between the successful bidder and Department including all Articles, Annexures, Schedules and the contents and specifications of the RFP and, all documents incorporated by reference thereto together with any subsequent modifications, the RFP, the bid offer, the acceptance and all related correspondences, clarifications, presentations.
- g. **Applicable Law(s)** means any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision in force within the territory of Republic of India and applicable to the relevant party and as may be in effect on the date of the execution of this Agreement and during the subsistence thereof, applicable to the Project;

- h. **“Confidential Information”** means all information including the information collected from traders, their Personally identifiable information (PII) and Department’s Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how, plans, budgets and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement);
- i. **Intellectual Property Rights** means all rights in written designs and copyrights, moral rights, rights in databases and Bespoke Software / Pre-existing work including its upgradation systems and compilation rights (whether or not any of these are registered and including application for registration);
- j. **Service Provider** means the Service Provider – Lead bidder along with all of its Consortium members and sub-contractors, who have to provide services to the Department under the Scope of this Agreement. This definition shall also include any and/or all of the employees of the MSP, Consortium Members, authorized partners/agents and representatives or other personnel employed or engaged either directly or indirectly by the Service Provider for the purposes of this Contract.
- k. **Operational Thresholds** define the standards/ timelines that must be adhered by the Service Provider for providing various services under normal conditions of operation.
- l. **SLA/ Penalty** It defines the penalties that may be imposed on the Service Provider in case of non adherence to the Operational Thresholds as defined in the RFP or agreed with the Department.
- m. **Trade** would mean any stakeholder involved in Import/ Export process or any of their authorised representatives visiting the service center to avail the services provided at Customs Service Center

All other terms and expressions used in this Agreement shall have the same meanings set out in the Glossary of Terms section in the RFP.

1.2. Interpretation

In this Agreement, unless otherwise specified:

- a. References to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- b. Words denoting the singular include the plural and vice versa and use of any gender includes the other genders;
- c. References to a ‘company’ shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;

- d. References to a 'person' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- e. A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- f. Any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- g. References to a 'business day' shall be construed as a reference to a day (other than a Sunday) on which Commissionerate's in the respective state are generally open for business;
- h. References to times are to Indian Standard Time;
- i. A reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
- j. all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- k. References to "Rs." or "Rupees" or "INR" or "₹" are references to lawful currency of India.
- l. Service Provider has been used for the same entity i.e. bidder selected for the Project.

1.3. Measurements and Arithmetic Conventions

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

1.4. Ambiguities within Agreement

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

- a) As between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- b) As between the provisions of RFP and any Corrigendum issued thereafter, the provisions of the Corrigendum shall, to that extent only, prevail over the corresponding earlier provision of the RFP;
- c) As between the provisions of this Agreement and the RFP and the Proposal, this Agreement shall prevail save and except as expressly provided otherwise in the Agreement;
- d) As between the provisions of the RFP and the Proposal, unless otherwise decided by the department, the RFP shall prevail; and
- e) As between any value written in numerals and that in words, the value in words shall prevail.

1.5. Priority of documents

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

- a. This Agreement along with OLA and NDA;
- b. Schedules and Annexures
- c. The RFP along with its subsequently issued corrigenda;
- d. Technical and financial proposal submitted by the successful bidder, to the extent they along with subsequently issued clarifications furnished by the Service provider in response to the RFP, to the extent they are not inconsistent with any terms of the RFP.
- e. For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures / Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexures / Schedules and Annexures / Schedules shall prevail over the contents and specifications of the RFP.

2. SCOPE OF THE PROJECT

2.1 In consideration of the award of the work under the RFP to the SERVICE PROVIDER, the SERVICE PROVIDER hereby covenants with the Department to accomplish the Scope of Work as provided in Volume 1 of the RFP and clarifications, annexures, schedules etc. thereof and to perform all obligations mentioned in all volumes of the RFP and the Proposal.

2.2 The SERVICE PROVIDER hereby covenants to collect the fees (rates as finalized with Department) from the end service users directly in consideration of the accomplishment of Scope of Work and for performance of all obligations mentioned in the RFP and the Proposal, no such other sum shall be payable to the SERVICE PROVIDER under the provisions of the Agreement at the times and in the manner prescribed under the Agreement.

2.3 Without prejudice to the generality of clause 2.2 above, the SERVICE PROVIDER is required to provide such services and support as the Department may deem proper and necessary, during the term of the Agreement, including all such processes and activities which are consistent with the Proposal, the RFP and this Agreement and are deemed necessary by the Department, in order to meet its business requirements (hereinafter 'Scope of Work' including the scope of work specified in Volume 1 of the RFP and clarification thereof, and Annexures thereof). The definition of the term 'Scope of Work' provided in this clause 2.3 shall prevail in case of conflict between the definition provided in this clause and elsewhere in the RFP.

3. TERM AND DURATION OF AGREEMENT

The term of this Agreement shall be for 2 (two) years, commencing from the effective date of this Agreement (the “Term”) unless terminated earlier in accordance with the provisions of Termination clause of this Agreement. The Parties may mutually agree to extend the Term of the Agreement on same terms and conditions.

4. CONDITIONS PRECEDENT & EFFECTIVE DATE

4.1. Provisions to take effect upon fulfilment of Conditions Precedent

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

For the avoidance of doubt, it is expressly clarified that the obligations of the Parties (or its nominated agencies) under this Agreement shall commence from the fulfilment of the Conditions Precedent as set forth below.

4.2.1. Conditions Precedent of the Service Provider

The Service Provider shall be required to fulfil the Conditions Precedent as follows:

- a. To provide an unconditional and irrevocable Performance Security/Guarantee to CBIC within twenty one (21) days from the date of issuance of Purchase Order/Letter of Intent, substantially in the format provided in the RFP ; and in a form and manner acceptable to the Department which would remain valid from the date of issuance till 6 months after expiry of the Term of the Agreement;
- b. Performance: The SERVICE PROVIDER provides an undertaking to the effect that it has entered into all relevant backend to end contracts with Consortium Partners and/or sub-contractors whose products / services it has quoted in the Proposal;
- c. Furnishing of such other documents certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Service Provider, related to this Agreement may include
 - a. This Agreement
 - b. Schedules and Annexures
 - c. The RFP along with its subsequently issued corrigenda
 - d. Technical and financial proposal submitted by the successful bidder
 - e. Corporate NDA

4.2.2. Conditions Precedent of CBIC

- a. Handing over of Customs Service Centres office to be operated by Service Provider
- b. Necessary clearances associated with the execution of the project, unless specified to be performed by the Service Provider
- c. Approval of the Project by a Competent Authority, etc.

4.3. Extension of time for fulfilment of Conditions Precedent

The Parties may, by mutual agreement extend the time for fulfilling the - Conditions Precedent and the Term of this Agreement.

For the avoidance of doubt, it is expressly clarified that any such extension of time shall be subject to imposition of penalties on the Service Provider linked to the delay in fulfilling the Conditions Precedent.

4.4. Non-fulfilment of the Service Provider's Conditions Precedent

- a. In the event that any of the Conditions Precedent of the Service Provider have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by the Department or its nominated agencies, this Agreement shall cease to exist;
- b. In the event that the Agreement fails to come into effect on account of non-fulfilment of the SERVICE PROVIDER's Conditions Precedent, the department shall not be liable in any manner whatsoever to the SERVICE PROVIDER and department shall forthwith forfeit the Earnest Money Deposit.
- c. In the event that possession of any of the department or its nominated agencies facilities has been delivered to the SERVICE PROVIDER prior to the fulfilment of the Conditions Precedent, upon the termination of this Agreement such facilities shall immediately revert to the department or its nominated agencies, free and clear from any encumbrances or claims.

5. RELATIONSHIP BETWEEN THE PARTIES

- a. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the department and the Service Provider. Service Provider, subject to this Agreement, has complete charge of personnel, if any, performing the services and shall be fully responsible for the services performed by them or on their behalf
- b. The Customs Officer designated by the department as System Manager or Alternate System Manager or any other officer authorized by Jurisdictional Commissioner at each of its EDI sites shall also be the coordinator between the trade and the Service Provider and will address day-to-day issues arising from the facilitation of the Customs Service Centre. Service Provider shall provide all assistance and cooperation to such coordinator and shall endeavour to comply with all directions of the coordinator given either orally or in writing for the efficient functioning of the Customs Service Centre in the interest of the trade.

6. NOTICES

- a. Any notice or other document which may be given by either Party under this Agreement shall be given in writing in person or by pre-paid recorded delivery post, email or by facsimile transmission.
- b. Any such notice request or consent required or permitted to be given or made pursuant to this Agreement, shall be deemed to have been given or made by hand delivery, recognized courier, registered post, email or facsimile transmission and delivered or transmitted to the Party's principal or registered office address as set out below:

Department:

Addressee: Director General (Systems), Central Board of Indirect Taxes and Customs

Address: 4th Floor, Hotel Samrat, Kautilya Marg, New Delhi - 110021

Tel:

Fax:

Email:

Service Provider

Addressee:

Address:

Tel:

Fax:

Email:

- a. In relation to a notice given under this Agreement, a Party shall specify the Party's address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause.
- b. Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, it's relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above.
- c. Either Party to this Agreement may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.
- d. The term 'in writing' or 'written' wherever used in this Agreement shall mean communicated in written/typed form.

7. AUTHORIZED REPRESENTATIVE

Any action required or permitted to be taken, and any document required or permitted to be executed under this Agreement by the department or the Service Provider may be taken or executed by the officials (Authorized Representatives) specified below:

- a. For the department: The Additional Director General, Directorate General of Systems and Data Management or any other person authorized by CBIC.
- b. For Service Provider: The Person duly authorised by the Board of Directors

8. FRAUD AND CORRUPTION

8.1. Definitions

It is CBIC's policy to require that CBIC as well as Service Provider (their respective officers, employees and advisers) shall observe the highest standard of ethics during the execution of the Agreement. In pursuance of this policy, CBIC defines, for the purpose of this provision, the terms set forth below as follows:

- a. "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of an official in the selection process or in agreement execution (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Department who is or has been associated in any manner concerning the Agreement or arising there from, before or after the execution thereof, at any time prior of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Department, shall be deemed to constitute influencing the actions of a person connected with the selection process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical consultant/adviser of the Department in relation to any matter concerning the Project;
- b. "fraudulent practice" means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence a selection process or the execution of an agreement;
- c. "collusive practices" means a scheme or arrangement between two or more Service Providers, with or without the knowledge of CBIC, designed to establish prices at artificial, non-competitive levels;¹
- d. "coercive practices" means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of an agreement

- e. “undesirable practice” means (i) establishing a contact with any person connected with or employed or engaged by Department with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection process or execution of the Agreement; or (ii) having a Conflict of Interest; and
- f. “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among bidders with the objective of restricting or manipulating a full and fair competition in the Selection Process

8.2. Measures to be taken by CBIC

- a. CBIC may terminate the Agreement if it determines at any time that representatives, employees and personnel of the Service Provider were engaged in corrupt, fraudulent, collusive or coercive practices during the selection process or the execution of the agreement, without the Service Provider having taken timely and appropriate action satisfactory to CBIC to remedy the situation;
- b. CBIC may also sanction against the Service Provider or Consortium member or sub-contractor, including declaring the Service Provider or Consortium member or sub-contractor ineligible, either indefinitely or for a stated period of time, to be awarded an agreement if it at any time determines that the Service Provider has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, any contract agreement/project involving CBIC or under the control of CBIC.

8.3. Commissions and Fees

CBIC will require the Service Provider to disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process or execution of the Agreement. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

9. OBLIGATION UNDER OPERATIONAL THRESHOLDS

- a. The Operational Threshold shall be adhered to as defined in Volume I of this RFP in respect of this Agreement and shall be entered into concurrently with this Agreement between Department and Service Provider;
- b. In relation to any future Operational Threshold entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein

9.1. Change Control

- a. In the event of a change of Control of the Service Provider or consortium member during the Term, the Service Provider shall promptly notify the Department of the same in the format set out as Annexure A of this Agreement. CBIC reserves its right to continue the agreement or may exercise its right to terminate it.
- b. In the event that the net worth of the surviving entity is less than that of Service Provider or consortium member prior to the change of control, CBIC or its nominated agencies may within 30 days of becoming aware of such change in control, require a replacement of existing Performance Guarantee furnished by the Service provider from a guarantor acceptable to the Department (which shall not be Service Provider or any of its associated entities)
- c. If such a Performance Guarantee is not furnished within 30 days to CBIC or its nominated agencies requiring the replacement, CBIC may exercise its right to terminate this Agreement within a further 30 days by written notice, to become effective as specified in such notice.
- d. Pursuant to termination, the effects of termination as set out in Termination clause of this Agreement shall follow.

For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Service Provider or consortium member shall not be deemed an event of a change of control for purposes of this clause unless the surviving entity is of less net worth than the predecessor entity.

The Parties shall each ensure that the range of the Services under the Operational Threshold shall not be varied, reduced or increased except with the prior written agreement between the Department and Service Provider in accordance with the Change Control Schedule set out in Annexure A of this Agreement. Department or its nominated agencies and its users may purchase any particular category of Services that may become necessary as per the Change Control Schedule set out in Annexure A of this Agreement, without the need to go for a separate procurement process.

10. REPRESENTATIONS

10.1. Representation of the Service Providers

The Service Provider and Consortium Partner represents and warrants to the Department or its nominated agencies that

- a. It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- b. It is competent in facilitating various Customs Service Centres;

- c. It has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- d. From the Effective Date, It will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- e. In providing the Services, it shall use reasonable endeavours in providing the desired services under this Agreement and not cause any disruption to CBIC's normal business operations;
- f. This Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- g. The information furnished in its Proposal in response to the RFP and, any subsequent clarification pertaining to the evaluation process, furnished on or before the date of this Agreement is to the best of its knowledge and belief true and accurate in all material respects as on the date of this Agreement;
- h. The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- i. There are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- j. It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on its ability to perform its obligations under this a Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- k. It has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement;
- l. It and its personnel, have the necessary experience, skill, knowledge and competence to perform the Services;
- m. It will not, nor will it suffer or permit any third party under its direction or control to negligently introduce into the CBIC's systems or any deliverables any harmful code;

- n. no representation or warranty by it contained herein or in any other document furnished' by it to CBIC or its nominated agencies including the Proposal submitted in response to the RFP or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
- o. No sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of CBIC or its nominated agencies in connection therewith.

10.2. Representations of CBIC or its nominated agencies

CBIC or its nominated agencies represent and warrant to the Service Provider that:

- a. it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- b. it has taken all necessary actions to authorize the execution, delivery and performance of this Agreement;
- c. it has the financial standing and capacity to perform its obligations under the Agreement;
- d. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- e. this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms thereof;
- f. the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- g. there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its material (including any payment) obligations under this Agreement;
- h. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on the Department or its nominated agencies ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- i. it has complied with Applicable Laws in all material respects;

- j. all information provided by it in the RFP in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and
- k. upon the Service Provider performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Service Provider, in accordance with this Agreement

11. OBLIGATIONS OF CBIC OR ITS NOMINATED AGENCIES

The obligations of the Department described in clause 11 is in addition to, any not in derogation of, the obligation mentioned in Volume 1 of the RFP and the two are to be read harmoniously. Without prejudice to any other undertakings or obligations of the Department under this Agreement or the RFP, the Department shall perform the following:

- a. CBIC or its nominated agency shall continue to facilitate the site for the Customs Service Centres for the Service Provider to operate and carry out the services hereunder along with requisite computer hardware/software, power connection (including UPS) and air conditioning equipment, furniture and other infrastructure that may be required;
- b. Facilitate proper access to the personnel deployed by the Service Provider at the Customs Service Centre, provided that the number of such personnel permitted access to Customs Service Centre shall not be more than the number fixed by the Jurisdictional Commissioner in consultation with the Service Provider.
- c. Facilitate Service Provider and its personnel with work permits and such other documents as shall be necessary to enable the Service Provider and its personnel to perform the services under this Agreement, provided all necessary documents requested by CBIC or its nominated agency for giving such permits are submitted to CBIC or its nominated agency.

12. OBLIGATIONS OF THE SERVICE PROVIDER

- a. Service Provider shall perform the Services and the deliverables as set out in the RFP to the best of its ability and in an effective, timely, professional and workmanlike manner in accordance with the applicable industry and technical standards.
- b. Service Provider shall provide the services presently at the Customs sites as mentioned in Annexure A Volume 1 of the RFP to this Agreement. Further Customs sites may be added to the list in Annexure A, as required by CBIC or its nominated agency, and such additional Customs sites shall be governed by this Agreement. If the Service Provider does not provide the required services in the additional EDI sites, for whatever reasons, within the stipulated time mentioned in the request/notice from CBIC, the services may

be arranged by CBIC or jurisdictional Commissioner through some other agency or from its own manpower resources at the cost of the Service Provider.

- c. Service Provider shall ensure that the Services are performed in accordance with specifications and documentations set forth by CBIC or its nominated agency;
- d. Service Provider shall ensure that the Services will comply with all applicable laws, rules, regulations, orders of any governmental agencies and will not violate any terms of any agreement between the Service Provider and third parties.
- e. Service Provider shall ensure the minimum wages as per the prevalent State Laws. CBIC reserves the right to conduct random audit/ verification of the wages provided to the employees deployed by the Service Provider in the Customs Service Centres.
- f. Service Provider shall be responsible for providing manpower, prescribed stationery for printing, consumables for printer, etc at Customs Service Centres as per RFP and corrigendum and there will be no liability on CBIC on account of these.
- g. Service Provider shall ensure that their employees extend courteous services to the representatives of the trading community,
- h. Service Provider shall ensure the integrity of their employees and shall neither collect nor allow them to collect from the trade representatives any amount more than the amount of service charges agreed between Service Provider and CBIC.
- i. Service Provider shall be responsible to ensure that the login credentials of the employee are promptly disabled when personnel is no longer in the Customs Service Centre operations.
- j. Service Provider shall adhere to such other instructions issued by CBIC or its authorised agency or Jurisdictional Commissioner in charge of the Customs sites with regard to Customs Service Centre operations and thereby improve facilitation to the trade.

13. APPROVALS AND REQUIRED CONSENTS

- a. The Parties shall cooperate to procure, maintain and observe all relevant and regulatory and governmental licenses, clearances and applicable approvals (hereinafter the “Required Consents”) necessary for the Service Provider to provide the Services. The costs of such Approvals shall be borne by the Party normally responsible for such costs according to local custom and practice in the locations where the Services are to be provided
- b. The Department or its nominated agencies shall use reasonable endeavours to assist Service Provider to obtain the Required Consents. In the event that any Required Consent is not obtained, the Service Provider and CBIC or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for CBIC or its nominated agencies to continue

to process its work with as minimal interruption to its business operations as is commercially reasonable until such Required Consent is obtained, provided that the Service Provider shall not be relieved of its obligations to provide the Services and to achieve the Operational Thresholds until the Required Consents are obtained if and to the extent that the Service Provider's obligations are not dependent upon such required consents.

14. USE OF ASSETS BY THE SERVICE PROVIDER

14.1 During the Term of this Agreement the Service Provider shall

- a. take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the project and other facilities leased/ owned /operated by the Service Provider exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the "Assets") in proportion to their use and control of such Assets; and
- b. keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as on the date the Service Provider takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- c. ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Service Provider will be followed by the Service Provider and any person who will be responsible for the use of the Assets;
- d. take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Service Provider or as may, in the reasonable opinion of the Service Provider, be necessary to use the Assets in a safe manner;
- e. ensure that the Assets that are under the control of the Service Provider, are kept suitably housed and in conformity with Applicable Law;
- f. procure permission from the CBIC or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- g. Shall use the Assets for the purpose of carrying out the legitimate business of operating the Customs Service Centre and shall not put to any other use except with the prior written permission of CBIC.
- h. Shall not knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to Applicable Law.

15. ACCESS TO CBIC OR ITS NOMINATED AGENCIES LOCATIONS

- a. For so long as the Service Provider provides Services to the CBIC, on a non-permanent basis and to the extent necessary, CBIC shall, subject to compliance by the Service Provider with its obligations as provided in this Agreement and subject to any safety and security guidelines which may be provided by CBIC and notified to the Service Provider in writing, provide Service Provider with:
 - i. Reasonable access to location of CBIC for facilitating the Project work;
 - ii. Reasonable work space, access to office equipment as mutually agreed and other related support services as may be reasonably necessary for the Service Provider to perform its obligations hereunder and under this Agreement.
- b. Access to locations, Assets shall be made available to the Service Provider on an “as is, where is” basis by CBIC. The Service Provider agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment referred to in RFP for the following purposes:
 - i. For the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
 - ii. In a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality).

16. GOVERNING LAW AND JURISDICTION

- a. This Agreement, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.
- b. Subject to the provisions of dispute resolution contained in Clause 25 – DISPUTE RESOLUTION, the competent courts of New Delhi shall have exclusive jurisdiction in connection with this Agreement.

17. PAYMENTS

- a. Service Provider shall collect the charges for the Services rendered under this Agreement directly from the trade, its representatives and any other person on whose behalf data entry or other related work is carried out at the Customs Service Centres in accordance with the Payment structure of this Agreement. For the services provided at the Customs Service Centres, the Service Provider shall not recover charges more than the specified rates given in Volume 1 of this RFP.
- b. CBIC or its nominated agency may in the interest of the trade, require the Service Provider to provide services and deliverables other than those mentioned in Annexure A of Volume I of this RFP and in such

- other Customs sites as may be notified from time to time, at a price so fixed by CBIC in that behalf after due consultations with Service Provider and having due regard to the cost of operation of such service.
- c. Service Provider shall maintain such records as prescribed by CBIC regarding collection towards service charges.
 - d. The Department shall not be responsible for making any payments or any other related obligations under this Agreement to the Service Provider or Consortium member or sub-contractor, if any. The Service Provider shall be fully liable and responsible for meeting all such obligations and all payments to be made to Consortium Member or sub-contractors (if any) and any other third party engaged by the Service Provider in any way connected with the discharge of the Service Provider's obligation under the Agreement and in any manner whatsoever.

18. TERMINATION

18.1. By CBIC

CBIC reserves the right to terminate this Agreement in case of the occurrence of any of the events specified in paragraphs (a) through (i) of this Clause

- a. If the Service Provider fails to remedy a failure in the performance of its obligations under this Agreement, as the case may be, as specified in a notice, within 30 (thirty) days of receipt of such notice or within such further period as CBIC may have subsequently approved in writing;
- b. If there is a change of control of the Service Provider has taken place, CBIC may upon its sole discretion, by giving a 30 days written notice, terminate this Agreement. For the purposes of this Clause, change of control shall mean the events stated in Clause 9.1 for Change of Control, and such notice shall become effective at the end of the notice period as set out in the said Clause.
- c. Immediately if the Service Provider becomes insolvent or goes into liquidation or upon bankruptcy proceedings initiated against the Service Provider or if there is an appointment of receiver over the Service Provider' assets by a court or in case of a similar proceedings or cessation of business of the Service Provider, whether compulsory or voluntary.
- d. If, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than 90 (ninety) days.
- e. Immediately if the Service Provider fails to comply with any final decision reached as a result of arbitration pursuant to arbitration award under this Agreement.
- f. Immediately if the Service Provider, in the judgment of the CBIC, has engaged in any corrupt or fraudulent practice in competing for or in executing this Agreement.

- g. Immediately if the Service Provider places itself in position of conflict of interest with CBIC in relation to this Agreement or fails to disclose promptly any such conflict of interest to CBIC.
- h. Immediately if the Service Provider submits to CBIC a false statement which has a material impact on the right, obligations or interest of CBIC;
- i. Immediately if any complaint of overcharging by the Service Provider is found to be substantiated to its or its nominated agency's satisfaction. The Service Provider shall however be given an opportunity to be heard before any such decision. The decision of CBIC or its nominated agency's would however, be final.

18.2. *By the Service Provider*

Service Provider may terminate Agreement, by not less than ninety (90) days written notice to CBIC, in case of the occurrence of any of the events specified in paragraphs (a) through (b) of this Clause.

- a. If, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than ninety (90) days.
- b. If the CBIC fails to comply with any final decision reached as a result of arbitration pursuant to arbitration award under this agreement.

18.3. *Cessation of Rights and Obligations*

Upon termination of this Agreement pursuant to above Clauses, or upon expiration of this Agreement, unless extended through mutual consent, all rights and obligations of the Parties hereunder shall cease, except:

- a. such rights and obligations as may have accrued on the date of termination or expiration,
- b. the obligation of confidentiality set forth in this Agreement, which shall remain in force for a period of 5 (five) years after expiry or termination of the Agreement or such extension of the Agreement as granted by the CBIC,
- c. Service Provider's obligations to permit inspection, copying and auditing of its accounts and accounts as set forth in Audit, Access and Reporting clause of this Agreement and Service Provider's obligation to indemnify as mentioned in Indemnification clause.
- d. any right which a Party may have under the Applicable Law.

18.4. *Cessation of Services*

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 18.1 and 18.2 hereof, the Service Provider shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner.

18.5. Effects of termination

- a. In the event that CBIC terminates this Agreement pursuant to failure on the part of the Service Provider to comply with the conditions as contained in this Agreement and depending on the event of default, Performance Bank Guarantee furnished by Service Provider may be invoked by CBIC.
- b. Upon any pre-mature termination or expiration of this Agreement, Service Provider shall (i) forthwith vacate the premises and handover the equipment provided to it at the time of commencement of the services, except for normal wear and tear, to CBIC or its nominated agency, failing which the Service Provider shall pay damages as may be determined by the Jurisdictional Commissioner of CBIC; (ii) deliver to CBIC all deliverables or work product, including any in progress at the time of termination or expiration; (iii) work with CBIC to ensure a smooth transition of services; (iv) make immediate payment of any amount due to CBIC.

18.6. Risk Purchase

If the Service Provider fails to perform its obligations (or any part thereof) under this Agreement or if the Agreement is terminated by CBIC pursuant to any of the grounds stated in Clauses 18.1 (a) through (c) or Clause 18.1 (e) through (i) hereof, CBIC reserves the right to procure same or equivalent services/ deliverables from elsewhere or other selected Service Provider at the risk and cost of the Service Provider. Any such incremental cost incurred in the procurement of the services from alternate sources shall be recovered from the performance bank guarantee provided by the Service Provider under this Agreement

19. INDEMNIFICATION

- 19.1. Subject to Clause 19.6 below, Service Provider (the "Indemnifying Party") at its expense and to the maximum extent permitted by law, undertakes to indemnify, defend and hold harmless CBIC or its nominated agency (the "Indemnified Party") from and against all losses, liabilities, costs, damages and expenses and will reimburse such fees and expenses as they are incurred, including in connection with any claim or action brought against the Indemnified Party, attributable to the Indemnifying Party's or its representative's negligence or wilful default or lack of due care or breach of terms of this Agreement,

including but not limited to, bodily injury, death or damage to tangible personal property any or damages caused to the premises or the equipment etc. arising in favour of any person, corporation or other entity (including the Indemnified Party) in performance or non-performance of the personnel deployed by the Service Provider under this Agreement; provided, however, the Indemnifying Party shall not be obligated to defend, indemnify, or hold the Indemnified Party from and against any such liabilities, costs, losses, damages and expenses to the extent caused solely by any negligent act or omission or intentional wrongdoing of such Indemnified Party.

- 19.2. Subject to Clause 19.6 below, the Indemnifying Party at its expense and to the maximum extent permitted by law, will indemnify, defend and hold harmless the Indemnified Party from and against all claims, actions, suits, proceedings, judgments, demands losses, liabilities, costs, damages and expenses and will reimburse such fees and expenses as they are incurred, including in connection with any claim or action brought against the Indemnified Party, arising out of or relating to any claim that the provision or the utilization of any services or any portion thereof constitutes an infringement, violation, trespass, contravention or breach of any intellectual property rights of any third party, or constitutes the unauthorized use of any trade secret of any third party.
- 19.3. Indemnified Party will promptly notify the Indemnifying Party of any such claim or action and will reasonably co-operate with Indemnified Party in the defence of any such claim or action, at Indemnifying Party's expense. If any Service is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either (i) procure the right for Indemnified Party to continue using services or such portion thereof, as contemplated hereunder, (ii) replace it with an equally suitable, compatible, non-infringing and functionally equivalent services as reasonably determined by Indemnified Party, (iii) modify the services or such portion thereof, to make it non infringing (provided such modification does not adversely affect the utilization of such services, as reasonably determined by Indemnified Party).
- 19.4. The Indemnifying Party shall indemnify the Indemnified Party against all losses, claims, damages, compensation, charges (including attorney fees) etc. arising out of data loss, data theft, data misuse, data tampering, unauthorized use or disclosure of confidential information etc, attributable to the Indemnifying Party's negligence, wilful default, lack of due care or breach of terms of this Agreement.
- 19.5. The indemnities set out in this, Clause 19 shall be subject to the following conditions:
- i. The Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings;
 - ii. The Indemnified Party shall, at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the defence of such claim or proceedings including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may,

at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such defence;

- iii. If the Indemnifying Party does not assume full control over the defence of a claim as provided in this clause, the Indemnifying Party may participate in such defence at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in losses;
- iv. In the event that the Indemnifying Party is obligated to indemnify an Indemnified Party pursuant to this clause, the Indemnifying Party will, upon payment of such indemnity in full, be subrogated to all rights and defences of the Indemnified Party with respect to the claims or proceedings to which such indemnification relates;

20. FORCE MAJEURE

20.1. Definition

- a. For the purposes of this Agreement, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable and its origin is not due to negligence or lack of care on the part of the Party claiming to be affected by such events (Affected Party) and, which has caused the non-performance or delay in performance, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other extreme- adverse weather conditions, strikes, lockouts or other industrial action, confiscation or any other action by Government agencies.

20.2. No Breach of Agreement

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default, under this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

20.3. Measures to be Taken

- a. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Agreement as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

- b. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- c. Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- d. During the period of their inability to perform the services as a result of an event of Force Majeure, the Service Provider, upon instructions by the CBIC, shall either:
 - i. continue with the services to the extent possible, in which case the Service Provider shall continue to be paid proportionately and on pro-rata basis, under the terms of this Agreement; or demobilize
 - ii. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to arbitration clause of this Agreement.

21. CONFIDENTIALITY

- a. Service Provider will not use or share or pass to anybody the data/information/documents derived from the traders or from CBIC in any form. Service Provider shall maintain confidentiality of the trader's and CBIC's business information, applications and data. For this, Service Provider and its employees, agents and representatives are required to sign Non—disclosure agreement/undertaking with CBIC, which have been duly approved by the CBIC with respect to this Project and will assume full responsibility for any failure to comply with the terms of this Agreement by any such employees, agents and representatives.
- b. Additionally, Service Provider shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities and shall use its best efforts to protect the confidentiality, integrity and proprietary of such information.
- c. Disclosure of any part of such aforementioned information to parties not directly involved in providing the Services, unless required to do so by the Court of Law or other statutory authorities, could result in premature termination of this Agreement. CBIC may apart from blacklisting the Service Provider, initiate legal action against the Service Provider for breach of trust.
- d. CBIC or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Service Provider regarding any forbidden disclosure.
- e. Service Provider may disclose the confidential information to its representatives who have a strict need to know such confidential information solely in connection with this Agreement for accomplishment of its

obligations under this Agreement provided such representatives of the Service Provider are bound under confidentiality agreements which are at least as restrictive as set out in this Agreement.

- f. Service Provider will not transfer or disclose any such confidential information to any third party without CBIC' prior written consent and without such third party having a contractual obligation to keep such confidential information confidential.
- g. Service Provider will not use any confidential information for any other purpose other than to provide Services to CBIC under this Agreement.
- h. Bidder acknowledges that a breach of the confidential obligations may result into irreparable and continuing damages to CBIC for which monetary damages may not be sufficient, and agrees that CBIC will be entitled to seek, in addition to its other rights and remedies under the law, preliminary and final injunctive relief without a requirement to post bond, as well as any and all other applicable remedies at law or in equity, including the recovery of damages.

22. AUDIT, ACCESS AND REPORTING

CBIC or its nominated agency may inspect the Service Provider at any time of Term of this Agreement and also appoint Internal Auditors or Third Party Auditor to monitor the work and efficiency of the Service Provider. The Auditors will be allowed to inspect among other things, the quality of stationary used, the printing quality, the accuracy of data entry, collection of service charges from traders, remittances made, records maintained and other related issues. The Service Provider shall allow access to CBIC or its nominated agencies to all information which is in the possession or control of the Service Provider and which relates to the provision of the Services under this Agreement. The records to be maintained and reports to be submitted by the Service Provider to CBIC may be communicated from time to time. The Service Provider shall maintain such records and submit reports as directed by CBIC or its nominated agency.

Without prejudice to the foregoing, the Service Provider shall allow access to CBIC or its nominated agencies to all information which is in the possession or control of the Service Provider and which relates to the provision of the Services/Deliverables as set out in the Audit, Access and Reporting Schedule and which is reasonably required by CBIC to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule II of this Agreement.

23. INTELLECTUAL PROPERTY RIGHTS

All plans, drawings, specifications, designs, reports, other documents and reports prepared by the Service Provider as part of / under this Agreement shall become and remain the property of CBIC, and the Service Provider shall, not later than upon termination or expiration of this Agreement, deliver all such documents to CBIC together with a detailed inventory thereof. The Service Provider shall not retain any copy of such

documents and shall not use anywhere, without taking permission, in writing, from CBIC and CBIC reserves right to grant or deny any such request.

24. INSURANCE

24.1. *Obligation to maintain insurance*

In connection with the provision of the Services, the Service Provider, at its sole cost and expense, must obtain and maintain adequate standard forms of insurance including liability which are mandatorily to be maintained as per the Applicable Laws and further agrees to provide CBIC on request copies of such policy of insurance and evidence that the premiums have been paid.

24.2. *Certificates of currency*

The Service provider must, on request by CBIC, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 24. The Service Provider agrees to replace any coverage prior to the date of expiry/cancellation.

24.3. *Non-compliance*

CBIC or its nominated agencies may, at its discretion, terminate this Agreement upon the failure of Service Provider, or notification of such failure, to maintain the required insurance coverage. Inadequate insurance coverage for any reason shall not relieve Bidder of its obligations under this Agreement.

25. DISPUTE RESOLUTION

Any difference or disputes arising between the Parties with regard to performance or non-performance of its obligations under this Agreement, Parties shall first try to resolve the same amicably by mutual consultation. If the Parties fail to resolve the dispute by such mutual consultation within twenty-one days, then such unresolved dispute/difference shall be referred to the arbitration of three (3) arbitrators, one to be appointed by each Party and the third arbitrator to be appointed by the two arbitrators. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and rules made there under. Arbitration proceedings shall be held at New Delhi, India and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English. The decision of the arbitrator shall be final and binding upon both the Parties.

26. MISCELLANEOUS

26.1 Personnel

- a. Service Provider shall arrange and deploy suitable number of personnel (trained data entry operators, Supervisor/ Manager Etc.) required for operating the Customs Service Centre. The number of personnel required for providing effective and speedy service to the trade would be determined by the Service Provider in the consultation with the Jurisdictional Commissioner.
- b. Service Provider is required to provide courteous and efficient service to the trade and should ensure that operators are well mannered, polite, courteous and helpful towards the members of the trade.
- c. The personnel/operators deployed by the Service Provider for carrying out the Services under this Agreement should have minimum educational qualification of 10+2 and should possess a certificate of data, entry/typing and computer proficiency from a reputed institute.
- d. The personnel assigned by Service Provider to perform the Services shall be employees of Service Provider, and under no circumstances shall such personnel be considered employees of CBIC or its nominated agencies. The Service Provider shall have the sole responsibility for the supervision and control of the personnel deployed in for rendering Services under this Agreement and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.
- e. CBIC shall have no obligations towards the personnel employed by the Service Provider. It is also agreed that the Service Provider shall employ personnel for managing the Customs Service Centres at its own risk and cost, shall duly comply with all rules, regulations, acts, statutes etc made in this behalf by any local authority, state or Central Government & CBIC will not be in anyway responsible for their security, remuneration, welfare or service conditions. CBIC will not be responsible for any labour dispute between the Service Provider and the personnel deployed by it at the Customs Service Centre.

26.2 Independent Contractor

Service Provider is acting as an independent contractor and the Service Provider is solely responsible for its actions and inactions, and nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture or employment relationship between the Parties to this Agreement and, except as expressly stated in this Agreement, nothing in this Agreement shall be deemed to constitute any Parties as the agent of any other Party or authorizes either Party to:

- a. incur any expenses on behalf of the other Party;
- b. enter into any engagement or make any representation or warranty on behalf of the other Party;

- c. pledge the credit of or otherwise bind or oblige the other Party; or
- d. Commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

26.3 Sub-contractors

- a. Service Provider may subcontract work as defined in Volume I of the RFP, to any third party and have furnished the details of the sub-contractor during the proposal submission. Service Provider shall be allowed to subcontract any work, only to a subcontract listed in the proposal. Service Provider shall assist the Department with all documents etc. required by the Department to decide whether to give its consent or not. While giving its consent for appointment of any subcontractor, the Department may impose such conditions on subcontracting as mutually agreed between the Service Provider and the Department for successful accomplishment of the obligations of the Service Provider under this Agreement and such conditions shall be applicable on the Service Provider and the subcontractor (as applicable).
- b. Prior to executing any contract or entering into any contract or understanding with a sub-contractor, the Service Provider shall ensure that, where requested by the Department, the sub-contractor appointed by the Service Provider executes a non-disclosure agreement and a deed of adherence in the manner and form prescribed by the Department. The deed of adherence will be a unilateral undertaking from the subcontractor to the Department. The terms of deed of adherence shall be discussed by the Department with the Service Provider. Execution of deed of adherence by the subcontractor shall not in any way relieve the Service Provider from any of its obligations and liability under this Agreement.
- c. The Service Provider shall ensure that the subcontractor proposed, is competent and professional and possess the requisite qualifications and experience appropriate to the tasks they will perform under this Agreement.
- d. Any change of the sub-contractor(s), after the arrangement is firmed up, will be made by the Service Provider only with the prior written approval of the Department which approval shall not be unreasonably withheld or delayed.
- e. The Service Provider shall be responsible and shall ensure the proper execution and performance of the services or tasks so sub-contracted and shall be liable for any non-performance or breach by such sub-contractor. The Service Provider indemnifies and shall keep indemnified the Department against any losses, damages, claims or such other implications arising from or out of the acts and omissions of such sub-contractor. It is clarified that this indemnity refers to (a) the same extent and nature the Service Provider is liable to indemnify for Service Provider's own acts and omissions under this Agreement; and (b) any claims made by the subcontractor against the Department due to breach by the Service Provider of the agreement entered into between subcontractor and the Service Provider. The Service Provider shall

be responsible for making all payments to the sub-contractor as may be necessary, in respect of any work performed or task executed, and the Department shall not be responsible for any part or full payment, which is due to such sub-contractor.

- f. The clauses related to intellectual property rights applicable on the Service Provider under this Agreement shall be mutatis mutandis applicable to the deliverables/services etc. provided by the sub-contractors. The Service Provider will provide the undertakings given by the subcontractor within 30 days from the date of appointment of subcontractor to disclose all such Intellectual Property Rights arising in performance of the Services to the Department and execute all such agreements/documents and file all relevant applications, effect transfers and obtain all permits and approvals that may be necessary in this regard to effectively transfer and conserve the Intellectual Property Rights of the Department.
- g. Nothing in this Agreement or any subcontract agreement hereunder shall relieve the Service Provider from its liabilities or obligations under this Agreement to provide the Services in accordance with this Agreement.
- h. Where the Department deems necessary, it shall have the right to require replacement of any sub-contractor with another sub-contractor and the Service Provider shall in such case find a suitable replacement for such sub-contractor to the satisfaction of the Department at no additional charge. Failure on the part of the Service Provider to find a suitable replacement shall amount to a breach of the terms hereof and the Department in addition to all other rights, have the right to claim damages and recover from the Service Provider all losses/or other damages that may have resulted from such failure. In case the Service Provider terminates any contract/arrangement or agreement with a sub-contractor for any reason whatsoever, the Service Provider shall ensure the smooth continuation of Services by providing forthwith, a suitable replacement which is acceptable to the Department at no additional charge. In case of a replacement of the sub-contractor, the new sub-contractor shall have the qualification at least as good as the replaced subcontractor.

26.4 Assignment

- a. All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the Department, Service Provider, the Consortium member and their respective successors and permitted assigns.
- b. Subject to Clause 9.1, the Service Provider and the Consortium member shall not be permitted to assign its rights and obligations under this Agreement to any third Party.
- c. The Department may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Service Provider and the Consortium member shall be party to such novation, to any third part contracted to provide outsourcesservices to the Department or any of its nominee.

26.5 Trademarks, Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that Service Provider may, upon completion, use the Project as a reference for credential purpose. Except as required by law or the rules and regulations, neither Party shall publish or permit to be published either alone or in conjunction with any other person any press release, information, Clause, photograph, illustration or any other material of whatever kind relating to this Agreement, the Operational Threshold or the business of the Parties without prior reference to and approval in writing from the other Party, such approval not to be unreasonably withheld or delayed provided however that Service Provider may include CBIC or its client lists for reference to third parties subject to the prior written consent of CBIC. Such approval shall apply to each specific case and relate only to that case.

26.6 Amendment

This Agreement shall not be amended except in writing through an amendment signed by both the Parties.

26.7 Variations and Further Assurance

- a. No amendment, variation or other change to this Agreement or the Operational Threshold shall be valid unless authorized in accordance with the change request procedure. Such amendment shall be made in writing and signed by the duly authorized representatives of the Parties to this Agreement.
- b. 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.

26.8 Severability and Waiver

- a. 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 will remain unimpaired and 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.
- b. 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.

26.9 Compliance with Applicable Law

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

26.10 Professional Fees

All expenses incurred by or on behalf of each Party to this Agreement, including all fees of agents, legal advisors, accountants and actuaries employed by either of the Parties in connection with the negotiation, preparation and execution of this Agreement shall be borne solely by the Party which incurred them.

26.11 Access to Sites

- a. CBIC's representative upon receipt of request from the SERVICE PROVIDER intimating commencement of Operations of Sites shall authorise access to as much of the Sites as may be necessary to enable the Service Provider to commence and proceed with the operations of the works in accordance with the Scope of Work. Any reasonable proposal of the Service Provider for access to Sites to proceed with the operation of the work in accordance with the Scope of Work will be considered for approval and shall not be unreasonably withheld by CBIC. Such requests shall be made to CBIC's representative in writing at least 7 days prior to start of the work.
- b. At the operations centre and respective CBIC locations, CBIC's representative shall authorize access to Service Provider to as much of the Locations as may be necessary to enable the Service Provider to commence and proceed with the operation of the works in accordance with the programme of work or for performance of Facilities Management Service Provider.

26.12 No Claim Certificate

The Service Provider shall not be entitled to make any claim, whatsoever against CBIC under or by virtue of or arising out of, this contract, nor shall CBIC entertain or consider any such claim, if made by the Service Provider after he shall have signed a 'No claim' certificate in favour of CBIC in such forms as shall be required by CBIC after the works are finally accepted.

26.13 Ethics

The Service Provider 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 CBIC or its nominated agencies in connection with this Agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of CBIC's standard policies and may result in cancellation of this Agreement.

26.14 Conflict of Interest

The Service Provider and the Consortium member shall ensure that it holds CBIC's interest's paramount, without any regard for future work, and strictly avoid conflict of interest with other assignments or their own corporate interests. The Service Provider shall disclose to CBIC in writing, all actual and potential conflicts of interest that exist, arise or may arise Service Provider in the course of performing the Services as soon as practical after it becomes aware of that conflict.

26.15 Survival

Any provision of this Agreement which imposes or intends to impose an obligation on any of the Parties after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Such provisions include, without limitation, obligations related to confidentiality, indemnity, licenses, risk purchase and AMC/ ATS provided by the OEMs or the Service Provider.

26.16 Entire Agreement

This Agreement with all Schedules & Annexures appended thereto and the contents and specifications of the RFP constitute the entire agreement between the Parties with respect to their subject matter, and as to all other representations, understandings or agreements which are not fully expressed herein, provided that nothing in this clause shall be interpreted so as to exclude any liability in respect of fraudulent misrepresentation.

IN WITNESS WHEREOF the Parties have by duly authorized Representatives set their respective hands and seal on the date first above written in the presence of witnesses:

For and on behalf of CBIC

For and on behalf of Service Provider

27. CONSTITUTION OF CONSORTIUM

- a. For the purposes of fulfilment of its obligations as laid down under the Agreement, unless the context requires otherwise, Lead Bidder shall be the sole point of interface between the Department and the Service Provider and the Service Provider would be absolutely accountable for the performance of its own, the other members of Consortium and or its Team's functions and obligations.
- b. The Consortium Members agree that the Lead Bidder shall be the prime point of contact between the Consortium Members/sub-contractors and the Department and shall be primarily responsible for the discharge and administration of all the obligations contained herein and, the Department, unless it deems necessary shall deal only with the Lead Bidder.
- c. Service Provider shall not, except with the prior approval of the Department, have any provision in the consortium agreement or make any amendments to the said consortium agreement which adversely affects the rights and/or obligations of Lead Bidder and Consortium Members under this Agreement or any amendment which is contrary to the provisions of this Agreement.
- d. The Service Provider shall be jointly and severally liable for all obligations under this Agreement. Notwithstanding the foregoing, in case of a breach of any of the terms hereof, the Consortium Member shall be responsible and liable only for obligations related to services to be supplied by the Consortium Member and the Lead Bidder shall be, in addition to its own obligation, responsible and liable for the obligations of the Consortium Members. Notwithstanding the foregoing and subject to the Agreement, the liability for direct damages of each Consortium Member under this Agreement shall be limited to the total amount corresponding to and commensurate with the scope of work related to the Consortium Member and the liability for direct damaged of the Service Provider shall be limited to Bank Guarantee. The Service Provider shall ensure that at all times during the Term of this Agreement, each member of the Service Provider complies with all the terms and conditions of this Agreement. Provided that the department may, if it deems necessary, deal with only the Lead Bidder or any member of the Consortium, individually or as a group.
- e. The Service Provider shall ensure that at all times during the Term of this Agreement, Consortium Member and the Consortium Member's Team complies with all the terms and conditions of this Agreement.
- f. The Service Provider and the Consortium Member shall be bound by all undertakings and representations made by their authorized representative and any covenants stipulated hereunder with respect to this Agreement, for and their behalf. The terms and conditions of this Agreement shall mutatis mutandis apply to all Consortium Members.
- g. The Service Provider shall not change any Consortium Member without the prior written approval of the Department. The approval of the Department may be subject to certain conditions in terms of credentials

and qualifications of the new Consortium Member which the Service Provider shall be liable to meet. The Service Provider shall give a notice of at least 3 months in advance to the Department if during the term of this Agreement the Service Provider desires to terminate any contract/arrangement relating to the performance of Services hereunder with the Consortium Member. Where, during the term of this Agreement, the Service Provider terminates any contract/arrangement or agreement relating to the performance of the Services hereunder with any Consortium Member (subject to approval by the Department), the Service Provider shall be liable for any consequences resulting from such termination. The Service Provider shall in such case ensure the smooth continuation of Services by providing a suitable replacement subject to approval and to the satisfaction of the Department at no additional charge and at the earliest opportunity.

28. BANK GUARANTEE

(a) Performance bank guarantee

- (i) The SERVICE PROVIDER shall, within 21 days after the receipt of Letter of Award from CBIC, furnish one unconditional, irrevocable and continuing Performance Securities/Guarantees to the Department, for an amount equal ₹ 50,00,000/- (Rupees Fifty Lakhs)., from a scheduled bank in the format acceptable to the Department. The Performance Security shall be valid for entire Term and six months thereafter. If the Performance Security is liquidated /encashed, in whole or in part, during the currency of the Performance Security, the SERVICE PROVIDER shall top up the Performance Security with the same amount as has been encashed within 15 days of such encashment without demur. The SERVICE PROVIDER is required to top up the Performance Security only once after it has been liquidated / encashed.
- (ii) In the event of the SERVICE PROVIDER being unable to service the Agreement for reasons attributable to the SERVICE PROVIDER, its consortium members or any sub-contractors or any team members, the Department would invoke the PBG. In the event SERVICE PROVIDER has not been provided a notice/ cure period for the relevant breach/ default etc. under any other clause of this agreement, the Department shall give 30 day notice/ cure period to SERVICE PROVIDER prior to invoking the PBG. Notwithstanding and without prejudice to any rights whatsoever of the Department under the Agreement in the matter, the proceeds of the PBG shall be payable to the Department as compensation for any loss resulting from the failure of SERVICE PROVIDER, , its consortium members or any sub-contractors or any team members to perform/comply its obligations under the contract. The Department shall notify the bidder in writing of the exercise of its right to receive such compensation within 30 days, indicating the contractual obligation(s) for which the SERVICE PROVIDER is in default.

- (iii) The Department shall also be entitled to make recoveries from the SERVICE PROVIDER's PBG, or recover any other amount from him due to inadvertence, error, collusion, misconstruction or misstatement.
- (iv) All Bank Guarantees should contain an "unconditional self renewal clause" with an undertaking from the Bank to keep the Bank Guarantees alive, till the bond (for which the bank guarantee is being given) is fully discharged by the CBIC. There should not be any overriding clause in regard to this requirement.
- (v) The Service Provider, during the Term of the Agreement, may be required to vary the amount of the bank guarantee furnished by the Service Provider prior to execution of the agreement depending upon the additional IT infrastructure that is made available to the Service Provider pursuant to this Agreement. CBIC shall have the right to invoke the bank guarantee to the tune of the damage caused to the IT infrastructure in performance or non-performance of the personnel deployed by the Service Provider under this Agreement. Subject to the foregoing, the bank guarantee will be returned interest free within 3 (three) months of expiry or date of termination of the agreement.

Schedule I – Audit, Access and Reporting

1. PURPOSE

This Schedule details the audit, access and reporting rights and obligations of the Department or its nominated agency and the SERVICE PROVIDER. This Schedule is in addition to, and in derogation of, the audit rights and process provided in the RFP.

2. AUDIT NOTICE AND TIMING

- 2.1 As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavours to agree to a timetable for routine audits (Other than those mentioned as part of the mandatory requirements for successful execution of the Engagement) during the entire duration of the Engagement.
- 2.2 The Department may conduct non-timetabled audits at its own discretion, if it reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the SERVICE PROVIDER, a security violation, or breach of confidentiality obligations by the SERVICE PROVIDER, provided that the requirement for such an audit is notified in writing to the SERVICE PROVIDER a reasonable period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the SERVICE PROVIDER considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in the Project Governance and Management section of RFP.
- 2.3 Except as provided in 2.2 above, audits shall be conducted by with adequate notice of 2 weeks to the SERVICE PROVIDER.

3. ACCESS

The SERVICE PROVIDER shall provide to the Department or its nominated agency reasonable access to employees, suppliers, agents and third party facilities as detailed in the RFP, documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The Department or its nominated agency shall have the right to copy and retain copies of any relevant records. The SERVICE PROVIDER shall make every reasonable effort to co-operate with them.

4. AUDIT RIGHTS

The Department or its nominated agency shall have the right to audit and inspect suppliers, agents and third party facilities (as detailed in the RFP), 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 data processed, held or conveyed by the Partner on behalf of the Department and documentation related thereto;
- (ii) That the actual level of performance of the services is the same as specified in the Operational Threshold;
- (iii) That the SERVICE PROVIDER has complied with the relevant technical standards, and has adequate internal controls in place;
- (iv) SERVICE PROVIDERs deployment of resources and their attendance records;
- (v) The compliance of the SERVICE PROVIDER with any other obligation under the Agreement;

For the avoidance of doubt the audit rights under this Schedule shall not include access to the SERVICE PROVIDER's profit margins or overheads, any confidential information relating to the SERVICE PROVIDER's employees, or (iii) minutes of its internal Board or Board committee meetings including internal audit, or (iv) such other information of commercially confidence in nature which are not relevant to the Services associated with any obligation under the AGREEMENT.

5. AUDIT RIGHTS OF SUPPLIERS AND AGENTS

- 5.1 The SERVICE PROVIDER shall use reasonable endeavours to achieve the same audit and access provisions as defined in this Schedule with suppliers and agents who supply labour, services, equipment or materials in respect of the services. The SERVICE PROVIDER shall inform the Department or its nominated agency prior to concluding supply agreement of any failure to achieve the same rights of audit or access.
- 5.2 REPORTING: The SERVICE PROVIDER will provide quarterly reports to the Department or its nominated agency regarding any specific aspects of the Project and in context of the audit and access information as required by the Department or its nominated agency.

6. ACTION AND REVIEW

- 6.1 Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the Department or its nominated agency and the SERVICE PROVIDER's representative shall inform the Department about the actions that would be taken by the SERVICE PROVIDER in respect of such discrepancies within a period of thirty (30) calendar days from the submission of the said audit / assessment report or such earlier time period as notified by the Department.
- 6.2 Any change or amendment to the systems and procedures of the SERVICE PROVIDER, where applicable, arising from the audit / assessment report shall be agreed within thirty (30) calendar days from the

submission of the said audit / assessment report or such earlier time period as notified by the Department. The changes agreed by the Department, or any changes suggested by the Department, shall be implemented by the SERVICE PROVIDER within a period of not more than 30 days or such other period as may be requested by the SERVICE PROVIDER and agreed to by the Department.

7. TERMS OF PAYMENT

Except for the audits that are conducted by the SERVICE PROVIDER, for which the costs will be borne by the SERVICE PROVIDER, the Department shall bear the cost of other audits and inspections. The SERVICE PROVIDER shall bear all costs for all reasonable assistance and information provided under the AGREEMENT, the Project Implementation, Operation and Maintenance Operational Threshold by the SERVICE PROVIDER pursuant to this Schedule.

8. RECORDS AND INFORMATION

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

The SERVICE PROVIDER at all times make and keep sufficient copies of the Agreement documents, manuals, reference material, drawings, specifications and any other document required by him to fulfil its duties under this Agreement.

The SERVICE PROVIDER shall keep at each Customs Service Centre Site, Operations Centre and CBIC Locations, adequate number of copies of all documents required to fulfil its duties under the Agreement. In excess of its own requirement and those copies shall be available at all times for use by the Department's Representative and / or by any other person authorized by the Department's representative.

Schedule II – Exit Management Schedule

1. PURPOSE

- a) This Schedule sets out the provisions which will apply six (6) months prior to expiry of the Term of the Agreement or from the effective date of termination of the Agreement. In the case of termination of any part of the Agreement or Services, the provisions of this Schedule shall, mutatis mutandis, apply to the part of Agreement or Services terminated.
- b) In this Schedule, the term 'Replacement SERVICE PROVIDER' shall mean any third party that the Department or its nominated agencies appoint to replace the SERVICE PROVIDER upon expiry of the Term or earlier termination of this Agreement to undertake the Services or part thereof;
- c) The SERVICE PROVIDER shall ensure that its respective associated entities, Service Providers carry out their respective obligations set out in this Exit Management Schedule.

2. CONTINUATION OF PROJECT

- a) In case of the Agreement being terminated by the Department, the Department reserves the right to ask the SERVICE PROVIDER to continue running the project operations for a period of 6 months after termination orders are issued and the SERVICE PROVIDER shall be obliged to provide such services for such period without any additional cost and expense to the Department and without any impediment in the quality of services (measured against the target Operational Thresholds defined in Volume 1 of the RFP).
- b) The SERVICE PROVIDER will pass on to the Department and/or to the Replacement SERVICE PROVIDER, the subsisting rights in any licensed products on terms not less favourable to the Department/ the Replacement SERVICE PROVIDER, than that enjoyed by the SERVICE PROVIDER.

3. COOPERATION AND PROVISION OF INFORMATION

- a) During the exit management period:
 1. The SERVICE PROVIDER will allow the Department or its nominated agency access to information reasonably required to define the then current mode of operation associated with the provision of the Services to enable the Department to assess the existing services being delivered;
 2. The SERVICE PROVIDER, on reasonable request by the Department, shall promptly provide access to and copies (hard and soft copies as deemed necessary by the Department) of all information held or controlled by the SERVICE PROVIDER which it has prepared or maintained in accordance with this Agreement relating to any material aspect of the Services (whether provided by the previous Service Provider, the SERVICE PROVIDER). The Department shall be entitled to copy of all such information. Such information shall include details pertaining to the services rendered and other performance data.

The SERVICE PROVIDER shall permit the Department and/or its nominated agencies to have reasonable access to the employees engaged for providing services and facilities as reasonably required by the Department to understand the methods of delivery of the services employed by the SERVICE PROVIDER and to assist appropriate knowledge transfer.

- b) During the exit management period, the Replacement SERVICE PROVIDER shall submit periodic reports on the progress of the transition with the Department and the SERVICE PROVIDER. The SERVICE PROVIDER shall ensure that any issues and gaps highlighted in such reports shall be resolved to the satisfaction of the Department

5. CONFIDENTIAL INFORMATION, SECURITY AND DATA

- a) The SERVICE PROVIDER will promptly on the commencement of the exit management period supply to the Department or its nominated agency the following:
 - a) information relating to the current services rendered and customer and performance data relating to the performance of sub-contractors in relation to the services;
 - b) documentation relating to Project's Intellectual Property Rights;
 - c) all current and updated data as is reasonably required for purposes of the Department or its nominated agencies transitioning the services to its Replacement SERVICE PROVIDER in a readily available format nominated by the Department and/or its nominated agency;
 - d) all other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable the Department or its nominated agencies, or its Replacement SERVICE PROVIDER to carry out due diligence in order to transition the provision of the Services to the Department or its nominated agencies, or its Replacement SERVICE PROVIDER (as the case may be).
 - 1. Before the expiry of the exit management period, the SERVICE PROVIDER shall deliver to the Department or its nominated agency all new or up-dated materials from the categories set out above (or any other information and data requested by the Department) and shall not retain any copies thereof, except that the SERVICE PROVIDER may be permitted to retain one copy of such materials for archival purposes only as approved by the Department.
 - 2. On completion of the exit management period, the SERVICE PROVIDER shall delete all confidential information and data from the SERVICE PROVIDER's system and provide a certificate to the Department stating the completion of deletion of all such data and information.

5. EMPLOYEES

Promptly, on reasonable request at any time during the exit management period, the SERVICE PROVIDER shall, subject to Applicable Laws, restraints and regulations (including in particular those relating to privacy) provide to

the Department or its nominated agency a list of all employees (with job titles and contact information) of the SERVICE PROVIDER dedicated to providing the services at the commencement of the exit management period.

6. TRANSFER OF CERTAIN AGREEMENTS

On request by the Department or its nominated agency the SERVICE PROVIDER shall effect such assignments, transfers, licenses and sub-licenses as the Department may require in favour of the Department or its nominated agencies or its Replacement SERVICE PROVIDER in relation to any equipment lease, maintenance or service provision agreement between the SERVICE PROVIDER and third party lessors, Service Providers, and which are related to the services and reasonably necessary for the carrying out of replacement services by the Department or its nominated agency or its Replacement SERVICE PROVIDER.

7. RIGHTS OF ACCESS TO PREMISES

- a) At any time during the exit management period, where Assets are located at the SERVICE PROVIDER's premises, the SERVICE PROVIDER will be obliged to give reasonable rights of access to (or, in the case of Assets located on a third party's premises, procure reasonable rights of access to) the Department or its nominated agency and/or any Replacement SERVICE PROVIDER in order to make an inventory of the Assets.
- b) The SERVICE PROVIDER shall also give the Department or its nominated agency or its nominated agencies, or any Replacement SERVICE PROVIDER right of reasonable access to the SERVICE PROVIDER's premises and shall procure the Department or its nominated agency or its nominated agencies and any Replacement SERVICE PROVIDER 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 Agreement as is reasonably necessary to migrate the services to the Department or its nominated agency, or a Replacement SERVICE PROVIDER.

8. GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

- a) The SERVICE PROVIDER shall provide all such information as may reasonably be necessary to effect as seamless handover as practicable in the circumstances to the Department or its nominated agency or its Replacement SERVICE PROVIDER and which the SERVICE PROVIDER 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 any SERVICE PROVIDER, associated entity, or sub-contractor is deemed to be in the possession or control of the SERVICE PROVIDER.
- c) The SERVICE PROVIDER shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

9. EXIT MANAGEMENT PLAN

- a) The SERVICE PROVIDER shall provide to the Department or its nominated agency with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the Agreement as a whole and in relation to the various phases of the Project:
1. a detailed program of the transfer process that could be used in conjunction with a Replacement SERVICE PROVIDER 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;
 2. plans for the communication with such of the SERVICE PROVIDER's sub-contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on the Department's operations as a result of undertaking the transfer;
 3. (if applicable) proposed arrangements for the segregation of the SERVICE PROVIDER's networks from the networks employed by the Department and identification of specific security tasks necessary at termination;
 4. plans for provision of contingent support to the Department, and Replacement SERVICE PROVIDER for a reasonable period after transfer.
- b) The SERVICE PROVIDER shall re-draft the Exit Management Plan every six (6) months thereafter to ensure that it is kept relevant and up to date.
- c) Each Exit Management Plan shall be presented by the SERVICE PROVIDER to and approved by the Department or its nominated agencies.
- d) The terms of payment as stated in the Terms of Payment Schedule include the costs of the SERVICE PROVIDER complying with its obligations under this Schedule.
- e) In the event of termination of the Agreement/ Services or any part thereof, or 6 months prior to expiry of the Term of the Agreement, each Party shall comply with the Exit Management Plan envisaged in this Schedule.
- f) During the exit management period, the SERVICE PROVIDER shall use its best efforts to deliver the services.
- g) Charges collected during the Exit Management period shall be made in accordance with the rates agreed in the Agreement. However, the SERVICE PROVIDER shall, within 30 days of commencement of the exit management period, submit a complete, accurate and up to date account of all charges collected by the Service Provider till the effective date of commencement of the exit management period; ~~(b) all payments that are due and payable to the SERVICE PROVIDER by the Department till the effective date of commencement of the exit management period; and (c) all payments that may be payable by the Department to the SERVICE PROVIDER till the effective date of completion of the exit management period.~~
- h) This Exit Management plan shall be furnished in writing to the Department or its nominated agencies within 90 days from the Effective Date of this Agreement.

Annexure

Annexure A–Format for Change Control Notice

CCN Number: <<Number>>	
Change of Control Details:	
Before Change of Control	After Change of Control (Surviving Entity)
Legal Name of Entity:	Legal Name of Entity:
Registered Office Address:	Registered Office Address:
Date of Incorporation (as per Companies Act, 1956):	Date of Incorporation of Surviving Entity (as per Companies Act, 1956):
Certificate of Incorporation:	Certificate of Incorporation:
Annual Turnover (in INR) during last three Financial Years	Annual Turnover (in INR) during last three Financial Years
Entity Financial Net worth (measured as paid-up capital plus free reserves)	Entity Financial Net worth (measured as paid-up capital plus free reserves)
Profitability (in INR) during last three Financial Years:	Profitability (in INR) during last three Financial Years:
Name & Designation:	
Signature	
Name:	
Designation:	
Date:	

Annexure B – Format for Change Request Notice

PART A: INITIATION	
CRN Number: <<Number ¹ >>/A	Date:
Title:	
Initiator:	
Brief Description of Proposed Change: (To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)	
Name & Designation: (On behalf of Initiator)	
Signature:	Date:

Part B: EVALUATION	
CRN Number: <<Number ¹ >>/B	Date:
Detailed Description of Change: (To include Changes to Deliverables, Cost/ Charging Structure, Payment Details, Documentation, Training, Operational Thresholds, Working Arrangements and any other contractual issue or change. Identify any attachments as B1, B2, and B3 etc.)	
Impact:	
Deliverables Involved:	
Detailed Timelines:	
Cost/ Charges for Proposed Change: (including detailed costing to arrive at such cost structure and schedule of payments, if change is approved)	

¹ CRN Number will be same for both Parts, but demarcated with “/ <Part Name>”

Any Other Relevant Information:	
Name & Designation (on behalf of Initiator)	
Signature:	Date:
Authority to Proceed: Implementation of this CRN as submitted in Part A, in accordance with Part B is: (tick as appropriate)	
Approved Comments:	Rejected Comments:
For CBIC	For SERVICE PROVIDER
Signature	Signature
Name:	Name:
Designation:	Designation:
Date:	Date:

Annexure C – Operational Threshold Agreement

The Bidder is required to provide courteous and efficient service to the trade. The Bidder should ensure that operators are well mannered, polite, courteous and helpful towards the members of the trade. The operators should have minimum educational qualification of 10+2 and should possess a certificate of data entry/typing and computer proficiency from a reputed institute. The Department may seek digital copies of educational qualification proofs, CV etc for verification and the Bidder must share the same. They should also meet the service delivery standards. The standards for various operations under normal conditions of operation shall be as follows:

	Types of Operation	Desirable Threshold
a	Data entry of document up to 10 line item	30 minutes
b	Time for additional block of 10 items	30 minutes
c	Editing Checklist	30 minutes
d	Submission into ICES system	10 minutes
e	Printing of document	10 minutes
f	Amendment to be carried out	15 minutes
g	Query Response/Submission	30 minutes

The operational thresholds and the rates should be clearly displayed on a board at the Customs Service Centre for awareness of visitors. Further, the board should also contain email details at which grievances can be emailed in consultation with the nodal officer from Customs.

SLA & Penalty

The performance of the Bidder will be evaluated based on the feedback received from the traders. It will be evaluated on the following parameters – timely completion of service, quality of service, experience of Interaction with the Bidder, facilities provided at service center.

The performance of the bidder will be evaluated based on “Feedback Score for a site ” which will be calculated as follows –

“Overall Feedback Rating for a user” = AVERAGE (Feedback rating given by that user on agreed parameters*)

“Feedback Score for a site” = AVERAGE (“Overall Feedback Rating for a user” for all feedbacks received at that site)

*Note – “Feedback Score for a site” will be calculated on a monthly basis for each site

*indicative 4 parameters have been mentioned

Penalty applied to Bidder on failing to meet Feedback score requirements		
Average Volume of Transactions at site per month	“Feedback Score for a site” (rounding off as per practice)	Penalty
≥ 1000	“Feedback score for a site is < 1.5” at < 25% of total sites in this category	1.00% of PBG
	“Feedback score for a site is < 1.5” at ≥ 25% AND < 50% of total sites in this category	2.00% of PBG
	“Feedback score for a site is < 1.5” at ≥ 50% of total sites in this category	4.00% of PBG
≥ 500 AND < 1000	“Feedback score for a site is < 1.5” at < 25% of total sites in this category	0.50% of PBG
	“Feedback score for a site is < 1.5” at ≥ 25% AND < 50% of total sites in this category	1.00% of PBG
	“Feedback score for a site is < 1.5” at ≥ 50% of total sites in this category	2.00% of PBG
≤ 500	“Feedback score for a site is < 1.5” at < 25% of total sites in this category	0.25% of PBG
	“Feedback score for a site is < 1.5” at ≥ 25% AND < 50% of total sites in this category	0.50% of PBG
	“Feedback score for a site is < 1.5” at ≥ 50% of total sites in this category	1.00% of PBG

In case of difference between penalty percentage, the penalty will be applied at a higher rate.

In case of repeated failure to meet the service standards or if the rating stays below the desired threshold for a continuous period of 3 months, corrective actions may be implemented by CBIC including but not limited to liquidation of PBG in partial or full, and termination of contract. Kindly refer Annexure C for illustrative calculation of penalty

**** End of Volume 3 ****