

Table of Contents

3	SECTION III - GENERAL CONDITIONS OF CONTRACT	3
3.1	Definitions	3
3.2	Application	4
3.3	Standards.....	4
3.4	Use of Contract Documents and Information	4
3.5	Patent Rights	4
3.6	Performance Security.....	4
3.7	Installation, Commissioning, Testing and Acceptance Tests	5
3.8	Incidental Services	6
3.9	Deleted	6
3.10	Delivery and Documents	6
3.11	Support and Manual	6
3.12	WARRANTY AND PERIOD OF CONTRACT	6
3.12.1	Warranty.....	6
3.12.2	Period of Contract	7
3.13	Payment schedule.....	7
3.13.1	Hardware & software:	7
3.14	Currency of Payment	7
3.15	Change Orders	7
3.16	Contract Amendments	8
3.17	Assignment	8
3.18	Sub-contracts.....	8
3.19	Delays in the Vendor's Performance	8
3.20	Liquidated Damages.....	9
3.21	Termination for Default	9
3.22	Force Majeure	10
3.23	Termination for Insolvency	10
3.24	Termination for Convenience.....	10
3.25	Dispute Resolution.....	10
3.26	Governing Language	11
3.27	Applicable Law	12
3.28	Notices	12

3.29	Deleted	12
3.30	Deleted	12
3.31	Firm price	12
3.32	Delivery	12
3.33	Passing of Property	12
3.34	Prices	12
3.35	Deductions	12
3.36	Taxes and Duties	12
3.37	Insurance	13
3.38	"No Claim" Certificate	13
3.39	Continuing Support	13
3.40	Conflict of Interest	13
3.41	Delivery and Risk Purchase	13
3.42	Fall Clause	14
3.43	Limitation of Liability	14

3 SECTION III - GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

In this Contract, the following terms shall be interpreted as indicated:

1. **"UIDAI"** means the Unique Identification Authority of India.
2. **"The Purchaser"** means the President of India acting through the Director General & Mission Director, Unique Identification Authority of India or any other representative authorized by the Director General & Mission Director, Unique Identification Authority of India.
3. **"Purchase Officer"** means the officer signing the acceptance of Bid and includes any officer who has authority to execute the relevant contract on behalf of the Purchaser.
4. The **"Contract"** means the agreement entered into between the Purchaser and the Vendor as recorded in the Contract Form signed by the Purchaser and the Vendor, including all attachments and annexes thereto and all documents incorporated by reference therein.
5. The **"Vendor"** means the person or the firm or the company with whom the order for the Procurement of the Goods/Services is placed and shall be deemed to include the Vendor's successors, representatives (approved by the Purchaser), heirs, executors, administrators and permitted assigns, as the case may be, unless excluded by the terms of the contract.
6. **"The Contract Price"** means the price payable to the Vendor under the Contract for the full and proper performance of its contractual obligations;
7. **"The Goods"** mean all of the equipment, hardware, software, machinery, accessories and/or other material which the Vendor is required to supply to the Purchaser under the Contract;
8. **"Service"** means services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, integration, commissioning, configuration, testing, acceptance, warranty and post warranty maintenance wherever applicable and support, provision of technical assistance, training and other obligations of the Vendor covered under the Contract;
9. **"Acceptance of Bid"** means the letter/telex/telegram/fax or any memorandum communicating to the selected Bidder the acceptance of his Bid and includes an advance acceptance of his Bid.
10. **"Supply"** means once the purchaser issues a Purchase Order, the bidder has to supply the items within stipulated time.
11. **"Delivery"** includes logistics, tracking and physical delivery of goods at purchaser premise (up to the equipment handling room-EHR) and handing over the sealed boxes to purchaser representatives. Delivery will be validated as number of boxes delivered against invoices. Delivery Challan needs to be signed by Purchaser/Authorized representatives. Extent of damage to the boxes will be also scrutinized and informed to the vendor.
12. **"Installation"** includes unpacking and movement of goods to the proposed location in Data Centre as indicated in the Deployment plan of the purchaser and the installation of these components adhering to OEM guidelines including cabling.
13. **"Configuration"** includes installation of Operating systems in respective components and power-on, basic hygiene tests, setup and tuning as per purchaser requirements.
14. **"Commissioning"** is declaration of completion of installation of the component by the bidder. Purchaser reserves the right to inspect the installation and the bidder has to obtain the installation note duly signed by purchaser or its representative to claim the successful commissioning of the component.

15. **"Integration"** includes network connectivity, end to end testing of the components with the existing setup by the purchaser representative and asset tagging.
16. **"Acceptance"** - Bidder has to submit test cases for each component and shall get approval of the purchaser. Acceptance includes execution of these test cases and verifying the expected results by Purchaser or its representatives. The components and its performance will be validated against the minimum specifications and requirements in the RFP. On successful completion of AT, a certificate will be issued to bidder.

3.2 Application

1. These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

3.3 Standards

1. The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standards, such standard shall be the latest issued by the concerned institution.
2. The Vendor shall ensure that the Goods supplied under the Contract against all purchase orders are new, unused, of the most recent or current models and incorporate all recent improvements in design and materials without any additional cost to the Purchaser.

3.4 Use of Contract Documents and Information

1. The Vendor shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Vendor in the Performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as it may be necessary for purposes of such performance.
2. The Vendor shall not, without the Purchaser's prior written consent, make use of any document of information enumerated in Clause 3 of Section II except for purposes of performing the Contract.
3. Any document, other than the Contract itself, enumerated in Clause 3 of Section II shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Vendor's performance under the Contract, if so required by the Purchaser.

3.5 Patent Rights

The Vendor shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark or industrial design rights arising from the use of the Goods or any part thereof.

3.6 Performance Security

1. Within 7 days after the receipt of notification of award of the Contract from the Purchaser, the successful Vendor shall furnish performance security to the Purchaser, which shall be equal to 10 percent (Ten Percent) of the value of the contract in the form of a bank guarantee bond from a scheduled bank valid for a period of sixty (60) days beyond the date of completion of contractual

obligations of the successful bidder including warranty and support obligations.

2. The Performance Security Bank Guarantee shall be released on completion of the Contract Period.

3.7 Installation, Commissioning, Testing and Acceptance Tests

1. The Vendor shall be responsible for installation, commissioning and support of the Software at Data Centre Hebbal and Manesar.
2. The acceptance test which involves the testing and acceptance of the complete Software shall be conducted by the Vendor in the presence of the Purchaser and/or authorized officials and/or any other team or agency nominated by the Purchaser. All expenses for special devices, if any, for installation, commissioning, testing and acceptance of the Goods/Services shall be borne by the Vendor.
3. The Vendor shall describe tests and in details the system on which he proposes to demonstrate the correct working of the equipment supplied both individually. System testing schedules are thus additional to test specifications for individual items or units of equipment and shall comprise of:
 - i) On-site commissioning tests
4. The above test shall demonstrate the satisfactory operation of all supplied equipment covering full range of the facilities of the equipment. Simulation equipment shall be provided by the Vendor wherever necessary, to simulate all input and output functions on the test configuration. All functions shall be tested including but not limited to:
 - i) Power failure and restoration.
 - ii) All combinations of permissible voltage and frequency variations.
 - iii) Limiting signal-noise ratios on data carrying circuits.
 - iv) Maintenance and testing facilities.
5. The acceptance test shall be carried out by the Vendor in the presence of the Purchaser or any other person(s) or agency designated by the Purchaser. In order to qualify for acceptance, the equipment must, as a complete system, operate for a month, 24 hours a day, at 99.9% up-time efficiency.
6. The Vendor shall conclude the installation, commissioning and acceptance as per delivery schedule indicated in Section-IV clause 4.1.6.
7. In case, the Acceptance Tests fails and/or not concluded to the satisfaction of the Purchaser within the prescribed time limit, the Vendor shall repair or replace, at the Vendor's cost, the whole or any part of the equipment as may be necessary for conclusion of the acceptance tests to the satisfaction of the Purchaser within a further period of five (5) days.
8. Should Acceptance Tests still not be concluded to the satisfaction of the Purchaser after the expiration of twenty (20) days from the repair or replacement of each equipment, the Purchaser shall have the right to reject the equipment in respect of which the acceptance tests are not satisfactorily concluded as provided in this Clause and to terminate this contract to the extent it relates to such equipment and in that event the Vendor shall refund and repay all amounts received by the Vendor from the Purchaser and all amount paid by the Purchaser towards freight, insurance, customs duty, octroi and other connected expenses including interest at the rate of 10% per annum in respect of that equipment, within 60 days from the receipt of a written claim

from the Purchaser.

3.8 Incidental Services

1. The Vendor shall be required to provide any or all of the following services without any additional cost to UIDAI:
 - i) Installation, testing and commissioning, warranty and support in respect of supplied Goods.
 - ii) Performance or supervision of on-site assembly and start-up of the supplied Goods;
 - iii) Furnishing of tools required for assembly and start-up of the Supplied Goods;
 - iv) Furnishing of detailed operations and maintenance manuals for each appropriate unit of the supplied Goods;
 - v) Performance, supervision, maintenance and repair of the supplied Goods, for Contract Period agreed by the Purchaser and the Vendor, provided that this service shall not relieve the Vendor of any warranty obligations under this Contract;
 - vi) Provision of 1(one) Resident Engineer/Technician at each of the two Data Centers for any kind of support for the duration of installation, commissioning and acceptance Period.
 - vii) Other obligations of the Vendor covered under the Contract.

3.9 Deleted

3.10 Delivery and Documents

Delivery of the Goods shall be made by the Vendor in accordance with the terms specified by the Purchaser in its Notification of Award / Letter of Intent.

3.11 Support and Manual

1. Documentation shall be supplied for installation and support of software. All equipment, symbols and abbreviations shall be in accordance with the generally accepted nomenclature and standards. The manual shall contain a description of the complete software and support procedures & necessary information for its operation.
2. After acceptance tests and final acceptance of the supplied good by UIDAI (refer Section V, Clause 3), the vendor shall hand over the entire supplied Software to UIDAI and shall continue to provide support services under the direct supervision of UIDAI. The vendor shall be liable and provide all necessary support and cooperation to the UIDAI in this regard.

3.12 WARRANTY AND PERIOD OF CONTRACT

3.12.1 Warranty

1. The Vendor warrants that the Software supplied under the Contract are latest, genuine and not pirated and have all updates/patches applied of the most recent or current models and incorporate all recent improvements in them unless provided otherwise in the Contract. The Vendor further warrants that the Software supplied shall have no defect arising from software viruses, malware or Trojan (except insofar as the design or material is required by the Purchaser's Specifications), or from any act or omission of the Vendor, that may develop under normal use of the supplied software in the conditions

prevailing in the country of final destination.

2. This warranty shall remain valid, for 3 Years (36 months).The warranty period shall commence from the date of acceptance of the system by UIDAI as defined in clause 3.1(16) or 90 days from the date of completion of installation and commissioning (where delay is wholly attributable to the purchaser), whichever is earlier.
3. The Purchaser shall promptly notify the Vendor in writing of any claims arising under this warranty.
4. Upon receipt of such notice, the Vendor shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without prejudice to any other rights which the Purchaser may have against the Vendor under the Contract.
5. If the Vendor, having been notified, fails to remedy the defect(s) within a reasonable period, the Purchaser may proceed to take such remedial action as may be necessary, at the Vendor risk and expense and without prejudice to any other rights which the Purchaser may have against the Vendor under the Contract.

3.12.2 Period of Contract

1. This contract for “Supply, Installation, Commissioning and SupportforSoftware” shall be valid for a total period of 3(Three) Years, including support for three years for software.The warranty period shall commence from the date of acceptance of the system by UIDAI as defined in clause 3.1(16) or 90 days from the date of completion of installation and commissioning (where delay is wholly attributable to the purchaser), whichever is earlier.
2. Notwithstanding the provisions of Clauses 21, 22, 23 and 24, the period of Contract shall be valid subject to the satisfaction of the Purchaser.

3.13 Payment schedule

The payment terms are as follows:

3.13.1 Hardware & software:

i)	40% against delivery of all equipments and accessories.
ii)	50% against installation and satisfactory commissioning of all Goods/ Services
iii)	10% against acceptance testing of Goods/ Services. In case the acceptance test of the Goods/Services is delayed or put off beyond 90 days of the receipt of the equipment at Purchaser's sites due to express written instructions of the Purchaser, this amount may be released to the Vendor on his furnishing a necessary Bank Guarantee on stamp paper of requisite value of an equivalent amount from any of the Scheduled Bank.

3.14 Currency of Payment

Payment shall be made in Indian Rupees only.

3.15 Change Orders

1. The Purchaser may at any time, by a written order given to the Vendor pursuant to Clause 3.28, make changes within the general scope of the Contract in any one or more of the following:
 - i) Drawings, designs or specifications, where Goods to be furnished

- under the Contract are to be specifically manufactured for the Purchaser;
 - ii) The method of shipment or packing;
 - iii) The place of delivery; or
 - iv) The Services to be provided by the Vendor.
 - v) Increase/ decrease quantities of goods
2. If any such change causes an increase or decrease in the cost of, or the time required for, the Vendor's performance of any part of the work under the Contract, whether changed or not changed by the order, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended.
 3. UIDAI reserves the right to increase the quantity by placing repeat order (s) within the Contract Period, of upto 25% of the Contract value. UIDAI may also decrease the quantity at its sole discretion. In case of any increase/ decrease in quantities of any item, unit rate for item indicated in the contract will be applicable.
 4. In case applicable rates for the increase/decrease of an item in question are not available in the Contract, then the equivalent rates may be finalized based on mutually agreed rates by both parties. UIDAI may form a change order committee for this purpose.

3.16 Contract Amendments

Subject to Clause 3.18, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

3.17 Assignment

The Vendor shall not assign, in whole or in part, its obligations to perform under the Contract, except with the Purchaser's prior written consent. The permission, if any, of the purchaser has to be taken within 15 days of award of the contract.

3.18 Sub-contracts

No sub-contracting of the work either in full or part is allowed.

3.19 Delays in the Vendor's Performance

1. Delivery of the Goods and performance of Service shall be made by the Vendor in accordance with the Timelines specified by the Purchaser in Clause 4.1.6 of Section IV.
2. An un-excused delay by the Vendor in the performance of its delivery obligations shall render the Vendor liable to any or all of the following sanctions: forfeiture of its performance security, imposition of liquidated damages, and/or termination of the Contract for default.
3. If at any time during performance of the Contract, the Vendor should encounter conditions impeding timely delivery of the goods and performance of services, the Vendor shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Vendor's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Vendor's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract. If the vendor request to delay the delivery of goods and performance of services

is not found acceptable to the purchaser, Clause 19.2 would be invoked.

3.20 Liquidated Damages

1. Subject to Clause 3.22, if the Supplier fails to deliver, install and/or commission any or all of the Goods or to perform the Services within the time period(s) specified in the Contract, the Purchaser shall without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the 0.5 per cent per week (Seven Days) or part thereof of the contract price of the delayed Goods or unperformed Services for each week (Seven Days) or part thereof of delay until actual delivery or performance, up to maximum deduction of 10% of the contract price. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to Clause 3.21.
2. During the period of the contract, if the successful bidder fails to replace, repair or rectify the faulty Software supplied by vendor within time period specified in section V- Clause no.5.5.3 from the date of reporting, Purchaser shall without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to 0.5 per cent per week (Seven Days) or part thereof of the contract price of the Goods or Services for each week (Seven Days) or part thereof of delay until actual rectification, repair or replacement, up to maximum deduction of 10% of the contract price. The same shall be adjusted against the PBG. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to Clause 3.21.

3.21 Termination for Default

1. The Purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Vendor, terminate the Contract in whole or in part:
 - (i) If the Vendor fails to deliver any or all of the Goods/Services within the time period(s) specified in the Contract, or any extension thereof granted by the Purchaser pursuant to Clause 3.19;
 - OR
 - (ii) If the Vendor fails to perform any other obligation(s) under the contract.
2. In the event the Purchaser terminates the Contract in whole or in part, pursuant to Clause 3.21.1 the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods similar to those undelivered, and the Vendor shall be liable to the Purchaser for any excess costs for such similar Goods including the efforts of the Purchaser for such arrangement. However, the Vendor shall continue performance of the Contract to the extent not terminated.
3. If the bidder places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to the Purchaser.

3.22 Force Majeure

1. Notwithstanding the provisions of Clauses 3.19, 3.20, 3.21 the Vendor shall not be liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that, its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
2. For Purposes of this Clause, "Force Majeure" means an event beyond the control of the Vendor and not involving the Vendor and not involving the Vendor's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Purchaser either in its sovereign or contractual capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
3. If a force Majeure situation rises, the Vendor shall promptly notify the Purchaser in writing of such conditions and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Vendor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

3.23 Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving written notice to the Vendor, without compensation to the Vendor, if the Vendor becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

3.24 Termination for Convenience

1. The Purchaser may by written notice sent to the Vendor, terminate the Contract, in whole or in part at any time of its convenience by giving a prior written notice of seven days. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

3.25 Dispute Resolution

1. If during the subsistence of this Contract or thereafter, any dispute between the Parties hereto arising out of or in connection with the validity, interpretation, implementation, material breach or any alleged material breach of any provision of this Contract or regarding any question, including as to whether the termination of this Contract by one Party hereto has been legitimate, the Parties hereto shall endeavor to settle such dispute amicably and/or by Conciliation to be governed by the Arbitration and Conciliation Act, 1996 or as may be agreed to between the Parties. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the Parties hereto, after reasonable attempts; which attempt shall continue for not less than thirty (30) days, gives thirty (30) days' notice to refer the dispute to arbitration to the other Party in writing.
2. The Arbitration proceedings shall be governed by the Arbitration and

Conciliation Act, 1996.

3. The Arbitration proceedings shall be held in New Delhi, India.
4. The Arbitration proceeding shall be governed by the substantive laws of India.
5. The proceedings of Arbitration shall be in English language.
6. Except as otherwise provided elsewhere in the contract if any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, at any time in connection with construction, meaning, operation, effect, interpretation or out of the contract or breach thereof the same shall be decided by an Arbitral Tribunal consisting of three Arbitrators. Each party shall appoint one Arbitrator and the Arbitrators so appointed shall appoint the third Arbitrator who will act as Presiding Arbitrator.
7. In case, a party fails to appoint an arbitrator within 30 days from the receipt of the request to do so by the other party or the two Arbitrators so appointed fail to agree on the appointment of third Arbitrator within 30 days from the date of their appointment upon request of a party, the Chief Justice of India or any person or institution designated by him (in case of International commercial Arbitration) shall appoint the Arbitrators/Presiding Arbitrator. In case of domestic contracts, the Chief Justice of the High Court or any person or institution designated by him within whose jurisdiction the subject purchase order/contract has been placed / made, shall appoint the arbitrator/Presiding Arbitrator upon request of one of the parties.
8. If any of the Arbitrators so appointed dies, resigns, incapacitated or withdraws for any reason from the proceedings, it shall be lawful for the concerned party/ arbitrator to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left if both parties consent for the same; otherwise, he shall precede de novo.
9. It is a Scope of the contract that the party invoking arbitration shall specify all disputes to be referred to arbitration at the time of invocation of arbitration and not thereafter.
10. It is also a Scope of the contract that neither party to the contract shall be entitled for any interest on the amount of the award.
11. The Arbitral Tribunal shall give reasoned award and the same shall be final, conclusive and binding on the parties.
12. The fees of the arbitrator shall be borne by the parties nominating them and the fee of the Presiding Arbitrator, costs and other expenses incidental to the arbitration proceedings shall be borne equally by the parties.
13. Subject to as aforesaid the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment in lieu thereof shall apply to the arbitration proceedings under this clause.
14. Continuance of the Contract: Notwithstanding the fact that settlement of dispute(s) (if any) under arbitration may be pending, the parties hereto shall continue to be governed by and perform the work in accordance with the provisions under this Contract.

3.26 Governing Language

The Contract shall be written in the English language. Subject to Clause 3.27, that language version of the Contract shall govern its interpretation. All correspondence

and other documents pertaining to the Contract which are exchanged by the parties shall be written in that same language.

3.27 Applicable Law

The Contract shall be governed by and construed in accordance with the laws of India.

3.28 Notices

1. Any notice by one party to the other pursuant to the Contract shall be sent in writing or by email and confirmed in writing to the address specified for that purpose in the contract.
2. A notice shall be effective when delivered or on the notice's effective date and time, whichever is later.

3.29 Deleted

3.30 Deleted

3.31 Firm price

Refer clause no. 2.9 of Section-II

3.32 Delivery

The Software are to be supplied as per schedule specified at Section-IV clause 4.1.6.

3.33 Passing of Property

Ownership shall not pass to the Purchaser unless and until the Goods have been delivered, installed and accepted, in accordance with the conditions of the contract to the entire satisfaction of the Purchaser.

3.34 Prices

Prices to be firm: The prices quoted for the Goods and services shall be firm throughout the currency of contract and shall not be subject to any variation.

3.35 Deductions

Payments, as envisaged in Clause 13, shall be subject to deductions of any amount, for which the Vendor is liable under the agreement against this Bid.

3.36 Taxes and Duties

1. The Vendor shall be entirely responsible for all taxes, duties, octroi, license fees, demurragecharges etc., incurred until delivery of the contracted Goods to the Purchaser. If there is any reduction/increase in duties and taxes due to any reason whatsoever, after Notification of Award, the same shall be passed on to the Purchaser.
2. The Vendor must also note that the octroi exemption certificate, if any, applicable to the Central Government purchases, may be issued by the Purchaser on receipt of the request from the Vendor. The Purchaser will, however, not be responsible if the octroi exemption certificate issued by it is not honored by the concerned local/municipal authorities. In that case, the

Vendor shall have to bear octroi duties, demurrage charges etc.

3.37 Insurance

The Goods supplied under the Contract shall be fully insured by the Vendor against loss or damage incidental to manufacture or acquisition, transportation, storage, delivery, installation and commissioning.

3.38 "No Claim" Certificate

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

3.39 Continuing Support

The Vendor shall provide adequate and appropriate support and participation, on a continuing basis, in tuning all vendor supplied software to meet the requirements of the applications.

3.40 Conflict of Interest

The bidder should not have any Conflict of Interest that may affect selection of bidder during section stage. The bidder shall disclose to the Purchaser in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for the bidder or the bidder's Team) in the course of performing the Services as soon as practical after it becomes aware of that conflict.

3.41 Delivery and Risk Purchase

1. The time for and the date of delivery of the IT Software as specified in Section V of this RFP shall be deemed to be the essence of the contract and delivery must be completed as per delivery schedule as per schedule specified at Section-IV clause 4.1.6.
2. The bidder shall deliver the IT Software at the place specified as per the Acceptance of Bid. No Stores shall be deliverable at the Purchaser's Consignee's premises on Sunday and Public Holidays without written permission of the Purchaser.
3. The Purchaser reserves the right to cancel the contract or a portion thereof and purchase the IT Software as specified in Section V of this RFP at the risk and cost of Contractor after giving due notice to the bidder even before completion of the contractual delivery schedule if it becomes apparent that bidder will not be able to fulfill the contractual obligations. In case the bidder fails to complete the supply of stores or a portion thereof within the contractual delivery schedule, the Purchaser has the right to purchase the IT Software or a portion thereof at the risk and cost of bidder.
4. In the event of cancellation of the contract by Purchaser at the risk and cost of the bidder, the bidder shall be liable for any loss which the Purchaser may sustain on account of risk purchase But the bidder shall not be entitled to any gain on such purchase made against such default. The manner and method of such purchase shall be at the entire discretion of the Purchaser, whose decision will be final.

5. The Purchaser reserves the right to suspend the business with such bidder who defaults in adhering to the contractual delivery schedule, quality of stores etc as per the contract after giving show cause notice to the bidder and considering his reply if any.

3.42 Fall Clause

The following fall clause will form part of the contract placed on successful Bidder:–

- a) The price charged for the supply of Software supplied under the contract by the selected bidder shall in no event exceed the lowest prices at which the Seller sells or offer to sell of identical description to any persons/ Organization including the purchaser or any department of the Central government or any Department of state government or Any statutory undertaking the central or state government as the case may be during the period till performance of all supply Orders placed during the currency of the rate contract is completed.
- b) If at any time, during the said period the OEM reduces the sale price, sells or offer to sell Software to any person/organization including any Dept of central Govt. or any Department of the State Government or any Statutory undertaking of the Central or state Government as the case may be at a price lower than the price chargeable under the contract, the shall forthwith notify such reduction or sale or offer of sale to the Director general of Supplies & Disposals and the price payable under the contract for the stores of such reduction of sale or offer of the sale shall stand correspondingly reduced.

3.43 Limitation of Liability

- a) Except in case of gross negligence or willful misconduct on the part of the Vendor or on the part of any person or company acting on behalf of the Vendor in executing the work or in carrying out the services, the Vendor, with respect to damage caused by the Vendor to property and/or assets of the Purchaser or of any of Purchaser's vendors, shall not be liable to Purchaser:
 - a) for any indirect or consequential loss or damage; and
 - b) for any direct loss or damage that exceeds
 - (i) the Contract Value, or
 - (ii) the proceeds the Vendor may be entitled to receive from any insurance maintained by the Vendor to cover such a liability, whichever of (i) or (ii) is higher.
- b) This limitation of liability shall not affect the Vendor's liability, if any, for damage to Third Parties caused by the Vendor/ Vendor's Team or any person or firm/company acting on behalf of the Vendor in executing the work or in carrying out the Services.