



Service Level Agreement And Packages

APPLICATION DEVELOPMENT AND MAINTENANCE RESOURCE HIRING SERVICES

Application Development and Maintenance Resource Hiring Services

PREAMBLE : All Application Development and Maintenance Resource Hiring Services contracts placed through GeM shall be governed by following set of Terms and Conditions:

1. General terms and conditions for Goods and Services;
 2. Service Specific STC of Application Development and Maintenance Resource Hiring Services- as defined in Service Catalogue which includes SLA for the Service or Service for a particular product;
 3. BID / Reverse Auction specific ATC
1. Operation of The above terms and conditions are in reverse order of precedence i.e. ATC supplement Service Specific STC and GTC, however Service Specific STC prevails or supersede over the GTC.
 2. The above set of conditions along with Scope of supply including price as enumerated in the Contract Document shall be construed to be part of the contract.
 3. This document represents a comprehensive Terms and Conditions governing the contract between the Buyer and Service Provider. The purpose of this document is to outline the scope of work, Stakeholder's obligation and terms and conditions of all services covered as mutually understood by the stakeholder

Agreement Overview :This Agreement represents a Service Level Agreement ("SLA" or "Agreement") between the Buyer and Application Development and Maintenance Resource Hiring Service Provider. The purpose of this agreement is to facilitate implementation Application Development and Maintenance Resource Hiring Services at the Buyer's premises. The Service Provider would provide the required equipment (if any) and personnel for the mentioned shifts as per the requirements of the buyer. This Agreement outlines the scope of work, Stakeholder's obligation and Terms and Conditions of all services covered as they are mutually understood by the stakeholders.

Stakeholders

The main stakeholders associated with this SLA are:

1) Service Provider(s)/Service Provider

2) Buyer

3)



The responsibilities and obligations of the stakeholders have been outlined in this document. The document also encompasses payment terms and penalties in case of non-adherence to the defined terms and conditions. It is assumed that all stakeholders would have read and understood the same before signing the SLA.

Objective And Goals

The objective of this Agreement is to ensure that the proper elements and commitments are in place to provide consistent delivery of service to buyer by service provider. The goals of this Agreement are to:

- Provide clear reference to service ownership, accountability, roles and/or responsibilities
- Present a clear, concise and measurable description of service provision to the customer
- Establish Terms and Conditions for all the involved stakeholders
- To ensure that all the parties understand the consequences in case of termination of services due to any of the stated reasons

Service Scope

Introduction

The scope of "Application Development and Maintenance Resource Hiring Services" is to provide specified number of Application Development and Maintenance Resource Hiring Services resources with requisite and prescribed qualifications and experience, to function and perform as per agreed terms and conditions.

Based on a performance based approach for engaging the Service Provider to deploy Professional resources, on a man month basis,


Buyer shall provide all details and information needed on line and use appropriate filters enabled on line for this service.

An indicative list of activities that resources of Service Providers will be required to undertake are as follows:

1. Design and Development of application S/W.
2. Rollout Management
3. Database Management.
4. Technical or Business Documentation.
5. Test case preparation and testing of the application software.
6. Training of users
7. Carry out maintenance, feature up-gradation and support of application software post completion of project.
8. Bug fixing and implementation support to end users.
9. Project/Program Management
10. Architecture of the solution

(a) The performance and discipline of the resources provided by the bidder should be ensured by the Service Provider.

(b) Regular progress reporting and review of the same with the concerned Project coordinator will be an integral part of the responsibility of the Service Provider.

(c)  quality output will be an overarching responsibility of the Service Provider.

(d)The Project plan including scope of work, job requirements, time lines and resource requirements shall be finalised by the concerned Buyer Department. These resources shall be engaged as per the requirements of the project.

Broad Scope :

Broad scope of the Service is as follows:

Capacity building aimed at enhancing overall output and efficiency of the Organisation and its resources, would include activities like design and customization of training modules to actual conduct of Training, certifying Master trainers, bundle a Product(s) offer with onsite training /skilling support, Core Sectoral Skilling and its upgradation.

Project Management would cover all or any activity including initiating, planning, executing, controlling, and closing the work of the Project (its team) to achieve specific goals and meet specific success criteria at the specified time. Setting up of a PMU, its operations (including Sourcing) and Management to deliver on agreed outcomes and performance will be central to this Service.

Programme Management where multiple projects would be involved would focus on supporting the Owner (Buyer) in Supervision , Monitoring and Review of Project(s) implementation.

Consultancy/Advisory provided for conceptualizing, designing including taking up Proof Of Concept (PoC) exercise across products and sectors. Such advisory would include Pre and Post implementation analysis and assessment of Projects, Draft documents like Vision, Strategy, Approach, DPRs etc.


Project Implementation refers actual implementation including assaying SI role in IT leveraged Projects will be covered under this track. Typically would involve setting up of an onsite Project team and its management to deliver on agreed outcomes and performance.

Operations and Support refers to services that entities provide to users of technology products or services. In general, Operations and Support provide help regarding specific problems with a product or service, rather than providing training, provision or customization of product, or other support services. Operations and Support may be delivered over by phone, e-mail, live support software on a website, or other tool where users can log an incident.

Buyer's Obligations

1. Except as expressly otherwise provided, the Buyer shall, at its own expense, provide timely all the required equipment and facilities at the location(s) where the manpower Services are to be provided required to enable Service Provider's employees to perform and deliver as per agreed Terms and Conditions .
2. The Buyer shall notify the Service Provider of any dishonest, wrongful or negligent acts or omissions of the Service Provider 's employees or agents in connection with the Services as soon as possible after the Buyer becomes aware of them.
3. The Buyer shall not be under any obligation for providing empanelment to any of the personnel of the Service Provider after the expiry of the contract. The Buyer does not recognise any employee employer's relationship with any of the workers of the Service Provider.

Service Provider's Obligations

 **Ask GeMmy** would be required to provide sufficient and qualified manpower for furtherment, capable of supporting the functioning of the project/department in a manner agreed

with the Buyer. The services shall be rendered on a monthly, quarterly and yearly basis, as per the requirements of the Buyer.

2. The Service Provider shall provide Manpower Services at Buyer's premises as per Schedule of Work / Requirements which may be amended from time to time by the Buyer during the Contractual period and it shall always form part and parcel of the Contract. The Service Provider shall abide by such assignments as provided by the Buyer from time to time.
 3. The Service Provider shall cover its personnel for personal accident and death whilst performing the duty and the Buyer shall own no liability and obligation in this regard.
 4. The Service Provider shall exercise adequate supervision to reasonably ensure proper performance of Manpower Services in accordance with Schedule of Requirements.
 5. The Service Provider shall issue identity cards / identification documents to all its employees who will be instructed by the Service Provider to display the same.
 6. The personnel of the Service Provider shall not be the employees of the Buyer and they shall not claim any salary or allowances, compensation, damages or anything arising out of their employment/duty under this Contract. The Service Provider shall make them known about this position in writing before deployment under this agreement.
 7. All necessary reports and other information shall be supplied immediately as required and regular meetings will be held with the Buyer.
 8. It is the responsibility of the Service Provider to provide manpower for the above listed work. The manpower has to be segregated, based on their years of experience.
 1. The responsibility of effective and efficient delivery would rest with the Service Provider. Thus, the education qualifications and experience of the manpower deployed would be left to the subjugation of the Service Provider, subject to them meeting the minimum qualifying criteria.
 2. The Service Provider shall provide the documentary proof for the qualifications and experience of the manpower deployed by them. The bio-data, qualification and experience of the said manpower should be certified by the Service Provider.
- The police verification, character and antecedent's verification of the employees is the whole and sole responsibility of the Service Provider. The same may be verified by the Buyer at the time of joining of the employees, if he/she so desires.
 1. The Service Provider shall ensure the following in respect of his employees-
 2. The working hours and days of the outsourced employees will be as per the existing applicable rules of the respective Central/State Government organisations. However, they have to work on holidays, if necessary and required based on demand of work.
 3. In an event of deployed personnel availing leave, and if required by buyer suitable substitute(s) shall be provided by service provider as per mutual understanding with buyer.
 - Consequent to poor performance of deployed manpower, service provider shall immediately replace the deployed manpower thereby maintaining service levels and continuity.
 1. Working shifts (includes day and night shift) if any, and daily working hours shall be mutually agreed upon between buyer and seller prior to deployment of manpower.
- of the employees will be entered in the register provided by the Service Provider and/or in d Biometric attendance system at the Buyer's premises. The persons deployed should be polite, cordial and efficient while handling the assigned work and their actions should promote good will and



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enhance the image of the Corporation or office concerned. The Service Provider shall be responsible for any act of indiscipline on the part of the persons deployed.

3. The persons deployed shall, during the course of their work be privy to certain qualified documents and information which they are not supposed to divulge to third parties. In view of this, they shall be required to take oath of confidentiality and breach of this condition shall make the Service Provider as well as the person deployed liable for penal action under the applicable laws besides, action for breach of contract.

Special Terms and Conditions of the Service

1. The Service Provider would be required to provide sufficient and qualified manpower, capable of supporting the functioning of the project/department in a manner desired by the Buyer.
2. The Service Provider should have a legal status, whether it will be a registered Proprietorship Firm/Partnership Firm/Company under Companies Act having legal entity having all statutory licenses/registration for carrying out such activity as well has had registration for income tax.
3. The Service Provider shall ensure that all the relevant licenses / registrations / permissions which may be required for providing the services are valid during the entire period of the contract; failing so shall attract the appropriate penalties. The documents relevant in this regard shall be provided by the Service Provider to the Buyer on demand.
4. In case of services hired on annual basis and 5 working days, the employees will be entitled to 08 days of casual leaves per year on pro-rata basis and in case of 6 working days, the employees will be entitled to 15 days casual leave per year on pro-rata basis. Beyond specified leaves as applicable, leave will be treated as leave without pay (LWP) for which necessary deduction will be made by the buyer in the billed amount if no replacement is provided.
5. No medical facilities or reimbursement or any sort of medical claims thereof in respect of employees provided by the Service Provider will be entertained by the Buyer.
6. The Buyer or its representative shall have the right to inspect and/or to test the services/Solution/Technology to check their conformity to the contract specifications at no extra cost to the Buyer.
7. The Buyer will in no way be responsible for the violation of any rules and/or infringement of any other laws from the time being in force, either by the employee or by the Service Provider. The employees as well as the Service Provider shall comply with the relevant rules and regulations applicable at present and as may be enforced from time to time, for which the Buyer's department would not be liable or responsible in any manner. The onus of compliance to all the applicable laws/acts/rules shall only rest with the Service Provider.
8. The Service Provider shall be required to keep the Buyer updated about the change of address, change of the Management etc. from time to time.
9. The Buyer shall have the right, within reason, to have any personnel removed who is considered to be undesirable with proper reasoning or otherwise and similarly the Service Provider reserves the right to remove any personnel with prior intimation to the Buyer, emergencies, exempted.
10. The Service Provider shall not be allowed to transfer, assign, pledge or subcontract its rights and liabilities under this Agreement to any other agency or organisation by whatever name be called without the prior written consent of the Authority.
11. The Service Provider shall nominate a coordinator who shall be responsible for regular interaction with the Buyer Department so that optimal services of the persons deployed could be availed without any disruption.
12. For all intents and purposes, the Service Provider shall be the "Employer" within the meaning of different aspect of manpower so deployed. The persons deployed by the Service Provider shall not whatsoever like employer and employee relationship against the Buyer Department.



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13. The Buyer Department shall not be responsible for any financial loss or any injury to any person deployed by the Service Provider in the course of their performing the functions/duties, or for payment towards any compensation.
14. The persons deployed by the Service Provider shall not claim nor shall be entitled to pay, perks and other facilities admissible to regular / confirmed employees during the currency or after expiry of the Agreement.
15. **Debarment:** All Government entities should follow the following debarment rules, prescribed in GFR, 2017.

(i) A bidder shall be debarred if he has been convicted of an offence—

1. under the Prevention of Corruption Act, 1988; or
2. the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment.

(iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.

(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment."

1. **Quoting of Price on the Portal** : Changes in Government taxes should not be imposed on the vendor by making payment adjustments. The net revenue for the Consultant should remain the same as was factored in during the financial estimation of the project"

1. **Fall Clause** :The BIDDER undertakes that under similar buying conditions, it has not supplied/is not supplying similar product/systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India or PSU and if it is found at any stage that similar product/systems or subsystems was so supplied by the BIDDER to any other Ministry/Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER to the BUYER, if the contract has already been concluded."

1. **EMD Forfeiture** :The EMD may be forfeited:

- If a bidder withdraws its bid during the period of bid validity.
- In case of a successful bidder, if the bidder fails to sign the contract in accordance with this RFP.
- In case of seller indulging in corrupt or false practices



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19. **Force Majeure** : Force Majeure is herein defined as any cause, which is beyond the control of the selected Bidder or Purchaser as the case may be which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affect the performance of the contract, such as:

1. Natural phenomenon, including but not limited to floods, droughts, earthquakes and epidemics
2. Acts of any government, including but not limited to war, declared or undeclared priorities, quarantines and embargos
3. Terrorist attack, public unrest in work area provided either party shall within 10 days from occurrence of such a cause, notify the other in writing of such causes. The Bidder or Purchaser shall not be liable for delay in performing his/her obligations resulting from any force majeure cause as referred to and/or defined above. Any delay beyond 30 days shall lead to termination of contract by parties and all obligations expressed quantitatively shall be calculated as on date of termination. Notwithstanding this, provisions relating to indemnity, confidentiality survive termination of the contract."

1. **Arbitration : Buyer and the Service Providing Agency will make every effort to resolve amicably, by direct negotiation, any disagreement or dispute arising between them under or in connection with the contract placed through GeM .**If the parties cannot resolve the Dispute 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 under which Jurisdiction office of the buyer falls. 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 above . Any legal dispute will come under the sole jurisdiction specified above .

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1. **Limitation of Liability:** (a) The liability of Consultant (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any claim in any manner related to this Agreement, including the work, deliverables or Services covered by this Agreement, shall be the payment of direct damages only which shall in no event in the aggregate exceed the fees and expenses received under this work order. The liability cap clause shall not be applicable to the indemnification obligations set out in Clause 22 .



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(b) In no event shall either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, lost business, lost profits, or lost savings) even if it has been advised of their possible existence.

(c) The allocations of liability in this clause represent the agreed and bargained-for understanding of the parties and compensation for the Services reflects such allocations. Each Party has a duty to mitigate the damages and any amounts payable under an indemnity that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts."

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

23. Forfeiture of Performance Bank Guarantee: Forfeiture of Security Deposit: Security amount in full or part may be forfeited in the following cases:

1. When the terms and conditions of contract is breached/infringed.
2. When contract is being terminated due to non-performance of the Successful Bidder.
3. Notice of reasonable time will be given in case of forfeiture of security deposit. The decision of the Nodal Officer in this regard shall be final."



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24. Termination for default :

1. a) Without limiting any other rights or remedies the Client may have against the Consultant / service providing agency arising out of or in connection with this Contract, the buyer/ Client may terminate this Contract effective immediately by giving written notice to the SPA/Consultant if: the Consultant breaches a material provision of this Contract where that breach is not capable of remedy; the Consultant breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or an event specified in any clause of the contract happens to the SPA/Consultant. Termination of this Contract does not affect any accrued rights or remedies of a party.

Confidentiality

The Service Provider shall not use Confidential Information, the name or the logo of Buyer Department except for the purposes of providing the Service as specified under this contract; The Service Provider may only disclose Confidential Information in the following circumstances with the prior written consent of Buyer Department to a member of the Service Provider if she/he is aware of the confidentiality of the Confidential Information and is obliged to use it only for the performance of obligations under this contract.

1. The Service Provider shall do everything reasonably possible to preserve the confidentiality of the Confidential Information to the satisfaction of Buyer Department.
2. The Service Provider shall notify Buyer Department promptly if it is aware of any disclosure of the Confidential Information otherwise than as permitted by this Contract or with the authority of Buyer Department.

Payments

1. The Service Providing Agency shall furnish statement of amount paid for the month to the persons deployed along with cheque number and date and Bank account from which the payment has been made. Service Providing agency is to furnish copy of bank statement in support of amount paid as and when required by Buyer Departments.
2. The payment to the Service Provider will be made on monthly and quarterly basis, depending upon the actual duration of the services rendered as per order.
3. Any violation of contractual obligations by the Service Provider/employee shall attract penalties as mentioned against each obligation. The Service Provider confirms and agrees that penalty whenever becomes payable, the same shall be deducted by the user department from the payments due to the Service Provider.
4. TA/DA shall be payable directly by the Buyer on production of travel documents in original and approval of appropriate authority of the Buyer for undertaking such travel for the project/assignment.
5. All applicable taxes and duties except GST, shall be payable by the Service Provider and the Buyer shall not entertain any claims whatsoever with respect to the same. The Service Provider shall pay the GST and the price quoted is inclusive.
6. The Service Provider shall ensure payment regularly for the deployed manpower to their entitlements like monthly salaries/wages etc. and submit the documentary proof of the salary paid as per the terms and contract. Bill for the subsequent month will be paid only after submission of certificate of wages of previous month.



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7. In case the submission of monthly bills is delayed by the Service Provider beyond 15 days from the last day of the month in which the services have been provided, the entire liability towards payment of interest/penalty to the tax authorities would be borne by the respective Service Provider.
8. Escalation towards payment of salaries / wages of the employees shall not be accepted on any ground during the contract period.
9. The Breakup of the components to be provided to the Buyer Department. The Buyer Department will provide Minimum Wage as per the Notification applicable in their area for the category of Resource they want to procure.

The following conditions shall specify breach of contract and buyer shall have right to immediately terminate the contract.

1. Cumulative penalties reach 10% of the contract value
2. Repeated breach of SLAs beyond 3 instances in the entire contractual period shall be treated as breach of contract. Breach of SLA is defined as performance lower than defined lower performance in this agreement.
3. In case of major default on the part of the Service Provider, the Buyer may provide a 24-hour written notice terminating the contract to the Service Provider.

Penalties

- Penalties for a specific month / period shall be capped at 10% of bill generated for that particular month / period.
- If any SLA is breached beyond 3 instances in any billing period then same shall be treated as a breach of contract and buyer will have full rights to terminate the contract after giving a notice of 30 days

Penalties for Non-Compliance to Service Level Agreement

Penalties will be levied on the service provider for the violation of service level agreement of the contract as mentioned below:

#	Service level agreement	Penalties for non-compliance
1	Non-deployment of total manpower mentioned in the contract as per the date of joining	Up to 15 Days, @1% per day of the value of monthly cost and Beyond 15 days cancellation of the contract with cancellation charges @ 10% of the order value.
2	If the employee is found responsible for any theft, loss of material/ articles and damages	Immediate payment in actuals, equivalent to the value of the article theft/lost/damaged. Replacement within 2 day/cancellation of contract as decided by the buyer depending on the gravity of the act.



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3	If the employee is found responsible for disobedience/ misconduct	Warning/counselling/Immediate replacement of resource within 2 days as decided by the buyer depending on the gravity of the act
4	If the employee is absent for more than 2 days without informing or taking prior approval.	Substitute within 2 days with equivalent resource failing which, @ 1% per day of the total value (excluding service tax etc.) of the absent resources up to 15 days. Beyond 15 days, cancellation of the contract with cancellation charges @ 10% of the order value
5	If the employee is found responsible for adopting illegal and foul methods or exercising any corrupt practice in collusion with any third party or officials at the workplace	Immediate replacement within 2 days/ cancellation of the contract with cancellation charges @ 10%, as decided by the buyer depending on the gravity of the act.



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