



## **Request for Proposal**

Tender Ref. No: MCI/DMMP-II/2017

Dated: 20.07.2017

**Implementation of IP Based CCTV  
Solution at Medical Colleges**

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*Volume III- Non Disclosure Agreement and Service Level Agreement*



### **Proprietary Notice**

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## 1 Non-disclosure Agreement

THIS AGREEMENT is made on this the \_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_, India.

BETWEEN

The Medical Council of India, represented by the Secretary having its office at MCI Building, Dwarka, New Delhi who is duly authorized by MCI to execute this agreement, of the FIRST PART;

AND

<name of the company>, a company registered under the Indian Companies Act, 1956 having its registered office at <address> and place of business at <address> (hereinafter referred to as "System Integrator/SI", which expression, unless excluded or the context otherwise required hereof includes its successors, administrators and assigns) represented through its <Name & designation of authorized person>, who is duly authorized to sign, execute vide a board resolution dated <date> passed by its board of directors being the Party of the SECOND PART.

MCI and System Integrator shall independently be called as "Party" and jointly as "Parties".

WHEREAS:

1. Medical Council of India (MCI) intends to implement an IP Based CCTV Solution at Medical Colleges. Objectives of MCI's – CCTV Project:
  - a. Monitoring availability of faculty and student for the classes as per schedule
  - b. Ensure that the assigned faculty is taking the classes
  - c. Monitoring effectiveness of teaching tools used by faculties while conducting the classes – Theory and lab sessions
  - d. Monitoring mal practices by students/ faculties during exams
  - e. Making use of video evidences in dispute/ grievance resolutions
  - f. Monitor proper maintenance of infrastructure in the class rooms & labs and raise timely alarms in case of any suspicious activities
  - g. Video analytics as a tool for performance improvement of the colleges
  - h. Live access to any class room across the country at any given point of time – Better control over colleges thereby improving the quality of education



2. Medical Council of India (MCI) and System Integrator have entered into a Master Services Agreement <dated> (the “MSA”) as well as a Service Level Agreement <dated> (the “SLA”) in furtherance of the Project.
3. Whereas in pursuing the Project (the “Business Purpose”), a Party (“Disclosing Party) recognizes that they will disclose certain Confidential Information (as defined hereinafter) to the other Party (“Receiving Party”).
4. Whereas such Confidential Information (as defined hereinafter) belongs to Receiving Party as the case may be and is being transferred to the Disclosing Party to be used only for the Business Purpose and hence there is a need to protect such information from unauthorized use and disclosure.

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

### **1.1 Definitions**

Terms and expressions used in this Agreement (including the Introduction) shall have the same meanings set out in **Article 1** of MSA.

### **1.2 Interpretation**

In this Agreement, unless otherwise specified:

1. References to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
2. Use of any gender includes the other genders;
3. References to a ‘company’ shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
4. References to a ‘person’ shall be construed to include any individual, partnerships, firms, companies, public sector units, corporations, joint ventures, trusts, associations, organizations, executors, administrators, successors, agents, substitutes and any permitted assignees or other entities (whether or not having a separate legal entity). A reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.
5. A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;



6. Any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
7. References to a 'business day' shall be construed as a reference to a day on which MCI office is generally open for business;
8. References to times are to Indian Standard Time;
9. A reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
10. All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
11. System Integrator (SI) or Implementation Agency (IA) has been used for the same entity i.e. bidder selected for the project.
12. The words importing singular shall include plural and vice versa;
13. Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Article or Schedule. The words "include" and "including" shall not be construed as terms of limitation;
14. The words "in 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;
15. The headings and use of bold type in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement;
16. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;
17. Any agreement, consent, approval, authorization, notice, communication, Information or report required under or pursuant to this Agreement from or by any Party or the independent engineer and/or a statutory auditor and/or any other authority shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the independent engineer and/or statutory auditor or any other authority, as the case may be, in this behalf and not otherwise;



18. Unless otherwise stated, any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include either such days or dates;

19. A reference to knowledge of a person includes Information that a reasonable person in the circumstances of that person would have known by reasonable inquiry;

### **1.3 Measurements and Arithmetic Conventions**

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

### **1.4 Ambiguities within Agreement**

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

1. Between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
2. Between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures; and
3. Between any value written in numerals and that in words, the value in words shall prevail.
4. Between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

### **1.5 Priority of agreements**

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

### **1.6 Term**

This Agreement will remain in effect during the entire project period, however from the date of the last disclosure of Confidential Information, at which time it will terminate, unless extended by the disclosing party in writing.





### **1.7 Scope of the agreement**

1. This Agreement shall apply to all confidential and proprietary information disclosed by Disclosing Party to the Receiving Party and other information which the disclosing party identifies in writing or otherwise as confidential before or within (30) thirty days after disclosure to the Receiving Party (“Confidential Information”). Such Confidential Information consists of certain specifications, documents, software, prototypes and/or technical information, and all copies and derivatives containing such Information that may be disclosed to the Disclosing Party for and during the Business Purpose, which a party considers proprietary or confidential.
2. Such Confidential Information may be in any form or medium, tangible or intangible, and may be communicated/disclosed in writing, orally, or through visual observation or by any other means to the Receiving Party.

### **1.8 Obligations of the receiving party**

The Receiving Party shall:

1. Use the Confidential Information only for the Business Purpose and shall hold the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, taking into account the nature of the Confidential Information, and
2. Grant access to Confidential Information only to its employees on a ‘need to know basis’ and restrict such access as and when not necessary to carry out the Business Purpose.
3. Cause its employees to comply with the provisions of this Agreement;
4. Reproduce Confidential Information only to the extent essential to fulfilling the Business Purpose, and
5. Prevent disclosure of Confidential Information to third parties;
6. Disclose the Confidential Information to its consultants/contractors on a need to know basis; provided that by doing so, the Receiving Party agrees to bind such consultants/ contractors to terms at least as restrictive as those stated herein. The Receiving Party upon making a disclosure under this Clause shall:
7. Advise the consultants/contractors of the confidentiality obligations imposed on them by this Clause.



8. Upon the Disclosing Party's request, the Receiving Party shall either return to the disclosing party all Confidential Information or shall certify to the disclosing party that all media containing Confidential Information have been destroyed.
9. Provided, however, that an archival copy of the Confidential Information may be retained in the files of the Receiving Party's counsel, solely for the purpose of proving the contents of the Confidential Information.
10. Not to remove any of the other Party's Confidential Information from the premises of the Disclosing Party without prior written approval.
11. Exercise extreme care in protecting the confidentiality of any Confidential Information which is removed, only with the Disclosing Party's prior written approval, from the Disclosing Party's premises. Each Party agrees to comply with any and all terms and conditions the disclosing party may impose upon any such approved removal, such as conditions that the removed Confidential Information and all copies must be returned by a date communicated by MCI, and that no copies are to be made off of the premises.
12. Upon the Disclosing Party's request, the Receiving Party shall promptly return to the Disclosing Party all tangible items containing or consisting of the disclosing party's Confidential Information all copies thereof.

#### **1.9 Exceptions to confidential information**

The foregoing restrictions on each party's use or disclosure of Confidential Information shall not apply to the Confidential Information that the Receiving Party can demonstrate that such Confidential Information:

1. Was independently developed by or for the Receiving Party without reference to the Information, or was received without restrictions; or
2. Has become generally available to the public without breach of confidentiality obligations of the Receiving Party; or
3. Was in the Receiving Party's possession without restriction or was known by the Receiving Party without restriction at the time of disclosure; or
4. Is the subject of a subpoena or other legal or administrative demand for disclosure; provided, however, that the Receiving Party has given the disclosing party prompt notice of such demand for disclosure and the Receiving Party reasonably cooperates with the disclosing party's efforts to secure an appropriate protective order; or



5. Is disclosed with the prior consent of the disclosing party; or
6. Was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing party and was not previously acquired by the Receiving Party from the disclosing party under an obligation of confidence; or
7. The Receiving Party obtains or has available from a source other than the disclosing party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the disclosing party.

#### **1.10 Ownership of the confidential information**

1. Each Party recognizes and agrees that all of the disclosing Party's Confidential Information is owned solely by the Disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain.
2. By disclosing the Confidential Information or executing this Agreement, Disclosing Party does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right. The Disclosing Party disclaims all warranties regarding the information, including all warranties with respect to infringement of intellectual property rights and all warranties as to the accuracy or utility of such information.
3. Access to Confidential Information hereunder shall not preclude an individual who has seen such Confidential Information for the purposes of this Agreement from working on future projects for the Disclosing Party which relate to similar subject matters, provided that such individual does not make reference to the Confidential Information and does not copy the substance of the Confidential Information during the Term. Furthermore, nothing contained herein shall be construed as imposing any restriction on the Receiving Party's disclosure or use of any general learning, skills or know-how developed by the Receiving Party's personnel under this Agreement.
4. Execution of this Agreement and the disclosure of Confidential Information pursuant to this Agreement do not constitute or imply any commitment, promise, or inducement by either Party to make any purchase or sale, or to enter into any additional agreement of any kind.



### **1.11 Dispute resolution**

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

### **1.12 Variation**

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

### **1.13 Waiver**

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

1. Shall be in writing
2. Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
3. Shall be executed by a duly authorized representative of the Party; and
4. Shall not affect the validity or enforceability of this Agreement in any manner.

### **1.14 Exclusion of implied warranties**

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

### **1.15 Entire agreement**

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

### **1.16 Severability**

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be



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

#### **1.17 No partnership**

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

#### **1.18 Third parties**

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

#### **1.19 Successors and assigns**

The Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

#### **1.20 Notices**

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

#### **If to Medical Council of India:**

Attn:

Tel:

Fax:

Email:



MCI CCTV: Vol III - NDA and SLA

Contact:

With a copy to:

**If to the System Integrator - company:**

Attn:

Phone:

Fax:

Email:

### **1.21 Language**

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

### **1.22 Counterparts**

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

### **1.23 Mitigation**

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

### **1.24 Removal of difficulties**

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

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



**For and on behalf of MCI**

<<Name>>

<<Designation>>

Medical Council of India

**Date:**

**Place: New Delhi**

**Witnessed by:**

- 1.
- 2.

**For and on behalf of << SI >>**

An authorized signatory duly nominated pursuant to Board Resolution No.

<<Name>>

<<Designation>>

<<Company Name>>

**Date:**

**Place: New Delhi**

**Witnessed by:**

- 1.
- 2.

**2 Service Level Agreement**

THIS AGREEMENT is made on this the \_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_, India.

BETWEEN

The Medical Council of India, represented by the Secretary having its office at MCI Building, Dwarka, New Delhi who is duly authorized by MCI to execute this agreement, of the FIRST PART;

AND

<Name of the company>, a company registered under the Indian Companies Act, 1956 having its registered office at <address> and place of business at <address> (hereinafter referred to as "System Integrator/SI", which expression, unless excluded or the context otherwise required hereof includes its successors, administrators and assigns) represented through its <Name & designation of authorized person>, who is duly authorized to sign, execute vide a board resolution dated <<date>> passed by its board of directors being the Party of the SECOND PART.

MCI and System Integrator shall independently be called as "Party" and jointly as "Parties".

WHEREAS:



1. Medical Council of India (MCI) intends to implement IP Based CCTV Solution at Medical Colleges. Objectives of MCI's – CCTV Project:
  - a. Monitoring availability of faculty and student for the classes as per schedule
  - b. Ensure that the assigned faculty is taking the classes
  - c. Monitoring effectiveness of teaching tools used by faculties while conducting the classes – Theory and lab sessions
  - d. Monitoring mal practices by students/ faculties during exams
  - e. Making use of video evidences in dispute/ grievance resolutions
  - f. Monitor proper maintenance of infrastructure in the class rooms & labs and raise timely alarms in case of any suspicious activities
  - g. Video analytics as a tool for performance improvement of the colleges
  - h. Live access to any class room across the country at any given point of time – Better control over colleges thereby improving the quality of education
2. Medical Council of India (MCI) and System Integrator have entered into a Master Services Agreement <dated> (the “MSA”)

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

## 2.2 Definitions

Terms and expressions used in this Agreement (including the Introduction) shall have the same meanings set out in **Article 1** of MSA.

## 2.3 Interpretation

In this Agreement, unless otherwise specified:

1. References to Clauses, Sub-Clauses, Paragraphs, Schedules and Annexures are to clauses, sub-clauses, paragraphs, schedules and annexures to this Agreement;
2. Use of any gender includes the other genders;
3. References to a ‘company’ shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;





4. References to a 'person' shall be construed to include any individual, partnerships, firms, companies, public sector units, corporations, joint ventures, trusts, associations, organizations, executors, administrators, successors, agents, substitutes and any permitted assignees or other entities (whether or not having a separate legal entity). A reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.
5. A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
6. Any reference to a 'day' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
7. References to a 'business day' shall be construed as a reference to a day on which MCI office is generally open for business;
8. References to times are to Indian Standard Time;
9. A reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time; and
10. All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
11. System Integrator (SI) or Implementation Agency (IA) has been used for the same entity i.e. bidder selected for the project.
12. The words importing singular shall include plural and vice versa;
13. Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Article or Schedule. The words "include" and "including" shall not be construed as terms of limitation;
14. The words "in 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;
15. The headings and use of bold type in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement;



16. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;
17. Any agreement, consent, approval, authorization, notice, communication, Information or report required under or pursuant to this Agreement from or by any Party or the independent engineer and/or a statutory auditor and/or any other authority shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the independent engineer and/or statutory auditor or any other authority, as the case may be, in this behalf and not otherwise;
18. Unless otherwise stated, any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include either such days or dates;
19. A reference to knowledge of a person includes Information that a reasonable person in the circumstances of that person would have known by reasonable inquiry;

#### **2.4 Measurements and Arithmetic Conventions**

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down except in money calculations where such amounts shall be rounded off to the nearest INR.

#### **2.5 Ambiguities within Agreement**

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

1. Between two Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in a general Clause;
2. Between the provisions of this Agreement and the Schedules/Annexures, the Agreement shall prevail, save and except as expressly provided otherwise in the Agreement or the Schedules/Annexures; and
3. Between any value written in numerals and that in words, the value in words shall prevail.
4. Between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.



## 2.6 Priority of agreements

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

## 2.7 Structure

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

## 2.8 Scope of SLA

This Agreement has been executed in relation to the scope of the Project between the Parties. The detailed Service Levels have been set out in this volume of RFP.

This Agreement shall ensure the following:

1. Establishment of responsibilities and accountability of the SI;
2. Definition of each Party's expectations in terms of services;
3. Establishment of the relevant performance measurement criteria;
4. Definition of the availability expectations;
5. Definition of the escalation process;
6. Definition of resolution time for various level of incidents/queries/errors/bugs (as defined in 'Helpdesk resolution time') to this volume of RFP
7. Establishment of trouble reporting single point of contact; and
8. Establishment of the framework for SLA change management

## 2.9 Agreement Owners

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

	<b>Title</b>	<b>Telephone</b>	<b>Email</b>
MCI	Authorized		



	<b>Title</b>	<b>Telephone</b>	<b>Email</b>
	Representative, Medical Council of India		
System Integrator			

### 2.10 Contact list

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

<b>Name</b>	<b>Title</b>	<b>Location</b>	<b>Telephone</b>
MCI	Authorized Representative, Medical Council of India		
System Integrator			

### 2.11 Principal contacts

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

MCP principal contact: \_\_\_\_\_

System Integrator principal contact: \_\_\_\_\_

### 2.12 Commencement and duration of this agreement

This Agreement shall come into effect on \_\_\_\_\_ 20\_\_ (hereinafter the ‘Effective Date’) and shall be valid for a period of three years post project Go Live.

### 2.13 Terms of payment and penalties

1. In consideration of the Services and subject to the provisions of the MSA and this Agreement, the MCI shall pay the amounts in accordance with the Terms of Payment Schedule of the MSA.
2. For the avoidance of doubt, it is expressly clarified that the MCI and/or its nominated agencies may also calculate a financial sum and debit the same against the terms of payment as defined in the Terms of Payment Schedule of the MSA as a result of the failure of the System Integrator to meet the Service Levels set out in this Agreement, such sum being determined in accordance with the terms of this Agreement.



## 2.14 Updating of this agreement

The Parties anticipate that this Agreement shall need to be re-evaluated and if required modified to account for changes in work environment and technology from time to time. Hence they hereby agree to review the terms of the Agreement once on an annual basis or as and when required. The Parties hereby agree upon the following procedure for revising this Agreement:

1. Any and all changes to this Agreement will be initiated in writing between the MCI and the System Integrator. The service levels in this Agreement shall be considered to be standard for the MCI and shall only be modified if both Parties agree to an appended set of terms and conditions;
2. Only the MCI or the System Integrator may initiate a review of this Agreement;
3. In case the representation of review is admitted, then a notice of the proposed revision (“SLA Change Request”) shall be served to the MCI or the System Integrator as the case may be;
4. The SLA Change request would be deemed to be denied in case it is not approved within a period of 30 (thirty) days. MCI shall update and republish the agreement and circulate to all parties within “15” days.
5. In the event that MCI/System Integrator approves of the suggested change(s), then the change(s) shall be communicated to all the Parties and the SLA Change request would be appended to the Agreement;
6. The MCI shall update and republish the text of Agreement annually to include all the SLA Change Requests that have been appended to the Agreement during the course of the year. Such republished Agreement shall be circulated to all the Parties within \_\_\_\_ days of such change taking place.

## 2.15 Document history

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

Version	Date	Description of changes
<_____>	<_____>	<_____>

## 2.16 Scope of services

1. The System Integrator shall ensure that Services are available at various locations as per the requirements of the project;



2. The System Integrator shall provide support services through the “Centralized Helpdesk” as detailed in Volume I of RFP.
3. The System Integrator guarantees that he shall achieve the Service Levels set out for the Project;
4. The System Integrator shall be liable to penalties in case of failure to comply with the set out Service Levels. However any delay not attributable to the System Integrator shall not be taken into account while computing adherence to the Service Levels.

### **2.17 Performance review**

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

1. Service performance;
2. Review of specific problems/exceptions and priorities; and
3. Review of the operation of this Agreement and determine corrective action to overcome deficiencies.

### **2.18 Indemnities**

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

### **2.19 Dispute resolution**

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

### **2.20 Miscellaneous**

#### **1. Assignment and charges**

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



## **2. Governing law and jurisdiction**

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

## **3. Waiver of sovereign immunity**

The Parties unconditionally and irrevocably:

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

## **4. Variation**

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

## **5. Waiver**

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

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



d. Shall not affect the validity or enforceability of this Agreement in any manner.

#### **6. Exclusion of implied warranties**

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

#### **7. Survival**

Termination or expiration of the Term shall:

- a. Not relieve the System Integrator or the MCI, as the case may be, of any obligations hereunder which expressly or by implication survive hereof; and
- b. Except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or expiration or arising out of such termination or expiration.

All obligations surviving termination or expiration of the Term shall only survive for a period of 1 year following the date of such termination or expiration of the Term.

#### **8. Entire Agreement**

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

#### **9. Severability**

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





agree upon any such provisions shall not be subject to the dispute resolution procedure set forth under this Agreement or otherwise.

#### **10. No partnership**

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

#### **11. Third parties**

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

#### **12. Notices**

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

##### **If to Medical Council of India:**

Attn.:

Tel:

Fax:

Email:

Contact:

With a copy to:

##### **If to the System Integrator:**

Attn.:

Phone:

Fax No.:



### 13. Language

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

### 14. Counterparts

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

### 15. Mitigation

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

### 16. Removal of Difficulties

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

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

**For and on behalf of MCI**

<<Name>>

<<Designation>>

Medical Council of India

**Date:**

**For and on behalf of << SI >>**

An authorized signatory duly nominated pursuant to Board Resolution No.

<<Name>>

<<Designation>>

<<Company Name>>

**Date:**



**Place: New Delhi**

**Witnessed by:**

- 1.
- 2.

**Place: New Delhi**

**Witnessed by:**

- 1.
- 2.

### 3 Service Levels

#### 3.1 Purpose of this document

The purpose of this section is to clearly define the levels of service to be provided by SI to MCI for the duration of this project.

#### 3.2 Description of Services Provided

SI shall provide service as defined in Volume I of this RFP.

#### 3.3 Duration of SLA

1. The service level enforcement would begin post Go-Live
2. This SLA may be reviewed and revised according to the procedures detailed in the Service Level Agreement of this RFP.

#### 3.4 SLA Specific Definitions

**Prime Business Hours (PBH)** - PBH refers to the prime business period, which shall be from 9:30 hrs till 18:00 hrs on Monday to Friday (excluding national public holidays, declared holidays, all Saturdays and Sundays).

**Extended SLA Hours (ESH)** - ESH refers to the non-business period, which shall be:

1. From 18:00 hrs till 9:30 hrs on Monday to Friday,
2. From 00:00 hrs to 23:59 hrs on Saturday, Sunday, National public holidays

**Outages** are the instance where users experience no response from the Application. Outages can be:

(1) Unplanned, (2) Planned outage/ Scheduled Downtime

1. **Unplanned outage** is defined as an event caused without prior notice where users experience no response from an Application for whatsoever is the reason (within the scope of services of the SI).
2. **Planned outage/Scheduled Downtime:**



- a. Pre-scheduled preventive maintenance and health checks (Scheduled outage).
- b. SI must notify MCI via email of the upcoming maintenance at least Three (3) business days prior to Scheduled Downtime.
- c. It shall not be scheduled during prime business hours.
- d. Any planned / scheduled downtime shall not be more than 12 hours else it shall be considered unplanned outage and penalized accordingly.
- e. The planned downtime would not be added to the SLA downtime unless it runs into prime business hours of the following day.
- f. Overall Planned downtime shall not be more than 24 hours in a quarter.
- g. The downtime for scheduled maintenance (patch application, upgrades – OS, Database, etc.) would need to be mutually agreed between MCI and the SI. To reduce this time, various maintenance activities can be clubbed together with proper planning.

### **Recording of outage period**

The recording of outages shall commence at the time of:

1. Registering the call with SI
2. Auto alerts triggered through monitoring tools- in case of connectivity and other infrastructure for any outage situation for the application / hardware.

Outages shall end when the problem is rectified and the application/ service is available to the user.

**Contact for support /complaint** will be by email or telephone. A Call will be logged by the SI/user in the System and an email/written response shall be provided to the system user about the resolution of the problem.

**Uptime** means, the aggregate number of hours in any specified time period during which application / hardware, is actually available for use.

Uptime Calculation for the month:

{[(Uptime Hours + Scheduled Downtime) / Total No. of Hours in the time period] x 100}

**Incident** refers to any event / abnormalities in the functioning of the application / hardware that may lead to disruption in normal operations of the MCI CCTV.



**Helpdesk Support** shall mean the IT Help desk which shall handle Fault reporting, Trouble Ticketing and related enquiries during this Project.

**Helpdesk Resolution Time** shall mean the time taken (after the incident has been reported at the helpdesk), in resolving (diagnosing, troubleshooting and fixing) or escalating (to the second level or to respective OEMs, getting the confirmatory details about the same from the OEM and conveying the same to the end user), the services related troubles during the first level escalation. The resolution time shall vary based on the severity of the incident reported at the help desk.

### 3.5 Service levels

This section is agreed to by MCI and SI as the key SI performance indicator for this engagement. It reflects the measurements to be used to track and report level of service on a regular basis. The targets shown in the following sub-sections are for the period of contract or its revision whichever is later.

#### 3.5.1 Measurement and Monitoring

1. The SLA parameters shall be monitored on a quarterly basis as per the individual SLA parameter requirements. However, if the performance of the system/services is degraded significantly at any given point in time during the contract and if the immediate measures are not implemented and issues are not rectified to the complete satisfaction of MCI or an agency designated by them, then MCI will have the right to take appropriate disciplinary actions including termination of the contract.
2. Overall Availability and Performance Measurements will be on a quarterly basis for the purpose of Service Level reporting. An “Availability and Performance Report” will be provided by the Service Provide on quarterly basis in the MCI suggested format and a review shall be conducted based on this report. An Availability and Performance Report shall be provided to the MCI at the end of every quarter containing the summary of all incidents reported and associated SI performance measurement for that period. The Availability and Performance Report will be deemed to be accepted by the MCI upon review and signoff by both System Integrator and MCI or MCI designated Agency.
3. SLA Monitoring Tool as specified in this RFP shall play a critical role in monitoring the SLA compliance and hence will have to be customized accordingly. The 3<sup>rd</sup> party testing and audit of the system shall put sufficient emphasis on ensuring the capability of tool to capture SLA compliance correctly and as specified in this RFP. The selected SI must deploy the tool and develop additional scripts (if required) for capturing the required data for SLA report generation in automated way. This tool should generate the SLA Monitoring report in the end of every



quarter which is to be shared with MCI on a quarterly basis. The tool should also be capable of generating SLA reports for each month. MCI may also ask for monthly SLA reports from SI for monitoring purpose.

4. MCI or its nominated agency shall have full access to the tools / solutions deployed for SLA measurement and monitoring to extract data (raw, intermediate as well as reports) as required during the project. MCI or its nominated agency will also audit the tool and the scripts on a regular basis.
5. The measurement methodology/ criteria/ logic will be reviewed by MCI.
6. Wherever, the measurement is through a client setup at DC, remote access to the client should be available at MCI. In addition, remote access should be provided at MCI for all SLA tool data and logs.
7. In case of default on any of the service level metric, the SI shall submit performance improvement plan along with the root cause analysis for MCI's approval.
8. For SLA related payments, the SLA measurement will be measured and computed on a quarterly basis.

### 3.5.2 Team Mobilization

This Service Level Requirement shall come into effect from the date of issue of work order/ LoI or signing of contract, whichever is earlier.

Definition and Description	Team mobilization and submission of final project plan
Service Level Requirement	<p>It is expected that the SI shall mobilize the team for commencement of work within 20 calendar days from the date of the signing of MSA or placement of the order, whichever is earlier.</p> <ol style="list-style-type: none"> <li>a. If any delay occurs, MCI will have the right to decide if the reason for delay was beyond the control of the SI and in such a case penalty will not be levied for that period.</li> <li>b. If the delay in team mobilization exceeds 20 calendar days then MCI reserves the right to terminate the agreement.</li> </ol>
Measurement of Service Level Parameter	To be measured in Number of days of delay from the date of signing of MSA or placement of the order/LoI, whichever is earlier.



Penalty for non-achievement of SLA Requirement	The Penalty per day is INR 50,000/- (Rupees fifty thousand).
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### 3.5.3 Security & Incident Management SLA

Definition and Description	<p>Security being one of the most important aspects, would be governed by stringent standards. All security incidents leading to disruption in network availability would be penalized heavily. Security incidents could consist of any of the following :</p> <p><b>Malware Attack:</b> This shall include Malicious code infection of any of the servers in use for MCI-CCTV</p> <p><b>Intrusion</b> Successful unauthorized access to MCI information system, resulting in loss of confidentiality/integrity/availability of data. The SI shall be responsible for monitoring, detecting and resolving all security related intrusions on the network using an Intrusion Prevention device.</p>
Service Level Requirement	<p>a. Any Denial of service attack shall not lead to complete service non availability for more than 12 hours.</p> <p>b. Desired service level shall not allow even a single web defacement, data theft and Intrusion. Each occurrence of these three types of security violation shall lead to appropriate penalties as mentioned below.</p>
Measurement of Service Level Parameter	<p>The network shall be monitored for:</p> <p><b>Malware Attack</b> Any malware infection and passing of malicious code shall be monitored at the gateway level or user complaints of malware infection shall be logged at the help desk system and collated every quarterly. Logs will be monitored every quarterly.</p> <p>a. All clients shall be configured to receive the latest pattern file from the central anti-malware server.</p> <p>b. The SI shall configure the AV system to perform scheduled scans every day/week at a time decided mutually with MCI.</p> <p><b>Denial of Service Attack</b> Non availability of any services shall be analysed and forensic evidence shall be examined to check whether it was due to external DoS attack.</p>



	<p><b>Security</b> The SI will be responsible to install and maintain security components at DC and DR and MCI as per the requirements of the RFP.</p> <p><b>Intrusion</b> Compromise of any kind of data hosted by MCI. <i>Note: Forensic evidence shall be analysed for all incidents.</i></p>																			
<p>Penalty for non-achievement of SLA Requirement</p>	<p>If the System Integrator is not able to meet the above defined service level requirement, then any deviation from the same would attract a penalty as per the following –</p> <table border="1" data-bbox="459 741 1388 1505"> <thead> <tr> <th colspan="4" data-bbox="459 741 1388 801">Security Incident</th> </tr> </thead> <tbody> <tr> <td data-bbox="459 801 959 958">                     Security Incident (Malware Attack/ Denial of Service Attack/ Data Theft/ Loss of data/ Intrusion or Defacement)                 </td> <td colspan="3" data-bbox="959 801 1388 958">                     1 % of quarterly payment                 </td> </tr> <tr> <td data-bbox="459 1014 799 1361">                     Uptime of Security Equipment (100% uptime for MCI office level security components - beyond planned downtime) (quarterly average)                 </td> <td data-bbox="799 1014 959 1361">                     &gt;= 98 % to &lt; 99.5%                 </td> <td data-bbox="959 1014 1182 1361">                     &gt;= 95% to &lt; 98%                 </td> <td data-bbox="1182 1014 1388 1361">                     &lt; 95%                 </td> </tr> <tr> <td data-bbox="459 1361 799 1505">                     Penalty                 </td> <td data-bbox="799 1361 959 1505">                     1% of quarterly payment                 </td> <td data-bbox="959 1361 1182 1505">                     2% of quarterly payment                 </td> <td data-bbox="1182 1361 1388 1505">                     4% of quarterly payment                 </td> </tr> </tbody> </table>				Security Incident				Security Incident (Malware Attack/ Denial of Service Attack/ Data Theft/ Loss of data/ Intrusion or Defacement)	1 % of quarterly payment			Uptime of Security Equipment (100% uptime for MCI office level security components - beyond planned downtime) (quarterly average)	>= 98 % to < 99.5%	>= 95% to < 98%	< 95%	Penalty	1% of quarterly payment	2% of quarterly payment	4% of quarterly payment
Security Incident																				
Security Incident (Malware Attack/ Denial of Service Attack/ Data Theft/ Loss of data/ Intrusion or Defacement)	1 % of quarterly payment																			
Uptime of Security Equipment (100% uptime for MCI office level security components - beyond planned downtime) (quarterly average)	>= 98 % to < 99.5%	>= 95% to < 98%	< 95%																	
Penalty	1% of quarterly payment	2% of quarterly payment	4% of quarterly payment																	

### 3.5.4 Backup and Archival Management

<p>Definition and Description</p>	<p>The System Integrator shall take backup as per the backup and archival policy (to be finalised in discussion with MCI).</p>
<p>Service Level Requirement</p>	<p>The System Integrator shall take backup of data, email and logs. Given below is indicative backup and archival policy. The actual policy will be discussed and finalised in discussion MCI.</p> <ol style="list-style-type: none"> <li>Incremental backup – every four hours</li> <li>Full backup shall be taken on specific media once in a week.</li> <li>Two (2) weeks data backup must be available at any time.</li> <li>Full data shall be archived once a month (Interval between two archives not</li> </ol>





	to exceed five weeks).			
	e. Testing of the backup will be undertaken by SI once every 1 month.			
Measurement of Service Level Parameter	SI shall adhere the backup and archival schedule/frequency to at-least 99%. The parameter will be calculated on quarterly basis.			
Penalty for non-achievement of SLA Requirement	Data	>= 98 % to < 99%	>= 96% to < 98%	< 96%
	Penalty	0.25 % of quarterly payment	0.5 % of quarterly payment	1 % of quarterly payment

### 3.5.5 SLA on additional services/items

Any additional/optional- equipment/service/items supplied by SI-as per the SI's commercial proposal (on MCI's request) shall also be governed by the terms and conditions set out in this agreement.

### 3.5.6 Installed Hardware

If any equipment supplied by SI fails for more than 3 times in a quarter OR for a total of more than 8 business hours in a quarter the SI will have to replace the equipment free of cost immediately.

### 3.5.7 Breach of SLA

In case the SI does not meet the service levels mentioned in this RFP, i.e. the service level where no penalty is imposed, for two (2) successive quarters, MCI will treat it as a case of breach of Service Level Agreement and MCI will have the right to terminate the MSA.

### 3.5.8 Exclusions (for penalty calculation)

The SI will be exempted from any delays or slippages on SLA parameters arising out of following reasons:

1. The non-compliance to the SLA other than for reasons beyond the control of the SI. Any such delays will be notified in writing to MCI by SI, will not be treated as breach of SLA from the SI's point of view.
2. There is a force majeure event effecting the SLA which is beyond the control of the System Integrator.



### **3.5.9 SLA Monitoring and Auditing**

MCI will review the performance of SI against the SLA parameters each quarter, or at any periodicity defined in this RFP document.

The review / audit report will form basis of any action relating to imposing penalty or breach of terms and conditions of work order. Any such review /Audit can be scheduled or unscheduled. The results will be shared with the SI as soon as possible.

MCI reserves the right to appoint a third-party auditor to validate the SLA.

#### **3.5.10 Reporting Procedures**

The SI's representative will prepare and distribute SLA performance reports in an agreed upon format by the 10<sup>th</sup> calendar day / next working day of subsequent quarter of the reporting period. Also, SI would be required to provide SLA performance report monthly for MCI records.

The reports will include “actual versus target” SLA performance, a variance analysis and discussion of appropriate issues or significant events. Performance reports will be distributed to MCI.

#### **3.5.11 Maximum Penalty to SI for the SLA**

The maximum penalty at any point of time on an additive basis in any quarter shall not exceed 15% of quarterly payments due as per the Commercial Bid submitted by the System Integrator. This is applicable only for the Operation and Maintenance phase. In case the penalty exceeds 15%, MCI reserves the right to terminate the MSA.

#### **3.5.12 Issue Management Procedures**

This process provides an appropriate management structure for the orderly consideration and resolution of business and operational issues in the event that quick consensus is not reached between MCI and SI. It is expected that this pre-defined process will only be used on an exception basis if issues are not resolved at lower management levels.

##### **1. Issue Management Process**

- a. Either MCI or SI may raise an issue by documenting the business or technical problem, which presents a reasonably objective summary of both points of view and identifies specific points of disagreement with possible solutions.
- b. MCI and the SI's representative will determine which committee or executive level shall logically be involved in resolution.



- c. A meeting or conference call will be conducted to resolve the issue in a timely manner. The documented issues will be distributed to the participants at least 24 hours prior to the discussion if the issue is not an emergency requiring immediate attention.
- d. Management of MCI and SI will develop a temporary, if needed, and the permanent solution for the problem at hand. The SI will then communicate the resolution to all interested parties.
- e. In the event a significant business issue is still unresolved, the arbitration procedures described in the RFP document will be used.

## **2. Risk and Cost Factor**

In the event of termination of MSA on the basis of non-performance by the SI as per SLA, SI will be solely responsible for risk and cost factor thereon.

\*\*\*\*\*END OF DOCUMENT\*\*\*\*\*