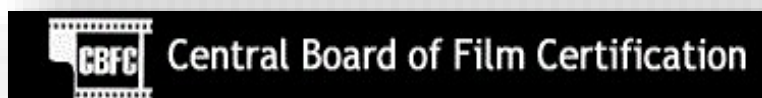


**“PROVIDING AND MANAGING SERVICES OF  
ARCHIVAL DCI, NON-DCI DIGITAL CINEMA  
CONTENT SUBMITTED FOR CENSOR  
CERTIFICATION ON LTO”**

**Volume III : Master Service Agreement**



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## 1. Master Services Agreement

THIS MASTER SERVICE AGREEMENT ("**Agreement**") is made on this the <\*\*\*> day of <\*\*\*> 2023 at Mumbai, India.

BETWEEN

**Central Board of Film Certification** having its office at **9<sup>th</sup> Floor, Phase-I Building, Films Division Complex, 24-Dr. G. Deshmukh Marg, Mumbai-400 026** India hereinafter referred to as '**CBFC**' or '**CBFC**', which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

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

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

WHEREAS:

- (i) CBFC is desirous to implement the project of **"Providing and managing services of archival DCI, Non-DCI Digital Cinema Content submitted for Censor Certification on LTO"**.
- (ii) In furtherance of the same, CBFC undertook the selection of a suitable Implementation Agency through a competitive bidding process for implementing the Project and in this behalf issued Request for Proposal (RFP) dated 20<sup>th</sup> December 2024.
- (iii) The successful bidder has been selected as the Implementation Agency on the basis of the bid response set out as **Annexure of this Agreement**, to undertake the Project providing and managing services of archival of Encrypted Digital Cinema Package (Content) of Films at CBFC of the development and implementation of the solution, its roll out and sustained operations.

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

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

1. **Adverse Effect:** means material adverse effect on
  - (a) the ability of the Implementation Agency to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or
  - (b) the legal validity, binding nature or enforceability of this Agreement;
2. **Agreement:** means this Agreement together with all Articles, Annexures, Schedules and the contents and specifications of the RFP;
3. **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 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;
4. **Application** means the software application used by the Implementation Agency which is provided as a part of its services under this agreement.
5. **Application Downtime** means the time for which user/s is not able to access the application. However, in calculating downtime, scheduled downtime (for example, backup time, routine maintenance time) would not be considered. **Planned Application Downtime** means the unavailability of the application services due to maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure wherein prior intimation (at least two working days in advance) of such planned outage shall be given and approval sought from the CBFC as applicable. **Unplanned Application Downtime** means the total time for all the instances where services in the software requirement specification document prepared by the Implementation Agency are not available for more than 5 consecutive minutes ;
6. **Assets:** means entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the Implementation Agency exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement
7. **Business Hours** shall mean the working time for CBFC users which is 9:30 AM to 6:00 PM on the days when CBFC Mumbai office is working;
8. **Confidential Information:** means all information including non-public CBFC Data or non-public data of Implementation Agency (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);

9. **Control** means, in relation to any business entity, the power of a person to secure
- (i) by means of the holding of shares or the possession of voting power in or in relation to that or any other business entity, or
  - (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other business entity, that the affairs of the first mentioned business entity are conducted in accordance with that person's wishes and in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;
10. **Deliverables** means the products, infrastructure and services agreed to be delivered by the Implementation Agency in pursuance of the agreement as defined more elaborately in the RFP, Implementation and the Maintenance phases and includes all documents related to the user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related), inter alia payment and/or process related etc., source code and all its modifications, Data regarding films information and programming source code, application software as part of the deliverables after development every quarter as proprietary to CBFC.
11. **Effective Date** shall have the same meaning ascribed to it in Clause 3 of this Volume;
12. **CBFC Data** means all proprietary data of the CBFC or its stakeholders generated out of operations and transactions, and related information including but not restricted to user data which the Implementation Agency obtains, possesses or processes in the context of providing the Services to the users pursuant to this Agreement;
13. **Gol means the Government of India;**
14. **Intellectual Property Rights** means all rights in written designs and copyrights, moral rights, rights in databases pre- existing work including its up- gradation systems and compilation rights (whether or not any of these are registered and including application for registration);
15. **Material Breach** means a breach by either Party (CBFC or Implementation Agency) of any of its obligations under this Agreement which has or is likely to have an Adverse Effect on the Project which such Party shall have failed to cure even after cure period of 30 days has been provided to the Party;
16. **Parties** means CBFC and Implementation Agency for the purposes of this Agreement and "Party" shall be interpreted accordingly;

17. **Performance Guarantee** Means the guarantee provided by a Nationalized Bank in favor of the Implementation Agency. The amount of Performance Security shall be Rs. \_\_\_\_\_ i.e. \_\_\_\_% of the overall cost of the project. This performance security shall be valid till six months after the completion of the project.
18. **Project** means Pilot, Project Implementation (roll out) and Maintenance in terms of the Agreement;
19. **Project Implementation Phase** shall be from the Effective Date of the Agreement to the date of final acceptance testing & certification.
20. **Project Timelines** shall have the same meaning ascribed to in **Schedule- IV**;
21. **Replacement Implementation Agency** means any third party that CBFC or its nominated agencies appoint to replace Implementation Agency upon expiry of the Term or termination of this Agreement to undertake the Services or part thereof;
22. **Required Consents** means the consents, waivers, clearances and licenses to use CBFC's Intellectual Property Rights, rights and other authorizations as may be required to be obtained for the software and other items that CBFC or their nominated agencies are required to make available to Implementation Agency pursuant to this Agreement  
  
**Services** means the services delivered to the Stakeholders of CBFC or its nominated agencies, employees of CBFC or its nominated agencies, and to professionals, using the tangible and intangible assets created, procured, installed, managed and operated by the Implementation Agency including the tools of information and communications technology;
23. **Service Level** means the level of service and other performance criteria which will apply to the Services delivered by the Implementation Agency;
24. **SLA** means the Performance and Maintenance SLA executed as part of this Agreement;
25. **Third Party Systems** means systems (or any part thereof) in which the Intellectual Property Rights are not owned by the CBFC or Implementation Agency and to which Implementation Agency has been granted a license to use and which are used in the provision of Services;



## 2.2 Interpretation

In this Agreement, unless otherwise specified:

- i) references to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
- ii) use of any gender includes the other genders;
- iii) references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- iv) 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);
- v) 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;
- vi) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- vii) references to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which the offices of CBFC are generally open for business;
- viii) references to times are to Indian Standard Time;
- ix) 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 all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- x) System integrator (SI) or Implementation Agency (IA) has been used for the same entity i.e. bidder selected for the project.

## 2.3 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.

## **2.4 Ambiguities within Agreement**

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

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

## **2.5 Priority of documents**

This Agreement, including its Schedules and Annexure, 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:

- (i) This Agreement along with the Schedules;
- (ii) Request for Proposal and Addendum / Corrigendum to the Request for Proposal (if any). For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexure / Schedules or the contents of the RFP, the terms of this Agreement shall prevail over the Annexure / Schedules and Annexure / Schedules shall prevail over the contents and specifications of the RFP.

## **3. SCOPE OF THE PROJECT**

As detailed in this RFP, the Implementation Agency shall be required to:

- (A) Setting up necessary hardware and software required for archival system which will archive certified each Digital Cinema content on LTO.

- (B) Continue providing of Help Desk Support (8 a.m. to 8 p.m.)
- (C) Provide Redundant hot standby system for archival.

For the avoidance of doubt, it is expressly clarified that this Agreement shall govern the provision of the contracted professional services under the SLA to the CBFC and its nominated agencies. It is anticipated that new or renewal agreements may be undertaken by creating a separate SLA, with schedules and annexures as required, under this Agreement for each additional engagement.

### 3.1 Scope of work

CBFC has decided to get the services outsourced for archival and management of digital cinema content that arrive for censor certification. In this regards the implementation agency will setup the necessary infrastructure including hardware, software, storage, network **for archival of content on LTO**. This setup needs to be established in CBFC premises at Mumbai.

Accordingly, the scope of work can be broadly classified into the following parts:

- 1 Setting up necessary hardware and software required for archival of each Digital cinema content.
- 2
  - Redundant hot standby system for archival storage on LTO.
  - Bidder to maintain two copies of each DCI-DCP content on separate LTO's as primary and backup. The backup will be maintained at same premises or at different location in Mumbai itself which will be decided at the time of signing of contract.
  - Necessary hardware like LTO, drive, computer system, etc. for archival system.
  - Archival Management software.
  - Bidder will be responsible for maintaining the necessary hardware, software and network provided for archival.
  - Bidder to provide storage media on LTO which will have a manufacture rated shelf life of minimum 12 years.
  - Bidder will establish and maintain the local IT network in the storage area where archival system is located.
  - Dedicated project manager staff to handle the archival operations.
  - Internet with sufficient bandwidth to download the movie data from cloud to the archival system collocated at CBFC premises in Mumbai.
  - Helpdesk for troubleshooting.
  - In case of increase in load the additional manpower should be made available within 3 hours at the site on business days.
  - Content retrieval system which can retrieve the content within 5 hours post the receipt of necessary approval from CBFC.
  - Bidder will maintain the documentation and define the SOP's along with CBFC officials required for the archival operations.
  - It is the bidder's responsibility to maintain the required metadata for indexing, identification, and retrieval of the content efficiently.
  - Fortnightly archival reports to be provided to CBFC.
- 3 It is the responsibility of the bidder to maintain the archival logs for any reference

- 4 Disposing off the LTO cartridges which are archived with the content that has completed 12 years from the year of archival.
- 5 Phase wise implementation: In the first phase, the project is to be implemented in r/o contents available in CBFC, Mumbai regional office. In the next phase, the project will be implemented for other regional office of CBFC subject to successful implementation for Mumbai office.

#### 4. TERM AND DURATION OF THE AGREEMENT

This Agreement shall come into effect on \_\_\_\_\_ hereinafter the 'Effective Date') **and unless terminated earlier, this agreement shall be in force and effect for a period of five (5) years.** After the end of the contract period, CBFC reserves the right to either continue with the existing bidder with either same or revised terms and conditions as mutually agreed by both parties or sign a contract with other agency.

#### 5. CONDITIONS PRECEDENT & EFFECTIVE DATE

##### 5.1 Provisions to take effect upon fulfillment of Conditions Precedent

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

##### Conditions Precedent

##### 5.2 Conditions Precedent of the Implementation Agency

The Implementation Agency shall be required to fulfill the Conditions Precedent in which is

- (i) to provide a Performance Bank Guarantee and other guarantees/ payments as and when required to the CBFC or its nominated agencies; and
- (ii) to provide the CBFC or its nominated agencies certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Implementation Agency.

### 5.3 Conditions Precedent of the CBFC

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

- (i) access to required offices and site
- (ii) Necessary clearances
- (iii) Approval of the Project by a Competent Authority, etc.
- (iv) Access to network from which content / film is to be downloaded  
For the avoidance of doubt, it is expressly clarified that the obligations of the Parties under this Agreement shall commence from the fulfillment of the Conditions Precedent as set forth above.

### 5.4 Extension of time for fulfillment of Conditions Precedent

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

### 5.5 Non-fulfillment of the Implementation Agency's Conditions Precedent

- i) In the event that any of the Conditions Precedent of the Implementation Agency have not been fulfilled within 15 days of signing of this Agreement and the same have not been waived fully or partially by CBFC or its nominated agencies, this Agreement shall cease to exist;
- ii) In the event that the Agreement fails to come into effect on account of non- fulfillment of the Implementation Agency's Conditions Precedent, the CBFC or its nominated agencies shall not be liable in any manner whatsoever to the Implementation Agency and the CBFC shall forthwith forfeit the Performance Guarantee.
- iii) In the event that possession of any of the CBFC or its nominated agencies facilities has been delivered to the Implementation Agency prior to the fulfillment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to CBFC or its nominated agencies, free and clear from any encumbrances or claims.

## 6. CHANGE OF CONTROL

- i) In the event of a change of control of the Implementation Agency during the Term, the Implementation Agency shall promptly notify CBFC and/or its nominated agencies of the same.
- ii) In the event that if the net worth of the surviving entity is less than that of Implementation Agency prior to the change of control, the CBFC 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 Implementation Agency from a guarantor acceptable to the CBFC or its nominated agencies (which shall not be Implementation Agency or any of its associated entities).
- iii) If such a guarantee is not furnished within 30 days of the CBFC or its nominated agencies requiring the replacement, the CBFC may exercise its right to terminate this Agreement within a further 30 days by written notice, to become effective as specified in such notice.
- iv) Pursuant to termination, the effects of termination as set out in Clause 13.2 of this Agreement shall follow.
- v) For the avoidance of doubt, it is expressly clarified that the internal reorganization of the Implementation Agency 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.

## 7. REPRESENTATIONS AND WARRANTIES

### 7.1 Representations and warranties of the Implementation Agency

The Implementation Agency represents and warrants to the CBFC or its nominated agencies that:

- i) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;
- ii) it is a competent provider of services for archival of Digital Cinema Content on LTO.
- iii) it has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- iv) from the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

- v) in providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to CBFC's normal business operations;
- vi) this Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;
- vii) the information furnished in the tender documents and as updated on or before the date of this Agreement is to the best of its knowledge and belief, true and accurate in all material respects as at the date of this Agreement;
- viii) 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;
- ix) there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;
- x) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- xi) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement;
- xii) no representation or warranty by it contained herein or in any other document furnished by it to CBFC or its nominated agencies in relation to the Required Consents contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading; and
- xiii) 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 CBFC or its nominated agencies in connection therewith.

## 7.2 Representations and warranties of the CBFC or its nominated agencies

CBFC or its nominated agencies represent and warrant to the Implementation Agency that:

- i. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement and carry out the transactions contemplated hereby;
- ii. it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- iii. it has the financial standing and capacity to perform its obligations under the Agreement;
- iv. 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 there under including any obligation, liability or responsibility hereunder;
- v. 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;
- vi. 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;
- vii. 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;
- viii. 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 CBFC 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; it has complied with Applicable Laws in all material respects;
- ix. 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 upon the Implementation Agency 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 Implementation Agency, in accordance with this Agreement.



## 8. OBLIGATIONS OF CBFC OR ITS NOMINATED AGENCIES

- i) Without prejudice to any other undertakings or obligations of the CBFC or its nominated agencies under this Agreement, the CBFC or its nominated agencies shall perform the following:
  - Archival of the content prior to effective date of commencement of archival services by the Implementation Agency shall be responsibility of the CBFC.
  - The premises with proper air conditioning with humidity controlled environment to be provided for archival and storage room for primary as well as for backup LTO, either in same premises or at 2 different premises based on decision taken at the time of signing the contract.
  - The necessary power to be provided for archival operations.
  - Fireproof cabinets to store the LTO storage media of the archived content and provide access of the same to the Implementation Agency for the archival operations as and when required.
  - To provide proper security measures for archival storage room.
  - Provisioning of required access and permissions for installation of complete infrastructure for the archival.
- ii) CBFC shall provide the access to personnel of Implementation Agency in its premises from where Services are to be performed.
- iii) KDM for any playback of the content will be arranged by CBFC from respective producer of the content.

## 9. OBLIGATIONS OF THE IMPLEMENTATION AGENCY

- i) It shall provide to the CBFC or its nominated agencies, the Deliverables as set out in RFP document.
- ii) It shall perform the Services as set out in Section 2 of this Agreement and in a good and workmanlike manner commensurate with industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Agreement, and so as to comply with the applicable Service Levels set out with this Agreement. It shall ensure that the Services are being provided as per the Project Timelines set out in **Schedule IV** of this Agreement.

## 10. APPROVALS AND REQUIRED CONSENTS

- i) 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 Implementation Agency 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.

ii) The CBFC or its nominated agencies shall use reasonable endeavors to assist Implementation Agency to obtain the Required Consents. In the event that any Required Consent is not obtained, the Implementation Agency and the CBFC or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the CBFC 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 Implementation Agency shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the Required Consents are obtained if and to the extent that the Implementation Agency's obligations are not dependent upon such Required Consents.

## 11. USE OF ASSETS BY THE IMPLEMENTATION AGENCY

During the Term the Implementation Agency shall:

- i) 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 Implementation Agency exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the “**Assets**”) in proportion to their use and control of such Assets; and
- ii) Keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Implementation Agency takes control of and/or first uses the Assets and during the entire Term of the Agreement ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Implementation Agency will be followed by the Implementation Agency and any person who will be responsible for the use of the Assets;
- iii) take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Implementation Agency or as may, in the reasonable opinion of the Implementation Agency, be necessary to use the Assets in a safe manner;
- iv) ensure that the Assets that are under the control of the Implementation Agency, are kept suitably housed in CBFC premises in Mumbai and in conformity with Applicable Law;

- v) procure permission from the CBFC 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;
- vi) 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.

## **12. ACCESS TO CBFC OR ITS NOMINATED AGENCIES LOCATIONS**

1. For so long as the Implementation Agency provides services to the CBFC or its nominated agencies location, as the case may be, on a non-permanent basis and to the extent necessary, the CBFC as the case may be or its nominated agencies shall, subject to compliance by the Implementation Agency with any safety and security guidelines which may be provided by the CBFC as the case may be or its nominated agencies and notified to the Implementation Agency in writing, provide the Implementation Agency with:
  - i. Reasonable access to the location, in the same manner granted to the CBFC or its nominated agencies employees.
  - ii. reasonable work space, access to office equipment as mutually agreed and other related
  - iii. support services in such location and at such other the CBFC as the case maybe location, if any, as may be reasonably necessary for the Implementation Agency to perform its obligations hereunder and under the SLA.
  - iv. Access to locations, office equipment and services shall be made available to the Implementation Agency on an “as is, where is” basis by the CBFC as the case may be or its nominated agencies. The Implementation Agency agrees to ensure that its employees, agents and contractors shall not interfere in the content provided by the applicant in any form whatsoever.

## **13. FINANCIAL MATTERS**

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

- i) In consideration of the Services and subject to the provisions of this Agreement and of the SLA, and subsequently the agreement between the Implementation Agency and the stakeholder / applicant seeking the service, the Implementation agency shall charge the exact amount of fee

which has been agreed while awarding the work to the Agency. The consideration to the Implementation Agency for the Services rendered in pursuance of this agreement, shall be in accordance with the commercial Terms set out in Schedule V of this Agreement.

ii) Save and except as otherwise provided for herein or as agreed between the Parties in writing, the CBFC shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the Implementation Agency performance of any obligations under this Agreement or the SLA). For the avoidance of doubt, it is expressly clarified that the payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, infrastructure costs, project costs, implementation and management charges and all other related costs including taxes which are addressed in this Clause.

## 13.2 Invoicing and Settlement

Subject to the specific terms of the SLA, the Implementation Agency shall raise its invoices in accordance with the following principles:

There will be two agreements-

- i) This agreement is the first, between the CBFC and the Implementation Agency.
- ii) In pursuance of the terms and conditions of this agreement, third party agreement will be made between the stakeholders of CBFC or the applicants and Implementation Agency. The stakeholders /applicants shall be invoiced by the Implementation Agency for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the Implementation Agency shall raise an invoice as per Schedule V of this Agreement; and

Any invoice presented in accordance with this Article shall be in a form agreed with the CBFC.

The Implementation Agency alone shall invoice all payments. Such invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in Schedule V of this Agreement. Payment of invoices raised by Implementation Agency shall be made by the stakeholders / applicants.

## 14 TERMINATION

### 14.1 Material Breach

- i) In the event that either Party believes that the other Party is in Material Breach of its obligations under this Agreement, such aggrieved Party may terminate this Agreement upon giving a one month's notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, the CBFC or Implementation Agency, as the case may be, will have the option to terminate the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach, which could include the following events and the termination will become effective:
- ii) If the Implementation Agency is not able to deliver the services as per the SLAs defined in RFP which translates into Material Breach, then the CBFC may serve a 30 days written notice for curing this Material Breach. In case the Material Breach continues, after the expiry of such notice period, the CBFC will have the option to terminate this Agreement.
- iii) Further, the CBFC may after affording a reasonable opportunity to the Implementation Agency to explain the circumstances leading to such a breach.
- iv) If there is a Material Breach by the CBFC or its nominated agencies which results in not fulfilling the obligations mentioned herein or not providing the certification of User Acceptance, then the Implementation Agency will give a one month's notice for curing the Material Breach to the CBFC. After the expiry of such notice period, the Implementation Agency will have the option to terminate the Agreement
- v) The CBFC may by giving a one month's written notice, terminate this Agreement if a change of control of the Implementation Agency has taken place. For the purposes of this Clause, in the case of Implementation Agency, change of control shall mean the events stated in Clause 5, and such notice shall become effective at the end of the notice period as set out in Clause 5.
- vi) In the event that Implementation Agency undergoes such a change of control, CBFC may, as an alternative to termination, require a full Performance Guarantee for the obligations of Implementation Agency by a guarantor acceptable to CBFC or its nominated agencies. If such a guarantee is not furnished within 30 days of CBFC's demand, the CBFC may exercise its right to terminate this Agreement in accordance with this Clause by giving 15 days further written notice to the Implementation Agency.

## 14.2 Effects of termination

- i) In the event that CBFC terminates this Agreement pursuant to failure on the part of the Implementation Agency to comply with the conditions as contained in this Clause and depending on the event of default, Performance Guarantee furnished by Implementation Agency may be forfeited.
- ii) Upon termination of this Agreement, the Parties will comply with the Exit Management clause as specified in this Agreement.
- iii) In the event that CBFC or the Implementation Agency terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as Schedule V of this Agreement.
- iv) CBFC agrees to pay Implementation Agency for
  - a) All charges for the services Implementation Agency provides and any Deliverables and/or system (or part thereof) Implementation Agency delivers through termination, and
  - b) Reimbursable expenses that the Implementation Agency incurs through termination.

## 14.3 Termination of this Agreement due to bankruptcy of Implementation Agency

The CBFC may serve written notice on Implementation Agency at any time to terminate this Agreement with immediate effect in the event that the Implementation Agency is adjudicated bankrupt.

## 15. EXIT MANAGEMENT

The contract period shall be for 5 (five) years from \_\_\_\_\_. During the contract period the performance of the bidder will be reviewed by competent authority on yearly basis. After the end of the contractual period CBFC reserves the right to either continue with the existing bidder with either same or revised terms and conditions as mutually agreed by both parties or sign a contract with other agency. Implementation Agency shall prepare and provide to CBFC an Exit Management Plan covering the aspects specified in clause 13.2 herein. Such Exit Management Plan for the first time shall be submitted to CBFC after completion of one year of live operation. The same will be

updated from time to time. The cost of preparation of such Exit Management Plan shall be borne by Implementation Agency.

The Exit Management Plan shall contain the details thereof including the following:

- a) A detailed program of the transfer/transition process that could be used in conjunction with a Replacement Vendor, including details of the means to be used to ensure continuing provision of the Services throughout the transfer/transition process or until the cessation of the Services and of the management structure during the transfer/transition;
- b) Modalities for communication with Implementation Agency's staff, suppliers and any related third party as are necessary to avoid any detrimental impact on the Project's operations as a result of the transfer/transition;
- c) Plans for provision of contingent support to the Project and Replacement Vendor for a reasonable period after the transfer/transition.

## 16. INDEMNIFICATION & LIMITATION OF LIABILITY

- i) Subject to Clause 15.2 below, the Party in breach of provisions of this Agreement (the "Indemnifying Party") undertakes to indemnify the other Party (the "Indemnified Party") from and against all Losses on account of the Indemnifying Party's negligence or wilful default in performance or non-performance under this Agreement. However, the Indemnified Party shall promptly notify Indemnifying Party in writing of a third party claim pertaining to negligence or willful default of the Indemnifying Party. Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Indemnified Party.

Implementation Agency will not indemnify CBFC, however, in case of claim of infringement of intellectual property rights, if the claim of infringement is caused by

- a) CBFC's misuse or modification of the Service;
- b) CBFC's failure to use corrections or enhancements made available by the Indemnifying Party;
- c) CBFC's use of the Service in combination with any product or information not owned or developed by Indemnifying Party;
- d) CBFC's distribution, marketing or use for the benefit of third parties of the Service;

Or Information, direction, specification or materials provided by CBFC or any third party contracted to it.

- ii) The foregoing remedies constitute CBFC's sole and exclusive remedies and Implementation Agency's entire liability with respect to infringement.

15.2 The indemnities set out in Clause 15.1 shall be subject to the following conditions:

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



subrogated to all rights and defenses of the Indemnified Party with respect to the claims to which such indemnification relates; and

10. If a Party makes a claim under the indemnity in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).

iii) The liability of Implementation Agency (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages and shall in no event such liability extends to indirect, consequential damages. The liability cap given under this Clause shall not be applicable to the indemnification obligations set out in Clause 15.1 and breach of Clause 17.

iv) The allocations of liability in this Section 15 represent the agreed and bargained- for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

## **17. FORCE MAJEURE**

### **17.1 Exemption in case of Force Majeure**

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

### **17.2 Force Majeure events**

i) A Force Majeure event means any event or circumstance or a combination of events and circumstances referred to in this Clause, which is beyond the reasonable control of the affected Party; such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care; does not result from the negligence of such

Party or the failure of such Party to perform its obligations under this Agreement; is of an incapacitating nature and prevents or causes a delay or impediment in performance; and may be classified as all or any of the following events: Such events include:

**ii) Non-Political Events**

- a)** act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions, epidemic or pandemic;
- b)** radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the Implementation Agency's use of radiation or radio- activity or biologically contaminating material;
- c)** strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances as the case may be not arising on account of the acts or omissions of the Implementation Agency and which affect the timely implementation and continued operation of the Project; or
- d)** any event or circumstances of a nature analogous to any of the foregoing.

**iii) Political Events**

- e)** Change in Law, other than any Change in Law for which relief is provided under this Agreement;
- f)** expropriation or compulsory acquisition by the CBFC or any of their nominated agencies of any material assets or rights of the Implementation Agency;
- g)** unlawful or unauthorized revocation of, or refusal by CBFC or any of their nominated agencies, GOI or any of its agencies to renew or grant any clearance or Required Consents required by the Implementation Agency to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Implementation Agency's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- h)** any judgment or order of any court of competent jurisdiction or statutory authority in

India made against the Implementation Agency in any proceedings for reasons other than failure of the Implementation Agency to comply with Applicable Laws or Required Consents or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement;

- i) expropriation or compulsory acquisition by the CBFC or any of their nominated agencies of any material assets or rights of the Implementation Agency;
- j) unlawful or unauthorized revocation of, or refusal by any authority other than the CBFC or any of their nominated agencies to renew or grant any Required Consents required by the Implementation Agency to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Implementation Agency's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- k) any requisition of the Project by any other authority; or
- l) any requisition of the Project by the CBFC or any of their nominated agencies.
- m) For the avoidance of doubt, suspension of the Project in accordance with the provisions of this Agreement shall not be considered a requisition for the purposes of Force Majeure event.

*Other Events*

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

- iv) For the avoidance of doubt, it is expressly clarified that the failure on the part of the Implementation Agency under this Agreement or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this Agreement or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of Services which directly causes any breach of security like hacking aren't the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure". In so far as

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applicable to the performance of Services, Service Provider will be solely responsible to complete the risk assessment and ensure implementation of adequate security hygiene, best practices, processes and technology to prevent any breach of security and any resulting liability there from (wherever applicable).

## 17.3 Notification procedure for Force Majeure

The affected Party shall notify the other Party of a Force Majeure event within seven (7) days of occurrence of such event. If the other Party disputes the claim for relief under Force Majeure it shall give the claiming Party written notice of such dispute within thirty (30) days of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in accordance with Clause Upon cessation of the situation which led the Party claiming Force Majeure, the claiming Party shall within seven (7) days hereof notify the other Party in writing of the cessation and the Parties shall as soon as practicable thereafter continue performance of all obligations under this Agreement.

## 17.4 Allocation of costs arising out of Force Majeure

- i) Upon the occurrence of any Force Majeure Event prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- ii) Upon occurrence of a Force Majeure Event after the Effective Date, the costs incurred and attributable to such event and directly relating to the Project (**'Force Majeure Costs'**) shall be allocated and paid as follows:
- iii) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
- iv) Upon occurrence of an Other Event of Force Majeure, all Force Majeure Costs attributable to such Other Event, and not exceeding the Insurance Cover for such Other Event, shall be borne by the Implementation Agency and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by CBFC to the Implementation Agency (optional clause – to be used, if relevant. upon occurrence of a

Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by CBFC to the Implementation Agency.

- v) For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, operation and maintenance expenses, any increase in the cost of the Services on account of inflation and all other costs directly attributable to the Force Majeure Event.
- vi) Save and except as expressly provided in this Clause, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof.

### **17.5 Consultation and duty to mitigate**

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

## **18. CONFIDENTIALITY**

- i) In the course of performing its functions and obligations under this Agreement, Implementation Agency shall maintain strict secrecy, confidentiality and privacy in respect of the confidential records and information that has come to its possession or knowledge.
- ii) Implementation Agency shall keep confidentiality of the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems.
- iii) It is agreed between CBFC and Implementation Agency that CBFC has a right to prevent or prohibit Implementation Agency at any time from disclosing any information and records to any person and Implementation Agency shall abide by such decision except as required by any Statutory bodies or by due process of law.

- iv) Implementation Agency agrees that it shall ensure that all its employees, agents, service providers and any another related stakeholder are bound by nondisclosure agreements, and shall provide copies of such agreements to CBFC whenever required.
- v) All Proprietary Information, documentation and correspondence exchanged between CBFC and Implementation Agency in relation to the Project and t h e performance of tasks by Implementation Agency shall be treated as confidential and privileged by the parties and disclosed only to their respective officers, agents, representatives, professional advisors and members of Official Committees (if any, formed for the purpose) on a need to know basis.
- vi) Implementation Agency shall treat information and records provided to it or obtained otherwise by it in connection with the Project or its implementation as confidential and not use the same wholly or partially for any purpose other than for discharging the obligations under this Agreement, without the prior written approval of CBFC except as required by any Statutory bodies or by due process of law. Information that is in the public domain shall not be considered as confidential information under this Agreement.
- vii) All technical information, commercial terms and other non-public information disclosed by Implementation Agency pursuant to the Services to be provided to this Agreement shall be Implementation Agency's Confidential Information. Provisions of this clause shall apply *mutatis mutandis* to such Confidential Information with CBFC under an obligation to protect Implementation Agency's Confidential Information.
- viii) Disclosures by Implementation Agency, pertaining to matters covered in this Agreement, to stock exchanges and statutory bodies pursuant to statutory compliances shall not be considered as a violation of this clause and shall not amount to breach of confidentiality.

## **19. INTELLECTUAL PROPERTY RIGHTS**

### **19.1 Content**

Under all circumstances, the Intellectual Property Rights of contents on the LTO shall lie with CBFC.

## 19.2 Products and fixes

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

## 19.3 Pre-existing work

If applicable, all IPR including the source code and materials developed or otherwise obtained independently of the efforts of a party under this Agreement (“pre-existing work”) including any enhancement or modification thereto shall remain the sole property of that party. During the performance of the services for this agreement, each party grants to the other party (and their sub- contractors as necessary) a non-exclusive, limited license to use, any of its pre-existing work provided to the other party solely for the performance of such services for duration of the Term of this Agreement. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, the Implementation Agency should grant CBFC a non- exclusive, limited, non-transferable (without right to sub-license) license to use the pre- existing work in the form delivered to CBFC as part of the service or deliverables only for its internal business operations.

Under such license, either of parties will have no right to sell the pre-existing work of the other party to a Third Party. CBFC’s license to pre-existing work is conditioned upon its compliance with the terms of this Agreement and the perpetual license applies solely to the pre-existing work that bidder leaves with CBFC at the conclusion of performance of the services.

## 19.4 Residuals

In no event shall Implementation Agency be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables set-out in this Agreement or Annexure. In addition, subject to the

confidentiality obligations, Implementation Agency shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services.

## **20. WARRANTY**

### **20.1 Standard**

The Implementation Agency warrants that the Project, including all the system(s) and other Services provided, shall be free from any defect or deficiency in the material, design, engineering, and performance/workmanship that prevent the Project and/or any of its systems(s) from fulfilling the technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the Project and/or any of its system(s) as per the performance guarantee / warranty period defined in the Schedule IV. If during the warranty period any defect or deficiency is found in the material, design and performance/workmanship of the Project and other Services provided by the Implementation Agency, the Implementation Agency shall promptly, in consultation and agreement with CBFC, and at the Implementation Agency's sole cost repair, replace, or otherwise make good (as the Implementation Agency shall, at its discretion, determine) such default, defect or deficiency as well as any damage to the Project caused by such default, defect or deficiency. Any defective system that has been replaced by the Implementation Agency shall remain the property of the Implementation Agency. If the Project or any of its System cannot be used by reason of such default, defect or deficiency and/or making good of such default, defect or deficiency, the warranty period for the Project shall be extended by a period equal to the period during which the Project or any of its system could not be used by the CBFC because of such defect and/or making good of such default, defect or deficiency.

### **20.2 Implied Warranty**

The warranties provided herein are in lieu of all other warranties, both express and implied, and all other warranties, including without limitation that of merchantability or fitness for intended purpose is specifically disclaimed.

The Implementation Agency shall have no liability in the case of breach of this warranty due to  
(i) use of the deliverables on any environment (hardware or software) other than the environment recommended or approved by the Implementation Agency,



(ii) the combination, operation, or use of some or all of the deliverables with information, software, specifications, instructions, data, or materials not approved by the Implementation Agency;

(iii) the deliverables having been tampered with, altered or modified or unauthorized accessed or used improperly by CBFC without the written permission of the Implementation Agency, or (iv) use of the deliverables otherwise than in terms of the relevant documentation. (v) failure of CBFC to provide the appropriate infrastructure for storage of LTO tapes having archived content.

## 21. LIQUIDATED DAMAGES

Time is the essence of the Agreement and the delivery dates are binding on the Implementation Agency. In the event of delay or any gross negligence, for causes attributable to the Implementation Agency, and not attributable to CBFC or Force Majeure, in meeting the deliverables, the CBFC shall be entitled at its option to recover from the Implementation Agency as agreed, liquidated damages as per the table given below:

S. No.	Delay in days	Penalty in terms of total project cost
1.	30 Days	Rs. 25,000
2.	45 Days	Rs. 50,000
3.	60 days	Rs. 75,000
4.	Beyond 61 days	Rs. 1,00,000

In case, if the delay goes beyond a period of 120 days, for causes attributable to the Implementation Agency and not attributable to CBFC or Force Majeure, CBFC may reserve the right to terminate the contract. CBFC in such scenario will forfeit the Performance Bank Guarantee of the selected bidder. Any payment for such delayed instance, if made by CBFC will also be recovered from the Vendor.

In the event of any delay, selected bidder shall also be provided with an opportunity to represent their case for delay in front of CBFC. However, the decision made by CBFC shall final and binding on the selected bidder.

## **22. GOVERNING LAWS / JURISDICTION ARBITRATION**

Any matter relating to the appointing of Selected Bidder or the procedure for the appointment of the Selected Bidder shall be governed by the Laws of Union of India.

In eventuality of any disputes, only the courts at Mumbai (with exclusion of all other courts) shall have the jurisdiction to decide or adjudicate on any matter of dispute which may arise during the tenure of appointment.

## **23. ARBITRATION AND LEGAL JURISDICTION**

i) All disputes between either parties occurring during the period of contract in relation to the contract shall be first resolved mutually between CBFC and Selected Bidder. However, disputes which remain unresolved further shall be subject to the jurisdiction of the courts in Mumbai only.

ii) In the event of any dispute or differences arising under these conditions or any conditions of the contract in connection with this contract, the same shall be settled by the Selected Bidder and CBFC amicably. If the disputes are not resolved by the Selected Bidder and CBFC amicably, the same shall be referred to a sole arbitrator to be appointed by CBFC as per the Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996) and the Rules thereunder. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996. Venue and seat of arbitration shall be Mumbai.

iii) Upon every or any such reference, the costs and incidental to the reference and award respectively shall be in the discretion of the Arbitrator who may determine the amount thereof, , or as between party and party, and shall direct by whom and to whom and in what manner the same shall be borne and paid.

iv) Work under the contract may be continued by the Selected Bidder during the arbitration proceedings unless otherwise directed in writing by CBFC, unless the matter is such that the works cannot possibly be continued until the decision of the Arbitrator is obtained and except as those which are otherwise expressly provided in the contract, no payment due or payable by the

Selected Bidder shall be withheld on- account of such arbitration proceedings unless it is the subject matter or one of the subject matter thereof.

## **24. MISCELLANEOUS**

### **24.1 Personnel**

- i. The personnel assigned by Implementation Agency to perform the Services shall be employees of Implementation Agency, and under no circumstances shall such personnel be considered employees of CBFC or its nominated agencies. The Implementation Agency shall have the sole responsibility for the supervision and control of the personnel deployed in the Project and for payment of such personnel's compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all obligations of an employer subject to Applicable Law.
- ii. The Implementation Agency shall use its best efforts to ensure that sufficient Implementation Agency personnel are assigned to perform the Services and that such personnel have appropriate qualifications to perform the Services. After discussion with Implementation Agency, CBFC or its nominated agencies shall have the right to require the removal or replacement of any Implementation Agency personnel performing work under this Agreement based on bonafide reasons. In the event that CBFC or its nominated agencies requests that any Implementation Agency personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.
- iii. In the event the CBFC or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.
- iv. Each Party shall be responsible for the performance of all its obligations under this Agreement or the SLA as the case may be and shall be liable for the acts and omissions of its employees and agents in connection therewith.
- v. Neither Party will solicit for employment or knowingly hire an employee of the other Party with whom such Party has contact pursuant to project engagements under this Agreement. This restriction shall not apply to employees of either Party responding to advertisements in job fairs or news media circulated to the general public.

## 24.2 Assignment

- i) All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the CBFC and their respective successors and permitted assigns.
- ii) Subject to Clause 5, the Implementation Agency shall not be permitted to assign its rights and
- iii) obligations under this Agreement to any third party without the prior written consent of CBFC which shall not be withheld unreasonably.
- iv) The CBFC may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Implementation Agency shall be a party to such novation, to any third party contracted to provide outsourced services to CBFC or any of its nominees.

## 24.3 Trademarks, Publicity

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

## 24.4 Notices

- i) 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.
- ii) In relation to a notice given under this Agreement, any such notice or other document shall be addressed to the other Party's principal or registered office address with a copy to implementation agency. In relation to a notice given under the agreement, a Party shall specify the Parties' address for service of notices, any such notice to be copied to the Parties at the addresses set out in this Clause.

- iii) Any such notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person or through email) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter).
- iv) Either Party to this Agreement may change its address, telephone number, email address and nominated contact for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

## 24.5 Variations and Further Assurance

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

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.

## 24.6 Severability and Waiver

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

#### **24.7 Compliance with Applicable Law**

Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to its business like the Implementation Agency) 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 regulation which result in a change to the Services shall be dealt with in accordance with the Change Control Schedule set out in Schedule III of this Agreement.

#### **24.8 Professional Fees**

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

#### **24.9 Ethics**

The Implementation Agency represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of CBFC 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 CBFC standard policies and may result in cancellation of this Agreement.

#### **24.10 Entire Agreement**

This Agreement with all schedules 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.

## 24.11 Amendment

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

This Agreement shall be with effect from \_\_\_\_\_.

In WITNESS WHEREOF the parties hereto have executed this Agreement as of the    day and year herein above written.

SIGNED for and on behalf of SIGNED for and on behalf of Central Board of Film Certification (CBFC),  
Implementation Agency Government of India (GOI).

(IA)

By Shri

By Shri

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Witness \_\_\_\_\_

Witness \_\_\_\_\_

Name:

Name:

Place:

Place:

Date:

Date

## 25 SCHEDULES

### 25.1 SCHEDULE – I – RFP Document

RFP for “Providing and managing services of archival DCI, NON-DCI Digital Cinema Content submitted for censor certification **on LTO**’

*<< The Published RFP copy will be placed here for reference >>*



## 25.2 SCHEDULE – II – TECHNICAL SLAs

### Technical Service Level Agreement for Application of the Implementation Agency used in connection to the archival of Digital Cinema Content

S. No.	SLA Parameter	Remarks	Penalty
1	<b>Availability of Application &amp; Platform</b>	1. Availability will be measured on quarterly basis.	
		2. Wherever redundancy is provided, the system will be considered as unavailable if failover is unsuccessful or system including redundancy fails. However, if the service is restored through an alternate means/workaround the service will be treated as “available”.	
		3. Planned downtime will not be classified as unavailability.	
		4. Planned downtime where both main as well redundant systems are not available for providing service will be limited to maximum of 48 Hours in a quarter. Implementation Agency will endeavor to take such downtimes only during weekends or holidays preferably after EoD. However duration of the maximum allowable planned downtime time will be reviewed on yearly basis.	
		5. On an exceptional basis planned downtime involving both main and redundant systems exceeding the duration as mentioned would be permitted subject to submission of a reasonable advance notice with technical reasons explaining the need for the same.	
		6. Implementation Agency will ensure application availability of 97% between 8 am to 11 pm for all critical functions. That is unavailability of any of the critical functionality individually between 8 am to 11 pm excluding planned down time will not exceed 40 hours in a quarter.	

		<p>7. Implementation Agency will ensure application availability of 90% between 11 pm to 8 am for all critical functions. That is unavailability of any of the critical functionality individually between 8am to 11 pm excluding planned down time will not exceed 81 hours in a quarter.</p>	
		<p>8. While availability measurements shall be in force on quarterly basis from the commencement of operations the penalty provisions relating to availability shall come into force only after 3 months of operations. After the first quarter of operation, Implementation Agency will be bound to demonstrate adequate performance, failing which penalty can be applied by CBFC.</p>	
2	<b>Reliability of Application and Platform</b>	<p>1. Wherever redundancy is provided, application platform failure shall mean either both the systems including redundancy having become in-operational or failover to redundant system is unsuccessful.</p> <p>2. Wherever redundancy is provided the application platform would be considered to have been repaired if one of the systems is made operational to restore the service.</p> <p>3. Period during which systems is under planned downtime, the herein stated provisions for failure and subsequent repair shall not apply.</p> <p>4. Alternatives should be provided where a service is getting impacted. Time from failure to the time when an alternative is found for aforementioned critical functions will be considered as down time. MTTR clause would be applicable for such time duration. In such case actual problem needs to be</p>	

		fixed depending upon the criticality of the problem and as per the service level defined below. In case if more time is required Implementation Agency will fix the problem in as per mutually agreed time period with CBFC.	

6. Following service levels will be applicable to the selected bidder for handholding and maintenance support:

Type of Service	Metric	Measure	Threshold		Expected Action / Remarks
As per Problem Report (PR)	Delivery	Initial Response	Critical	1 Hour	Initial review for Category, Priority and whether the PR has sufficient information to understand the problem
			High	4 Hour	
			Medium	8 Hour	Assignment to respective individual for analysis
			Low	10 Hours	Respond to initiator informing of assignment for further analysis

		<table><tr><th>Type of Service</th><th>Metric</th><th>Measure</th><th colspan="2">Threshold</th><th>Expected Action / Remarks</th></tr><tr><td rowspan="4">As per Problem Report (PR)</td><td rowspan="4">Delivery</td><td rowspan="4">Complete Analysis / Resolution</td><td>Critical</td><td>4 Hour</td><td rowspan="4">Detail analysis of Problem Report and provide, root cause, potential risk / impact, effort estimate for resolution a closing of the problem</td></tr><tr><td>High</td><td>1 working day</td></tr><tr><td>Medium</td><td>7 working days</td></tr><tr><td>Low</td><td>10 working days</td></tr></table>	Type of Service	Metric	Measure	Threshold		Expected Action / Remarks	As per Problem Report (PR)	Delivery	Complete Analysis / Resolution	Critical	4 Hour	Detail analysis of Problem Report and provide, root cause, potential risk / impact, effort estimate for resolution a closing of the problem	High	1 working day	Medium	7 working days	Low	10 working days	
Type of Service	Metric	Measure	Threshold		Expected Action / Remarks																
As per Problem Report (PR)	Delivery	Complete Analysis / Resolution	Critical	4 Hour	Detail analysis of Problem Report and provide, root cause, potential risk / impact, effort estimate for resolution a closing of the problem																
			High	1 working day																	
			Medium	7 working days																	
			Low	10 working days																	

## 25.3 SCHEDULE – III – CHANGE CONTROL SCHEDULE CHANGE CONTROL PROCEDURE

- i) Implementation Agency recognizes that frequent change is an inevitable part of delivering services. CBFC recognizes that this change may require modification in the systems and re-organizing processes and therefore may have a financial impact. CBFC will work with Implementation Agency to ensure that all changes are discussed and managed in a constructive manner.
- ii) This section describes the procedure to be followed in the event of any proposed changes to the Agreement, scope of work and SLAs. Such change shall include, but not be limited to, changes in the scope of services provided by Implementation Agency, addition of new SLAs and changes to the terms of payment as stated in the Terms of Payment.
- iii) Change Control Note (“CCN”)
- iv) Change requests in respect of the Agreement, the Project Implementation, or the SLA will emanate from the Parties' respective Project Management Unit (PMU), who will be responsible for obtaining approval for the change and will complete part A of CCN provided in this schedule
- v) Parties, while evaluating and finalizing CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant service required and as detailed in RFP documents.
- vi) Change requests and CCNs will be reported monthly to CBFC who will prioritize and review progress Implementation Agency shall be obliged to implement any proposed changes once approval in accordance of Part B: CC (Evaluation and Finalization) provided in this schedule with effect from the date agreed for implementation.
- vii) On evaluation of the financial impact, the charges for such a change will be decided between the CBFC an Implementation Agency and will be a part of the Change Control Notice (Evaluation and Finalization).The payment of such changes will be as per the Terms of Payment to be decided by CBFC and Implementation Agency.

Part A: Change Control NOTICE (Initiation)

Change Control Note	CCN Number:    Request Date:
Title of the request for change	
Party Requesting change	
Party Expected to Implement the change	
Details of Proposed Change	
To include reason for change and appropriate details/specifications)	
Signature of the Party Proposing the change	

Part B: Change Control Notice (Evaluation and Finalization)

Reference CCN Number:	
Date on which change request initiated:	
Party Proposed :	
Title:	
Date:	
Brief Description of Solution/Procedure for implementation of change)	
Impact	
Operational impact	
Systems impact	
Deliverables:  ( to be provided by the party implementing the change)	
Charges for the proposed change	
One-Time Cost	
Recurring Cost	

Implementation Schedule along with roles and responsibilities: ( to be agreed mutually by parties initiating and implementing the change)
Other Relevant Information: (including acceptance criteria, if any during/after implementation)
Signature of Implementation Agency ( as an acceptance of the change initiator/Implementer)
Signature of CBFC ( as an acceptance of the change initiator/Implementer)



## 25.4 SCHEDULE – IV IMPLEMENTATION TIMELINES

The project schedules for the implementation of Archival System is as follows:

Implementation timelines for the archival system

S. No.	Activities	Time for Completion <sup>1</sup>
1)	Signing of Contract with successful bidder	Date of Start (T)
2)	Installation of hardware and provisioning of internet facility for archival of Digital Cinema Content on LTO.	T+45 days
3)	User Acceptance Testing & Training to key staff	T + 50 days
4)	System ready for “Go-Live”	T+51 days

Timeline changes amongst activities can be discussed with the successful bidder within the project completion period of 24 weeks.

## 25.5 SCHEDULE V - PAYMENTS SCHEDULE

The payment of consideration for the services rendered by the Implementation Agency shall be paid directly by the stakeholders in accordance with section 12 of the agreement. The fees ("Archival Fees") charged by the Implementation Agency shall be:

Sl. No	Description	Total Base Price (INR)	Goods and Service Tax (INR)	Other applicable taxes (mention details, if any) (INR)	Total Price (INR)
1.	Total Cost to be charged to the applicant for Providing and managing the services for a single DCI/NON-DCI digital cinema content on LTO.				

However, the above framework is indicative and would be finalized mutually between CBFC and the successful bidder.

## 25.6 SCHEDULE–VI–INTEGRITY PACT

### Integrity Pact

#### **(To Be Signed Before the Financial Bid Opening)**

This pre-bid pre contract Agreement (hereinafter called the Integrity Pact) is made on \_\_\_\_\_ Day of the \_\_\_\_\_ month of 2024 between on one hand, the President of India acting through \_\_\_\_\_ (CEO, CBFC) (Hereinafter called the “BUYER” which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part \_\_\_\_\_ and M/s.

\_\_\_\_\_ (Name of the Company) represented by Sh. \_\_\_\_\_ Chief Executive Officer/ Authorized Signatory (Name & Designation of the officer) (hereinafter called the “BIDDER/ Seller” which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS THE BUYER invites bid for the “Selection of Implementation Agency towards the Design and Maintenance for content archival system on LTO and the BIDDER/Seller is willing to submit bid for the same and

WHEREAS the BIDDER is a Private Company/ Public Company/ Government Undertaking/Partnership Firm/ Ownership Firm/ Registered Export Agency, constituted in accordance with the relevant law in the matter and the BUYER is a Department of the Government of India performing its functions on behalf of the President of India.

NOW, THEREFORE

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

Enabling the BUYER to obtain the desired said Services at a competitive price in conformity with the defined terms of reference by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling BIDDERS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the BUYER will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:-

*1. Commitments of the BUYER*

- a. The BUYER undertakes that no official of the BUYER, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- b. The BUYER will, during the pre-contract stage, treat all BIDDERS alike, and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS.
- c. All the officials of the BUYER will report to the CEO, CBFC any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.

**2.** In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the BUYER with full and verifiable facts and the same is prima facie found to be correct by the BUYER, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the BUYER and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the BUYER the proceedings under the contract would not be stalled.

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3. *Commitments of BIDDERS*

The BIDDER commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bidder during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:-

- a. The BIDDER will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the BUYER, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- b. The BIDDER further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the BUYER or otherwise in procuring the Contract or for bearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with CBFC for showing or for bearing to show favour or disfavour to any person in relation to the contract or any other contract with Government.
- c. BIDDERS shall disclose the name and address of agents and representatives and Indian BIDDERS shall disclose their foreign principals or associates.
- d. BIDDERS shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid/contract.
- e. The BIDDER further confirms and declares to the BUYER that the BIDDER has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the BUYER or any of its functionaries, whether officially or unofficially to the award of the contract to the BIDDER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.

- f. The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract shall disclose any payment he has made, is committed to or intends to make to officials of the BUYER or their family members, agents brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- g. The BIDDER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- h. The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- i. The BIDDER shall not use improperly, for purposes of competition or personal gain, or passion to others any information provided by the BUYER as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.
- j. The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- k. The BIDDER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- l. If the Bidder or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the officers of the BUYER, or alternatively, if any relative of an officer of the BUYER has financial interest/stake in the BIDDER's firm, the same shall be disclosed by the BIDDER at the time of filing of tender. The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.
- m. The BIDDER shall not lend to or borrow any money from or enter into any monetary dealing or transactions, directly or indirectly, with any employee of the BUYER.

*4. Previous Transgression*

- a. The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify BIDDER's exclusion from the tender process.
- b. The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

*5. Sanctions for Violations*

Any breach of the aforesaid provisions by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the BUYER to take all or any one of the following actions, wherever required:-

- i) To immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.
- ii) The Earnest Money Deposit (in pre-contract stage) and/or Security Deposit/Performance Bond(after the contract is signed) shall stand forfeited either fully or partially, as decided by the BUYER and the BUYER shall not be required to assign any reason therefore.
- iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.
- iv) To recover all sums already paid by the BUYER, and in case of an Indian BIDDER with interest thereon at 2% higher than the prevailing Base Rate of State Bank of India, while in case of a BIDDER from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER from the BUYER in connection with any other contract, such outstanding payment could also be utilized to recover the aforesaid sum and interest.

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- v) To encash the advance Bank Guarantee and performance bond/warranty bond, if furnished by the BIDDER, in order to recover the payments, already made by the BUYER, along with interest.
  - vi) To cancel all or any other Contracts with the BIDDER. The BIDDER shall be liable to pay compensation for any loss or damage to the BUYER resulting from such cancellation/rescission and the BUYER shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.
  - vii) To debar the BIDDER from participating in future bidding processes of CBFC for a minimum period of five years, which may be further extended at the discretion of the BUYER.
  - viii) To recover all sums paid in violation of this Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.
  - ix) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the BUYER with the BIDDER, the same shall not be opened.
  - x) Forfeiture of Performance Bond in case of a decision by the BUYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

The BUYER will be entitled to take all or any of the actions mentioned at para 5.1(i) to (x) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in Chapter IX of the Indian Penal Code, 1860 or Prevention of Corruption Act 1988 or any other statute enacted for prevention of corruption.

The decision of the BUYER to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the BIDDER can approach the Independent External Monitor (s) appointed for the purposes of this Pact.



6. *Fall Clause*

The BIDDER undertakes that it has not supplied similar products/systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India or PSU and if it is found at any stage that similar products/systems or subsystems was supplied by the BIDDER to any other Ministry/Department of the Government of India or a PSU at a lower price, then that very price, with due allowances for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER to the BUYER, if the contract has already been concluded,

7. *Independent External Monitor(IEMs)*

- a. The BUYER shall appoint Independent External Monitors (IEMs) for this Pact in consultation with the Central Vigilance Commission, if required.
- b. The task of the IEMs shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- c. The IEMs shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- d. Both the parties accept that the IEMs have the right to access all the documents relating to the project/procurement, including minutes of meetings.
- e. As soon as the IEM notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the BUYER.
- f. The BIDDER(s) accepts that the IEM has the right to access without restriction to all Project documentation of the BUYER including that provided by the BIDDER. The BIDDER will also grant the IEM, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The IEM shall be under contractual obligation to treat the information and documents of the BIDDER/Subcontractor(s) with confidentiality.

- g. The BUYER will provide to the IEM sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the IEM the option to participate in such meetings.
- h. The IEM will submit a written report to the CEO, CBFC within 8 to 10 weeks from the date of reference or intimation to him by the BUYER/BIDDER and, should the occasion arise, submit proposals for correcting problematic situations.
- i. The word 'IEM' would include both singular and plural.

*8. Facilitation of investigation*

In case of any allegation of violation of any provisions of this Pact or payment of commission, the BUYER or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

*9. Law and Place of jurisdiction*

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the BUYER (i.e. Mumbai).

*10. Other Legal Actions*

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

*11. Validity*

The validity of this Integrity Pact shall be from the date of its signing and extend up to 5 years or the complete execution of the contract to the satisfaction of both the BUYER and BIDDER/Seller, including warranty period, whichever is later. In case BIDDER is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.

Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

**12.** The parties hereby sign this Integrity  
Pact at \_\_\_\_\_ on \_\_\_\_\_.

SIGNED for and on behalf of  
Central Board of Film Certification (CBFC),  
Government of India (GOI).

SIGNED for and on behalf of  
Implementation Agency  
(IA)

By Shri

By Shri

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Witness1 \_\_\_\_\_

Witness 1 \_\_\_\_\_

Name:

Name:

Witness2 \_\_\_\_\_

Witness 2 \_\_\_\_\_

Name:

Name:

Place:

Place:

Date: