

**BID DOCUMENT NO.**

**REQUEST FOR PROPOSAL FOR BID AND SELECTION  
OF SERVICE CENTRE AGENCIES  
TO SET UP, MANAGE AND OPERATE 6797  
COMMON SERVICES CENTERS (TATHYA MITRA)  
IN THE STATE OF WEST BENGAL**

**VOLUME 3:  
MASTER SERVICE AGREEMENT**

**DATE:** \_\_\_\_\_

**ISSUED BY  
WEST BENGAL STATE RURAL DEVELOPMENT AGENCY  
(WBSRDA)  
(State Designated Agency under the Department of Panchayat & Rural Development)  
Government of West Bengal**

**Jessop Building  
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## **MASTER SERVICE AGREEMENT**

This Master Service Agreement, hereinafter referred to as “**MSA**” is made this \_\_\_ day of \_\_\_\_\_  
200\_ at Kolkata

BY AND AMONG

**The Governor** of the State of West Bengal in his executive capacity for the Government of the State of West Bengal, acting through the Principal Secretary, Panchayat & Rural Development Department, West Bengal, hereinafter referred to as "**GoWB**" (which term or expression, unless excluded by or repugnant to the subject or context, shall mean and include its successors-in office and assigns) of the First Part

AND

**The West Bengal State Rural Development Agency (WBSRDA)**, GoWB under the West Bengal Societies Registration Act, 1961, having its registered office at First Floor, Jessop Building, 63 N.S. Road, Kolkata-700001, which has been appointed as the nodal agency for implementing the Scheme by the GoWB, hereinafter referred to as "**State Designated Agency or the SDA**" (which term or expression, unless excluded by or repugnant to the subject or context, shall mean and include its successors and assigns) of the Second Part

AND

M/s \_\_\_\_\_, a company/trust/society/[others as applicable] registered under the [Name of the Act], having its registered office at \_\_\_\_\_ and place of business at \_\_\_\_\_, hereinafter referred to as "**Service Centre Agency or the SCA**" (which term or expression, unless excluded by or repugnant to the subject or context, shall mean and include its successors and permitted assigns) of the Third Part

Each individually a “Party” hereto and collectively the “Parties”

Whereas,

- i. The GoWB intends to provide convenient and speedy Government Services, using Information & Communication Technologies (ICT) through Common Services Centers (CSCs). The CSCs will be utilized as efficient distribution channels through which the GoWB can offer its services, information and schemes etc. to citizens in a cost effective, sustainable and efficient manner. To undertake the delivery of Government Services on a Public Private Partnership basis, the GoWB intends to appoint Service Centre Agencies (SCAs) to roll out and manage the CSCs in the State of West Bengal and offer revenue support to the SCAs, as agreed and accepted by the SDA through the SCA’s Financial Bid.

- ii. The SCA shall develop, finance, design, build, rollout, establish, manage, operate and maintain the CSCs for delivery of services to the customers in accordance with the provisions of this MSA on a Build, Own and Operate (BOO) basis; provided that the SCA shall be allowed to collect transaction charges for providing Government services as determined by GoWB/ SDA and receive revenue support, as agreed to between the SCA and GoWB, vide this MSA by enabling the private and social sector to use this network for offering a host of IT and non-IT related services to customers and users.

Now therefore this agreement witnesseth as under –

## **1. Definitions, Interpretations and Other Terms**

### **1.1 Definitions**

- a) **Assets** means all Government Assets and shall have the meaning specified in para 2.8 of this MSA;
- b) **Bid** means the documents in their entirety comprising of the technical and commercial bid submitted by the successful bidder, the SCA herein, in response to the RFP, and accepted by the SDA, signed for verification by the authorized representatives of the Parties, vide letter no. \_\_\_\_ dated \_\_\_\_\_;
- c) **B2C Services** means Business to Consumer services, or all non-Government Services offered through the CSCs;
- d) **B2B Services** means all Business to Business services offered through the CSCs;
- e) **Common Services Center(s)** or **CSC(s)** means the ICT enabled access points to be established by the SCA as per the specifications and requirements set forth in Vol.1 of the RFP and this MSA;
- f) **Confidential Information** means all information including GoWB Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, customers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how 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 MSA (including without limitation such information received during negotiations, location visits and meetings in connection with this MSA);
- g) **Customers** means all citizens and users who use the CSCs for Government as well as other services, either directly or through the SCA;
- h) **Deliverables** means all the activities related to the setting up and operations of Common Services Centers, as defined in Volume 1 of the RFP, and as required as per this MSA;
- i) **Zone/Zones** means the minimum region, which the SCA has bid for and has been authorized to set up and operate the CSCs, vide letter no. \_\_\_\_ dated \_\_\_\_\_
- j) **Designated/Nominated Agency(s)** means any GoI/GoWB approved agency, including a Special Purpose Vehicle (SPV) formulated for the Scheme, as outlined in para 2.4 of this MSA.

- k) **Effective Date** means the date on which this MSA is executed;
- l) **Government Services or G2C services** means services that are offered by GoWB/GOI/or any of their departments and agencies, through the CSCs, as outlined in the Service Level Agreement(s) between the SDA and SCA, vide Schedule 3 of this MSA;
- m) **GoWB Data** means all proprietary data of GoWB or its departments, instrumentalities, corporations and agencies or the SDA, but not restricted to user data which the SCA obtains, possesses or processes in the context of providing the Services to the users pursuant to this MSA;
- n) **MSA** means this Master Service Agreement (MSA), together with the recitals and all schedules and the contents, requirements, specifications and standards of the Volume I of the RFP (as may be amended, supplemented or modified in accordance with the provisions hereof) and the Bid. In the event of a conflict between this MSA and the Schedules, the terms of the MSA shall prevail;
- o) **Network Connectivity** means the appropriate communication network for interactive and online access to voice, data, and video based services, including wireless broadband connectivity that shall be deployed by the SCA to connect to the CSCs;
- p) **Operations or Operations and Management** means the operation, maintenance and management of the CSCs by the SCA;
- q) **Performance Security** means the irrevocable and unconditional Bank Guarantee provided by the SCA from a Scheduled Commercial Bank in favor of the SDA for an amount specified in the Vol. 2 of the RFP;
- r) **Proprietary Information** means processes, methodologies and technical and business information, including drawings, designs, formulae, flow charts, data and computer programs already owned by either Party or granted by third parties to a Party hereto prior to the execution of this MSA;
- s) **Required Consents** means the written consents, clearances and licenses, rights and other authorizations as may be required to be obtained by the SCA, for all activities/software/hardware under the CSC Scheme;
- t) **RFP** means the Request For Proposal released vide Bid Document no. \_\_\_\_\_ dated \_\_\_\_\_, and include all clarifications/addendums, explanations and amendments issued by the SDA in respect thereof;
- u) **Replacement SCA** means any third party that the SDA may appoint to replace the existing SCA upon expiry of the term or prior termination of this MSA;

- v) **SCA Data Centre** means the Data Centre that may be set up by the SCA with requisite ICT infrastructure that shall include but not be limited to servers, routers, switches, etc. for delivering the services through the CSCs to the customers;
- w) **Scheme** or **Tathya Mitra** means the process of setting up, managing and operating the CSCs by the SCA;
- x) **Service Level(s)** means the performance criteria, which will apply, to the services delivered through the CSCs;
- y) **Service Level Agreement(s)** means agreement(s) executed by and between GoWB, SDA and the SCA for delivering various Government services through the CSCs, pursuant to the Schedule 3 of this MSA;
- z) **Services** means the content and services delivered and to be delivered to the customers by the SCA through the CSCs, set up, managed and operated by the SCA and includes but not limited to the list of services specified in Volume 1 of the RFP or as may be specified in the subsequent Agreement/s;
- aa) **Users** means the citizens, businesses, GoWB including its departments, service providers, technology vendors, corporations and agencies and their employees, as the context admits or requires;
- bb) **State Data Centre** means State/District Data Centre, which will host the Government applications, backend infrastructure, including client server hardware, software, LAN access switch, server farm, firewall, core WAN router for connecting high speed internet connections and high-speed WAN links connecting to various departments, agencies and entities of the GoWB;
- cc) **Term** means the duration of this MSA;
- dd) **Third Party Systems** means systems (or any part thereof) in which the Intellectual Property Rights are owned by a third party and to which SCA has been granted a license to use and which are used in the provision of Services;
- ee) **Village Level Entrepreneur** or **VLE** means the individual identified and retained by the SCA as employee or business associate/partner/franchisee in any other legal and contractual capacity for the day-to-day management, operations and maintenance of the CSCs so as to provide services to the customers;



## 1.2 Interpretations

- a) References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it;
- b) Words denoting the singular shall include the plural and vice-versa and words denoting persons shall include firms and corporations and vice versa;
- c) Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this MSA as a whole and not to any particular Article, Schedule. The term Articles, refers to Articles of this MSA. The words "include" and "including" shall not be construed as terms of limitation. The words "day" and "month" mean "calendar day" and "calendar month" unless otherwise stated. The words "writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated;
- d) The headings and use of bold type in this MSA are for convenience only and shall not affect the interpretation of any provision of this MSA;
- e) The Schedules to this MSA form an integral part of this MSA and will be in full force and effect as though they were expressly set out in the body of this MSA;
- f) Reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to such agreement, deed, instrument, license or other document as the same may be amended, varied, supplemented, modified, novated or suspended at the time of such reference;
- g) References to "construction" or "roll out" includes, unless the context otherwise requires, design, development, implementation, engineering, procurement, delivery, transportation, installation, processing, fabrication, acceptance testing, certification, commissioning and other activities incidental to the construction or roll out, and "construct" or "roll out" shall be construed accordingly;
- h) Any word or expression used in this MSA shall, unless defined or construed in this MSA, bear its ordinary English language meaning;
- i) The damages payable by a Party to the other Party as set forth in this MSA, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and liquidated damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty;

- j) This MSA shall operate as a legally binding agreement specifying the master terms, which apply to the Parties under this agreement and to the provision of the services by the SCA;
- k) The SDA may nominate a technically competent agency/individual for conducting acceptance testing and certification of the Scheme or carry out these tasks itself;
- l) The agency/individual nominated by the SDA can engage professional organizations for conducting specific tests on the software, hardware, networking, security and all other aspects;
- m) The agency/individual will establish appropriate processes for notifying the SCA of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the SCA to take corrective action;
- n) Such an involvement of and guidance by the agency/person will not, however, absolve the SCA of the fundamental responsibility of designing, developing, installing, testing and commissioning the CSCs.

### 1.3 **Conditions Precedent**

The SCA will provide the Performance Security before the execution of this MSA to the SDA as specified in Vol. 2 of the RFP;

## **2. Rolling Out the CSCs**

### **2.1 Scope of the MSA**

- a) The SCA is mandated to establish \_\_\_\_\_ [number] CSCs in \_\_\_\_\_Zone/Zones of the State of WB. The GoWB will provide a variety of Government Services through the CSCs.
- b) The GoWB will extend revenue support to the SCA as agreed vide this MSA.
- c) This MSA shall govern the provision of Deliverables of the SCA to GoWB and the SDA, included in the RFP and the MSA. It is anticipated that new or renewal agreements may be undertaken by creating separate Service Level Agreements with schedules and exhibits, as required, under this MSA for each/set of Government Service(s). A copy of the Service Level Agreement is attached as Schedule 3 of this MSA.

### **2.2 Term of the MSA**

This MSA shall come into effect on the Effective Date and shall continue and extend, unless terminated earlier in accordance with the provisions hereof, for a period of 4 years from the satisfactory completion of roll out of all the CSCs in the SCA's Zone/Zones. The maximum period for completion of roll out of the CSCs by the SCA is 12 months from the Effective Date. The Parties may continue to implement the Scheme after expiry of the MSA on mutually agreed terms and conditions by executing a fresh MSA

### **2.3 Rollout of CSCs**

- a) The SCA shall set up and operationalize the CSCs at its own cost and expense within 12 months from the Effective Date, as per the Deliverables outlined in the RFP document of this MSA.
- b) The SCA shall enter into arrangements at its own cost and risk with the non-Government content and service providers for IT and non-IT based services delivered through the CSCs.
- c) The SCA shall select, train, facilitate and enter into appropriate arrangements with the VLEs at its own cost and risk in accordance with the provisions of the RFP, and this MSA for establishing, managing, operating and maintaining the CSCs.

**2.4 The Special Purpose Vehicle (SPV)**

- a) A Special Purpose Vehicle has been proposed to set up by the GoI to undertake the day-to-day monitoring of the Scheme on behalf of the GoI/SDA. The SPV could be the designated/nominated agency of the SDA for the Scheme. The SPV would undertake the following key roles and responsibilities:
  - i Lay down operating and financial disciplines within the CSC system
  - ii Provide a framework for collaborative decision making process
  - iii Catalyze and maintain content aggregation on an on-going basis
  - iv Build a common “Identity” for the Scheme
- b) The SPV may also undertake all the audit, monitoring and financial management of the Scheme and may verify and authorize the revenue support payments made to the SCA by the GoWB
- c) It is also proposed that the SCA will be required to invest into the SPV as an equity shareholder.

**2.5 Scope and Provision of the Services**

- a) The provision of Services to the citizens with certainty and speed is the essence of the MSA between the Parties. The SCA has the competence to manage and provide a variety of Government and other Private services to customers. The SCA will keep abreast of the relevant technical, managerial and operational requirements applicable to the provision of the Services and best practices in this area and will share its knowledge with the GoWB and the SDA, regarding matters which would assist the GoWB and the SDA, in its use of the services, provided that SCA shall not be obligated to share other client information or Confidential Information of the SCA not relevant to this MSA. The Services shall be performed by the SCA pursuant to project engagements under the Service Level Agreements entered into in accordance with this MSA.
- b) The SCA shall operate and manage the CSCs in a good professional manner commensurate with existing industry and technical standards and innovations pursuant thereon, so as to comply with the applicable Service Levels, as laid out in Schedule 1 of this MSA, or as may be laid out in the individual Service Level Agreements for each service.
- c) The SCA shall be liable for ensuring compliance by the persons working for the SCA, including the VLEs, with the provisions of the RFP, the Bid, this MSA and the

performance of their respective obligations and functions in accordance with the specifications and requirements and shall indemnify and keep indemnified the GoWB and the SDA in this behalf.

- d) No Party to this MSA will at any time perform, or omit to perform, any act which it is aware, at the time of performance, will place the other Party in default under any insurance policy, mortgage or lease governing activities at any location provided by the GoWB.
- e) Except as otherwise provided for herein or with the prior written approval of GoWB/SDA, the SCA shall not:
  - i. Systematically collect and use any GoWB Data, Deliverable, Assets or GoWB contents/contents of G2C services and information, including the use of any data mining, or similar data gathering and extraction methods;
  - ii. Market, sell, or make commercial or derivative use of the GoWB Data, Deliverable or Assets, GoWB contents/contents of G2C services and information;
  - iii. Publish, publicly perform or display, or distribute to any third party any GoWB Data, Deliverables or GoWB contents/contents of Government services and information, including reproduction on any computer network or broadcast or publications media; or
  - iv. Use, frame, or utilize framing techniques to enclose any portion of the GoWB Data, Deliverables or GoWB contents/contents of G2C services and information (including images, any text or the layout/design, form or content of any page or otherwise).

## **2.6 Service Level Agreements**

Separate Agreements shall govern service levels for the Government services delivered through the CSCs, in pursuance of this MSA. The Service Level Agreements shall be executed along/separately with the MSA and commence from the Effective Date of the MSA or the Agreements and shall, unless terminated earlier in accordance with the terms hereof or thereof or unless otherwise agreed by the Parties, expire on the date on which this MSA expires.

## **2.7 Approvals and Required Consents**

- a) The Parties shall co-operate to procure, maintain and observe all relevant and customary regulatory and governmental licenses, clearances and applicable approvals (hereinafter the “Approval”) necessary for the SCA to provide the Services. The costs of such Approvals shall be borne by the Party normally responsible for such costs according to local custom and practice in the locations where the Services are to be provided
- b) The GoWB and the SDA shall use reasonable endeavors to assist the SCA in obtaining the Required Consents. In the event that any Required Consent is not obtained, the SCA and the GoWB (along with the SDA) will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the GoWB 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 SCA 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 SCA's obligations are dependent upon such Required Consents.
- c) The GoWB shall establish the enabling legal framework necessary for the implementation of the Scheme within 6 months from the Effective Date.
- d) GoWB shall ensure that the State Data Centre, the State Portal and SWAN, as necessary for the provision of the services by the SCA, are installed, operated and maintained by it throughout the Term and shall facilitate the integration thereof with the CSCs.

## **2.8 Use of GoWB Assets**

During the Term the SCA shall:

- a) take all reasonable and proper care of the CSCs, including the entire hardware and software, network or any other information technology infrastructure components used for the CSCs and other facilities leased / owned by the SCA (hereinafter “Assets”) as per this MSA in proportion to their use and control of such Assets which will include all upgradation / enhancements and improvements to meet the current needs of delivering Government Services;

- b) provide permission to the GoWB and SDA and any persons duly authorized by it/them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same; and  
in the event of setting up CSCs in any GoWB location, the GoWB shall, to the extent necessary for the SCA to provide the Services, subject to compliance by the SCA with any safety and security guidelines which may be provided by the GoWB and notified to the SCA in writing, provide the SCA with access to office equipment as mutually agreed and other related support services in such location and at such other GoWB location, if any, as may be reasonably necessary for the SCA to perform its obligations hereunder; and
- c) agree that the grant of aforesaid access to the SCA to the GoWB locations shall be in the nature of a bare license and shall not confer or be deemed to have conferred on the SCA any right, title or interest whatsoever (whether in the nature of an easement or otherwise) in such locations, office equipment or support services or any part thereof and nothing in these presents contained shall be construed as a demise in law of such locations unto the SCA so as to give the SCA any legal interest therein. The SCA shall only have the right to enter upon such locations for the purpose of executing the Scheme in accordance with the terms hereof.
- d) not part with or create any encumbrances whatsoever on the whole or any part of such locations, office equipment or support services made available by GoWB to the SCA.
- e) agree that the GoWB building locations, where available, from time to time, shall be made available to the SCA on an "as is, where is" basis by the GoWB. The SCA agrees to ensure that its VLEs and to the extent possible the users, do not use such locations, services and items made available by GoWB for'
- i. the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
  - ii. any act, which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or other intellectual property right, confidentiality or privacy).

- f) at all times, afford access to the CSC business (including the CSCs, SCA offices, systems, software, hardware, networks, sites, accounts, documents, records, contracts, materials, personnel, subcontractors, VLEs, etc.) to GoWB or the SDA, as the case may be, their authorized officers, representatives, advisors, experts, auditors and monitoring or certifying entities, the representatives of any competent government authority having jurisdiction over the Scheme to inspect the CSCs and their roll out and operation and to investigate any matter within their authority and the SCA shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
- g) The SCA shall at all times co-operate by providing reasonable access and services to the CSCs for customers as well as the SDA and its designated agencies, as well as GoWB personnel, as per timings specified in the RFP; and

## 2.9 **Requirements for the Prime Bidder**

Other than the Prime Bidder, other consortium members may be changed but only after the full roll out of the CSCs in the Zone/Zones has been achieved and with the prior written approval of the SDA and/or its nominated agencies. Provided that in the event of any such approved change of consortium members, the entities (companies) replacing them shall have, to the reasonable satisfaction of the SDA, the same or higher financial, technical and legal qualifications as the outgoing entities. In the event the SDA does not grant approval for the change of the non-principal bidders or suitably qualified replacement entities (companies) are not available/ found, the exit of the non-principal bidders shall constitute a breach of this MSA

## 2.10 **Security and Safety**

- a) The SCA will comply with the directions issued from time to time by the *GoWB* or the SDA and the standards related to the security and safety as stated in the RFP, insofar as it applies to the provision of the Government services.
- b) Each Party to the MSA shall also comply with *GoWB's/ SDA's* IT security and standards policies in force from time to time, which the *GoWB/the SDA* makes the SCA aware in writing insofar as the same apply to the provision of the Government services.



- c) The Parties to the MSA shall use reasonable endeavors to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons either to gain access to or interfere with the *GoWB*'s data, facilities or Confidential Information.
- d) The Parties under the MSA shall promptly report in writing to each other any act or omission which they are aware that could have an adverse effect on the safety and information technology security at the CSC's/*GoWB*'s facilities.

**2.11 Co-operation**

- a) Except as otherwise provided elsewhere in this MSA, each Party ("Providing Party") to this MSA, undertakes promptly to provide the other Party ("Receiving Party") with all such information and co-operation which the receiving Party reasonably requests, provided that such information and co-operation:
  - i. Does not require material expenditure by the Providing Party to provide; and
  - ii. Is reasonably required by the Receiving Party in order for it to comply with its obligations under this MSA; and
  - iii. Is not Confidential Information; and
  - iv. Is capable of being provided by the Providing Party.
- b) Each Party agrees to co-operate with the contractors and sub-contractors of the other Party as reasonably requested in order to accomplish the purposes of this MSA

### **3. Financial Provisions**

#### **3.1 Payments and Charges**

- a) The GoWB will pay up to a maximum of Rs.\_\_\_\_\_ per CSC per month to the SCA, towards revenue support, on a quarterly basis as per the financial bid of the SCA accepted by the SDA, vide letter no.\_\_\_\_ dated \_\_\_\_\_
- b) The SCA shall not be entitled to receive any capital support/subsidy from the GoWB and/or for undertaking the roll out of the Scheme and the SCA shall be required to finance the same through its own resources or funding arranged by it at its cost.
- c) The SCA shall be entitled to retain its specified share of the transaction charges, collected from the citizens pursuant to the provision of Government services under this MSA, through the CSCs, and receive the revenue support, as explained in the RFP, and as bid and accepted by the SDA, from GoWB during the Term. Such revenue support shall be payable by GoWB to the SCA on a quarterly basis
- d) The SCA and its VLEs shall be authorized to collect the transaction charges from the users for the Government applications/services as specified in Appendix B of Schedule 3 and as may be revised from time to time, at rates fixed by GoWB. The SCA/its VLEs shall promptly deposit the GoWB's or a Government utility service provider's share of such transaction charges, at the pre-agreed rates and within the time specified as maybe, along with the applicable/stipulated/mandatory fee, if any, relating to such application/service and the service tax, if any, in the respective designated bank account of the GoWB or the relevant utility service provider, as the case may be, as notified in writing by the SDA to the SCA from time to time. Unless otherwise specified to the contrary, the GoWB's share of the transaction charges, such applicable /stipulated fee and the service tax, if any, shall be deposited in the SDA bank account, as notified in writing by the SDA to the SCA. The transaction charges may be collected from the users by the VLEs and credited by them to the GoWB bank account or the bank account of the utility service provider, but as between the GoWB and the SDA/relevant utility service provider on the one hand and the SCA on the other hand, the SCA shall be liable and responsible for all such operations and activities

- e) The SCA shall ensure and be liable for the timely deposit of such monies as stated above by its VLEs and shall defend, hold harmless, indemnify and keep indemnified the GoWB and the SDA/relevant utility service provider from and against any failure on its part/by VLEs in the timely deposit of such monies or failure to deposit such monies, in full or part.
- f) The SCA would not be eligible for the revenue support bid for and accepted by the GoWB, for a specific Zone/Zones, until all the CSCs within the Zone/Zones of the SCA are completely rolled out and operational to the satisfaction and subsequent certification of the SDA or its designated agencies.
- g) For the purposes of determining the amount of support to be disbursed, the revenues actually generated from the delivery of Government Services would be deducted (to the extent of 70%) from the revenue support bid accepted by the State. The SCA would be eligible for the balance revenue support upon tallying the MIS report generated by the SCA's Data Centre and the State Data Centre at the end of each quarter. The revenue support to be disbursed to the SCA would be re-evaluated at the end of each year, i.e., the fourth quarter, based on the revenue generated in each quarter and the revenue support disbursed at the end of each of the three quarters. Consequently, the revenue support to be disbursed at the end of the fourth quarter would be adjusted keeping in view the total revenues earned through Government services through the year and the support disbursed in the first three quarters.
- h) The sharing of costs and remuneration/profits between the SCA and VLEs shall constitute an internal inter-se matter between the SCA and the VLEs as per their mutual agreement and GoWB/SDA/relevant utility service provider shall not be concerned with or liable for the same in any manner whatsoever.
- i) All payments are subject to the application of debits towards liquidated damages for delays and/or breaches by the SCA/its VLEs in meeting the Service Levels and performance standards in the provision of Services in accordance with the provisions hereof, at the rates specified in the applicable Agreements. It is clarified here that in case of the failure of the SCA to meet the Service Levels agreed to, the SDA may calculate a financial sum and debit the same against the payment to be made to the SCA, , such sum being determined in accordance with the terms of the Agreements

- j) Except as otherwise provided for herein or as agreed between the Parties in writing, the GoWB/SDA shall not be required to make any payments in respect of the Services other than those covered by the terms of payment as stated herein, including the Terms of Payment section of this MSA.

### **3.2 Invoicing and Settlement**

- a) As regards the revenue support quoted by the SCA in the financial bid as accepted by SDA, vide letter no. and dated\_\_\_\_\_, the SCA shall submit its invoices in accordance with the following principles:
- i. The SCA shall submit a certificate from the SDA or its designated agencies certifying that all the CSCs in the allotted Zone/Zones of the SCA have been rolled out and are operational to the satisfaction of the SDA or its designated agencies.
  - ii. The SCA shall submit quarterly invoices for the revenue support along with a detailed MIS sheet in respect of the services delivered and an audited financial statement indicating revenue generated from delivery of Government services.
  - iii. At the end of fourth quarter, the SCA shall submit a detailed MIS sheet for all four quarters of the year in respect of the services delivered and an audited financial statement indicating revenue generated from delivery of Government services. The revenue support to be disbursed at the end of the fourth quarter will be adjusted to balance the total revenues generated in the complete year and the revenue support disbursed in the previous three quarters.
- b) The SCA shall invoice all payments for revenue support by the 10th working day of the month following the relevant quarter in which the Services were provided.
- c) Payment of the revenue support shall be made by GoWB to the SCA within 21 working days of the receipt of invoice by the GoWB subject to adjustments for liquidated damages and set off against revenues generated out of Government Services through the CSCs and surplus payment(s) made, if any, during previous quarter(s)

- d) The GoWB shall be entitled to delay or withhold payment of any invoice or part of it delivered by the SCA where the GoWB disputes such invoice or part of it provided that such dispute is bona fide. The withheld amount shall be limited to that which is in dispute. The disputed amount shall be settled in accordance with the escalation procedure as set out in this MSA. Any exercise by the GoWB under this article shall not entitle the SCA to delay or withhold provision of the Government Services.

### 3.3 **Tax**

- a) The SCA/VLEs shall pay for all taxes under the applicable laws arising from its operations/activities/services/business under the MSA and/or in connection with the MSA.
- b) The GoWB/SDA shall deduct withholding taxes as per the applicable laws from the amounts due and payable to the SCA wherever applicable.
- c) The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible.
- d) Service taxes as applicable shall be levied to and be payable by the customers over and above the transaction charges specified in the RFP

## **4. Breach and Rectification**

### **4.1 Termination of MSA**

In the event that either Party believes that the other is in breach of its obligations under this MSA, such aggrieved Party may terminate this MSA, upon notice to the other Party. Any notice served pursuant to this section shall give reasonable details of the breach, which shall comprise of the events set forth in paragraph 4.2 below, and the termination shall become effective from the date of such notice. The SDA shall take the necessary action pursuant to this section for and on behalf of itself and GoWB, unless GoWB decides otherwise

### **4.2 Events of Default and Rectification**

a) If there is breach which translates into default as per this MSA in provisioning of Government services and/or default as per this MSA in provisioning of Government services on account of matters related to the provision of other IT and non-IT services by the SCA under the Scheme/through the CSC network, continuously for more than seven days or more than a cumulative period of ten days in a month, except in conditions of force majeure, the same shall attract liquidated damages at the rate of 10% per CSC per week of the monthly revenue support sought OR Rs.500 per CSC per week, whichever is more. In case the rectification is not carried out within 30 days of the applicability of the inoperability clause, it would constitute a material breach by the SCA, which shall entitle the SDA to, at its sole option, forthwith terminate this MSA on the expiry of such stipulated period, unless the SCA has in the meantime rectified, removed or cured, as the case may be, such material breach. The SDA may at its sole option, debit or set off the amounts of liquidated damages, if any, against the payments as defined in the Terms of Payment section of this MSA, and/or through invocation or forfeiture of the Performance Security, in full or part, as the case may be

- b) In the event the SCA fails to make timely deposit of the GoWB's share of the gross amounts of the weekly transaction charges collected from the citizens in accordance with the RFP, the SCA shall be required to pay liquidated damages at the rate of 10% of the total overdue amount due or Rs.500 per week per CSC, whichever is more. In the event that such payment defaults occur for 3 consecutive weeks, the GoWB/SDA shall be entitled to forthwith stop the SCA's access to State Data Centre, The State Portal, WBSWAN, GoWB applications, as well as any other Government support, whether physical or otherwise, and require the SCA to stop providing the Government services to the citizens through the CSCs. The SDA may at its sole option, debit or set off the amounts of liquidated damages due to it against the terms of payment as defined in the Terms of Payment section of this MSA and/or through invocation and forfeiture of the Performance Security, in full or part, as the case may be
- c) In the event the SCA fails to make timely deposit of the Government utility provider's share of the gross amounts of the weekly transaction charges collected from the citizens in accordance with the RFP, the SCA shall be required to pay liquidated damages at the rate of 10% of the total overdue amount due or Rs.500 per day per CSC, whichever is more. In the event that such payment defaults occur for 5 consecutive weeks, the GoWB/SDA shall be entitled to forthwith stop the SCA's access to State Data Centre, State Portal, WB SWAN, GoWB applications, as well as any other Government support, whether physical or otherwise, and require the SCA to stop providing the Government services to the citizens through the CSCs, and even terminate the MSA. The SDA may at its sole option, debit or set off the amounts of liquidated damages due to it against the terms of payment as defined in the Terms of Payment section of this MSA and/or through invocation and forfeiture of the Performance Security, in full or part, as the case may be
- d) In the event of any invocation of the Performance Security by the SDA, the SCA shall be required to forthwith replenish or top up the existing Performance Security, failing which the same shall constitute a material breach by the SCA, which shall entitle the SDA to terminate this MSA

- e) If there is a material breach by the GoWB/SDA, in terms of delay in payment/non-payment of revenue support, or not providing the certification of the Scheme rollout phase and, provided the SCA is in compliance of all the applicable specifications, requirements and/or compliances set forth in the RFP / Bid / MSA / Agreements, in this behalf, then the SCA may give a 3 month's notice to GoWB/SDA for curing such breach. In the event the breach continues, the SCA will have the option to terminate the MSA.
- f) Any delay of more than one month from the date of submission of the invoice to the State Government in disbursement of revenue support by the SDA, would attract interest charges at State Bank of India's prime lending rate on the amount of revenue support sought for that quarter. These interest charges would be paid by the State Government to the SCA along with the revenue support to be disbursed
- g) The SDA may serve written notice on SCA at any time to terminate this MSA, with immediate effect, in the event of a reasonable apprehension of bankruptcy or any unpaid charge, lien or mortgage that is likely to reduce the financial credibility of the SCA.

#### 4.3 **Effects of Termination**

- a) The termination provisions set out in this MSA shall apply mutatis mutandis to the Agreements.
- b) In the event that the SDA or the SCA terminates this MSA, depending on the event of default, compensation will be decided in accordance with the Terms of Payment outlined in Appendix E, Schedule 3 of this MSA.
- c) Upon termination of this MSA, the Parties will comply with the Exit Management Schedule, as outlined in this MSA, in Schedule 2
- d) Upon the expiration or any termination of this MSA, SCA shall undertake the actions set forth in this MSA to assist the GoWB/SDA to procure replacement services as provided hereunder:
  - i. The SCA undertakes to negotiate in good faith with the GoWB/SDA and any relevant Replacement SCA in respect of commercial terms applying to all SCA Intellectual Property Rights and which the GoWB/SDA and any relevant Replacement SCA require to enable them to provide or receive services substantially equivalent to the Services hereunder



- ii. In respect of SCA third party Intellectual Property Rights, SCA undertakes to assist the GoWB/SDA to secure such consents or licenses from such third parties as are necessary to enable GoWB/ SDA / Replacement SCA to receive services substantially equivalent to the Services hereunder.
- iii. The SCA shall hand over to the GoWB / SDA or its designated agency, at the appropriate time, in accordance with the terms of Appendix E, Schedule 3 of this MSA, any asset or deliverable, including the software, if any, (and including any data, ownership, source code and associated documentation which is the work product of the development efforts involved in the Scheme) in which the GoWB/SDA has the right, title and interest and that is in the possession or control of the SCA

## **5. Warranties, Liabilities and Confidentiality**

### **5.1 Warranties**

The SCA warrants and represents to the GoWB and SDA that:

- a) It has full capacity and authority and all necessary approvals to enter into and to perform its obligations under this MSA;
- b) This MSA is executed by a duly authorized representative of the SCA
- c) It shall discharge its obligations under this MSA with due skill, care and diligence so as to comply, with this MSA

### **5.2 Third Party Claims**

- a) The SCA (the "Indemnifying Party") undertakes to indemnify the GoWB and/or SDA/their nominated agencies, as the case may be, (the "Indemnified Party") from and against all losses, claims or damages on account of bodily injury, death or damage to tangible personal property arising in favor of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's performance or non-performance under this MSA
- b) The indemnities shall be subject to the following conditions:
  - i. the Indemnified Party, as promptly as possible, informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise
  - ii. 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
  - iii. if the Indemnifying Party does not assume full control over the defense of a claim as provided in this Article, the Indemnifying Party may participate in such defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnified Party will be included in losses

- c) 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
- d) All settlements of claims subject to indemnification under this MSA will: (a) be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant or plaintiff for all liability in respect of such claim; and (b) include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement
- e) The Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favor of the Indemnified Party, which are to be paid to it in connection with any such claim or proceedings
- f) 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; and

### **5.3 Limitation of Liability**

- a) There shall be no limitation of liability in respect of the SCA in case of any damages for bodily injury (including death) and damage to real property and tangible personal property, other than as applicable under the relevant laws.
- b) Neither this MSA nor the Agreements grants or creates any rights, benefits, claims, obligations or causes of action in, to or on behalf of any person or entity (including any third party) other than between the respective Parties to this MSA, as the case may be.
- c) Any claim or series of claims arising out or in connection with this MSA shall be time barred and invalid if legal proceedings are not commenced by the relevant Party against the other Party within a period of 3 years from the date when the cause of action first arose or within such longer period as may be permitted by applicable law without the possibility of contractual waiver or limitation.
- d) The GoWB/SDA shall be entitled to claim the remedy of specific performance under this MSA

**5.4 Force Majeure**

- a) Neither Party to this MSA shall be liable to the other for any loss or damage which may be suffered by the other due (directly) to the extent and for the duration of any cause beyond the reasonable control of the Party unable to perform ("Force Majeure") events such as but not limited to acts of God not confined to the premises of the Party claiming the Force Majeure, flood, drought, lightning or fire, earthquakes, strike, lock-outs beyond its control, labour disturbance not caused at the instance of the Party claiming Force Majeure, acts of government or other competent authority, war, terrorist activities, military operations, riots, epidemics, civil commotions etc. No failure, delay or other default of any contractor or sub-contractor to either Party shall entitle such Party to claim Force Majeure under this MSA
- b) The Party seeking to rely on Force Majeure shall promptly, within 2 days, notify the other Party of the occurrence of a Force Majeure event as a condition precedent to the availability of this defense with particulars detail in writing to the other Party and shall demonstrate that it has and is taking all reasonable measures to mitigate the events of Force Majeure
- c) In the event the Force Majeure substantially prevents, hinders or delays the SCA's performance of Services, in over 300 CSCs, for a period in excess of 14 days, the SDA may declare this as an emergency situation. The SDA will issue a notice to the SCA to resume normal services at all affected sites and for all operations within a period of 30 days. In the event that the SCA is not able to resume services within the next 30 days, the SDA may obtain substitute performance from an alternate supplier/SCA.
- d) All payments pursuant to termination due to Force Majeure event shall be in accordance with the Terms of Payment outlined in this MSA
- e) Notwithstanding the terms of this MSA, the failure on the part of the SCA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of the this MSA and subsequent Agreements, against natural disaster, fire, sabotage or other similar occurrence shall not be an event of Force Majeure

**5.5 Confidentiality**

- a) The GoWB/SDA may permit the SCA to come into possession of confidential public records as per the needs of the Scheme and the SCA (including its VLEs, employees, contractors, agencies and representatives) shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- b) Additionally, the SCA shall keep confidential all the details and information with regard to the Scheme, including systems, facilities, operations, management and maintenance of the systems/ facilities.
- c) The GoWB/SDA shall retain all rights to prevent, stop and if required take the necessary punitive action against the SCA regarding any forbidden disclosure.
- d) The SCA shall ensure that all its employees, agents and sub-contractors execute individual non-disclosure agreements, which have been duly approved by the GoWB/SDA, with respect to this Scheme
- e) The aforesaid provisions shall not apply to the information:
  - i. already in the public domain; and
  - ii. which has been received from a third party who had the right to disclose the aforesaid information; and
  - iii. disclosed to the public due to a court order.

**5.6 Audit, Access and Reporting**

- a) The GoWB/SDA/ nominated agency like the SPV, may carry out routine, random and periodic audits and inspections, by itself or through authorized representatives of all project/services related documents, data, locations, accounts, information; GoWB/SDA/ nominated agency like the SPV, shall endeavor to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the SCA or users
- b) The GoWB/SDA/ nominated agency like the SPV, may carry out non-timetabled audits are necessary as a result of an act of fraud by the SCA, a security violation, or breach of confidentiality obligations by the SCA.
- c) The frequency of audits (time tabled) shall be 6 monthly, provided always that the GoWB/SDA shall endeavor to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the SCA or users
- d) The audit and access rights contained within this section shall survive the termination or expiration of the MSA for a period of twenty-four (24) months.

- e) The SCA shall provide to the GoWB/SDA/ nominated agency like the SPV, or its representatives reasonable access to the Service Delivery Channel Network, VLEs, employees, subcontractors, suppliers, agents, third party facilities, including leased premises used for Scheme/kiosks, documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The GoWB/SDA/ nominated agency like the SPV, shall have the right to copy and retain copies of any relevant records. The SCA shall make every reasonable effort to co-operate with them.

### **5.7 Verification**

- a) The GoWB/SDA/nominated agency like the SPV, shall have the right to, as shall be reasonably necessary, to verify:
  - i. The security, integrity and availability of all GoWB Data processed, held or conveyed by the SCA on behalf of GoWB/SDA and the users and documentation related thereto
  - ii. That the actual level of performance of the services is the same as specified in the Service Level Agreements
  - iii. That the SCA has complied with the relevant technical standards, and has adequate internal controls in place; and
  - iv. The compliance of the SCA with any other obligation under the MSA and/or the Agreements
- b) The audit and access rights contained in the MSA shall survive the termination or expiration of the MSA for a period of 24 months

### **5.8 Reporting**

- a) The SCA will provide quarterly reports to the GoWB/SDA/their nominated agencies regarding any specific aspects of the Scheme and in context of the audit and access information as required or such by the GoWB/SDA or its nominated agencies.
- b) For the purposes of audit, the SCA shall maintain true and accurate records in connection with the provision of the services and the SCA shall handover all the relevant records and documents upon the termination or expiry of the MSA.

**5.9 Scheme Management Committee**

- a) The Parties shall nominate Scheme Managers (one by SCA and one jointly by the GoWB and SDA), who shall have periodic meeting and be responsible for maintaining the interface and communication between the Parties.
- b) The GoWB/SDA will appoint a Scheme Management Committee. The Management Committee will meet formally on a quarterly basis at a time and location to be agreed between them. These meetings will cover, as a minimum, the following agenda items: (i) consideration of periodic performance reports; (ii) consideration of matters arising out of the change control; (iii) matters to be brought before the Scheme Management Committee in accordance with the MSA and Schedules thereto; (iv) any other issue which either Party wishes to add to the agenda.
- c) The Parties shall comply with the Audit, Access, and Reporting Schedule set forth by the Scheme Management Committee

## **6. Intellectual Property**

### **6.1 Government IPR**

- a) Except to the extent otherwise expressly provided in this MSA, the GoWB/ SDA shall retain exclusive intellectual property rights to the forms, content, data and the compilations of the GoWB/SDA to which the GoWB/SDA has sovereign rights and nothing herein shall or will be construed or deemed to grant to the SCA any right, title, license, sub-license, proprietary right or other claim against or interest in, to or under (whether by estoppels, by implication or otherwise) to the aforesaid rights of GoWB/SDA.
  - d) Without limiting the generality of the above article, and except to the extent otherwise expressly agreed by the Parties to this MSA in writing, nothing contained in this MSA shall or will be construed or deemed to grant to the SCA any right, title, license or other interest in, to or under (whether by estoppels, by implication or otherwise) any logo, trademark, trade name, service mark or similar designations of CSC Scheme/GoWB/SDA or its respective affiliates/nominees.
  - e) Subject to any sole or exclusive rights granted by the GoWB to a third party prior to the Effective Date, the GoWB may, if required, grant to the SCA and any sub-contractors to the SCA solely for use in their performance of Services for Go\_/SDA or its nominated agencies, non-exclusive, paid-up, royalty-free right and license during the Term of this MSA, but not the right to sub-license, to use the GoWB Data including the right to copy, perform, display, execute, reproduce, modify, enhance and improve the GoWB Data to the extent reasonably necessary or useful for the provision of Services hereunder
  - f) The SCA shall indemnify, defend and hold harmless GoWB/SDA and its respective officers, employees, successors and assigns, from and against any and all losses arising from claims by third parties that any Deliverables (or the access, use or other rights thereto) created by SCA pursuant to this MSA or any equipment, software, information, methods of operation or other intellectual property (or the access, use or other rights thereto) provided by SCA or sub-contractors to the SCA pursuant to this MSA:
    - i. Infringes a copyright enforceable in India,
    - ii. Infringes a patent issued in India, or



- iii. Constitutes misappropriation or unlawful disclosure or use of another Party's trade secret under the laws of the India (collectively, "Infringement Claims"); provided, however, that this will not apply to any Deliverable (or the access, use or other rights thereto) created by (A) GoWB/SDA ; (B) third parties (i.e., other than SCA or SCA's sub-contractors) at the direction of GoWB/SDA
- g) The GoWB/SDA shall have no liability or obligation to SCA or any other Party above to the extent the Infringement Claim is based upon any use of the equipment, software, information, methods of operation or other intellectual property (or the access, use or other rights thereto) for the benefit of any Party (including any use by SCA or its nominees outside the scope of the Services) other than for the GoWB/SDA.
- h) Notwithstanding any provisions of this MSA to the contrary, the foregoing remedies constitute the Parties' sole and exclusive remedies and each Party's entire liability, with respect to Infringement Claims

## 6.2 **SCA IPR**

- a) All right, title and interest in and to, and ownership in, Proprietary Information of GoWB which may, if required, be provided to SCA, and all modifications, enhancements and other derivative works of such GoWB Proprietary Information ("GoWB Proprietary Information"), as a result of Services rendered by the SCA hereunder shall remain solely with the GoWB. SCA shall be entitled to use such GoWB Proprietary Information only during the Term and only for the purposes of providing the Services or to the extent necessary for SCA's normal operational, repair and maintenance purposes related to the Services. The GoWB shall retain ownership of all Intellectual Property Rights related to GoWB Proprietary Information
- b) All right, title and interest in and to, and ownership in, Proprietary Information of SCA, which is provided to the GoWB/SDA, and all modifications, enhancements and other derivative works of such SCA Proprietary Information ("SCA Proprietary Information"), shall remain solely with SCA. The SCA will upon the award of the Scheme in its favor, declare the status of all the SCA Proprietary Information along with documentary support sufficient to establish its sole legal rights in the aforesaid Proprietary Information to the GoWB/SDA. This Proprietary Information shall refer to that which has been owned by the SCA prior to commencement of the MSA.

- c) Additionally, the GoWB/SDA shall also consider any software that may be acquired from third parties by the SCA, solely for its own purpose, during the term of the MSA as SCA Proprietary Information. The GoWB/SDA/its nominated agencies shall be entitled to use such SCA Proprietary Information only in connection with the Services or to the extent necessary for GoWB's/CSC Scheme's normal operational, repair and maintenance purposes related to the Services.

## **7. Miscellaneous**

### **7.1 SCA duties**

- a) The SCA shall not change the key personnel named by it in the Bid except with the prior written approval of the GoWB/SDA and replace with personnel having similar or higher qualifications, such approval will not be unreasonably withheld, and will be processed within 7 days of the request being made
- b) The SCA shall ensure that G2C services are effectively and cordially provided to the citizens by the concerned VLEs. The SCA shall ensure that the VLE does not hinder/inhibit the objective of the CSC scheme by withholding information or refusing to deliver services as per demand of the citizens and availability of services.
- c) In providing the B2C/B2B services, the SCA shall ensure that:
  - i. which are opposed to public interest or public policy shall not be provided by it/under the Scheme;
  - ii. such services shall not be provided in a manner that has an adverse impact on the provision of Government Services to citizens or on the operations, functioning, performance, infrastructure and manpower requirements of the CSCs
  - iii. the provision of Services is carried out in accordance with the provisions and specification set out in the RFP, the Bid and this MSA.
- d) The SCA shall not transmit, cause to transmit or suffer transmission, under or pursuant to the Scheme, of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or in a manner, which constitutes a violation or infringement of the rights of any person or entity (including but not limited to rights of copyright and other intellectual property rights, confidentiality or privacy).
- e) The SCA shall have the right to fix the charges for B2C/B2B services at market driven rates; provided that such rates are competitive rates and not exorbitant and do not overburden the users of such services so as to dampen the overall image of the Government of West Bengal and the Scheme.

- f) The SCA shall indemnify, continue to indemnify and hold harmless the GoWB/SDA and its agencies from and against all costs (including attorney fees), liabilities of all types, claims, litigation, proceedings, damages, penalties, etc arising or resulting from the provision of B2C/B2B services under and pursuant to this MSA/the Scheme. The GoWB/SDA shall not be liable in any manner whatsoever to any person whomsoever in this behalf. All cost, risk and liability in this behalf shall be borne solely by the SCA.

**7.2 Commitment for future Government Services**

- a) The GoWB/SDA shall provide and the SCA shall deliver, this being a mandatory obligation of the SCA, all future GoWB/SDA Government services/applications under the Scheme/through the CSC channels.
- b) The transaction charges for such future GoWB/SDA Government services/applications shall be fixed by GoWB, on a mutually agreed basis, pursuant to Service Level Agreements

**7.3 Independent Contractor**

Nothing in this MSA shall be construed as establishing or implying any partnership or joint venture between the Parties to this MSA and, except as expressly stated in this MSA, nothing in this MSA shall be deemed to constitute any Parties as the agent of any other Party or authorizes either Party (i) to incur any expenses on behalf of the other Party, (ii) to enter into any engagement or make any representation or warranty on behalf of the other Party, (iii) to pledge the credit of or otherwise bind or oblige the other Party, or (iv) to commit the other Party in any way whatsoever.

**7.4 Assignment**

All terms and provisions of this MSA shall be binding on and shall ensure to the benefit of the GoWB, SDA and the SCA and any assignment or transfer of this MSA or any rights hereunder by either Party shall be strictly prohibited.

**7.5 Trademarks, Publicity**

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

**7.6 Notices**

a) Any notice or other document, which may be given by either Party under this MSA or under the Service Level Agreements, shall be given in writing in person or by pre-paid recorded delivery post or by facsimile transmission

b) In relation to a notice given under this MSA, any such notice or other document shall be addressed to the other Party's principal or registered office address as set out below:

West Bengal State Rural Development Agency (WBSRDA)

First Floor, Jessop Building

63 Netaji Subhash Road

Kolkata – 700001, West Bengal, INDIA

TEL# 033-22439040/41, 22317246(direct)

FAX: 033-22410080/22484327/22438719

Government of West Bengal

c) In relation to a notice under this MSA, it shall specify the Parties' address for services of notices, any such notice to be copied to the Parties as the addresses set out in Article 7.6 (b).

d) Any notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter)

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

**7.7 Severability and Waiver**

- a) If any provision of this MSA, 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 MSA 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 or part thereof.
- b) No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this MSA of any right, remedy or provision of this MSA 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

**7.8 Compliance with Laws and Regulations**

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

**7.9 Ethics**

The SCA 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 the GoWB/SDA, or its nominated agencies in connection with this MSA and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of GoWB's/ SDA's standard policies and may result in cancellation of this MSA

**7.10 Entire MSA**

This MSA, all schedules appended thereto and the contents and specifications of the RFP and the Bid 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.

**7.11 Survivability**

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

**7.12 Insurance Cover**

- a) On and from the date of execution of this MSA, the SCA shall maintain or cause to be maintained, insurance policies as are customarily and ordinarily available in India on commercially reasonable terms and reasonably required to be maintained consistent with projects and facilities of the size and type of this Scheme, including loss that is due to fire, floods, earthquake, riots, civil commotion or acts of God and as may be required by the GoWB/SDA.
- b) The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the SCA.

**7.13 Governing Law**

This MSA shall be governed by and construed in accordance with the laws of India and the courts of West Bengal shall have jurisdiction over all matters arising out of or in relation to this MSA.

## **8. Dispute Resolution**

### **8.1 Dispute Resolution**

- a) Any dispute arising out of or in connection with this MSA shall in the first instance be dealt with in accordance with the escalation procedure as set out in this MSA
- b) Any dispute or difference whatsoever arising between the parties to this MSA out of or relating to the construction, meaning, scope, operation or effect of this MSA or the validity of the breach thereof or otherwise, which can not be resolved through the application of the provisions of the Governance section of this MSA, shall be referred to a sole arbitrator, the Secretary, Panchayat & Rural Development Department, GoWB.
- c) The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at [Capital City of State], India
- d) The arbitration shall be conducted in English and all written documents used during the arbitration shall be in English.
- e) The parties agree that any decision or award of the arbitrator pursuant to this clause shall be a domestic award and final, conclusive and binding upon the parties and any person affected by it. The parties also agree that any court of competent jurisdiction may enforce any arbitration award rendered pursuant to this clause.
- f) During any period of arbitration, there shall be no suspension of this MSA.

### **8.2 Amendment**

The Parties acknowledge and agree that amendment to this agreement shall be made in writing in accordance with the procedure this MSA is executed and signed.



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

For and on behalf of Governor of West Bengal

(Name and designation)

For and on behalf of SDA

(Name and designation)

For and on behalf of SCA:

(Name and designation)

an authorized signatory duly nominated pursuant to Board Resolution No. \_\_\_\_\_  
dated \_\_\_\_\_

[In case of Consortium, all members to sign]

Witnesses:

- i.
- ii.

### Schedule 1: Service Level Metrics

| S No. | SDA  | Penalty for breach  | Material Breach  | Stipulated period for mitigating material breach conditions | Remedial performance required for non termination during stipulated period                        |
|-------|--|---|--|---|---|
| 1.    | <p><b>Rollout of CSCs as per the Scheme Rollout period specified</b></p> <p>A CSC will be deemed to be operational only after the being certified by <i>GoWB</i> or its nominated agencies</p>   | No revenue support to be granted during the delay period for any CSCs + Penalty of Rs. 100 per CSC that has been delayed, per additional day of delay | Rollout being delayed by 4 weeks as per the rollout schedule | 3 months  | 100% roll out of CSCs in the stipulated period for mitigating material breach                     |
| 2     | <p><b>Inoperability of CSCs</b></p> <p>A CSC will be deemed inoperable if it is not offering Government Services for a continuous period of seven days, or more than a cumulative period of ten days in a month. A CSC needs to offer Government Services for at least 300 days per year</p> | 1% per CSC per week of the total revenue support sought or Rs.500 per CSC per month   | If a CSC is inoperable for more than 30 days                 | 7 days  | CSC needs to be operational and certified operational by <i>WBSRDA</i> or its designated agencies |

| <b>S No.</b> | <b>SDA</b>  | <b>Penalty for breach</b>   | <b>Material Breach</b>   | <b>Stipulated period for mitigating material breach conditions</b> | <b>Remedial performance required for non termination during stipulated period</b> |
|--------------|---|---|--|--|---|
| 3            | <b>Default on Payment to State Government/ Department</b><br>Payments have to be made no later than 2:00 P.M. on Monday of the following week         | 10% of the total amount due OR Rs.500 per CSC per week, whichever is more.                              | Default for 3 consecutive weeks will lead to termination of VLE        | None   | None  |
| 4            | <b>Default on deposit of collection with Utility providers</b><br>Collection has to be deposited no later than 2:00 P.M. of the following working day | 10% of the total amount due OR Rs.500 per CSC per day, whichever is more.                               | Default for 3 consecutive working days will lead to termination of VLE | None   | None  |
| 5            | <b>Mean time to repair any hardware at the Common Service Centers</b><br>Any hardware problem has to be rectified within 48 working hours             | 1% per CSC per week of the total revenue support sought or Rs.1000 per CSC per month, whichever is more | Outage of Government Services for seven days due to hardware failure   | 7 days   | Hardware problem rectified within 16 working hours                                |

## **Schedule 2: Exit Management**

### 1) SCA Assets

- a) The SCA shall be entitled to use the Assets for the duration of the exit management period, which shall be the four-month period from the date of expiry, or termination of the MSA.
- b) The SDA shall be entitled to serve notice in writing on the SCA at any time prior to the date that is 30 days prior to the end of the exit management period requiring the SCA to transfer and hand over the GoWB/SDA or its nominated agency at the appropriate time, in accordance with the terms of the MSA any Asset or Deliverable, in which the GoWB/SDA has the right, title and interest and that is in the possession or control of the SCA.
- c) No compensation shall be paid to the SCA in event of the expiry of the MSA by efflux of time or termination of the MSA due to the SCA being in breach of its obligations under this MSA
- d) The SDA shall be entitled to invoke the Performance Security in the event the MSA is terminated due to the SCA being in breach as stated above and the SDA shall return the Performance Security if the MSA is terminated due to the GoWB/SDA being in breach as stated above or due to a Force Majeure Event, or on normal expiry of this MSA.
- e) Upon service of a notice the following provisions shall apply:
  - i. all risk in and title to the Assets, other than those that are to be transferred to the GoWB/SDA, shall remain with the SCA after the last day of the exit management period.
  - ii. the GoWB shall pay to the SCA on the last day of the exit management period the amounts due for remuneration for services already rendered as stated in the Terms of Payment Section of this MSA
  - iii. The GoWB/SDA shall withdraw all Government services and the SCA shall cease to have any right whatsoever to render such services under or pursuant to the CSC Scheme/this Agreement
- f) The employees of the SCA/its sub-contractors and the VLEs shall continue to be their respective employees/counter parties and GoWB/SDA shall have no obligation in respect of such employees or the VLEs
- g) The SCA shall ensure that the VLEs, sub-contractors, agents, representatives and respective associated entities carry out their respective obligations during the Exit Management Period

- h) Save as otherwise expressly provided in this MSA, the SCA shall be entitled to retain all physical infrastructure; hardware, software, technology, networks, connectivity, information related to provision Services/at the CSCs; all contracts with any non-Government content and services providers

2) Transfer of Certain Agreements

- a) During the exit management period the SCA shall hand over the GoWB/SDA proprietary materials, data and information to GoWB/SDA or its nominated agency, including information relating to the current Government services rendered and customer satisfaction surveys and performance data relating to the performance of sub contractors in relation to the Government services; provide training to the employees of GoWB/SDA in the operation and management of the Scheme, as applicable; vacate the GoWB/SDA sites and locations; allow the GoWB/SDA access to information reasonably required to define the then current mode of operation associated with the provision of the Government services; on request by the GoWB/SDA, the SCA shall effect such assignments, transfers, licenses and sub-licenses as the GoWB/SDA may require in favor of the GoWB/SDA, or its nominated agencies or the replacement SCA in relation to any equipment lease, maintenance or service provision agreement between SCA and third party lessors, vendors, and which are related to the Government services and reasonably necessary for the carrying out of replacement Government services by the GoWB/SDA or its nominated agencies or its replacement SCA.

3) Rights of Access to Premises

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

- c) The SCA and its sub-contractors, agents and representatives shall on the last date of the Exit Management Period forthwith vacate, without any delay or demur, the GoWB/SDA locations, office equipment and support services, to which the SCA has been given access by GoWB/SDA pursuant to this MSA
- 4) General Obligations of the SCA
- a) The SCA shall provide all such information as may reasonably be necessary to effect as seamless a handover of the Government services as practicable in the circumstances to the Go/SDA or its nominated agencies or its Replacement SCA and which the SCA has in its possession or control at any time during the Exit Management Period
  - b) For the purposes of this Schedule, anything in the possession or control of any SCA, associated entity, VLEs, or sub contractor is deemed to be in the possession or control of the SCA.
  - c) The SCA shall commit adequate resources to comply with its obligations under this Exit Management Schedule
- 5) Exit Management Plan
- a) The SCA shall provide the GoWB/SDA with a recommended Exit Management Plan ("Exit Management Plan") that shall deal with all the activities to be undertaken in the Exit Management Period, in relation to this MSA
  - b) The SCA shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date
  - c) Payments during the Exit Management period shall be made in accordance with the Terms of Payment section of this MSA
  - d) This Exit Management Plan shall be furnished in writing by the SCA to the GoWB/SDA or its nominated agencies within 90 days from the Effective Date of this MSA

### **Schedule 3: Model Service Level Agreement**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2006

BY AND AMONG

*The Governor* of the State of West Bengal in his executive capacity for the Government of the State of West Bengal, acting through the Principal Secretary, Panchayat & Rural Development Department, West Bengal, hereinafter referred to as "*GoWB*" (which term or expression, unless excluded by or repugnant to the subject or context, shall mean and include its successors-in office and assigns) of the First Part

AND

*The West Bengal State Rural Development Agency (WBSRDA)*, GoWB under the Societies Registration Act, 1860, having its registered office at First Floor, Jessop Building, 63 NS Road, Kolkata - 700001, which has been appointed as the nodal agency for implementing the Scheme by the GoWB, hereinafter referred to as "*State Designated Agency or the SDA*" (which term or expression, unless excluded by or repugnant to the subject or context, shall mean and include its successors and assigns) of the Second Part

AND

M/s \_\_\_\_\_, a company/trust/society/[others as applicable] registered under the [Name of the Act], having its registered office at \_\_\_\_\_ and place of business at \_\_\_\_\_, hereinafter referred to as "*Service Centre Agency or the SCA*" (which term or expression, unless excluded by or repugnant to the subject or context, shall mean and include its successors and permitted assigns) of the Third Part

Each individually a "Party" hereto and collectively the "Parties"

WHEREAS:

- A. The GoWB, SDA and [\_\_\_\_\_], the SCA have entered into a Master Service Agreement dated [\_\_\_\_\_] (hereinafter referred to as the "MSA").
- B. The SCA, vide the above MSA is entitled to offer Government Services through the CSCs. Each service has defined service levels that, if appropriately delivered, as per this agreement, can allow the SCA to collect the requisite transaction share as well as the revenue support from the GoWB against the delivery of Government Services
- C. In accordance with the provisions of the MSA, the GoWB, SDA and SCA wish to enter into this Service-Level Agreement on the following terms:

## **Article I: Definitions and General Purpose**

1. Definitions: In this Agreement unless the context requires otherwise:
  - a) “**Agreement/ Service Level Agreement**” means this Agreement, together with its Appendices;
  - b) “**Parties**” means *GoWB*, the SDA and SCA for the purposes of this Agreement and “Party” shall be interpreted accordingly;
  - c) “**Service Level**” means the level of service and other performance criteria(s), which will apply to the Services as, set out in the Agreement and effective during the Term of this Agreement
  - d) “**Term**” means the duration of this Agreement, which expires with the expiry of the MSA Term
2. All Appendices and other attachments to this Agreement are hereby incorporated as a part of this Agreement by this reference.
3. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it.
4. Words denoting the singular shall include the plural and vice versa and words denoting persons shall include firms and corporations and vice versa.
5. Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Article, Appendix or other subdivision. The terms Article and Appendix refer to Articles and Appendices of this Agreement. The words "include" and "including" shall not be construed as terms of limitation. The words "day" and "month" mean "calendar day" and "calendar month" unless otherwise stated. Where, because of a difference in time zone, the calendar day or calendar month in one Country differs from another Country, then the calendar day or calendar month shall be deemed to be the calendar day or calendar month applicable to India. The words "writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated.
6. The headings and use of bold type in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement
7. The definitions/terms used in this Agreement (including the recitals above and the Annexures hereto) but not defined herein shall, unless the context otherwise requires, have the meaning assigned to them respectively in the Master Service Agreement.



## **Article 2: Objectives and Scope of Contract**

1. The SCA is to perform Service Levels, which will ensure:
  - i. provision of speedy and efficient services in conformity with the Service Level to the users without any discrimination on grounds of religion, race, caste or sex;
  - ii. making it convenient for citizens and other stakeholders to interact with the Government;
  - iii. educating the users about the relevant procedures;
2. To meet the aforesaid objectives the SCA shall provide the Service Levels in accordance with the performance metrics as more particularly described in Appendix C of this Agreement. Further this Agreement shall govern the provision of the contracted professional services to GoWB, SDA or nominated agencies after the Effective Date.

## **Article 3: Commencement and Duration of this Agreement**

1. The Agreement shall be executed along with the MSA and commence from the Effective Date and shall, unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties, expire on the date on which the MSA expires, which shall be four years from the Effective Date.
2. Terms of Payment & Liquidated Damages  
In consideration of the Services and subject to the provisions of the MSA and this Agreement, the GoWB shall pay the revenue support to the SCA in accordance with the provisions of the MSA, including the Terms of Payment section of the MSA.
3. It is clarified here that the GoWB can also calculate a financial sum for the liquidated damages and debit the same against the terms of payment as defined in the Terms of Payment section of the MSA as a result of the failure of the SCA to meet the Service Levels as outlined in Annexure D to this Agreement, such sum being determined in accordance with the terms of the Agreement

## **Article 4: Applicability of the MSA**

1. Apart from the provisions as set out hereinabove, the terms and conditions stated in the MSA shall apply mutatis mutandis to this Agreement. In the event of a conflict in interpretation of any Article in the MSA and the Agreement, the provisions of the MSA shall prevail.

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

For and on behalf of

Governor of West Bengal  
(Name and designation)

For and on behalf of WBSRDA

(Name and designation)

For and on behalf of SCA

(Name and designation)

an authorized signatory duly nominated  
pursuant to Board Resolution No. \_\_\_\_\_ dated \_\_\_\_\_  
[In case of Consortium, all members to sign]

Witnesses:

- (i)
- (ii)

**Appendix A**  
**List of Government Services**

**Appendix B**  
**Service Rates and Revenue Share**

Appendix C

**Service Level Metrics**

| Service Name | Service Description and Process | Minimum Service Levels expected (if required) |
|--------------|---------------------------------|---|
|--------------|---------------------------------|---|

**Appendix D**  
**Liquidated Damages**

Appendix E  
**Effects of Termination**