

Pre Contract NON-DISCLOSURE AGREEMENT for Tender Ref. No.
9-12/ISMG/2018

(The pre contract NDA needs to be executed on a stamp paper of value equal to Rupees hundred only (₹100) and signed by a person duly authorised by the bidder)

THIS AGREEMENT is made on this the <***> day of <***> 20--- at <***>, India.
BETWEEN Director, Financial Intelligence Unit – India (FIU-IND), Department of Revenue, Ministry of Finance, Government of India having its office at 6th Floor, Hotel Samrat, Chanakyapuri, New Delhi, India, acting for and on behalf of the President of India, (hereinafter referred to as ‘FIU-IND’, which expression shall, unless the context otherwise requires, include its permitted successors and assigns);

AND

<***>, a Company incorporated under the Companies Act, 1956, having its registered office at <***> (hereinafter referred to as ‘**Purchasing firm**’ which expression shall, unless the context otherwise requires, include its permitted successors and assigns).

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

WHEREAS:

- (a) FIU-IND is desirous to select a single Managed Service Provider (MSP) for design, development, implementation, operations and maintenance of FINnet 2.0 of Financial Intelligence Unit-India.
- (b) Whereas in pursuing the RFP for this project (the “Business Purpose”), FIU-IND (“Disclosing Party”) recognises that they will disclose certain Confidential Information (as defined hereinafter) to the Purchasing firm (“Receiving Party”).
- (c) Whereas such Confidential Information belongs to Disclosing Party as the case may be and is being transferred to the Receiving Party to be used only for the Business Purpose and hence there is a need to protect such information from unauthorised 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. INTERPRETATION

1.1 Interpretation

In this agreement, unless otherwise specified:

- (i) references to clauses, Sub-clauses, Paragraphs and Schedules are to clauses, sub-clauses, paragraphs of and schedules to this Agreement;
- (ii) use of any gender includes the other genders;
- (iii) references to a '**company**' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (iv) references to a '**person**' shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (v) 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;
- (vi) any reference to a '**day**' (including within the phrase 'business day') shall mean a period of 24 hours running from midnight to midnight;
- (vii) references to a 'business day' shall be construed as a reference to any day that is not a Sunday or a public holiday and starts at 9 am;
- (viii) references to times are to Indian standard time;
- (ix) 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
- (x) all headings and titles are inserted for convenience only.

1.2 Ambiguities within Agreement

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

- (i) as between two clauses of this agreement, the provisions of a specific clause relevant to the issue under consideration shall prevail over those in a general clause;
- (ii) as between the provisions of this agreement and the Schedules, the agreement shall prevail, save and except as expressly provided otherwise in the agreement or the Schedules; and
- (iii) as between any value written in numerals and that in words, the value in words shall prevail.

2. TERM

This agreement will remain in effect till six (6) months post the expiry of the contract for the on boarded MSP unless explicitly extended by FIU-IND.

3. SCOPE OF THE AGREEMENT

- (i) 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 RFP, 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.
- (ii) 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.

4. OBLIGATIONS OF THE RECEIVING PARTY

The Receiving Party shall –

- (i) 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
- (ii) 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.
- (iii) cause its employees to comply with the provisions of this agreement;
- (iv) reproduce Confidential Information only to the extent essential to fulfilling the Business Purpose, and
- (v) disclose the Confidential Information to its consultants/contractors/any third parties 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 –
 - a. advise the consultants/contractors of the confidentiality obligations imposed on them by this clause.
- (vi) 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. 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.
- (vii) not to remove any of the other Party's Confidential Information from the premises of the Disclosing Party without prior written approval.
- (viii) 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 certain date, and that no copies are to be made off of the premises.

- (ix) 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.

5. 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 –

- (i) was independently developed by or for the Receiving Party without reference to the Information, or was received without restrictions; or
- (ii) has become generally available to the public without breach of confidentiality obligations of the Receiving Party; or
- (iii) was in the Receiving Party's possession without restriction or was known by the Receiving Party without restriction at the time of disclosure; or
- (iv) 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
- (v) is disclosed with the prior consent of the disclosing party; or
- (vi) 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
- (vii) 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.

6. OWNERSHIP OF THE CONFIDENTIAL INFORMATION

- (i) Each Party recognises and agrees that all of the disclosing Party's Confidential Information is owned solely by the Disclosing Party (or its licensors) and that the unauthorised disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain.
- (ii) 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.

- (iii) 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.
- (iv) 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.

7. DISPUTE RESOLUTION

- (i) If a dispute arises in relation to the conduct of this Contract (Dispute), a party must comply with this clause 7 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 7.
- (ii) A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.
- (iii) During the 14 days after a notice is given under clause 7 (ii) (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Executive (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period then any such dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of Delhi. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at the jurisdiction specified in Item 27. Any legal dispute will come under the sole jurisdiction specified in Item 27.

- (iv) The Receiving Party agrees that the Disclosing Party shall have the right to obtain an immediate injunction enjoining any breach of this agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

8. VARIATION

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

9. 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:-

- (i) shall be in writing
- (ii) 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;
- (iii) shall be executed by a duly authorised representative of the Party; and
- (iv) shall not affect the validity or enforceability of this agreement in any manner.

10. 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.

11. ENTIRE AGREEMENT

This agreement 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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, recognised courier, registered post, email or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below –

If to FIU:

Attn: <>

If to the bidder:

Attn. <***>

Phone: <***>

Fax No. <***>

17. 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.

18. MITIGATION

Without prejudice to any express provisions of this agreement on any mitigation obligations of the Parties, each of FIU and the bidder 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.

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

SIGNED, SEALED AND DELIVERED For and on behalf of the bidder by:	SIGNED, SEALED AND DELIVERED For and on behalf of FIU by:
(Signature) (Name) (Designation) (Address) (Fax No.)	(Signature) <>

In the presence of:

1._____

2._____