

**DRAFT
SERVICE LEVEL AGREEMENT
with
Service Provider for implementation of
Examination Management System
at
Kerala Technological University,
Thiruvananthapuram**



SERVICE LEVEL AGREEMENT

THIS AGREEMENT is made on this the day of2015 at..... Kerala.

BETWEEN

----- having its office at ----- India hereinafter referred to as '**Kerala Technological University**', which expression shall, unless the context otherwise requires, include its `permitted successors and assignees);

AND

with

_____ (**Name, Designation and Address of the Agency/SP**) hereinafter referred to as the Service Provider / XXX ' (which expression shall unless excluded by or repugnant to the context be deemed to include his/her successor in office or assign)

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

WHEREAS:

Kerala Technological University is desirous to implement the Examination Management System product and services, a suite of applications developed by the _____, for 160 plus Affiliated Engineering Colleges, Under Kerala Technological University.

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

Abbreviations

AB	Answer Books
BG	Bank Guarantee
CERT	Computer Emergency Response Team
DC	Data Centre
DR	Disaster Recovery
EE	External Examiner
EMS	Examination management system
IE	Internal Examiner
FRS	Functional Requirement Specifications
IT/ICT	Information and Communication Technologies
KTU	Kerala Technological University
MCQ	Multiple Choice Question
MSA	Master Service Agreement
OEM	Original Equipment Manufacturer / Original Licensor of EMS Solution
QP	Question Paper
QPM	Question Paper Moderator
QPR	Question Paper Reviewer
QPS	Question Paper Setter
RFP	Request for Proposal
EMD	Earnest Money Deposit
EMS	EXAMINATION MANAGEMENT SYSTEM
SP/SI	Service Provider. The terms Systems Integrator/ Implementation Partner / Bidder are also used interchangeably. In case of a consortium, lead bidder.
PBG	Performance Bank Guarantee
PMU	Project Management Unit
SPOC	Single Point of Contact
SRS	Software Requirements Specification.
COTS	Commercial Of The Shelve
IT	Information Technology
ICT	Information and Communication Technology
SLA	Service Level Agreement
STQC	Standard Testing and Quality Certification
SGR	Semester Wise Generated Revenue
UAT	User Acceptance Testing
VSM	Valuation Scheme Maker

DEFINITIONS

For the purpose of this SLA, the definitions and terms as specified in the contract along with the following terms shall have the meanings set forth below:

1. **"Incident"** refers to any event / abnormalities in the functioning of the EMS components that may lead to disruption in normal operations of the EMS services
2. **"Support"** shall mean the 24x7 support which shall handle Fault reporting, Trouble Ticketing and related enquiries during this contract. Voice support & Interactive remote diagnostic support shall also be there, allowing technological support engineers to troubleshoot an incident securely through remote access.
3. **Availability** means the time for which the services and facilities are available for conducting operations on an EMS application. Availability is defined as:
$$\frac{\{(Scheduled\ Operation\ Time - System\ Downtime)\}}{Scheduled\ Operation\ Time} \times 100$$
4. **Scheduled Maintenance Time / Scheduled downtime** shall mean the time that the System is not in service due to a scheduled activity as defined in this SLA. The scheduled maintenance time would not be during examination cycle is the operating timeframe. Further, scheduled maintenance time is planned downtime with the prior permission of Kerala Technological University
5. **Scheduled operation time** means the scheduled operating hours of the System for the 3. All scheduled maintenance time on the system would be deducted from the total operation time for the month to give the scheduled operation time. The total operation time for the systems and applications will be 24x7x365. **Downtime** means accumulated time during which the System is totally inoperable within the Scheduled Operation Time but outside the scheduled maintenance time.
6. **"Response time"** is defined as the time between receipt of the incident by support team and its logging / generation of ticket on the system
7. **"Resolution Time"** shall mean the time taken (after the incident has been reported to the support team) till resolution. The severity parameters have been defined below:
The severity would be as follows:
 - a. **Critical:** In case an essential functionality of the EMS solution becomes unavailable in the live environment which are hampering the basic operations of the examination will be termed as critical.
 - b. **High:** In case an essential functionality of the EMS solution becomes unavailable in the Live environment which is not actually hampering the basic operations of the examination resulting in a denial of service to the beneficiaries but may impact the other services will be termed as critical.
 - c. **Medium:** In case an essential functionality of the EMS solution becomes unavailable in the Live environment which is not actually hampering the live services of the EMS but may impact the services if not attended immediately will be termed as medium.

INTERPRETATIONS

In this Agreement, unless otherwise specified:

- (a) References to Clauses, Sub-Clauses, Paragraphs and Schedules are to clauses, sub-clauses, paragraphs of and schedules to this Agreement;
- (b) Use of any gender includes the other genders;
- (c) references to a **'person'** shall be construed so as to include any individual, firm, company, University or KTU, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);

- (d) 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;
- (e) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- (f) References to a '**business day**' shall be construed as a reference to a day (other than a Sunday) on which banks in the state of Kerala are generally open for business or Kerala Technological University working days;
- (g) References to times are to Indian Standard Time;
- (h) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, notated or supplemented at any time; and
- (i) all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
- (j) The "business hours" means, it is 10 AM to 5 PM,
- (k) "Non-Business Hours" shall mean hours excluding "Business Hours".
- (l) If the operations at Primary DC are not switched to DR within the stipulated Time frame (Recovery Time Objective), it will be added to the system downtime.
- (m) The SLA parameters shall be monitored on every instance of the start of the examination process as per the individual SLA parameter requirements. However, if the performance of the system/services is degraded significantly at any given point in time during the contract and if the immediate measures are not implemented and issues are not rectified to the complete satisfaction of Kerala Technological University or an agency designated by them, then Kerala Technological University will have the right to take appropriate disciplinary actions including termination of the contract.
- (n) A Service Level violation will occur if the SP fails to meet Minimum Service Levels, as measured between start and end of the examination process basis, for a particular Service Level. Overall Availability and Performance Measurements will be on semester basis for the purpose of Service Level reporting. An "Availability and Performance Report" will be provided by the SP on every examination process on semester basis in KTU suggested format and a review shall be conducted based on this report. A semester Availability and Performance Report shall be provided to the KTU and certificate of satisfactory performance by the end users at the end of completing the examination at semester containing the summary of all incidents reported and associated SP performance measurement for that period. The Availability and Performance Report at every instance of examination process will be deemed to be accepted by Kerala Technological University upon review and signoff by both SP and Kerala Technological University. Where required, some of the Service Levels will be assessed through audits or reports e.g. utilization reports, measurements reports, etc., as appropriate to be provided by the SI on a monthly basis, in the formats as required by Kerala Technological University. The tools to perform the audit will need to be provided by the SP. Audits will normally be done on Pre and Post Examination Process on regular basis or as required by Kerala Technological University and will be performed by Kerala Technological University or third party audit agencies (including SLA online monitoring).
- (p) The Post Implementation SLAs will prevail from the start of the Operations and Maintenance Phase. However, SLAs will be subject to being redefined, to the extent necessitated by field experience at the offices and the developments of technology practices globally. The SLAs may be reviewed on an annual/bi-annual basis as Kerala Technological University decides after taking the advice of the SP and other agencies. All the changes would be made by Kerala Technological University in consultation with the SP.

(q) The SP is expected to provide the following service levels. In case these service levels cannot be achieved at service levels defined in the tables below, it shall result in a breach of contract and invoke the penalty clause. Payments to the SP are linked to the compliance with the SLA metrics laid down in the tables below. The penalties will be computed and calculated as per the computation explained in this Agreement. During the contract period, it is envisaged that there could be changes to the SLA, in terms of addition, alteration or deletion of certain parameters, based on mutual consent of both the parties i.e. Kerala Technological University and SP.

(r) Following tables outlines the key service level requirements for the system, which needs be ensured by the SP during the operations and maintenance period. These requirements shall be strictly imposed and either Kerala Technological University or a third party audit/certification agency shall be deployed for certifying the performance of the SP against the target performance metrics as outlined in the tables below. A third party agency is required to validate the outcome of the project with respect to its objectives

(s) Kerala Technological University should be interpreted as _____ or the Kerala Technological University or Project Management Unit appointed by Kerala Technological University to carry out EMS related tasks

(t) One month is defined as 30 days

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.

AMBIGUITIES WITHIN AGREEMENT

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

(a) As between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;

(b) As between the provisions of this Agreement and the Schedules, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules; and

(c) As between any value written in numerals and that in words, the value in words shall prevail.

PRIORITY OF AGREEMENTS

The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the MSA and this Agreement shall be read together and construed harmoniously. In the event of any conflict between the MSA and this Agreement, the provisions contained in the MSA shall prevail over this Agreement.

STRUCTURE

This SLA shall operate as a legally binding services agreement specifying terms which apply to the Parties in relation to the provision of the Services by the Service Provider to the Buyer and its nominated agencies under this Agreement and the MSA.

OBJECTIVES OF THIS SLA

The System Provider shall be required to ensure that the Service Levels which shall ensure the following:

(a) Leveraging the benefits in new system in order to:

(i) Replacement of manual examination process and replace with computerized centralized digitized end to end examination process.

(ii) Infuse transparency in operations by enabling the stakeholders to have easy access of question papers preparation, finalization, e-distribution, decentralized printing of question papers, scanning the filled answer sheets to the server and distribute to valuating officials for valuation and provision of login ids and DSC (Digital Signature Certificate) to infuse accountability in operations

(iii) Enable faster processing in delivery of services with better turnaround time.

(iv) Generate meaningful MIS from the system.

(v) Provide inbuilt mechanism of security and quality control for crucial data.

To meet the aforementioned objectives the System Provider will provide the Service Levels in accordance with the performance metrics as set out in detail in this Agreement. Further this Agreement shall govern the provision of the contracted professional services of SP to the Kerala Technological University and its nominated agencies after the Effective Date

SCOPE OF SLA

This Agreement has been executed in relation to implementation and support portion of the Project between the Parties.

This Agreement shall ensure the following:

(a) Establishment of mutual responsibilities and accountability of the Parties;

(b) Definition each Party's expectations in terms of services provided;

(c) Establishment of the relevant performance measurement criteria;

(d) Definition of the availability expectations;

(e) Definition of the escalation process;

(f) Establishment of trouble reporting single point of contact;

(g) Establishment of Project Management Unit;

(h) Establishment of the framework for SLA change management

The following parties are obligated to follow the procedures as specified by this Agreement:

(a) Kerala Technological University

(b) System Provider

AGREEMENT OWNERS

The following personnel shall be notified to discuss the Agreement and take into consideration any proposed SLA change requests:

	Title	Te le ph on e
Buyer	Authorized Kerala University	Representative, Technological
		<* ** >
System Provider	<***>	<* ** >

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CONTACT LIST

In the event that there is any change in the listed contacts, the same shall be communicated and updated prior to such change occurring. The Single Point of Contact (“**POC**”) for the System Provider shall be <***> and will be available 24X7.

Name	Title	Location	Telephone
Buyer	Authorized Representative, Kerala Technological University	<***>	<***>
System Provider	<***>	<***>	<***>

PRINCIPAL CONTACTS

The Buyer and the System Provider will nominate a senior staff member to be the principal contact regarding operation of this Agreement. At the date of signing of this Agreement, the nominated principal contacts are:

Buyer principal contact: _____

System Provider principal contact: _____

COMMENCEMENT AND DURATION OF THIS AGREEMENT

Agreement shall commence on the date on which it is executed by the Buyer and the System Provider (hereinafter 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 this Agreement expires or terminates, which shall be a period of five years starting from the date of the Final Acceptance Test.

EXCLUSIONS TO THE AGREEMENT

This Agreement shall not govern the following services:

- (a) Consulting services; and
- (b) System Provider’s business processes not related to the Project.

TERMS OF PAYMENT AND PENALTIES

(a) In consideration of the Services and subject to the provisions of the MSA and this Agreement, the Buyer shall pay the amounts in accordance with the Terms of Payment Schedule of the MSA.

(b) For the avoidance of doubt, it is expressly clarified that the Buyer and/or its nominated agencies may also calculate a financial sum and debit the same against the terms of payment as defined in the Terms of Payment Schedule of the MSA as a result of the failure of the System Provider to meet the Service Levels.

UPDATING OF THIS AGREEMENT

(a) The Parties anticipate that this Agreement shall need to be re-evaluated and modified to account for changes in work environment and technology from time to time. Hence they hereby agree to revise the terms of the Agreement on an annual basis.

(b) The Parties hereby agree upon the following procedure for revising this Agreement:

- (i) Any and all changes to this Agreement will be initiated in writing between the Buyer and the System Provider, The service levels in this Agreement shall be considered to be standard for the Buyer and shall only be modified if both Parties agree to an appended set of terms and conditions;
- (ii) Only the Buyer or the System Provider may initiate a revision to this Agreement;
- (iii) A notice of the proposed revision ("**SLA Change Request**") shall be served to the Buyer or the System Provider as the case may be;
- (iv) The SLA Change request would be deemed to be denied in case it is not approved within a period of 30 days;
- (v) In the event that Buyer/System Provider approves of the suggested change the change shall be communicated to all the Parties and the SLA Change request would be appended to the Agreement;
- (vi) The KTU shall update and republish the text of Agreement annually to include all the SLA Change Requests that have been appended to the Agreement during the course of the year. Such republished Agreement shall be circulated to all the Parties within 15 days of such change taking place.

DOCUMENT HISTORY

All revisions made to this Agreement shall be listed in chronological order as per the format set out below and a copy of the same shall be provided to the Parties:

Version	Date	Description of changes
<***>	<***>	<***>

SCOPE OF SERVICES

- (a) The System Provider shall ensure that Services are available at various locations as per the requirements of the project;
- (b) The System Provider shall provide support services for addressing problems related to the provision of services
- (c) The System Provider guarantees that he shall achieve the Service Levels for the Project;
- (d) The System Provider shall be liable to penalties in case of failure to comply with the Service Levels. However any delay not attributable to the System Provider shall not be taken into account while computing adherence to the Service Levels.

PERFORMANCE REVIEW

The POC's of both the KTU and the System Provider shall meet on a quarterly basis to discuss priorities, service levels and system performance. Additional meetings may be held at the request of either the System Provider or the Buyer. The agenda for these meetings shall be as follows:

- (a) Service performance;
- (b) Review of specific problems/exceptions and priorities; and
- (c) Review of the operation of this Agreement and determine corrective action to overcome deficiencies.

REPRESENTATIONS AND WARRANTIES OF BUYER

The KTU hereby represents and warrants to the System Provider as follows:

- (a) 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;
- (b) It has taken all necessary actions under Applicable Law to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) It has the financial standing and capacity to perform its obligations under the Agreement;
- (d) 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 obligations against it in accordance with the terms thereof;
- (e) 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;
- (f) 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;
- (g) 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 material adverse effect on the System Provider's 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.

REPRESENTATIONS AND WARRANTIES OF THE SYSTEM PROVIDER

The System Provider hereby represents and warrants to the Buyer as follows:

- (a) It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) It has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) This Agreement has been duly executed by it and constitutes its 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 obligations against it in accordance with the terms hereof;
- (d) 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 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;
- (e) there are no 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;

(f) 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 material 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;

(g) it has complied with Applicable Law 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 a material adverse effect on its ability to perform its obligations under this Agreement;

(h) no representation or warranty by it contained herein or in any other document furnished by it to the Buyer or to any government instrumentality 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

(i) 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 the Buyer in connection therewith.

INDEMNITIES

The Parties agree to indemnify each other under this Agreement in accordance with the terms and principles set out in the MSA.

DISPUTE RESOLUTION

Any dispute, difference or claim arising out of or in connection with the Agreement which is not resolved amicably shall be decided in accordance with the dispute resolution procedure as set out in the MSA.

MISCELLANEOUS

(a) Assignment and charges

This Agreement shall be binding on and enure for the benefit of each Party's successors in title. No Party shall assign, or declare any trust in favour of a third party over, all or any part of the benefit of, or its rights or benefits under, this Agreement.

(b) Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at the State of Kerala shall have jurisdiction over matters arising out of or relating to this Agreement.

(c) Waiver of sovereign immunity

The Parties unconditionally and irrevocably:

- (i) agree that the execution, delivery and performance by them of the Agreement constitute commercial acts done and performed for commercial purpose;
- (ii) agree that, should any proceedings be brought against a Party or its assets, property or revenues in any jurisdiction in relation to the Agreement or any transaction contemplated by the Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of such Party with respect to its assets;
- (iii) waive any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (iv) consent generally to the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

(d) Variation

This Agreement may only be varied in writing and signed by both Parties.

(e) Waiver

(i) Waiver including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

- shall be in writing
- shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- shall not affect the validity or enforceability of this Agreement in any manner.

(f) Exclusion of implied warranties

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

(g) Survival

(i) Termination or expiration of the Term shall:

not relieve the System Provider or the Buyer, as the case may be, of any obligations hereunder which expressly or by implication survive hereof; and

except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or expiration or arising out of such termination or expiration.

(ii) All obligations surviving termination or expiration of the Term shall cease on termination or expiration of the Term.

(h) Entire Agreement

This Agreement constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

(i) Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the dispute resolution procedure set forth under this Agreement or otherwise.

(j) No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to

otherwise bind, the other Party except as expressly provided under the terms of this Agreement.

(k) Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

(l) Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by hand delivery, recognized courier, registered post, email or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Kerala Technological University:

*Attn: <***>*

Tel:

Fax:

Email:

Contact:

With a copy to:

If to the System Provider:

*Attn. <***>*

*Phone: <***>*

*Fax No. <***>*

(m) Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in the English language.

(n) Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

(o) Mitigation

Without prejudice to any express provisions of this Agreement on any mitigation obligations of the Parties, each of the Buyer and the System Provider shall at all times take all reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

(p) Removal of Difficulties

The Parties acknowledge that it is conceivable that the Parties may encounter difficulties or problems in the course of implementation of the Project and the transactions envisaged under this Agreement. The Parties agree and covenant that they shall mutually discuss such difficulties and problems in good faith and take all reasonable steps necessary for removal or resolution of such difficulties or problems.

SERVICE LEVELS

This SLA document provides for minimum level of services required as per contractual obligations based on performance indicators and measurements thereof. **XXX** shall ensure provisioning of all required services, while monitoring the performance of the same, to effectively comply with the performance levels mentioned below. The services provided by the NIC shall be reviewed by the State, which will:

- Regularly check performance of the SP against this SLA
- Discuss escalated problems, new issues and matters still outstanding for resolution
- Review statistics related to rectification of outstanding faults and agreed changes

- Obtain suggestions for changes to improve the service levels

The SLAs have been logically segregated in the following categories:

1. **Implementation Service Related Levels**
2. **Delivery Related Service Levels**
3. **Helpdesk Service Related Levels**
4. **Compliance and Reporting Service Levels**
5. **IT Infrastructure/Application related Service Levels**

IMPLEMENTATION SERVICE RELATED LEVELS

Capacity Building

Service Level Description	Measurement						
Capacity Building	<p>All trainings should be completed before go live. The feedback form should be collected from all trainees, which will be verified by EMS PMU. Also the percentage of targeted trainees completed should be reported weekly to the PMU. If 80% of the trainings should be completed before go live in all the Designated Examination Centers and KTU it will be considered as for levying charges</p> <table border="1" data-bbox="824 926 1416 1163"> <thead> <tr> <th data-bbox="824 926 1117 961">Percentage</th> <th data-bbox="1118 926 1416 1094">Violations for calculation of penalty (Index Weightage)</th> </tr> </thead> <tbody> <tr> <td data-bbox="824 1096 1117 1131">70-80</td> <td data-bbox="1118 1096 1416 1131">3</td> </tr> <tr> <td data-bbox="824 1134 1117 1163">50-70</td> <td data-bbox="1118 1134 1416 1163">1</td> </tr> </tbody> </table> <p>Charges will be levied from Implementation, Training and Hand holding head under Cost Break up for EMS rollout in pilot departments at Kerala Technological University (Till _____), Penalties applicable for each of the violations is 1% for quarterly payment (SGR) to the SP.</p>	Percentage	Violations for calculation of penalty (Index Weightage)	70-80	3	50-70	1
Percentage	Violations for calculation of penalty (Index Weightage)						
70-80	3						
50-70	1						

DELIVERY RELATED SERVICE LEVELS

		Baseline	Lower Performance		Violation of Service level agreement		Basis of Measurement
		Metric	Metric	Deduction	Metric	Deduction/Action	

		As per the dates as mentioned in the schedule	First month	1	penalty of 1 %	> 2 months	Charges will be levied from Implementation, Training and Hand holding under Cost Break up for EMS rollout in pilot departments at Kerala Secretariat, Kerala Technological University (Till March 2014)

System Integration Services include, but not limit to, the following:

- Team Mobilization for the commencement of the work
- Before the initialization of the work a complete schedule will be provided by the Bidder to the KTU as the Project Plan

- Weekly track report would be given to the KTU by end of every week for acknowledgement and review
- Delivery of all the modules of the Software on time which are part of Scope of Work
- Installation report needs to be checked and passed by the KTU
- All the documents, manuals & CDs need to be made available to the University
- Licenses, Service Support documents will be checked and cleared by the University
- Component-wise installation, commissioning & testing schedule shall be made available to the University, by which periodic tracking of all the components can be done
- Quality control document for installation and commissioning shall be prepared by SP and verified by the University before installation kickoff
- Complete Load testing of all the equipments as per the equipment Data Sheet would be done by XXXX with an authorized team.(STQC)
- Complete Security testing report as per requirement for the STQC testing
- User Acceptance Test (UAT)
- Training schedule to be submitted two weeks prior to the start of Training and approved by the State after signing the contract

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HELP DESK SERVICES LEVELS

Time in which a complaint / query is resolved after it has been responded to by the IT service management.

Help Desk Support: KTU Site Support

	EMS	Question Paper Setting	Printing of Question Papers at Examination Centers	Uploading of Scanned Answer Sheets
Level 1	Login To EMS Failure for all users All e-file functionality Not Accessible Scan Document Not able to Upload Log of event Not Possible Receipts Functionality Not Available Digital Signing Not Accepted By EMS for all users Local Administration Creation Not Possible EMD Data Not Getting Populated	Not able login, Not able to upload the Question Paper Not able to do other activities which are critical for proceeding for next level.		S

	Roles Assignment Not Possible User creation not possible			
Level -2	Login To EMS Failure for some users Login is time consuming Password Reset e-File functionality partially accessible and not working some functions Receipts functionality is time consuming. e-file functionality is time consuming failure in Migration Of Physical to e-file Digital Signing Not Accepted By EMS for some users Search Functionality Not Working User modification/ deletion not possible MIS Report Generation Including Customized Reports not appearing/anomalous	Meta Data Entry Not Functioning Access Permission Not Set Properly Role Assignment According to Hierarchical Structure and Folder Permission cannot be Set Insufficient space for the folders		Users cannot use the mail system functionality
Level-3	Time taken to upload digitized physical file is time consuming	Documents Not Retrievable, Uploadable is time consuming		

	Templates Not Accessible	Data Retrieval From Other Digital Archives Not Possible	
Level-4		<p>Obsolete documents cannot be removed</p> <p>Meta Data Entry Not Functioning is time consuming</p> <p>Folder Creation/Deletion Not Possible</p> <p>Data Retrieval From Other Digital Archives is time consuming</p>	<p>Individual users cannot use the mail system functionality</p> <p>Attachments is time consuming for upload /download</p> <p>RSS feeds / bulletins not working</p>

- (c) The severity of the individual incidents will be mutually determined by Kerala Technological University and XXXX.
- (d) The scheduled operation time for Kerala Technological University site systems shall be the pre and post of examination process ie., from setting up of question papers to completion of valuation of papers of Kerala Technological University.
- (e) This service level will be measured on a semester basis for each examination center.
- (f) The tables on the following page give details of the Service Levels the XXX is required to maintain.

Help Desk Services related SLA

Service Level Description	Measurement										
Kerala Technological University & Examination Centers Site Support Performance	<p>80% of the Level 1 Incidents at each site should be resolved within at the earliest from the time call is received / logged whichever is earlier. The maximum resolution time for any incident of this nature shall not exceed 1 hour.</p> <p>This service level will be measured on basis for each examination center site. If the performance in a total examination process period for an examination center or site falls below the minimum service level, it will be treated as one (1) instance. The total number of instances for the period will be the cumulative number of instances across the process time across all sites in the total examinations period of a particular semester. Average number of instances per process = (Total number of instances during the examinations period) / 6</p> <table border="1" data-bbox="400 1160 1394 1391"> <thead> <tr> <th data-bbox="400 1160 890 1227">Average number of instances per month</th> <th data-bbox="890 1160 1394 1227">Violations for calculation of penalty (Index Weightage)</th> </tr> </thead> <tbody> <tr> <td data-bbox="400 1227 890 1272">>0 & <=4</td> <td data-bbox="890 1227 1394 1272">1</td> </tr> <tr> <td data-bbox="400 1272 890 1317">>4 & <=8</td> <td data-bbox="890 1272 1394 1317">2</td> </tr> <tr> <td data-bbox="400 1317 890 1361">>8 & <=12</td> <td data-bbox="890 1317 1394 1361">3</td> </tr> <tr> <td data-bbox="400 1361 890 1391">>12</td> <td data-bbox="890 1361 1394 1391">4</td> </tr> </tbody> </table>	Average number of instances per month	Violations for calculation of penalty (Index Weightage)	>0 & <=4	1	>4 & <=8	2	>8 & <=12	3	>12	4
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>0 & <=4	1										
>4 & <=8	2										
>8 & <=12	3										
>12	4										

<p>Kerala Technological University & Examination Centers Site Support Performance</p>	<p>80% of the Level 2 Incidents at each site should be resolved within one hour from the time a call is received / logged whichever is earlier. The maximum resolution time for any incident of this nature shall not exceed 2 hours.</p> <p>This service level will be measured on basis for each examination center site. If the performance in a total examination process period for an examination center or site falls below the minimum service level, it will be treated as one (1) instance. The total number of instances for the period will be the cumulative number of instances across the process time across all sites in the total examinations period of a particular semester. Average number of instances per process = (Total number of instances during the examinations period) / 6</p> <table border="1" data-bbox="486 696 1401 965"> <thead> <tr> <th data-bbox="486 696 938 801">Average number of instances per month</th> <th data-bbox="938 696 1401 801">Violations for calculation of penalty (Index Weightage)</th> </tr> </thead> <tbody> <tr> <td data-bbox="486 801 938 842">>0 & <=4</td> <td data-bbox="938 801 1401 842">1</td> </tr> <tr> <td data-bbox="486 842 938 882">>4 & <=8</td> <td data-bbox="938 842 1401 882">2</td> </tr> <tr> <td data-bbox="486 882 938 922">>8 & <=12</td> <td data-bbox="938 882 1401 922">3</td> </tr> <tr> <td data-bbox="486 922 938 965">>12</td> <td data-bbox="938 922 1401 965">4</td> </tr> </tbody> </table>	Average number of instances per month	Violations for calculation of penalty (Index Weightage)	>0 & <=4	1	>4 & <=8	2	>8 & <=12	3	>12	4
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<p>Kerala Technological University & Examination Centers Site Support Performance</p>	<p>80% of the Level 3 Incidents at each site should be resolved within 2 hours from the time a call is received / logged whichever is earlier. The maximum resolution time for any incident of this nature shall not exceed 3 hours.</p> <p>This service level will be measured on basis for each examination center site. If the performance in a total examination process period for an examination center or site falls below the minimum service level, it will be treated as one (1) instance. The total number of instances for the period will be the cumulative number of instances across the process time across all sites in the total examinations period of a particular semester. Average number of instances per process = (Total number of instances during the examinations period) / 6</p> <table border="1" data-bbox="486 1473 1401 1738"> <thead> <tr> <th data-bbox="486 1473 938 1579">Average number of instances per month</th> <th data-bbox="938 1473 1401 1579">Violations for calculation of penalty (Index Weightage)</th> </tr> </thead> <tbody> <tr> <td data-bbox="486 1579 938 1619">>0 & <=4</td> <td data-bbox="938 1579 1401 1619">1</td> </tr> <tr> <td data-bbox="486 1619 938 1659">>4 & <=8</td> <td data-bbox="938 1619 1401 1659">2</td> </tr> <tr> <td data-bbox="486 1659 938 1700">>8 & <=12</td> <td data-bbox="938 1659 1401 1700">3</td> </tr> <tr> <td data-bbox="486 1700 938 1738">>12</td> <td data-bbox="938 1700 1401 1738">4</td> </tr> </tbody> </table>	Average number of instances per month	Violations for calculation of penalty (Index Weightage)	>0 & <=4	1	>4 & <=8	2	>8 & <=12	3	>12	4
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>0 & <=4	1										
>4 & <=8	2										
>8 & <=12	3										
>12	4										

Kerala Technological University Examination Centers Support Performance	& Site	80% of the Level 4 Incidents at each site should be resolved within 6 hours from the time a call is received / logged whichever is earlier. The maximum resolution time for any incident of this nature shall not exceed 12 hours.										
		This service level will be measured on basis for each examination center site. If the performance in a total examination process period for an examination center or site falls below the minimum service level, it will be treated as one (1) instance. The total number of instances for the period will be the cumulative number of instances across the process time across all sites in the total examinations period of a particular semester. Average number of instances per process = (Total number of instances during the examinations period) / 6										
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		>0 & <=4	1									
>4 & <=8	2											
>8 & <=12	3											
>12	4											

This service level will be monitored at every instance of conducting examination. The scheduled operation time for the Helpdesk shall be 24x7 from start and end of the pre and post examinations till the results are declared. Help desk SLA clause will be applicable from the first cycle of examination process.

Helpdesk Services include, but not limited to, the following:

- Reports from the monitoring tools need to be submitted to the KTU weekly
- Diagnostic reports shall be made available to State as and when required
- Reports can be asked by KTU at any point of time
- Escalation Matrix need to be maintained by the helpdesk team
- Any call logs and its associated resolution shall be stored in knowledge management database for future reference
- Support examination centers/ KTU team to solve their problems pertaining to the application.
- Track each incident / call to resolution
- Provide feedback option to callers.
- Analyze the incident / call statistics and provide reports whenever requested by KTU including but not limited to:
 - Category of incidents / calls logged
 - Incidents / calls resolved
 - Incidents / calls open

Steps to be followed under Helpdesk Services for managed Infrastructure portfolio:

- Ticket will be raised by the Help Desk, and it will go to the concerned support staff dedicated at the examination center or a cluster center to solve the issue or error in the application.
- The Help Desk staff will continue follow-up with the concerned person for examination center.

- If the rectification is not done in the specified time, the call will be escalated to the concerned authority of University.
- After the rectification of the problem, the call shall be closed and the name of the responsible person for the rectification is stored in the database.
- The reason for the problem and how the problem was rectified will be stored in the Knowledge management database.

COMPLIANCE AND REPORTING

MIS Reporting

Service Level Description	Measurement						
Availability and Performance Report	<p>Provide monthly SLA compliance reports, monitoring and maintenance related MIS reports by the 5th of the following month.</p> <p>This service level will be monitored on a monthly basis. If the monthly SLA compliance report related to the service level metrics is not provided in the given timeframe, it will be treated as one (1) instance. The total number of instances for the six-month period will be the cumulative number of instances across all the months in the six month period. Charges will be levied from Database Administration head under Cost Break up for EMS rollout and Penalties applicable for each of the violations is 0.1% of quarterly payment (SGR) to the SP.</p> <table border="1" data-bbox="496 1131 1240 1314"> <thead> <tr> <th data-bbox="496 1131 879 1234">Total number of instances over the six month period</th> <th data-bbox="879 1131 1240 1234">Violations for calculation of penalty</th> </tr> </thead> <tbody> <tr> <td data-bbox="496 1234 879 1274">>0 & <=3</td> <td data-bbox="879 1234 1240 1274">1</td> </tr> <tr> <td data-bbox="496 1274 879 1314">> 3</td> <td data-bbox="879 1274 1240 1314">2</td> </tr> </tbody> </table>	Total number of instances over the six month period	Violations for calculation of penalty	>0 & <=3	1	> 3	2
Total number of instances over the six month period	Violations for calculation of penalty						
>0 & <=3	1						
> 3	2						

IT INFRASTRUCTURE/APPLICATION RELATED SERVICE LEVELS

Following outlines the service level indicators & and the target performance levels to be maintained by the SP during the contract period. These SLAs shall be strictly imposed and a third party audit/certification agency shall be deployed for certifying the performance of the SP against the target performance metrics as outlined in the table below:

Availability and Downtime of EMS System during the agreement period

1. **Availability** : The Agency is required to provide the minimum uptime on quarterly basis as per the availability matrix given below for all Modules /components/services

Availability Matrix:

SI No	Level	Criticality of availability	Percentage of Availability - Quarterly
	Level 1	Very Critical	99.75
	Level 2	Critical	97.75 to 99.74
	Level 3	High	97.00 to 97.74

Availability shall be calculated for every quarter on a 24x7 basis for each of the Modules/components/services separately

2. **Down Time**: The SP is required to limit the downtime of Modules / components / services as per the Downtime Matrix below. SI shall provide services as per SLA matrix, which defines maximum response as well as rectification times for all kinds of infrastructure/equipment

Down Time Matrix

Severity Level	Permitted Down Time in a quarter In Hours	Permitted Down Time at single instance failure	Response Time
Level 1	5.40	30 minutes	Not Applicable
Level 2	48.60	Maximum 1 Hour	Within 15 Minutes
Level 3	64.8	Maximum 8 Hours	Within one hour

The SP shall provide Application Response Measurement (ARM) tools so that the end Users can test the response times as and when they feel inadequacies and report.

Penalty for non-compliance of SLA with respect to Downtime

Penalty for non-compliance of SLA is evaluated every quarter. This Evaluation shall be done in two stages. First stage is to evaluate Service Level compliance and penalty with regard to Downtime. After that, evaluation of Service Level compliance and penalty with regard to Availability is carried out. If penalty for downtime SLA violation is already levied for a component for a quarter then penalty for violation of Availability SLA need not be charged for the same component for the same Quarter. The total Penalty for non-compliance of Availability and Downtime Service Levels will be the sum of the two amounts calculated in two stages.

Penalty for Violation of Downtime Service Level:

Penalty is to be calculated for each violation of Service Level regarding Downtime. The rates of Penalty for each violation of Service Levels as per the Downtime Matrix are given in table below.

	Severity Level	Actual Down Time at single instance of failure	Actual Down Time in a quarter In Hours	Violations for calculation of penalty (Index Weightage)
	Level 1	> For every 30 minutes	> 5.40	3 violations of critical severity
	Level 2	> For every 1 Hour	> 48.60	4 violations of critical severity
	Level 3	> For every 8 Hour	> 64.8	5 violations of critical severity

Charges shall be levied from Deployment infrastructure at SDC, Hardware provisioning charges (One Time) & Operating system, Replication & DR software, System Administration and Database Administration heads under Cost Break up for EMS rollout in pilot departments at Kerala Secretariat, Kerala Technological University (Till March 2014), Penalties applicable for each of the violations is one 0.05% of quarterly payment (QGR) to the SI.

Web based system for reporting

The SP shall provide a web based system for reporting faults and breakdowns with facility to record closure of calls both by EMS PMU Engineer in charge and SP's Engineer. Uptime and Availability will be based on this system logs.

Manpower requirements as per SLA

The SP shall deploy sufficient manpower suitably qualified and experienced in shifts to meet the SLA.

SP shall appoint as many team members, over and above the above minimum manpower specified, as deemed fit by them, to meet the time Schedule and SLA requirements.

The list of persons intended to be engaged for the EMS shall be submitted well before the commencement of the SLA. The persons deployed can be withdrawn if required by the SP after providing a replacement with equal or better qualifications and experience with prior intimation to EMS PMU.

Preventive Maintenance:

SP has to provide a detailed schedule for Preventive maintenance for the entire period of contract. The SP will be allowed to carry out preventive maintenance activities and processes by shutting down the redundant system without affecting the functioning of the data Centre and maintaining the SLA conditions for Severity Level 0 for a period not exceeding 10 hours in a quarter. This period of shutdown will not be counted for downtime calculation for the quarter and will be subject to maintaining the SLA conditions for Severity Level 0.

SLA COMPLIANCE REVIEW PROCESS

- The SP has to submit all the reports pertaining to SLA Review process within 2 weeks after the end of the monthly / quarter.
- All the reports must be made available to KTU, as and when the report is generated or as and when asked by the competent authority.
- In case the issue is still unresolved, the arbitration procedures described in the Terms & Conditions section will be applicable.
- SLA may be revised after every 1 year with mutually acceptable terms between SP and the KTU.

PENALTIES

Violations and Associated Penalties

(a) The primary intent of Penalties is to ensure that the system performs in accordance with the defined service levels. Penalties are not meant to be punitive or, conversely, a vehicle for additional fees.

(b) A quarterly performance evaluation will be conducted using the semester/ duration of the examination process reporting periods of that period.

(c) The total deduction per quarter shall not exceed 20% of the total SGR value

(d) Two consecutive semester/examination process deductions amounting to more than 20% of the total SGR on account of any reasons will be deemed to be an event of default and termination

(e) It is the right of the KTU to bring any external resource at any time for SLA review

(f) No Carry forward of any penalties of SLA calculations can be done from any of the preceding semester/the next instance of the examination processing.

IN WITNESS WHEREOF THE PARTIES HAVE EXUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED
For and on behalf of the System Provider by:

SIGNED, SEALED AND DELIVERED
For and on behalf of the Buyer by:

(Signature)

(Signature)

(Name)
(Designation)
(Address)

(Name)
(Designation)
(Address)

In the presence of:

- 1.
- 2.

DRAFT

**Master Service Agreement
with
Service Provider for implementation
of
Examination Management System
at
Kerala Technological University,
Thiruvananthapuram**

DRAFT

LIST OF ABBREVIATIONS

AB	Answer Books
BG	Bank Guarantee
CERT	Computer Emergency Response Team
DC	Data Centre
DR	Disaster Recovery
EE	External Examiner
EMS	Examination management system
IE	Internal Examiner
FRS	Functional Requirement Specifications
IT/ICT	Information and Communication Technologies
KTU	Kerala Technological University
MCQ	Multiple Choice Question
MSA	Master Service Agreement
OEM	Original Equipment Manufacturer / Original Licensor of EMS Solution
QP	Question Paper
QPM	Question Paper Moderator
QPR	Question Paper Reviewer
QPS	Question Paper Setter
RFP	Request for Proposal
EMD	Earnest Money Deposit
EMS	EXAMINATION MANAGEMENT SYSTEM
SP/SI	Service Provider. The terms Systems Integrator/ Implementation Partner / Bidder are also used interchangeably. In case of a consortium, lead bidder.
PBG	Performance Bank Guarantee
PMU	Project Management Unit
SPOC	Single Point of Contact
SRS	Software Requirements Specification.
COTS	Commercial Of The Shelve
IT	Information Technology
ICT	Information and Communication Technology
SLA	Service Level Agreement
STQC	Standard Testing and Quality Certification
SGR	Semester Wise Generated Revenue
UAT	User Acceptance Testing
VSM	Valuation Scheme Maker

GLOSSARY OF TERMS

- **“Contract / Agreement / Contract Agreement/ Master Service Agreement”** means the Agreement to be signed between the selected service provider/agency for implementation and Kerala Technological University, including all attachments, appendices, all documents incorporated by reference thereto together with any subsequent modifications, the proposal, all related correspondences, clarifications, presentations.
- **“Service Provider”** means any firm or organization who has been awarded by the process of tendering by Kerala Technological University to Design Develop, implement and execute with all the services which are included in the end to end process of Examination Management System, at all the designated examination centers across the state of Kerala and other centers of the University in other states.
- **“Successful Implementation / Go-Live”** will mean:
 - Successful deployment, commissioning and UAT of the Examination Management System (EMS) application modules implemented
 - Successful Data digitization / migration after verification and approval by KTU or its constituted committees or representatives
 - Training and Certification ,
 - (a) For all end users on the EMS application modules
 - (b) For all technological staffs involved in backend of the project
 - Setup, install and Configure all hardware and software required for installation of EMS application suite at Secured Tier 3 or 4 level Data Center at the service provider place or at KTU ,.
 - Deployment of Disaster Recovery and a Business Continuity Plan.
 - Achievement of the Service Levels as expected
 - Acceptance / Sign off from Kerala Technological University or its constituted committees or representatives

MASTER SERVICES AGREEMENT

THIS MASTER SERVICE AGREEMENT (“Agreement”) is made on this the <***> day of <***> 20... at <***>, Kerala.

BETWEEN

----- having its office at -----
----- India hereinafter referred to as ‘Kerala Technological University’ or ‘**KTU**’, which expression shall, unless the context otherwise requires, include its permitted successors and assignees);

AND

With

_____, Kerala hereinafter referred to as the ‘Service Provider/SP/XXX’ (which expression shall unless excluded by or repugnant to the context be deemed to include his/her successor in office or assign)

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:

1. Kerala Technological University is desirous to implement the Examination Management System a service mainly for all technological written examination pattern with end to end automation of Examination Evaluation Process which includes pre examination preparation like Question Paper Setting, Printing and Distribution of Question Papers and Post examination process cross verifying the answer sheets, scanning and uploading to the central server and distributing to the valuers, as per the functional requirement of the KTU across the Kerala and other states where KTU have its examination centers.

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

DEFINITIONS AND INTERPRETATION

Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the meanings set out in Schedule I.

Interpretation

In this Agreement, unless otherwise specified:

- (a) References to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexure are to clauses, sub-clauses, paragraphs, schedules and annexure to this Agreement;
- (b) Use of any gender includes the other genders;
- (c) References to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (e) A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (f) Any reference to a '**day**' (including within the phrase 'examination day') shall mean a period of 24 hours running from midnight to midnight;
- (g) References to a '**examination day**' shall be construed as a reference to a day (other than a Sunday) on which examination is conducted by Kerala Technological University;
- (h) References to times are to Indian Standard Time;
- (i) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, notated or supplemented at any time; and
- (j) All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.

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.

AMBIGUITIES WITHIN AGREEMENT

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

- (a) as between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
- (b) as between the provisions of 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
- (c) as between any value written in numerals and that in words, the value in words shall prevail.

PRIORITY OF DOCUMENTS

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

(a) This Agreement along with the SLA agreement, Schedules and Annexures;

For the avoidance of doubt, it is expressly clarified that in the event of a conflict between this Agreement, Annexures / Schedules, the terms of this Agreement shall prevail over the Annexures / Schedules.

SCOPE OF THE PROJECT

The Service Provider shall be required to follow the scope of work as defined below. In addition to the scope of work, SP will also be required to adhere to the project timelines and submit the required deliverables as defined in **ANNEXURE – B and C**

The roles and responsibilities of the Parties under this Agreement have been set out in detail as Annexure F of this Agreement.

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 Kerala Technological University 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.

Scope of work

Detailed scope of work for the selected Service Provider (NIC) as follows

The Examination management system, envisaged by the University, would be a system that handles the end-to-end process relating to the management of examination at the various authorized centres of the University. The system should be fully automated with high availability, and should handle not just the initial load (that of year 1 students of over 160 affiliated colleges), but also the future loads of the university. The system should be able to accept the registration details of all the eligible students from the Students lifecycle management system (an internal system of the University), distribute the question papers securely to the students at the registered centres, digitize the answer sheets in the most accurate and secured way, pass it on to the evaluators, collate the outcome and transfer it to Results Management System (an internal system of the University) of the University.

- I. Setup, install and Configure all hardware and software required for installation of examination management system at Data Center at SPs place.
- II. Configuration and customization of EMS for the Kerala Technological University users at various examination centers and other users externally.
- III. Deployment of resources for implementation.
- IV. Training and Capacity Building
 - For all end users on the application modules
 - For all technological staffs involved in backend of the project
- V. Preparation of Project Management Deliverables
 - Project Implementation Plan
 - Periodic Status Reports
 - Schedule Updates
 - MIS Reports
- VI. Provide Handholding and Support to EMS users
- VII. Deployment of Disaster Recovery and a Business Continuity Plan.
- VIII. Complete responsibility for secure storage of data with integrity in database during contract period.
- IX. Security audit the application with a cert-in empanelled agency.
- X. Digitization of answer sheets and uploading digital repositories into the said EMS repository.
- XI. SP will undertake all such activities as directed by KTU.

TERM AND DURATION OF THE AGREEMENT

This Agreement shall come into effect on/...../20... (hereinafter the 'Effective Date') and shall continue till operation and maintenance completion date which shall be the date of the completion of the operation and maintenance to the Kerala Technological University or its nominated agencies.

CONDITIONS PRECEDENT & EFFECTIVE DATE

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, Kerala Technological University or its nominated agencies may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the Service Provider.

Conditions Precedent of the Implementing Partner

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

(ii) To provide the Kerala Technological University or its nominated agencies certified true copies of their consent for the, delivery and performance of this Agreement by the Service Provider.

Conditions Precedent of the Kerala Technological University

The Kerala Technological University shall be required to fulfill the Conditions Precedent in which is as follows:

- (i) Handing over of site
- (ii) Necessary clearances
- (iii) Approval of the Project by a Competent Authority, etc.

For the avoidance of doubt, it is expressly clarified that the obligations of the Parties except the financial obligations of Kerala Technological University or its nominated agencies under this Agreement shall commence from the fulfillment of the Conditions Precedent as set forth above.

Extension of time for fulfillment of Conditions Precedent

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

For the avoidance of doubt, it is expressly clarified that any such extension of time shall be subject to imposition of penalties on the Service Provider linked to the delay in fulfilling the Conditions Precedent. Penalty should be decided by both the parties with mutual consent

Non-fulfillment of the Service Provider's Conditions Precedent

(a) In the event that any of the Conditions Precedent of the Service Provider have not been fulfilled within 30 days of signing of this Agreement and the same have not been waived fully or partially by Kerala Technological University or its nominated agencies, this Agreement shall cease to exist;

(b) In the event that the Agreement fails to come into effect on account of non fulfillment of the Service Provider's Conditions Precedent, the Kerala Technological University or its nominated agencies shall not be liable in any manner whatsoever to the Service Provider

(c) In the event that possession of any of the Kerala Technological University or its nominated agencies facilities has been delivered to the Service Provider prior to the fulfillment of the Conditions Precedent, upon the termination of this Agreement such shall immediately revert to Kerala Technological University or its nominated agencies, free and clear from any encumbrances or claims.

OBLIGATIONS UNDER THE SLA

a) The SLA shall be a separate contract in respect of this Agreement and shall be entered into concurrently with this Agreement between Kerala Technological University and Service Provider;

b) In relation to any future SLA entered into between the Parties; each of the Parties shall observe and perform the obligations set out herein.

Change of Control

(a) In the event of a change of control of the Service Provider during the Term, the Service Provider shall promptly notify Kerala Technological University and/or its nominated agencies of the same in the format set out as Annexure A of this Agreement.

Final testing and certification

The Project shall be governed by the mechanism of final acceptance testing and certification to be put into place by the Kerala Technological University and Service Provider as under:

(a) Final testing and certification criteria will lay down a set of guidelines following accepted norms and standards for testing and certification for all aspects of project development and implementation covering software, hardware including the processes relating to testing, business process description, documentation, version control, change management, security, service oriented architecture, performance in relation to compliance with SLA metrics, interoperability, scalability, availability and compliance with all the technological and functional requirements Kerala Technological University.

(d) Final testing and certification criteria will consider conducting specific tests on the software, hardware, networking, security and all other aspects;

(e) Final testing and certification criteria will establish appropriate processes for notifying the Service Provider of any deviations from the norms, standards or guidelines at the earliest instance after taking cognizance of the same to enable the Service Provider to take corrective action; etc.

(f) Such an involvement of and guidance by the Final Testing and Certification Agency shall not, however, absolve the Service Provider of the fundamental responsibility of designing, customizing/ developing, installing, testing commissioning and providing total end to services involved in Pre-examination and Post-examination process till the valuation of the answer sheet and migrating the data for result processing and the various components of the Project to deliver the services in perfect conformity with this Agreement

The Parties shall each ensure that the range of the Services under the SLA shall not be varied, reduced or increased except with the prior written agreement between the Kerala Technological University and Service Provider in accordance with the Change Control Schedule set out in Schedule II of this Agreement. Save for the express terms of the Terms of Payment Schedule set out as Schedule VI of this Agreement, Kerala Technological University or its nominated agencies and its users may purchase any particular category of Services that may become necessary as per the Change Control Schedule set out in Schedule II of this Agreement, without the need to go for a separate procurement process.

REPRESENTATIONS AND WARRANTIES

Representations and warranties of the Service Provider

The Service Provider represents and warrants to the Kerala Technological University or its nominated agencies that:

[A concept of materiality could be introduced for some of the clauses, on request of Service Provider]

(a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and other agreements and to carry out the transactions contemplated hereby;

(b) It is a competent provider of a variety of information technology and business process management services;

(c) It has taken all necessary corporate and other actions under laws applicable to its business to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(d) From the Effective Date, it will have the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

(e) In providing the Services, it shall use reasonable endeavors not to cause any unnecessary disruption to Kerala Technological University's normal business operations

(f) This Agreement has been duly executed by it and constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable against it in accordance with the terms hereof;

(g) The information furnished in the proposal document 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;

(h) there are no material actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;

(j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(k) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have an Adverse Effect on its ability to perform its obligations under this Agreement;

(l) no representation or warranty by it contained herein or in any other document furnished by it to Kerala Technological University 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

(m) 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 Kerala Technological University or its nominated agencies in connection therewith.

REPRESENTATIONS AND WARRANTIES OF THE KERALA TECHNOLOGICAL UNIVERSITY OR ITS NOMINATED AGENCIES

Kerala Technological University or its nominated agencies represent and warrant to the Service Provider that:

(a) it has full power and authority to execute, deliver and perform its obligations under this Agreement 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;

(b) 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;

(c) It has the financial standing and capacity to perform its obligations under the Agreement;

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

OBLIGATIONS OF THE KERALA TECHNOLOGICAL UNIVERSITY OR ITS NOMINATED AGENCIES

Without prejudice to any other undertakings or obligations of the Kerala Technological University or its nominated agencies under this Agreement, the Kerala Technological University or its nominated agencies shall perform the following:

- (a) To provide any support through personnel to test the system during the Term;
- (b) To provide any support through personnel and/or test data during training, rollout, steady state operation, as well as, for any changes/enhancements in the system whenever required due to scope change that may arise due to business, delivery or statutory/regulatory reasons;
- (c) Kerala Technological University shall provide the access the examination centers with every possible facilities to start their services during the examination process.

OBLIGATIONS OF THE SERVICE PROVIDER

- It shall provide to the Kerala Technological University or its nominated agencies, the Deliverables as set out in Annexure C of this Agreement.**
- 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 technological standards which are generally in effect for 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 as Annexure C to this Agreement.**

APPROVALS AND REQUIRED CONSENTS

The Parties shall cooperate to procure, maintain and observe all clearances and applicable approvals (hereinafter the “Required Consents”) necessary for the Service Provider to provide the Services.

The Kerala Technological University or its nominated agencies shall use reasonable endeavours to assist Service Provider to obtain the Required Consents. In the event that any Required Consent is not obtained, the Service Provider and the Kerala Technological University or its nominated agencies will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the Kerala Technological University or its nominated agencies to continue to process its work with as minimal interruption to its operations as is commercially reasonable until such Required Consent is obtained, provided that the Service Provider shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the Required Consents are obtained if and to the extent that the Service Provider's obligations are not dependent upon such Required Consents.

USE OF ASSETS BY THE SERVICE PROVIDER

During the Term the Service Provider shall:

- (a) take all reasonable and proper care of the entire hardware and software, network or any other information technology infrastructure components used for the Project and other facilities leased / owned / operated by the Service Provider exclusively in terms of ensuring their usability for the delivery of the Services as per this Agreement (hereinafter the "**Assets**") in proportion to their use and control of such Assets; and
- (b) keep all the tangible Assets in as good and serviceable condition (reasonable wear and tear excepted) as at the date the Service Provider takes control of and/or first uses the Assets and during the entire Term of the Agreement.
- (c) ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and which are provided to the Service Provider will be followed by the Service Provider and any person who will be responsible for the use of the Assets;
- (d) Take such steps as may be properly recommended by the manufacturer of the Assets and notified to the Service Provider or as may, in the reasonable opinion of the Service Provider, be necessary to use the Assets in a safe manner;
- (e) Ensure that the Assets that are under the control of the Service Provider, are kept suitably housed and in conformity with Applicable Law;
- (f) procure permission from the Kerala Technological University or its nominated agencies and any persons duly authorized by them to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements;
- (g) 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.
- (h) Be responsible for undertaking comprehensive insurance including liability insurance, system and facility insurance and any other insurance for the personnel, Assets, data, software, etc.

ACCESS TO THE KERALA TECHNOLOGICAL UNIVERSITY OR ITS NOMINATED AGENCIES LOCATIONS

3.14.1 For so long as the Service Provider provides services to the Kerala Technological University or its nominated agencies location, as the case may be, on a non-permanent basis and to the extent necessary, the Kerala Technological University as the case may be or its nominated agencies shall, subject to compliance by the Service Provider with any safety and security guidelines which may be provided by the Kerala Technological University as the case may be or its nominated agencies and notified to the Service Provider in writing, provide the Service Provider with:

- (a) Reasonable access, in the same manner granted to the Kerala Technological University or its nominated agencies employees, to the Kerala Technological University as the case may be location twenty-four hours a day, seven days a week;
- (b) Reasonable work space, access to office equipment as mutually agreed and other related support services in such location and at such other the Kerala Technological University as the case may be location, if any, as may be reasonably necessary for the Service Provider to perform its obligations here under and under the SLA.

Access to locations, office equipments and services shall be made available to the Service Provider on an "as is, where is" basis by the Kerala Technological University as the case may be or its nominated agencies. The Service Provider agrees to ensure that its employees, agents and contractors shall not use the location, services and equipment the following purposes:

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

MANAGEMENT PHASE

Governance

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

Use of Services

- (a) The Kerala Technological University as the case may be or its nominated agencies, will undertake and use the Services in accordance with any instructions or procedures as per the acceptance criteria as set out in the SLA or this Agreement or any agreement that may be entered into between the Parties from time to time;
- (b) The Kerala Technological University as the case may be or its nominated agencies shall be responsible for the operation and use of the Deliverables resulting from the Services.

12.3 Changes

Unless expressly dealt with elsewhere in this Agreement, any changes under or to this Agreement or under or to the SLA shall be dealt with in accordance with the Change Control Schedule set out in Schedule II of this Agreement.

Security and Safety

- (a) The Service Provider shall comply with the technological requirements of the relevant security, safety and other requirements specified in the Information Technology Act, IT Security Manual of the Kerala Technological University and follow the industry standards related to safety and security, insofar as it applies to the provision of the Services.
- (b) Each Party to the SLA/Agreement shall also comply with Kerala Technological University or the Government of India, and the respective State's security standards and policies in force from time to time at each location of which Kerala Technological University or its nominated agencies make the Service Provider aware in writing insofar as the same apply to the provision of the Services.

(c) The Parties to the SLA/Agreement shall use reasonable endeavors to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Kerala Technological University as the case may be or any of their nominees data, facilities or Confidential Information.

(d) The Service Provider shall upon reasonable request by the Kerala Technological University as the case may be or their nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.

(e) As per the provisions of the SLA or this Agreement, the Service Provider shall promptly report in writing to the Kerala Technological University or its nominated agencies, any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at the facilities of Kerala Technological University as the case may be.

Cooperation

Except as otherwise provided elsewhere in this Agreement or the SLA, each Party ("**Providing Party**") to this Agreement or to the SLA undertakes promptly to provide the other Party ("**Receiving Party**") with all such information and co-operation which the Receiving Party reasonably requests, provided that such information and co-operation:

- (a) Does not require material expenditure by the Providing Party to provide the same;
- (b) Is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement or the SLA;
- (c) Cannot be construed to be Confidential Information; and
- (d) is capable of being provided by the Providing Party.

Further, each Party agrees to co-operate with the contractors and subcontractors of the other Party as reasonably requested in order to accomplish the purposes of this Agreement.

FINANCIAL MATTERS

Terms of Payment and Service Credits and Debits

(a) In consideration of the Services and subject to the provisions of this Agreement and of the SLA, the Kerala Technological University shall pay the Service Provider for the Services rendered in pursuance of this agreement, in accordance with the Terms of Payment Schedule set out as Schedule VI of this Agreement.

(b) All payments are subject to the application of service credits and debits as may be provided for in the SLA. For the avoidance of doubt, it is expressly clarified that the Kerala Technological University will pay the service credits as stated in accordance with the Schedule VI of this Agreement and the Kerala Technological University may also calculate a financial sum and debit the same against the terms of payment as set out in Schedule VI of this Agreement as a result of the failure of the Service Provider to meet the Service Level as defined in SLA

(c) Save and except as otherwise provided for herein or as agreed between the Parties in writing, the Kerala Technological University shall not be required to make any payments in respect of the Services (or, without limitation to the foregoing, in respect of the Service Provider performance of any obligations under this Agreement or the SLA) other than those covered in Schedule VI of this Agreement. 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.

Invoicing and Settlement

(a) Subject to the specific terms of the SLA, the Service Provider shall submit its invoices in accordance with the following principles:

(i) The Kerala Technological University shall be invoiced by the Service Provider for the Services. Generally and unless otherwise agreed in writing between the Parties or expressly set out in the SLA, the Service Provider shall raise an invoice as per Schedule VI of this Agreement; and

(ii) Any invoice presented in accordance with this Article shall be in a form agreed with the Kerala Technological University.

(b) The Service Provider alone shall invoice all payments after receiving due approval from the competent authority. Such invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in Schedule VI of this Agreement. The Service Provider shall waive any charge for a Service that is not invoiced within six months after the end of the month in which the change relating to such Service is (i) authorized or (ii) incurred, whichever is later.

(c) The Kerala Technological University shall be entitled to delay or withhold payment of any invoice or part of it delivered by the Service Provider under Schedule VI of this Agreement where the Kerala Technological University disputes/ withholds such invoice or part of it provided that such dispute is bona fide. The withheld amount shall be limited to that which is in dispute. The disputed / withheld amount shall be settled in accordance with the escalation procedure as set out in Schedule V of this Agreement. Any exercise by the Kerala Technological University under this Clause shall not entitle the Service Provider to delay or withhold provision of the Services.

(d) The Kerala Technological University shall be entitled to delay or withhold part of the payment of any invoice which is under a dispute. The withheld amount shall be limited to that which is the disputed amount. The disputed amount shall be referred to the escalation procedure as set out in Schedule V of this Agreement. Any exercise by the Kerala Technological University under this Clause shall not entitle the Service Provider to delay or withhold provision of the Services.

(e) The Service Provider shall be solely responsible to make payment its sub-contractors.

13.3 Tax

(a) The Kerala Technological University or its nominated agencies shall be responsible for withholding taxes from the amounts due and payable to the Service Provider wherever applicable. Service Provider shall pay for all other taxes in connection with this Agreement, SLA, scope of work and any other engagement required to be undertaken as a part of this Agreement, including, but not limited to, property, sales, use, excise, value-added, goods and services, consumption and other similar taxes or duties.

(b) The Kerala Technological University or its nominated agencies shall provide Service Provider with the original tax receipt of any withholding taxes paid by Kerala Technological University or its nominated agencies on payments under this Agreement. The Service Provider agrees to reimburse and hold the Kerala Technological University or its nominated agencies harmless from any deficiency including penalties and interest relating to taxes that are its responsibility under this paragraph. For purposes of this Agreement, taxes shall include taxes incurred on transactions between and among the Kerala Technological University or its nominated agencies, the Service Provider and third party subcontractors.

(c) If, after the date of this Agreement, there is any change of rate of levy under the existing applicable laws of India with respect to taxes and duties, which are directly payable by the Kerala Technological University for providing the services i.e. service tax or any such other applicable tax from time to time, which increase or decreases the cost incurred by the Service Provider in performing the Services, then the remuneration and reimbursable expense otherwise payable to the Kerala Technological University under this Agreement shall be increased or decreased accordingly by correspondence between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Schedule VI. However, in case of any new or fresh tax or levy imposed after submission of the proposal the Service Provider shall be entitled to reimbursement on submission of proof of payment of such tax or levy.

(d) 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. In connection therewith, the Parties shall provide each other with the following:

(i) Any resale certificates;

(ii) Any relevant information regarding out-of-state or use of materials, equipment or services; and

(iii) Any direct pay permits, exemption certificates or information reasonably requested by the other Party.

TERMINATION

Material Breach

- (a) 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 Kerala Technological University or Service Provider, 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:
- (i) If the Service Provider is not able to deliver the services as per the SLAs defined in Proposal which translates into Material Breach, then the Kerala Technological University 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 Kerala Technological University will have the option to terminate this Agreement. Further, the Kerala Technological University may after affording a reasonable opportunity to the Service Provider to explain the circumstances leading to such a breach.
- (ii) If there is a Material Breach by the Kerala Technological University or its nominated agencies which results in not providing support for effecting Examination Process or not providing the certification of User Acceptance, and / or failing to make payment of undisputed amount within 45 days from date of submission of invoice, then the Service Provider will give a one month's notice for curing the Material Breach to the Kerala Technological University. After the expiry of such notice period, the Service Provider will have the option to terminate the Agreement
- (b) The Kerala Technological University may by giving a one month's written notice, terminate this Agreement if a change of control of the Service Provider has taken place. For the purposes of this Clause, in the case of Service Provider, change of control shall mean the events stated in Clause 5.3, and such notice shall become effective at the end of the notice period as set out in Clause 5.3 (c).
- (c) In the event that Service Provider undergoes such a change of control, Kerala Technological University may, as an alternative to termination, require a full Performance Guarantee for the obligations of Service Provider by a guarantor acceptable to Kerala Technological University or its nominated agencies. If such a guarantee is not furnished within 30 days of Kerala Technological University's demand, the Kerala Technological University may exercise its right to terminate this Agreement in accordance with this Clause by giving 30 days further written notice to the Service Provider.
- (d) The termination provisions set out in this Clause shall apply *mutatis mutandis* to the SLA.

Effects of termination

- (a) Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule set out as Schedule III of this Agreement.
- (b) In the event that Kerala Technological University or the Service Provider terminates this Agreement, the compensation will be decided in accordance with the Terms of Payment Schedule set out as Schedule VI of this Agreement.
- (c) Kerala Technological University agrees to pay Service Provider for i) all charges for Services Service Provider provides and any Deliverables and/or system (or part thereof) Service Provider delivers through termination, and ii) reimbursable expenses Service Provider incurs through termination. If Kerala Technological University terminates without cause, Kerala Technological University also agrees to pay any applicable adjustment expenses Service Provider incurs as a result of such termination (which Service Provider will take reasonable steps to mitigate).
- Other option
Kerala Technological University will decide the appropriate course of action.

Termination of this Agreement due to bankruptcy of Service Provider

The Kerala Technological University may serve written notice on Service Provider at any time to terminate this Agreement with immediate effect in the event that the Service Provider reporting an apprehension of bankruptcy to the Kerala Technological University or its nominated agencies

INDEMNIFICATION & LIMITATION OF LIABILITY

Subject to Clause 3.18.2 below, Service Provider (the "Indemnifying Party") undertakes to indemnify Kerala Technological University (the "Indemnified Party") from and against all Losses on account of bodily injury, death or damage to tangible personal property arising in favour of any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's negligence or willful default in performance or non-performance under this Agreement. If the Indemnified Party promptly notifies Indemnifying Party in writing of a third party claim against Indemnified Party that any Service provided by the Indemnifying Party infringes a copyright, trade secret or patents incorporated in India of any third party, Indemnifying Party will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Indemnified Party. Indemnifying Party will not indemnify the Indemnified Party, however, if the claim of infringement is caused by (a) Indemnified Party's misuse or modification of the Service; (b) Indemnified Party's failure to use corrections or enhancements made available by the Indemnifying Party; (c) Indemnified Party's use of the Service in combination with any product or information not owned or developed by Indemnifying Party; (d) Indemnified Party's distribution, marketing or use for the benefit of third parties of the Service; or (e) information, direction, specification or materials provided by Indemnified Party or any third party contracted to it. If any Service is or likely to be held to be infringing, Indemnifying Party shall at its expense and option either (i) procure the right for Indemnified Party to continue using it, (ii) replace it with a noninfringing equivalent, (iii) modify it to make it noninfringing. The foregoing remedies constitute Indemnified Party's sole and exclusive remedies and Indemnifying Party's entire liability with respect to infringement.

The indemnities set out in Clause 3.18.1 shall be subject to the following conditions:

- (i) the Indemnified Party as promptly as practicable informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
- (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;

- (iv) 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;
- (v) all settlements of claims subject to indemnification under this Clause 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;
- (vi) 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;
- (vii) 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;
- (viii) 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
- (ix) if a Party makes a claim under the indemnity set out under Clause 3.18.1 above in respect of any particular Loss or Losses, then that Party shall not be entitled to make any further claim in respect of that Loss or Losses (including any claim for damages).

FORCE MAJEURE

Definition of Force Majeure

The Service Provider or the Kerala Technological University 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').

Force Majeure events

A Force Majeure event means any event or circumstance or a combination of events and circumstances referred to in this Clause, which:

- a) is beyond the reasonable control of the affected Party;
- b) Such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care;
- c) Does not result from the negligence of such Party or the failure of such Party to perform its obligations under this Agreement;
- d) Is of an incapacitating nature and prevents or causes a delay or impediment in performance; and
- e) May be classified as all or any of the following events:

Such events include:

Non-Political Events

- a) act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions;

- b) Radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the Service Provider's use of radiation or radio-activity or biologically contaminating material;
- c) strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances as the case may be not arising on account of the acts or omissions of the Service Provider and which affect the timely implementation and continued operation of the Project; or
- d) Any event or circumstances of a nature analogous to any of the foregoing.

Political Events

- a) Change in Law, other than any Change in Law for which relief is provided under this Agreement;
- b) Expropriation or compulsory acquisition by the Kerala Technological University or any of their nominated agencies of any material assets or rights of the Implementing Partner;
- c) Unlawful or unauthorized revocation of, or refusal by Kerala Technological University or any of their nominated agencies, GoI or any of its agencies to renew or grant any clearance or Required Consents required by the Service Provider to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- d) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Service Provider in any proceedings for reasons other than failure of the Service Provider to comply with Applicable Laws or 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 Kerala Technological University or any of their nominated agencies of any material assets or rights of the Service Provider;
- e) Unlawful or unauthorized revocation of, or refusal by any authority other than the Kerala Technological University or any of their nominated agencies to renew or grant any Required Consents required by the Service Provider to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Required Consents applied on a non-discriminatory basis;
- f) Any requisition of the Project by any other authority; or
- g) Any requisition of the Project by the Kerala Technological University or any of their nominated agencies.
- h) 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

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

For the avoidance of doubt, it is expressly clarified that the failure on the part of the Service Provider 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 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).*

Notification procedure for Force Majeure

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

Allocation of costs arising out of Force Majeure

- (a) 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.
- (b) 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:
- 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.
 - upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by Kerala Technological University to the Service Provider.
 - 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.
 - 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.

Consultation and duty to mitigate

(a) 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.

CONFIDENTIALITY

The Kerala Technological University or its nominated agencies shall allow the Service Provider to review and utilize highly confidential public records and the Service Provider shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.

Additionally, the Service Provider shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities.

The Kerala Technological University or its nominated agencies shall retain all rights to prevent, stop and if required take the necessary punitive action against the Service Provider regarding any forbidden disclosure.

Service Provider shall ensure that all its employees, agents and sub-contractors execute individual non-disclosure agreements, which have been duly approved by the Kerala Technological University with respect to this Project

For the avoidance of doubt, it is expressly clarified that the aforesaid provisions shall not apply to the following information:

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

To the extent the Service Provider shares its confidential or proprietary information with the Kerala Technological University for effective performance of the Services, the provisions of the Clause 3.20.1 to 3.20.3 shall apply mutatis mutandis on the Kerala Technological University or its nominated agencies.

AUDIT, ACCESS AND REPORTING

The Service Provider shall allow access to the Kerala Technological University or its nominated agencies to all information which is in the possession or control of the Service Provider and which relates to the provision of the Services as set out in the Audit, Access and Reporting Schedule and which is reasonably required by the Kerala Technological University to comply with the terms of the Audit, Access and Reporting Schedule set out as Schedule IV of this Agreement.

INTELLECTUAL PROPERTY RIGHTS

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. Service Provider 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 Kerala Technological University 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.

Pre-existing work: 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 license to use, reproduce and modify 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 Service Provider

should grant Kerala Technological University a non-exclusive, perpetual, fully paid-up license to use the pre-existing work in the form delivered to Kerala Technological University 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. Kerala Technological University'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 Kerala Technological University at the conclusion of performance of the services.

Residuals: In no event shall Service Provider 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, Service Provider 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.

WARRANTY

Standard: The Service Provider 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 technological 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. 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 Service Provider, the Service Provider shall promptly, in consultation and agreement with Kerala Technological University, and at the Service Provider sole cost repair, replace, or otherwise make good (as the Service Provider 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 Service Provider shall remain the property of the Service Provider. 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 Kerala Technological University because of such defect and/or making good of such default, defect or deficiency.

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.

LIQUIDATED DAMAGES

Time is the essence of the Agreement and the delivery dates are binding on the Service Provider. In the event of delay or any gross negligence, for causes attributable to the Service Provider, in meeting the deliverables, the Kerala Technological University shall be entitled at its option to recover from the Service Provider as agreed, liquidated damages, a sum of 0.05% of the value of the deliverable which suffered delay or gross negligence for each completed week or part thereof subject to a limit of 5% of the relevant deliverable value.

INSURANCE COVER

Obligation to maintain insurance

In connection with the provision of the Services, the Service Provider must have and maintain:

- a) For the Agreement Period, valid and enforceable insurance coverage for:
 - (i) public liability;
 - (ii) either professional indemnity or errors and omissions;
 - (iii) product liability;
 - (iv) workers' compensation as required by law; and
 - (v) any additional types specified in Schedule I; and
- b) for <three> years following the expiry or termination of the Agreement, valid and enforceable insurance policies (if relevant), in the amount not less than the Insurance Cover specified in Schedule I.

Certificates of currency

The Service Provider must, on request by the Kerala Technological University, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this Clause 3.26. The Service Provider agrees to replace any coverage prior to the date of expiry/cancellation.

Non-compliance

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

MISCELLANEOUS

Personnel

(a) The personnel assigned by Service Provider to perform the Services shall be employees of Service Provider or its subcontractor(s), and under no circumstances shall such personnel be considered employees of Kerala Technological University or its nominated agencies. The Service Provider 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.

(b) The Service Provider shall use its best efforts to ensure that sufficient Service Provider personnel are assigned to perform the Services and that, such personnel have appropriate qualifications to perform the Services. After discussion with Service Provider, Kerala Technological University or its nominated agencies shall have the right to require the removal or replacement of any Service Provider personnel performing work under this Agreement based on bonafide reasons. In the event that Kerala Technological University or its nominated agencies requests that any Service Provider personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule.

c) The Service Provider shall also be responsible to train certain employees of Kerala Technological University, or its nominated agencies with regard to the Services being provided by the Service Provider as and when required by Kerala Technological University or its nominated agencies during the Term of this Project. The parameters of the training required for these employees of Kerala Technological University or its nominated agencies shall be communicated by Kerala Technological University or its nominated agencies to the Service Provider periodically and shall be in accordance with the latest procedures and processes available in the relevant areas of work.

(d) In the event that the Kerala Technological University and Service Provider identify any personnel of Service Provider as “Key Personnel”, then the Service Provider shall not remove such personnel from the Project without the prior written consent of Kerala Technological University or its nominated agencies unless such removal is the result of an unavoidable circumstance including but not limited to resignation, termination, medical leave, etc.

(e) Except as stated in this Clause, nothing in this Agreement or the SLA will limit the ability of Service Provider to freely assign or reassign its employees; provided that Service Provider shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. Kerala Technological University or its nominated agencies shall have the right to review and approve Service Provider’s plan for any such knowledge transfer. Service Provider shall maintain the same or higher standards for skills and professionalism among replacement personnel as in personnel being replaced.

(f) 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.

(g) 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.

Independent Contractor

Nothing in this Agreement or the SLA shall be construed as establishing or implying any partnership or joint venture between the Parties to this Agreement or the SLA and, except as expressly stated in this Agreement or the SLA, nothing in this Agreement or the SLA shall be deemed to constitute any Parties as the agent of any other Party or authorizes either Party to:

(a) incur any expenses on behalf of the other Party;

(b) enter into any engagement or make any representation or warranty on behalf of the other Party;

(c) pledge the credit of or otherwise bind or oblige the other Party; or

(d) commit the other Party in any way whatsoever without in each case obtaining the other Party’s prior written consent.

24.3 Sub-contractors

Service Provider shall not subcontract any work related to EMS Project without Kerala Technological University’s prior written consent. However the Service Provider shall provide the list of all the other services planned to be sub contracted, within 15 days of signing the Agreement. It is clarified that the Service Provider shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The Service Provider undertakes to indemnify the Kerala Technological University or its nominated agencies from any claims on the grounds stated hereinabove.

24.4 Assignment

(a) All terms and provisions of this Agreement shall be binding on and shall inure to the benefit of the Kerala Technological University and their respective successors and permitted assigns.

(b) Subject to Clause 4.3.5.3, the Service Provider shall not be permitted to assign its rights and obligations under this Agreement to any third party.

(c) The Kerala Technological University may assign or novate all or any part of this Agreement and Schedules/Annexures, and the Service Provider shall be a party to such novation, to any third party contracted to provide outsourced services to Kerala Technological University or any of its nominees.

24.5 Trademarks, Publicity

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party except that Service Provider may, upon completion, use the Project as a reference for credential purpose. Except as required by law or the rules and regulations 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 Service Provider may include Kerala Technological University or its client lists for reference to third parties subject to the prior written consent of Kerala Technological University not to be unreasonably withheld or delayed. Such approval shall apply to each specific case and relate only to that case.

24.6 Notices

(a) Any notice or other document which may be given by either Party under this Agreement or under the SLA shall be given in writing in person or by pre-paid recorded delivery post, email or by facsimile transmission.

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

<Insert Address>	
Tel:	
Fax:	
Email:	
Contact:	

With a copy to:
Service Provider

Name:	
Tel:	
Fax:	
Email:	
Contact:	

In relation to a notice given under the MSA / SLA, 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.

(d) 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) if delivered between the hours of 10.00 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 Agreement or to the SLA 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.

Variations and Further Assurance

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

(b) Each Party to this Agreement or the SLA 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 or the SLA.

Severability and Waiver

(a) If any provision of this Agreement or the SLA, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this Agreement or the SLA 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.

(b) No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement or the SLA of any right, remedy or provision of this Agreement or the SLA shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision.

Compliance with Applicable Law

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

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 in connection with the negotiation, preparation and execution of this Agreement or the SLA shall be borne solely by the Party which incurred them.

Ethics

The Service Provider represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of Kerala Technological University 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 Kerala Technological University standard policies and may result in cancellation of this Agreement, or the SLA.

Entire Agreement

This Agreement and the SLA with all schedules & annexures appended thereto and 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.

Amendment

Any amendment to this Agreement shall be made in accordance with the Change Control Schedule set out in Schedule II of this Agreement by mutual written consent of all the Parties GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules. Any dispute arising out of or in connection with this Agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as Schedule V of this Agreement.

In case the escalations do not help in resolution of the problem within 3 weeks of escalation, both the parties should agree on a mediator for communication between the two parties. The process of the mediation would be as follows:

- Aggrieved party should refer the dispute to the identified mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.
- The mediator shall use his best endeavors to conclude the mediation within a certain number of days of his appointment.
- If no resolution can be reached through mutual discussion or mediation within 30 days then the matter should be referred to Experts for advising on the issue.

In case the mediation does not help in resolution and it requires expertise to understand an issue, a neutral panel of 3 experts, agreeable to both parties should be constituted. The process of the expert advisory would be as follows :

- Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the timeframe and requesting for expert advisory. This is to be sent with a copy to the mediator.
- Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute
- The expert panel shall use his best endeavours to provide a neutral position on the issue.

- If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.

DRAFT

- Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the Arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the Registrar, Kerala Technological University. 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 Kerala.

Compliance with laws: Each party will comply with all applicable export and import laws and regulations.

Risk of Loss: For each hardware item, Service Provider bears the risk of loss or damage up to the time it is delivered to the Kerala Technological University-designated carrier for shipment to Kerala Technological University or Kerala Technological University's designated location.

Third party components: Service Provider will provide all third party components solely on a pass-through basis in accordance with the relevant third party terms and conditions.

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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 Kerala Technological University

(FIRST PARTY)

Name _____
Designation _____
Date _____
Signature _____

Service Provider

(SECOND PARTY)

(Name and designation)

For and on behalf of Service Provider

Name _____
Designation _____
Date _____
Signature _____

WITNESSES:-

1. Signature _____
Name _____
Designation _____
Date _____
Signature _____
2. Signature _____
Name _____
Designation _____
Date _____
Signature _____