

AICNET – Phase II

Draft Contract Agreement

THIS CONTRACT is made on this ___ day of _____, 2008, by and between:

- (i) AGRICULTURE INSURANCE COMPANY OF INDIA LIMITED (AIC), a Company registered under the Indian Companies Act, 1956 having its Registered office at “AMBA DEEP”, 13th floor, 14 Kasturba Gandhi Marg, New Delhi – 110001, herein after referred to as AIC as Party of the FIRST PART; AND
- (ii) IMPLEMENTATION VENDOR a Company registered under the Indian Companies Act, 1956 having its Registered office at _____ and place of business at _____ herein after referred to as ImV as party of the SECOND PART.

WHEREAS

- A. The First Party Agriculture Insurance Company of India Limited (AIC) has desired to implement a project viz AICNET envisaged as a holistic IT systems solutions project encompassing all the IT needs of the company and accordingly under took to engage an Implementation Vendor, adopting an open tender route, through competitive bidding for implementing the project AICNET and for which a tender was issued on 11.10.2008.
- B. The second partythe ImV has been selected as the successful bidder to undertake the project AICNET involving the development of the total solution rollout and maintenance to permit the dissemination of best practices relating to the services. ;
- C. The First party intends to accord to the second party the right to undertake and implement the project AICNET on the terms and conditions set forth below:-
- D. The Second party ImV in pursuance of its bid undertakes to implement the Project AICNET on the terms and conditions set forth below:-
 - a. Tender Document (which has been uploaded on AIC’s website, www.aicofindia.org on 11.10.2008) and the Amendment thereto (which has been uploaded on AIC’s website on 12.11.2008)

- b. Bid submitted bythe ImV
- c. The Contract Agreement detailed herein.
- d. Written commitments made by the ImV to AIC, from time to time during the pendency of Project AICNET.

IN THE EVENT OF ANY CONFLICT ARISES WITHIN AND/OR BETWEEN THE DOCUMENT (S), THE OPTION DECIDED BY AIC AS BEST SUITED FOR PROJECT AICNET SHALL PREVAIL.

NOW THEREFORE, IN VIEW OF THE MUTUAL OFFER AND CONSIDERATION SET OUT HEREIN, THE PARTY OF THE FIRST PARTY AND PARTY OF THE SECOND PART I.E. THE AIC AND THE IMV (EACH INDIVIDUALLY A "PARTY" HERETO AND COLLECTIVELY THE "PARTIES") HAVE AGREED TO ENTER INTO THIS CONTRACT TO GOVERN THE WAY IN WHICH THE IMV WILL IMPLEMENT THE PROJECT AICNET AS PER THE TERMS AND CONDITIONS SET OUT HEREIN BELOW:-

1. ARTICLE 1 - DEFINITIONS & INTERPRETATION

1.1 DEFINITIONS

- a. In this Contract, unless the context requires otherwise:
- i. "Contract" means this Contract and the contents and specifications of the TENDER in the event of a conflict within and/or between the document(s), the option decided by AIC as best suited for project AICNET shall prevail;
 - ii. "Project" means the AICNET Solution Design, Development, Implementation, Operations and Maintenance across all the locations of AIC as per agreed terms and conditions laid down in the TENDER and in this contract;
 - iii. "Bespoke Software" means the software designed, developed, tested and deployed by the ImV for the purposes of rendering the Services to the Stakeholders of the Project and includes the source code along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products (except for the customization components on such products), proprietary software components and tools deployed by the ImV and which shall be solely owned by AIC;
 - iv. "Confidential Information" means all information including Project Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, customers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party (whether a Party to this Contract) in the course of or in connection with this Contract (including without limitation such information received during negotiations, location visits and meetings in connection with this Contract);
 - v. "PROJECT Data" means all proprietary data of the PROJECT generated out of PROJECT operations and transactions, documents and related information including but not restricted to user data which the ImV obtains, possesses or processes in the context of providing the Services to the users pursuant to this Contract;
 - vi. "Deliverables" means the products, infrastructure and services agreed to be delivered by the ImV in pursuance of the Contract as defined more elaborately in this TENDER (section 5.1) in relation to the Implementation Phase and the Operations and Maintenance Phase and includes all documents related to the solution, user manual, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines and source code and all its modifications;
 - vii. "Effective Date" means the date on which this Contract is executed.

- viii. "Intellectual Property Rights" means and includes all rights in the Bespoke Software, its improvements, upgrades, enhancements, modified versions that may be made from time to time, database generated, compilations made, source code and object code of the software, the said rights including designs, copyrights, trademarks, patents, trade secrets, moral and other rights therein;
 - ix. "Performance Guarantee" shall mean the guarantee provided by a Nationalized Bank in favor of the ImV for an amount specified in the TENDER;
 - x. "Project Implementation" means Project Implementation as per the testing standards and acceptance criteria as prescribed in the TENDER;
 - xii. "Go-Live" means the date on which the acceptance testing of the Project has been successfully completed on all sites.
 - xi. "Proprietary Information" means processes, methodologies and technical and business information, including drawings, designs, formulae, flow charts, data and computer programs already owned by, or granted by third parties to a Party hereto prior to its being made available under this Contract.
 - xii. "TENDER" means the documents containing the Technical, Functional, Commercial and Legal Specifications for the implementation of the Project and includes the clarifications, explanations and amendments issued from time to time.
 - xiii. "Replacement ImV" means any third party that AIC may appoint to replace the ImV upon expiry of the Term or other termination of this Contract to undertake the Services or part thereof;
 - xv. "Service Level" means the level of service and other performance criteria which will apply to the Services as set out in Tender.
 - xvii. "Services" means Satellite Services and Managed IT Services as set out in the Tender.
 - xviii. "Stakeholders" means the farmers, employees, management, Contractors, Citizens, Businesses, Departments, Agencies of Government and their employees;
 - xix. "Third Party Systems" means Systems (or any part thereof) in which the Intellectual Property Rights are owned by a third party and to which ImV has been granted a license to use and which are used in the provision of Services;
- a. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it.
 - b. Words denoting the singular shall include the plural and vice versa and words denoting persons shall include firms and corporations and vice versa.
 - c. Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Contract as a whole and not

to any particular Article, Schedule. The term Articles, refers to Articles of this Contract. The words "include" and "including" shall not be construed as terms of limitation. The words "day" and "month" mean "calendar day" and "calendar month" unless otherwise stated. Where, because of a difference in time zone, the calendar day or calendar month in one Country differs from another Country, then the calendar day or calendar month shall be deemed to be the calendar day or calendar month applicable to India. The words "writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated. Any reference to attorneys' fees shall include fees of the professional assistants of such attorneys.

- d. The headings and use of bold type in this Contract are for convenience only and shall not affect the interpretation of any provision of this Contract.

1.2 STRUCTURE

- a. This Contract shall operate as a legally binding services agreement specifying the master terms which apply to the Parties under this Contract.
- b. In the event of a change of Control of the ImV during implementation of AICNET Project, ImV shall promptly notify AIC well in advance of the same and in the event that the net worth of the surviving entity is less than that of ImV prior to the change of Control, AIC may within 30 days of its becoming aware of the change in Control, require a replacement of existing Performance Guarantee furnished by the ImV from a guarantor acceptable to AIC (which shall not be ImV or any of its associated entities). If such a guarantee cannot be obtained within 30 days of AIC becoming aware of the change in Control, it may exercise its right to terminate this contract by serving a written notice to ImV. Pursuant to termination, the consequences of termination as set out in Article 5.2 will become effective. The internal reorganization of the ImV shall not be deemed an event of a change of Control for purposes of this Article unless the surviving entity is of less net worth than the predecessor entity.

1.3 CONDITIONS PRECEDENT

Subject to express terms to the contrary, the rights and obligations under this Contract shall be effective only upon fulfillment of all the Conditions Precedent set out in Articles 1.3.1 and 1.3.2. However, AIC, may at any time at its sole discretion waive fully or partially any of the Conditions Precedent for the ImV, if it is fully satisfied that the same is required.

1.3.1 Conditions Precedent for ImV

- a. The ImV shall have to fulfill Conditions Precedent, which are as follows:

Provide Performance Security/ Guarantee and other guarantees/ Payments [EMD and other warranties] to the Project Director, AIC as specified in the TENDER;

- b. To provide AIC certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Contract with AIC; and

1.3.2 Non-fulfillment of Conditions Precedent

- a. In the event that any of the Conditions Precedent relating to ImV has not been fulfilled and the same has not been waived by AIC fully or partially, this Contract shall cease to have any effect as of that date.
- b. In the event that the Contract fails to come into effect on account of non-fulfillment of the ImV's Conditions Precedent, AIC shall not be liable in any manner whatsoever to the ImV and AIC shall forthwith forfeit the Performance Guarantee.
- c. In the event that vacant possession of any of the PROJECT facilities and/or PROJECT Data has been delivered to the ImV prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Contract such shall immediately revert to AIC, free and clear from any encumbrances or claims.
- d. Instead of terminating this Contract as provided in paragraph 1.3.2(a) above, the Parties may extend the time for fulfilling the Conditions Precedent and the Term of this Contract if mutually agreed and reduced to writing a supplementary agreement to this regard. It is clarified that any extension of time shall be subject to imposition of penalties on the ImV linked to the delay in fulfilling the Conditions Precedent.

2 ARTICLE II - INITIALIZATION PHASE

2.1 SCOPE OF CONTRACT

This Contract agreement shall govern and prescribe the provisions to Implement the Project, AICNET by ImV in accordance with the details laid out in:

- a. Tender Document (which has been uploaded on AIC's website, www.aicofindia.org on 11.10.2008) and the Amendment thereto (which has been uploaded on AIC's website on 12.11.2008)
- b. Bids submitted by the ImV
- c. This Contract Agreement and the
- d. Written commitments made by the ImV to AIC, from time to time during the tenure of Project AICNET.

2.2 COMMENCEMENT AND DURATION OF THIS CONTRACT

This Contract shall come to force with effect from ____-200_ (hereinafter called the "Effective Date") and shall continue till the completion of the Operations and Maintenance phase, subject to fulfillment of the rights and obligations of the parties under the Contract.

2.3 SCOPE AND PROVISION OF THE SERVICES

- a. The provision of Services to the Stakeholders with certainty and speed is the essence of the Contract between the Parties.
- b. The ImV represents that it is a competent provider of a variety of information technology and business process management services. ImV will keep abreast of the relevant technical, managerial and operational requirements applicable to the provision of the Services and best practices in this area and will share their knowledge with AIC, regarding all relevant matters which would be necessary to and liable to be in the know how of AIC in its use of the service..
- c. The Services shall be performed by the ImV pursuant to the Tender. The ImV shall perform the Services in a good professional manner commensurate with professional industry and technical standards which are generally in effect for international projects and innovations pursuant thereon similar to those contemplated by this Contract,
- d. Either Party to this Contract shall at any time during the term of this contract perform, or omit to perform, any act which they are aware, at the time of performance, will place the other Party in default under any insurance policy, mortgage or lease, governing activities at any location provided by AIC.

2.4 APPROVALS AND REQUIRED CONSENTS

- a. The Parties shall mutually cooperate to procure, maintain and observe all relevant, customary, regulatory and governmental licenses, clearances

- and such other applicable approvals (hereinafter the "Approvals") necessary for the ImV to provide the Services.
- b. Both parties shall give each other all co-operation and information reasonably required to meet their respective obligations under this Contract.
 - c. AIC shall, to the extent possible use reasonable endeavors to assist ImV obtain the Required Consents. In the event that any Required Consent is not obtained, AIC and the ImV shall co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for AIC, to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such Required Consent is obtained, provided that the ImV 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 ImV's obligations are dependent upon such Required Consents.

2.5 USE AND ACQUISITION OF ASSETS

During the Term the ImV 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 by the ImV exclusively in terms of the delivery of the Services as per this Contract (hereinafter the "Assets") in proportion to their use and control of such Assets which will include all upgrades/ enhancements and improvements to meet the current needs of the Project; and
- b. Keep all the tangible Assets in as good and serviceable condition and/or the intangible Assets suitably upgraded subject to the relevant standards as stated in the TENDER as at the date the ImV takes control of and/ or first uses the Assets and during the entire Term of the Contract; and
- c. ensure that any instructions or manuals supplied by the manufacturer of the Assets for use of the Assets and provided to the ImV will be followed by the ImV and any person who will be responsible for the use of the Assets; and
- d. take such steps as may be properly recommended by the manufacturer of the Assets and notified to the ImV or as may, in the reasonable opinion of the ImV, be necessary to use the Assets in a safe manner; and
- e. to the extent that the Assets are under the control of the ImV, keep the Assets suitably housed and in conformity with any statutory requirements from time to time applicable to them; and
- f. provide permission to AIC and any persons duly authorized by him/ her to enter any land or premises on which the Assets are for the time being sited so as to inspect the same, subject to any reasonable third party requirements; and

- g. not knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or contrary to law; and
- h. use the Assets exclusively for the purpose of providing the Services to the AIC as appropriate; and
- i. not to sell, offer for sale, assign, mortgage, pledge, sub-let or lend out any of the Assets; and
- j. use the Assets only in accordance with the terms hereof and those contained in the contract and tender document and
- k. maintain standard forms of comprehensive insurance including liability insurance, system and facility insurance and any other insurance for the personnel, Assets, data, software, etc.; and
- l. transfer the ownership of the Assets (not already with AIC including the solution and Bespoke Software including the source code and associated documentation which is the work product of the development efforts involved in the Project) to AIC at the appropriate time (in sync with the submission of deliverables thereof by the ImV) or in accordance with the terms of this Contract; and
- m. ensure the integration of the software with hardware to be installed and the current Assets in order to ensure the smooth operations of the entire solution architecture to provide efficient services to all the Stakeholders of PROJECT in an efficient and speedy manner; and

2.7 ACCESS TO PROJECT OR ITS NOMINATED AGENCIES LOCATION

- a. For so long as the ImV provides Services from any Project location on a non-permanent basis and to the extent necessary for the ImV to provide the Services and at no cost to the ImV, AIC, shall, subject to compliance by the ImV with any safety and security guidelines which may be notified by AIC to the ImV in writing, provide the ImV with:
 - i. reasonable access, in the same manner granted to PROJECT employees, to PROJECT locations twenty-four hours a day, seven days a week; and
 - ii. Access to office equipment as mutually agreed and other related support services in such location and at such other PROJECT location, if any, as may be reasonably necessary for the ImV to perform its obligations hereunder.
- b. Locations and items shall be made available to the ImV on an "as is, where is" basis by AIC. The ImV agrees to ensure that its employees, agents and contractors do not use the location, services and items :
 - i. for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
 - ii. In a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality).

3 ARTICLE III - MANAGEMENT PHASE

3.1 GOVERNANCE

The review and management process of this Contract shall be carried out in accordance with arrangement as set out in the TENDER.

3.2 USE OF SERVICES

- a. AIC, or its nominated agencies will undertake and use the Services in accordance with the Tender document.
- b. AIC, or its nominated agencies shall be responsible for the operation and use of the Deliverables resulting from the Services.

3.3 SECURITY AND SAFETY

- a. The ImV will comply with the directions issued from time to time by AIC and the standards related to the security and safety as stated in the TENDER, insofar as it applies to the provision of the Services.
- b. The Parties to the contract shall use reasonable endeavors to prevent any attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Project's data, facilities or Confidential Information and shall report in writing to each other if such attempts are made by any one in this regard.
- c. The ImV shall upon reasonable request by AIC or its nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- d. The Parties under the contract shall promptly report in writing to each other any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at Project's Facilities.

3.4 CO-OPERATION

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

4 ARTICLE IV - FINANCIAL ISSUES

4.1 TERMS OF PAYMENT

All the payments to the ImV shall be made as per the terms set out in Tender.

4.2 TAX

- a. AIC shall be responsible for withholding taxes from the amounts due and payable to the ImV wherever, applicable as per the law of the land. The ImV shall pay for all other taxes in connection with this Contract. AIC shall provide ImV with the original tax receipt of any withholding taxes paid by PROJECT on payments under this Contract. The ImV agrees to reimburse and hold AIC harmless from any deficiency (including penalties and interest) relating to taxes that are its responsibility under this paragraph. For purposes of this Contract, taxes shall include taxes incurred on transactions between and among AIC, the ImV and any third party subcontractors.
- b. In the event of any increase or decrease of the rate of taxes due to any statutory notification/s during the Term of the Contract the consequential effect shall be to the account of the party who is liable to pay the taxes as per the existing applicable law of the land.
- c. The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible. In connection therewith, the Parties shall provide each other with (i) any resale certificates, (ii) any relevant information regarding use of out-of-state materials, equipment or services and (iii) any exemption certificates or information reasonably requested by the other Party.

5 ARTICLE V - BREACH AND RECTIFICATION

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

- i. If there is Breach which translates into default in providing Services by the ImV as per the Contract and Tender document, continuously for more than one week, then AIC, will serve a seven days notice for curing this Material Breach. In case the Material Breach continues after the notice period, AIC will have the option to terminate the Contract.
- ii. Because time is the essence of the contract, in case, for reasons prima facie attributable to the ImV, there is a delay of more than 4 weeks in the Project Implementation Phase by the ImV prior to the acceptance testing and certification stage, AIC may terminate this contract after affording a reasonable opportunity to the ImV to explain the circumstances leading to such a delay. Further, AIC may at its discretion also invoke the Performance Guarantee of the ImV.
- iii. If there is a Breach by AIC which results in terms of not handing over the location in time, not providing support for integration of AIC system with the IT systems of the participating Centers and Departments of AIC, or not providing the certification of the Implementation Phase, then the ImV may give a one month's notice for curing the Material Breach. In the event the Breach continues, the ImV will have the option to terminate the Contract.
- b. Where a change of management of the ImV has occurred whereby the ImV-company has merged, amalgamated or been taken over, due to which the majority shareholding of the ImV has been transferred to another entity, AIC can by a 30 days written notice, terminate this Contract if so felt and such notice shall become effective at the end of the notice period.

5.1 TERMINATION

- a. AIC may serve written notice on ImV at any time to terminate this Contract with immediate effect in the event of a reasonable apprehension of bankruptcy of the ImV:
 - i. ImV shall in the event of an apprehension of bankruptcy immediately inform AIC well in advance (at least 3 months) about such a development;
 - ii. Conversely if AIC apprehend a similar event regarding the ImV, it can exercise the right of termination in the manner stated hereinabove.

5.2 EFFECTS OF TERMINATION

In the event that AIC or the ImV, terminates this Contract pursuant to Article 5.1, depending on the event of default, and for the reason mentioned in clause no. 1.2 (d), compensation will be decided in accordance with the Terms as set out in the Tender.

Upon termination of this Contract:-

- a. The ImV shall provide AIC with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to Project Implementation.
- b. A detailed program of the transfer process that could be used in conjunction with a Replacement ImV including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer;
plans for the communication with such of the ImV's sub contractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on Project's operations as a result of undertaking the transfer;
- c. (if applicable) proposed arrangements for the segregation of the ImV's networks from the networks employed by PROJECT and identification of specific security tasks necessary at termination;
- d. Plans for provision of contingent support to PROJECT, and Replacement ImV for a reasonable period after transfer.
- e. The ImV shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- f. Each Exit Management Plan shall be presented by the ImV to and approved by AIC or its nominated agencies.
- g. In the event of termination of Contract, each Party shall comply with the Exit Management Plan.
- h. During the exit management period, the ImV shall use its best efforts to deliver the services.
- i. Payments during the Exit Management period shall be made in accordance with the Terms as set out in Tender.
- j. This Exit Management plan shall be furnished in writing to AIC or its nominated agencies within 90 days from the Effective Date of this Contract.

6 ARTICLE VI - PROTECTION AND LIMITATIONS

6.1 WARRANTIES

- a. The ImV warrants and represents to AIC that:
 - i. it has full capacity and authority and all necessary approvals to enter into and to perform its obligations under this Contract;
 - ii. this Contract is executed by a duly authorized representative of ImV;
 - iii. it shall discharge its obligations under this Contract with due skill, care and diligence so as to comply with Article 2.3.
 - iv. the ImV has full capacity and authority and all necessary approvals to enter into and perform its obligations under the contract and to provide the Services;
 - v. the contract has been executed by a duly authorized representative of the ImV;
 - vi. the ImV is experienced in managing and providing works similar to the Services and that it will perform the Services with all due skill, care and diligence so as to comply with Article 2.3;
 - vii. the Services will be provided and rendered by appropriately qualified, trained and experienced and competent personnel;
 - viii. ImV has and will have all necessary licenses, approvals, consents of third parties and all necessary technology, hardware and software to enable it to provide the Services;
 - ix. the Services shall be supplied in conformity with all applicable laws, enactments, orders and regulations;
 - x. ImV will use its reasonable endeavors to ensure that the equipment, software and hardware supplied and/or used in the course of the provision of the Services, save for the Assets, are operational and functional; and
 - xi. if ImV uses in the course of the provision of the Services components, equipment, software and hardware manufactured by any third party which are embedded in the Deliverables or are essential for the successful use of the Deliverables, it will pass through third party manufacturer's warranties relating to those components, equipment, software and hardware to the extent possible. In the event that such warranties cannot be enforced by AIC, the ImV shall enforce such warranties on behalf of AIC and pass on to AIC, the benefit of any other remedy received in relation to such warranties.
- b. Notwithstanding what has been stated elsewhere in this Contract and the Schedules attached herein, in the event the ImV is unable to meet the obligations of the Project implementation, Operations and Maintenance Services and any related scope of work as stated in this Contract and Tender document, AIC will have the option to invoke the Performance Guarantee after serving a written notice of fifteen days on the ImV.

6.2 THIRD PARTY CLAIMS

- a. Subject to Article 6.2b below, ImV (the "Indemnifying Party") undertakes to indemnify AIC (the "Indemnified Party") from and against all losses, claims or damages on account of bodily injury, death or damage to any person, corporation or other entity (including the Indemnified Party) attributable to the act, commission and omission of the Indemnifying Party's performance or non-performance under this Contract and the Tender document.
- b. The indemnities set out in Articles 6.2a 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;
 - vi. 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;
 - vii. all settlements of claims subject to indemnification under this Article will: (a) be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant for all liability in respect of such claim; and (b) include any appropriate confidentiality Contract prohibiting disclosure of the terms of such settlement;
 - viii. the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favor of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;
 - ix. the Indemnified Party shall take steps that the Indemnifying Party may reasonably require to mitigate or reduce its loss as a result of such a claim or proceedings; and
 - x. 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;

6.3 LIMITATION OF LIABILITY

- a. This Contract does not grants or creates any rights, benefits, claims, obligations or causes of action in, to or on behalf of any person or entity (including any third party) other than between the respective Parties to this Contract.
- b. Any claim or series of claims arising out or in connection with this Contract shall be time barred and invalid if legal proceedings are not commenced by the relevant Party against the other Party within a period of 18 months from the date when the cause of action first arose or within such longer period as may be permitted by applicable law without the possibility of contractual waiver or limitation.

6.4 FORCE MAJEURE

- a. Neither Party to this Contract shall be liable to the other for any loss or damage which may be suffered by the other due (directly) to the extent and for the duration of any cause beyond the reasonable control of the Party unable to perform ("Force Majeure") events such as but not limited to Acts of God not confined to the premises of the Party claiming the Force Majeure, flood, drought, lightning or fire, earthquakes, strike, lock-outs beyond its control, labour disturbance not caused at the instance of the Party claiming Force Majeure, acts of government or other competent authority, war, terrorist activities, military operations, riots, epidemics, civil commotions etc. No failure, delay or other default of any contractor or sub-contractor to either Party shall entitle such Party to claim Force Majeure under this Article.
- b. The Party seeking to rely on Force Majeure shall promptly, within 5 working days notify the other Party of the occurrence of a Force Majeure event as a condition precedent to the availability of this defense with particulars detail in writing to the other Party and shall demonstrate that it has and is taking all reasonable measures to mitigate the events of Force Majeure.
- c. In the event the Force Majeure substantially prevents, hinders or delays the ImV's performance of Services necessary for the operation of PROJECT's critical business functions for a period in excess of 5 days, AIC may declare that an emergency exists. AIC will issue a notice to the ImV to resume normal services at all affected sites and for all operations within a period of seven days. In the event that the ImV is not able to resume services within the specified time, AIC may terminate the Contract and/or obtain substitute performance from an alternate supplier. However, the event of Force Majeure is to be reviewed under two categories i.e. prior to commencement of operations and post commencement of operations respectively.

- d. Prior to commencement of operations: If the event of Force Majeure occurs prior to commencement of operations and continues for a period in excess of ten days, then AIC will grant a period of 7 days to the ImV to resume normal activities under this Contract. In case the default continues, then AIC may discuss the issue with the ImV and revise the existing timelines for the Project. If the ImV does not complete the Project Implementation in accordance with the revised timelessness, AIC will have the option to invoke the Performance Guarantee and/or terminate this Contract.
- e. Post commencement of operations: If Force Majeure occurs post commencement of operations and continues for a period in excess of five days, then AIC will grant a period of 7 days to the ImV to resume normal services under this Contract. In case the default continues, AIC may grant an extension of time to the ImV for rectifying the situation. However, AIC will deduct for each day of the extension period a percentage proportionate to the number of days and the affected areas/s from the next payable amount as per the Tender document. If there is any further delay despite the extended period, AIC will have the option to invoke the Performance Guarantee and/or terminate the Contract.
- f. All payments pursuant to termination due to Force Majeure event shall be in accordance with the Tender document.
- g. Notwithstanding the terms of this Article, the failure on the part of the ImV under this contract or Tender document to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of the contract or Tender document against natural disaster, fire, sabotage or other similar occurrence shall not be an event of Force Majeure.

6.5 DATA PROTECTION

- a. In the course of providing the Services the ImV may be compiling, processing and storing proprietary PROJECT Data relating to the users.
- b. The ImV and each user are responsible for complying with its respective obligations under the applicable data protection laws and regulations governing the PROJECT Data.
- c. The ImV is required to perform or adhere to only those security measures concerning the PROJECT Data which were in place (i) as of the Effective Date; and (ii) those made available to it in writing from time to time in accordance with Tender document.
- d. As a processor of PROJECT Data, the ImV will process PROJECT Data in accordance with the tender document.
- e. The ImV shall not transfer any PROJECT, Data unless otherwise authorized by AIC in this regard.
- f. Upon reasonable written request from either Party to this contract, other Party will provide the requesting Party with such information that it has regarding the PROJECT, Data and its processing which is necessary to

enable the requesting party to comply with its obligations under the applicable data protection law or regulation.

6.7 AUDIT, ACCESS AND REPORTING

AIC may conduct audits at its discretion if it reasonably believes that such audits are necessary. The frequency of audits shall be 6 monthly, provided that AIC shall endeavor to conduct such audits with the lowest levels of inconvenience and disturbance being caused to the ImV.

7 ARTICLE VII - INTELLECTUAL PROPERTY

7.1 INTELLECTUAL PROPERTY

- a. Except to the extent otherwise expressly provided in this Contract, AIC shall retain exclusive intellectual property rights to the bespoke software, forms and the compilations of the PROJECT to which AIC has sovereign rights and nothing herein shall or will be construed or deemed to grant to the ImV any right, title, license, sub-license, proprietary right or other claim against or interest in, to or under (whether by estoppels, by implication or otherwise) to the aforesaid rights.
- b. Without limiting the generality of Article 7.1a and except to the extent otherwise expressly agreed by the Parties to this Contract in writing, nothing contained in this Contract shall or will be construed or deemed to grant to the ImV any right, title, license or other interest in, to or under (whether by estoppel, by implication or otherwise) any logo, trademark, trade name, service mark or similar designations of PROJECT or its respective affiliates/nominees or any confusingly similar designations of PROJECT .
- c. Subject to any sole or exclusive rights granted by AIC to a third party prior to the Effective Date, AIC grants to the ImV and any sub-contractors to the ImV solely in their performance of Services for PROJECT or its nominated agencies, non-exclusive, paid-up, royalty-free right and license during the Term of this Contract, but not the right to sub-license, to use the PROJECT Data including the right to copy, perform, display, execute, reproduce, modify, enhance and improve the PROJECT Data to the extent reasonably necessary or useful for the provision of Services hereunder.
- d. ImV shall not use the PROJECT Data to provide services for the benefit of any third party.
- e. ImV shall indemnify, defend and hold harmless PROJECT and their respective officers, employees, successors and assigns, from and against any and all losses arising from claims by third parties that any Deliverable (or the access, use or other rights thereto) created by ImV pursuant to this Contract, any equipment, software, information, methods of operation or other intellectual property (or the access, use or

- other rights thereto) provided by ImV or sub-contractors to the ImV pursuant to this Contract (i) infringes a copyright enforceable in India, (ii) infringes a patent issued in India, or (iii) constitutes misappropriation or unlawful disclosure or use of another Party's trade secret under the laws of the India (collectively, "Infringement Claims"); provided, however, that this will not apply to any Deliverable (or the access, use or other rights thereto) created by (A) PROJECT ; (B) third parties (i.e., other than ImV or ImV's sub-contractors) at the direction of PROJECT .
- f. AIC shall have no liability or obligation to ImV or any other Party under Article 7.1e above to the extent the Infringement Claim is based upon any use of the equipment, software, information, methods of operation or other intellectual property (or the access, use or other rights thereto) for the benefit of any Party (including any use by ImV or its nominees outside the scope of the Services) other than for PROJECT.
- h. All right, title and interest in and to, and ownership in, Proprietary Information of PROJECT which is provided to ImV, and all modifications, enhancements and other derivative works of such PROJECT Proprietary Information ("PROJECT Proprietary Information"), as a result of Services rendered by the ImV hereunder shall remain solely with AIC. ImV shall be entitled to use such PROJECT Proprietary Information only during the Contract Term and only for the purposes of providing the Services or to the extent necessary for ImV's normal operational, repair and maintenance purposes related to the Services. AIC shall retain ownership of all Intellectual Property Rights related to PROJECT Proprietary Information.
- j. All right, title and interest in and to, and ownership in, Proprietary Information of ImV, which is provided to AIC, and all modifications, enhancements and other derivative works of such ImV Proprietary Information ("ImV Proprietary Information"), shall remain solely with ImV. The ImV will upon the award of the Project in its favor, declare the status of all the ImV Proprietary Information along with documentary support sufficient to establish its sole legal rights in the aforesaid Proprietary Information to AIC. This Proprietary Information shall refer to that which has been owned by the ImV prior to commencement of the Contract. Additionally, any software that may be acquired from third parties during the term of the Contract and that which may be developed by the ImV during the course of the Contract specifically for PROJECT shall also not be considered as ImV Proprietary Information. AIC shall be entitled to use such ImV Proprietary Information only in connection with the Services or to the extent necessary for Project's normal operational, repair and maintenance purposes related to the Services. To the extent that the ImV Proprietary Information is incorporated within the Deliverables, ImV and its employees engaged hereby grant to AIC a worldwide, perpetual, irrevocable, exclusive, transferable, paid-up right and license to use, copy, modify (or have modified), transport to PROJECT facilities, and prepare from them, use

and copy derivative works for the benefit of and internal use of PROJECT such ImV Proprietary Information.

- h. AIC hereby grants to ImV a non-exclusive right and license to access and use the PROJECT Proprietary Information solely for the purpose of providing Services to PROJECT. Such right and license shall terminate upon the expiration or termination of this Contract.
- g. Upon the expiration or any termination of this Contract, ImV shall undertake the actions set forth below in this Article to assist AIC to procure replacement services equivalent to Services provided hereunder.
- h. Further the ImV undertakes to negotiate in good faith with AIC and any relevant Replacement ImV in respect of commercial terms applying to all ImV Intellectual Property Rights and which AIC and any relevant Replacement ImV require to enable them to provide or receive services substantially equivalent to the Services hereunder.
- i. In respect of ImV's usage of third party Intellectual Property Rights, ImV undertakes to assist AIC to secure such consents or licenses from such third parties as are necessary to enable PROJECT to receive services substantially equivalent to the Services hereunder.

8 ARTICLE VIII - MISCELLANEOUS

8.1 CONFIDENTIALITY (NON-DISCLOSURE)

- a. The ImV recognizes that during the term of this Contract, sensitive data will be procured and made available to it, its Sub contractors and agents and others working for or under the ImV by AIC. Disclosure or unauthorised usage of the data by any such recipient shall constitute a breach of applicable laws causing harm not only to the interest of AIC whose data is used but also to its shareholders, directors and other officers. The function of AIC requires the ImV, its subcontractors and agents to demonstrate utmost care, sensitivity and strict confidentiality. Any breach of this Article will result in a right to seek injunctive relief and damages without any limit, from the ImV.
- b. Each Party agrees as to any Confidential Information disclosed by a Party to this Contract (the "Discloser") to the other Party to this Contract (the "Recipient"):

- i. to take such steps necessary to protect the Discloser's Confidential Information from unauthorized use, reproduction and disclosure as the Recipient takes in relation to its own Confidential Information of the same type, but in no event less than reasonable care; and
 - ii. to use such Confidential Information only for the purposes of this Contract or as otherwise expressly permitted or expressly required by this Contract or as otherwise permitted by the Discloser in writing; and
 - iii. not, without the Discloser's prior written consent, to copy the Confidential Information or cause or allow it to be copied, directly or indirectly, in whole or in part, except as otherwise expressly provided in this Contract, or as required in connection with Recipient's use as permitted under this Article, or as needed for the purposes of this Contract, provided that any proprietary legends and notices (whether of the Discloser or of a Third Party) are not removed or obscured; and
 - iv. not, without the Discloser's prior written consent, to disclose, transfer, unauthorized usage, publish or communicate the Confidential Information in any manner to any person except as permitted under this Contract.
- c. The restrictions of this Article shall not apply to Confidential Information that:
- i. is or becomes generally available to the public through no breach of this Article by the Recipient; and
 - ii. was in the Recipient's possession free of any obligation of confidence prior to the time of receipt of it by the Recipient hereunder; and
 - iii. is developed by the Recipient independently of any of Discloser's Confidential Information; and
 - iv. is rightfully obtained by the Recipient from third parties authorized at that time to make such disclosure without restriction; and
 - v. is identified in writing by the Discloser as no longer proprietary or confidential; or
 - vi. is required to be disclosed by law, regulation or Court Order, provided that the Recipient gives prompt written notice to the Discloser of such legal and regulatory requirement to disclose so as to allow the Discloser reasonable opportunity to contest such disclosure.
- d. To the extent that such disclosure is required for the purposes of this Contract, either Party may disclose Confidential Information to:
- i. its employees, agents and concerned independent contractors and to any of its affiliates and their respective independent contractors or employees; and
 - ii. its professional advisors and auditors, who require access for the purposes of this Contract, whom the relevant Party has informed of its obligations under this Article and in respect of whom the relevant Party has used commercially reasonable efforts to ensure that they are contractually obliged to keep such Confidential Information confidential on terms substantially the same as set forth in this Article. Either Party

- may also disclose Confidential Information to any entity with the other Party's prior written consent.
- e. The provisions of this Article shall survive even after the expiration or in the event of any earlier termination of this Contract.
 - f. Confidential Information shall be and remain the property of the Discloser and nothing in this Article shall be construed to grant either Party any right or licence with respect to the other Party's Confidential Information otherwise than as is expressly set out in this Contract.
 - g. Subject as otherwise expressly provided in this Contract all Confidential Information in tangible or electronic form under the control of the Recipient shall either be destroyed, erased or returned to the Discloser promptly upon the earlier of: (i) the written request of the Discloser, or, (ii) termination or expiry of this Contract. Notwithstanding the foregoing, both Parties may retain, subject to the terms of this Article, a reasonable number of copies of the other Party's Confidential Information solely for confirmation of compliance with the confidentiality obligations of this Contract.
 - h. Neither Party is restricted by the provisions of Article 8.1 from using (including using to provide products or perform services on behalf of third parties) any ideas, concepts, know how and techniques that are related to the Recipient's business activities and which are retained in unaided memories of the Recipient's employees or agents (and not intentionally memorized for the purpose of later recording or use) (collectively, the "Residuals"). This Article shall not permit the disclosure or use by either Party of any financial (including business plans), statistical, product, personnel or customer data of the other Party. Each Party agrees not to disclose the source of the Residuals.
 - i. Both Parties agree that monetary damages would not be a sufficient remedy for any breach of this Article by the other Party and that AIC and ImV, as appropriate, shall be entitled to equitable relief, including injunction and specific performance as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by a Party of this Article, but shall be in addition to all other remedies available at law or equity to the damaged Party.

8.2 PERSONNEL

- a. Personnel employed or engaged by ImV to perform the Services shall be employees of ImV, and under no circumstances will such personnel be considered employees of PROJECT. ImV shall have the sole responsibility for supervision and control of its personnel and for payment of such personnel's entire compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all employer obligations under all applicable laws.
- b. ImV shall use its best efforts to ensure that sufficient ImV personnel are employed for effective and efficient implementation of Project AICNET,

and also that such personnel have appropriate qualifications to perform the Services in respective domains. AIC shall have the right to require the removal or replacement of any ImV personnel performing work under this Contract. In the event that AIC requests that any ImV personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule but not later than 3 working days.

- c. The ImV shall also be responsible for Change Management of PROJECT AICNET during the Term of this Project. The parameters, content, periodicity and other details of the Training required shall be periodically formulated by ImV at the desire and consent of AIC and shall be in accordance with the latest procedures and processes available in the relevant areas of work.
- d. In the event AIC identifies any personnel of ImV as "Key Personnel", with regard to the effective implementation of Project AICNET, then the ImV shall not remove such personnel without the prior written consent of AIC.
- e. Except as stated in this Article, nothing in this Contract will limit the ability of ImV or any ImV freely to assign or reassign its employees; provided that ImV shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. AIC shall have the right to review and approve ImV's plan for any such knowledge transfer. ImV shall maintain the same 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 Contract and shall be liable for the acts and omissions of its employees and agents in connection therewith.

8.2A Non-solicitation

Each party agrees not to employ, or solicit or seek to employ, any employee of the other party who is involved in the development, use, or provision of Services during the implementation of AICNET Project or for a period of six months after the employee's termination/resignation from the employment, without the prior written consent of the other party.

8.3 ASSIGNMENT

All terms and provisions of this Contract shall be binding on and shall inure to the benefit of AIC, ImV and any assignment or transfer of this Contract by either Party shall be strictly prohibited.

8.4 TRADEMARKS, PUBLICITY

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party.

8.5 NOTICES

- a. Any notice or other document, which may be given by either Party under this Contract, shall be given in writing in person or by Registered-Post, Courier, recorded delivery post or by facsimile transmission or in person with written acknowledgement.
- b. In relation to a notice given under this Contract, any such notice or other document shall be addressed to the other Party's principal or registered office address as set out below

AIC

"AMBA DEEP", 13th floor, 14 Kasturba Gandhi Marg, New Delhi - 110001

Tel:

Fax:

Email:.....

ImV

Tel:

Fax:

Email:

- c. Any notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by letter).
- d. Either Party to this Contract may change its address, telephone number, facsimile number and nominated email for notification purposes by giving the other party reasonable prior written notice of the new information and its effective date.

8.7 SEVERABILITY AND WAIVER

- a. If any provision of this Contract, 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 Contract 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 such illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible to attain the economic, legal and commercial objectives of the contract.
- b. Failure to exercise or enforce and delay in exercising or enforcing on the part of either Party to this Contract of any right, remedy or provision of

this Contract shall not operate as a waiver of such right, remedy or provision in any future application or 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.

8.8 COMPLIANCE WITH LAWS AND REGULATIONS

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

8.9 ETHICS

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

8.10 ENTIRE CONTRACT

This Contract agreement and the TENDER constitute the entire Contract between the Parties with respect to their subject matter, in accordance with the scope of contract as enumerated under clause 2.1 of this contract.

8.11 SURVIVABILITY

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

9 ARTICLE IX - DISPUTES AND LAW

9.1 DISPUTE RESOLUTION

Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to but limited to the construction, meaning, scope, operation or effect of this Contract and Tender, 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 nominated by the Chairman-cum-Managing Director of AIC. 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 Delhi. That the provisions of arbitration as set out herein will be in super-session of the arbitration clause set out in the tender documents.

9.2 AMENDMENT

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

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

WITNESSES:

Signed by:

(Name and designation)

For and on behalf of

AIC

(FIRST PARTY)

Signed by:

(Name and designation)

an authorized signatory duly nominated

pursuant to Board Resolution No. _____ dated _____

(IMV)

(SecondParty)