

PART-4

FORMAT OF CONVEYANCE DEED

THIS CONVEYANCE DEED is made and executed on _____, 2006 BETWEEN the Governor of Uttar Pradesh through Sri _____, Registrar General, High Court of Judicature at Allahabad (hereinafter referred to as "THE BUYER") of the one part and M/s _____ registered and having its registered office at _____, India through its Sri _____ (authorized channel partner of M/s _____, OEM____), (hereinafter referred to as "SELLER" which expression shall include its successors, assigns, legal representations and agents) of the other part.

WHEREAS SELLER is engaged in the business of selling of (_____details of items_____) and other ancillary and allied equipments and the items related with the Information and Communication Technology and, their installation and maintenance;

AND WHEREAS SELLER has agreed to sell, supply and install (_____details of items_____) and other ancillary and allied equipments as per technical specification mentioned in Annexure-I in the premises of HIGH COURT, Allahabad and District Courts of Uttar Pradesh and to provide complete service support and maintenance support for the (_____details of items_____) and other ancillary and allied equipments and for this purpose post a qualified engineer in the premises of the HIGH COURT at Allahabad with spare parts, all equipments needed for installation, configuration, maintenance, support and testing of (_____details of items_____) and other ancillary and allied equipments and to provide such services at District Courts of Uttar Pradesh through SELLER's service centers at commissioner/district levels for a minimum period of three years, and the BUYER has agreed to purchase the items with service support offered by the SELLER at the prices and rates mentioned in **Annexure-I** of this agreement subject to the terms and conditions contained hereinafter.

NOW, THEREFORE, the parties hereto agree as follows:-

ARTICLE - I: DEFINITIONS

- 1.1 **"High Court of Judicature at Allahabad"** hereinafter referred to as 'HIGH COURT' and **"District Courts of Uttar Pradesh"** hereinafter referred to as 'DISTRICT COURTS';
- 1.2 **"Acceptance Test"** shall mean the set of tests which will be conducted at the site of delivery by the team of technical experts nominated by the HIGH COURT in the presence of SELLER to ascertain that the said items are same of which Pre-Dispatch Inspection has been conducted at the factory site of SELLER and are of the acceptable quality as described in Clauses 7.4 and 7.5 of Article VII;
- 1.3 **"AMC"** means annual maintenance contract;

- 1.4 **"Commissioning of items"** shall mean commissioning of (_____details of items_____) and other ancillary and allied equipments together with all accessories in Intranet and Internet as mentioned in Annexure-I and as described in Article VIII;
- 1.5 **"Cost"** means the prices of items given at Annexure-I. Prices of items mentioned at Annexure-I are inclusive of all levies, duties and taxes etcetera prevailing at the time of issue of purchase order by the BUYER to the SELLER;
- 1.6 **"Date of commissioning"** shall mean the date of issue of the certificate by the BUYER to SELLER about the acceptability of (_____details of items_____) and other ancillary and allied equipments purchased alongwith;
- 1.7 **"Delivery"** shall mean the physical delivery of the complete items by SELLER to HIGH COURT at Allahabad and DISTRICT COURTS and submitting the delivery challans duly countersigned and stamped by the competent authority of HIGH COURT and DISTRICT COURTS;
- 1.8 **"Documentation"** shall mean current standard visually readable materials on paper and manuals related to operation, usage and maintenance of the items supplied by SELLER;
- 1.9 **"Items"** shall mean all the items ordered and listed at **Annexure-I**;
- 1.10 **"Pre-Dispatch Inspection"** shall mean the set of tests at the office/factory of SELLER wherever situated in India prior to the delivery by the team of technical experts nominated by the HIGH COURT to ascertain that the items are as per the technical specifications and of acceptable quality as described in Clauses 7.1, 7.2 and 7.3 of Article VII;
- 1.11 **"Site of delivery"** shall mean the premises of HIGH COURT at ALLAHABAD and DISTRICT COURTS where respective items will be delivered;
- 1.12 **"Site of installation"** shall mean the premises of HIGH COURT at ALLAHABAD and DISTRICT COURTS where the respective items will be installed;
- 1.13 **"Successful Acceptance Test"** shall mean acceptance test conducted by the team of technical experts nominated by the HIGH COURT to ascertain that the items after delivery at the premises of HIGH COURT at Allahabad and respective DISTRICT COURTS are as per the technical specifications and of acceptable quality;
- 1.14 **"Uptime"** of (_____details of items_____) shall mean error free time for each of the equipments i.e. (_____details of items_____) for 24 hours a

day considering 365 days a year when the power and satisfactory environmental conditions (Temperature: minimum 0 degree Celsius maximum 45 degree Celsius, Relative humidity : minimum 5% maximum 95% non condensing) are made available to the items. Any unutilized time, during the period, will also qualify as uptime provided there is no malfunctioning in the (_____ details of items _____) installed by SELLER. The period between (_____ details of items _____) breakdown and the time, complaint is reported to the SELLER's local service engineer at HIGH COURT, Allahabad or SELLER's nearest Service Centre at Commissionery/District level either through email/fax/letter/messenger/telephone or collection of complaint from complaint register maintained at HIGH COURT by their service engineer will be treated as uptime. In case the complaint is logged after working hours then the problem should be rectified within first four hours of the next working day failing which the (_____ details of items _____) shall be treated as down. In case, any item is required to be moved from one place to another, the time interval from packing of the item till installation of item shall be treated as uptime. Rest of the time shall be treated as downtime of the item. Uptime percentage of item will be computed as follows: -

$$\frac{\text{Uptime in hours in a year}}{\text{Total working hours in a year}} \times 100$$

The following will not be included in the total working hours in a month :-

- (I) The time lost due to power or environmental conditions failure.
- (II) Preventive maintenance period up to 4 hours per Server.
- (III) Preventive maintenance period up to 1 hour per Personal Computer for the period of 6 months.
- (IV) Total working hours for (_____ details of items _____) will be 24 hours a day considering 365 days a year.
- (V) Total working hours for Personal Computers, LaserJet printers and off-line Uninterrupted Power Supply systems will be 8 hours per working day at HIGH COURT.

- 1.15 **“DEED”** means this CONVEYANCE DEED being executed by BUYER and SELLER;
- 1.16 **“Warranty Period”** shall mean warranty period of three years from the date of installation of all the items, including on all internal parts of (_____ details of items _____) and other ancillary and allied equipments, etc;
- 1.17 **“Purchase Order”** means the purchase order issued by HIGH COURT to SELLER regarding purchase of items mentioned in **Annexure-I** to this DEED.

ARTICLE - II INTERPRETATION

Save where the contrary is indicated, any reference in this agreement to :

- (a) words importing the singular shall include the plural and vice versa;
- (b) a person shall be construed as including a reference to its successors, permitted transferees and permitted assignees in accordance with their respective interests;
- (c) a statute or enactment shall be construed as a reference to such statute as it may have been, or may from time to time be, amended or re-enacted;
- (d) a time of day shall be construed as a reference to Indian Standard Time;
- (e) "HIGH COURT" shall mean BUYER;
- (f) "Clause" shall mean clause of this DEED; and
- (g) "Article" shall mean ARTICLE of this DEED.

ARTICLE - III PRICE

3.1 The rates of items shown in **Annexure-I** include the cost of packaging, transportation of the items to the site of delivery and to the site of installation, transit insurance and installation at the site. The rates of hardware items are inclusive of all taxes prevailing at the time of issue of the Purchase Order by the BUYER to the SELLER.

ARTICLE - IV TERMS OF PAYMENT

4.1 The payment for the items supplied by SELLER shall be made by the HIGH COURT to SELLER as follows:-

- A. 80% amount of the total order value will be paid to the SELLER within one month against physical delivery against all the ordered items to the sites of delivery after their physical inspection at the office/factory of the vendor and physical inspection (Acceptance Test) of all the items at site(s) of delivery by the team of technical experts nominated by HIGH COURT and providing all the delivery challans duly signed and stamped by authorised representatives of user department.
- B. Payment shall be released only after complete delivery of items _____ as per specifications mentioned in **Annexure-I**, successful and satisfactory commissioning of all aforesaid items, furnishing of Performance Bank Guarantee of 20% of Purchase Order value in favour of the Registrar General, High Court, Allahabad valid for a period not less than 43 months, commencing from the date of commissioning and including the entire

warranty period as well as 6 months thereafter, and on receipt of original bills in triplicate complete in all respects.

- C. Remaining 20% amount of the total order value will be released to the SELLER within one month after satisfactory installation and testing of all the supplied items at sites, imparting training to the technical staff nominated by HIGH COURT and furnishing of a performance bank guarantee of 20% amount of total order value in favour of **Registrar General, High Court, Allahabad** in the prescribed format only from a Nationalized Bank valid for six month beyond the full warranty period of three years from the date of successful commissioning of all the supplied items.
- D. Payment shall be released on receipt of the original bills in triplicate complete in all respect and original delivery challans of all the items duly signed and stamped by the authorized officer of HIGH COURT/DISTRICT COURTS. If physical inspection and testing of items is carried out centrally in the HIGH COURT prior to delivery of the items at sites of delivery, then SELLER will have to submit a certificate from authorized person(s) of the site(s) of delivery that they have received unbroken sealed packets with the seal and signature of HIGH COURT representative on challans for claiming the payment against delivery of the items.
- E. In case installation and commissioning of the items is not completed within 12 weeks from the date of purchase order, HIGH COURT reserves the right to invoke the Bank Guarantee.
- F. Within 7 days of the receipt of notification of award i.e. Purchase Order from the HIGH COURT, the SELLER shall furnish the Performance Bank Guarantee of 20% of the purchase value of the items from State Bank of India or its associate banks or any Nationalized Bank of India or scheduled bank located in India in favour of Registrar General, High Court, Allahabad in accordance with the Conditions of Contract, in the format of Performance Bank Guarantee as given in Part-5 of the Tender document.
- G. No payment shall be released for part delivery of the hardware, software and other related items against the purchase order.

4.2 Payment shall be deemed to have been made as and when cheque is issued by the HIGH COURT to SELLER.

4.3 In case excise duty is reduced or increased subsequently by the Government of India at the time of delivery of the items to HIGH COURT then the same will be adjusted by SELLER.

4.4 In case Trade Tax is reduced or increased subsequently by the Uttar Pradesh Government at the time of delivery of the items to HIGH COURT then the same will be adjusted by SELLER.

4.5 The Bank guarantee furnished by SELLER to HIGH COURT shall not be invoked, if SELLER supplies the items and does commissioning of all the items and imparts training within stipulated period and provides maintenance services to the satisfaction of the BUYER during warranty period of the items, provided that if the uptime of the Computer Servers, Networking Equipments and the 5 KVA On-line UPS supplied is not maintained above ninety nine percent consecutively for three months during warranty period and that if the uptime of the Personal Computer, LaserJet Printers and off-line UPS supplied is not maintained above ninety five percent consecutively for the three months during warranty period, then BUYER has the right to invoke the Bank guarantee and the proceeds thereof shall be forfeited by BUYER.

ARTICLE - V TITLE, RISK AND INSURANCE

- 5.1 Title of ownership of the items shall pass onto BUYER from the date and time of physical delivery of the items to the HIGH COURT/DISTRICT COURTS. All risks of losses and/or damages shall be borne by SELLER till the title passes to the HIGH COURT.
- 5.2 After delivery of all the items to HIGH COURT by SELLER, it will be the responsibility of HIGH COURT/ DISTRICT COURTS to protect the items against losses, damage and theft etcetera.
- 5.3 SELLER shall be responsible for the installation and commissioning of all the items in the premises of HIGH COURT at ALLAHABAD and DISTRICT COURTS. All the risks of losses and/or damages shall be borne by SELLER during installation and commissioning of all the items.
- 5.4 If anyhow the items installed are found defective during the acceptance tests to the extent to be replaced by new ones, then SELLER shall replace the same by new ones within 4 weeks and will inform the BUYER for conducting the acceptance test on new items. Any expenditure incurred by SELLER in replacement of the defective items shall be borne by SELLER. Any expenditure incurred by the HIGH COURT on this account shall be reimbursed by the SELLER.

ARTICLE – VI PACKING

- 6.1 SELLER shall provide such packing of the items as is required to prevent their damage or deterioration during transit to their final destination as indicated in this DEED or in the Purchase Order. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, humidity, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the items' final destination and the absence of heavy handling facilities at all points in transit.
- 6.2 The packing, making and documentation within and outside the packages shall comply strictly with such special requirements as shall be provided for in this DEED.

ARTICLE – VII INSPECTIONS AND TESTS

- 7.1 Pre-Dispatch Inspection of the items shall be carried out by the technical experts nominated by the HIGH COURT for the purchase in the office/factory of SELLER to check whether the items are in conformity with the technical specifications as in **Annexure-I** to this deed and are in working conditions and all the ordered items are complete prior to dispatch of the items by the SELLER to HIGH COURT. Complete hardware and software as specified in **Annexure-I** to this deed should be supplied, installed and commissioned properly by SELLER.
- 7.2 For conducting the inspection and tests at the office/factory of SELLER, all reasonable facilities and assistance, including access to drawings and production data shall be furnished by the SELLER at no charge to the inspectors of the BUYER. SELLER shall intimate to the HIGH COURT for the purchase indicating that the (_____details of items_____) and other ancillary and allied equipments are ready for inspection and the BUYER can send its team of technical experts to their office/factory. After receipt of such intimation from SELLER, the BUYER shall send its team of technical experts for Pre-Dispatch Inspection and test. After the Pre-Dispatch Inspection is successfully conducted, the items which are inspected by the BUYER shall be packed and sealed by SELLER and the team of technical experts of the BUYER will put a unique number, their seal and signature on each of the packet. SELLER shall deliver and install these sealed items at the respective sites mentioned in the Purchase Order.
- 7.3 If any inspected or tested items as mentioned in **Annexure-I** fail to conform to the specifications, the BUYER may reject the items and SELLER shall either replace the rejected items or make alterations necessary to meet specification requirements free of cost to the satisfaction of the BUYER. In any case, the items which do not pass in Pre-Dispatch Inspection will not be accepted by HIGH COURT and neither it shall be packed by SELLER for delivery to HIGH COURT/ DISTRICT COURTS.
- 7.4 Acceptance Test of items meant for HIGH COURT will be conducted by the team of technical experts nominated by the HIGH COURT after the items are delivered at the HIGH COURT. Acceptance Test of items meant for DISTRICT COURTS will be conducted by the team of technical experts nominated by the HIGH COURT/DISTRICT COURTS after the items are delivered at DISTRICT COURTS. The acceptance will involve to ensure that all the items are as per technical specifications as mentioned in **Annexure-I** to this deed running the latest diagnostic tools on the machines and trouble-free operation of all the items during acceptance testing period and all the items are in complete numbers as mentioned in **Annexure-I**. If any item or its sub-part is not ensured by running the diagnostic tool, then it is verified physically opening the box of the machine by the BUYER. There shall not be any additional charges for carrying out acceptance tests. No malfunction, partial or complete failure of any part of hardware or excessive heating of (_____details of items_____), etc. or bugs in the software should occur. All the software should be complete and no missing module/sections will be allowed. During acceptance tests, the items having the same or higher technical

specifications as given in **Annexure-I** shall only be accepted by the BUYER. SELLER shall maintain necessary log in respect of the result of the tests to establish to the entire satisfaction of the BUYER for successful completion of the tests. An average uptake efficiency of 99% for the (_____ details of items _____) and 98% for the Personal Computers, LaserJet Printers and off-line Uninterrupted Power Supply systems for the duration of test period shall be considered as satisfactory.

- 7.5 In the event of the Hardware and Software failing to pass the acceptance test if carried out at site of installation, SELLER shall rectify the defects and clear the acceptance test of the rectified items within one week, failing which the BUYER reserves the rights to get the equipment's replaced by SELLER at no extra cost to BUYER.
- 7.6 Successful conduction and the conclusion of the acceptance test for the installed items and equipment shall also be the sole responsibility and at the cost of SELLER.
- 7.7 The HIGH COURT's rights to inspect, test and, where necessary, reject the items after its delivery at respective sites of installation shall in no way be limited or waived by reason of the items having previously been inspected, tested and passed by the HIGH COURT or by the team of technical experts nominated by the HIGH COURT.
- 7.8 That if the SELLER intimates the HIGH COURT to come for the Pre-Dispatch Inspections and if it is found that the ITEMS are not ready for testing and deploying and that the Pre-Dispatch Inspection gets delayed by more than two week, then, HIGH COURT reserves the right to cancel the whole Purchase Order or a part thereof and invoke the Bank guarantee without giving notice to the SELLER. The High Court shall have no responsibility whatsoever for any damages sustained by SELLER due to cancellation of the Purchase Order. In such case the earnest money deposited by the SELLER shall also be forfeited.
- 7.9 That during Pre-Dispatch Inspection if it is found at any stage that the ITEMS do not conform to minimum required specification as mentioned in **Annexure-I** of the this deed and the SELLER is not able to replace the defective items with the items of required specification as mentioned in **Annexure-I** of this deed or with items of higher technical specification as compared to the items mentioned in **Annexure-I** of this deed, then, HIGH COURT reserves the right to cancel the whole Purchase Order or a part thereof and invoke the bank guarantee without giving notice to the SELLER. The High Court shall have no responsibility whatsoever for any damages sustained by SELLER due to cancellation of the Purchase Order. In such case the earnest money deposited by the SELLER shall also be forfeited.
- 7.10 That during Acceptance Test if it is found at any stage that the ITEMS do not conform to minimum required specification as mentioned in **Annexure-I** of the this deed and the SELLER is not able to replace the defective items with the items of required specification as mentioned in

Annexure-I of this deed or with items of higher technical specification as compared to the items mentioned in **Annexure-I** of this deed, then, HIGH COURT reserves the right to cancel the whole Purchase Order or a part thereof and invoke the bank guarantee without giving notice to the SELLER. The High Court shall have no responsibility whatsoever for any damages sustained by SELLER due to cancellation of the Purchase Order. In such case the earnest money deposited by the SELLER shall also be forfeited.

ARTICLE - VIII DELIVERY, INSTALLATION AND COMMISSIONING

- 8.1 The delivery of all the items ordered shall be accepted in the premises of HIGH COURT at ALLAHABAD and DISTRICT COURTS. SELLER shall arrange to transport the items to the respective sites of delivery and installation at the risk and cost of SELLER.
- 8.2 The delivery and installation of all the items shall be made by SELLER to the satisfaction of BUYER within six weeks after the Pre-Dispatch Inspection is completed at the office/factory of SELLER. Pre-Dispatch Inspection will be conducted within six weeks from the date of placement of Purchase Order.
- 8.3 SELLER shall carry out unpacking of the items on the sites of delivery and installation in the presence of team of technical experts nominated by the HIGH COURT/ DISTRICT COURTS for the purpose and display that the seal and signatures put at time of packing of items after Pre-Dispatch Inspection are intact.
- 8.4 SELLER shall inspect the items brought for delivery, before delivery is made, for assessing the damage in transit, if any, and make necessary insurance claims. The BUYER shall provide necessary assistance, letters and certificates when required.
- 8.5 If the site of delivery and site of installation of items differ but are in the premises of HIGH COURT/ DISTRICT COURTS then it shall be the responsibility of SELLER to shift the items from the site of delivery to the site of installation safely at the risk and the cost of SELLER.
- 8.6 SELLER shall not deliver and the BUYER shall not accept the defective items, if any, and SELLER shall be legally bound to replace the defective items with new ones at the cost of SELLER within one week from the date of notice. Any expenditure incurred by the BUYER on this account shall also have to be reimbursed by the SELLER.
- 8.7 After successful acceptance tests of all the items by the technical experts nominated by HIGH COURT/DISTRICT COURTS, a certificate shall be issued by the HIGH COURT/ DISTRICT COURTS to SELLER and after issue of this certificate, the items shall be deemed as commissioned.
- 8.8 If any bug is detected in the software supplied by the SELLER at any time during implementation and/or after implementation of the software, the same shall be communicated

in writing by HIGH COURT to SELLER and it will be rectified by SELLER free of charge within a week's time after receipt of such notice.

8.9 The SELLER shall deliver the items within _____(specify period) of the date of requisition issued by the High Court and in case of failure to deliver the items in time the High Court shall be entitled either to revoke the entire agreement or to accept late delivery alongwith such compensation as determined by the High Court. In case of revocation of agreement, the High Court shall also be entitled to claim damages from the SELLER as determined by the Arbitrator.

ARTICLE - IX TRAINING

9.1 The training shall be conducted by SELLER in the premises of HIGH COURT at ALLAHABAD. The dates for the training shall be decided by the High Court after consulting SELLER.

9.2 Training will be imparted by SELLER at the cost of SELLER to the technical staff nominated by the HIGH COURT. Any expenditure on account of stationery, training material, etcetera shall be borne by SELLER.

9.3 The seven days training on the following topics will be given by SELLER to the candidates nominated by the HIGH COURT. Broadly following topics shall be covered during training session :-

(----- Details of the topics covered -----)

ARTICLE - X WARRANTY

10.1 SELLER warrants that each item supplied under this contract to HIGH COURT shall be free from any defect in material and/or workmanship.

10.2 The warranty period of all the items shall be three year from the date of their installation. Plastic parts, batteries, interface cables and networking cables will be included in warranty maintenance.

10.3 During the warranty period SELLER shall be bound to replace or repair free of charge any or all items, as the case may be, which will be reported by HIGH COURT to SELLER as defective or has been determined by SELLER to be defective in material and/or in workmanship. The defective parts that are replaced shall become the property of the SELLER.

10.4 If the HIGH COURT reports a defect to SELLER and SELLER determines that defect is not due to defect in material and/or workmanship, then SELLER shall notify HIGH COURT in writing of the reasons for such decision to the satisfaction of HIGH COURT but SELLER shall be duty bound to get the items set right and make the same in functioning condition as original ones at the cost of SELLER.

10.5 Consumable items such as floppy diskettes, CD-ROMS, CD-RW and stationery are excluded from warranty maintenance.

10.6 The SELLER guarantees minimum uptime of 99% for the (_____ details of items _____) and 95% for the Personal Computer, LaserJet Printers and offline Uninterrupted Power Supply system and other items supplied by SELLER during the warranty period of three years. If any items are not working, then SELLER shall remove the defects and get the items set right and make the same functional within four hours from the date and time the fault is communicated (in case the defect is communicated after working hours then the defect should be removed within first four hours of the next working day) by HIGH COURT/ DISTRICT COURTS to the local or nearest Service Centre either telephonically or through a letter and/or messenger or the Service Engineer has collected the complaint from the complaint register to be maintained at HIGH COURT/ DISTRICT COURTS failing which the SELLER shall have to pay the compensation for damages to the BUYER as per Article-XI. SELLER shall post an engineer at HIGH COURT, ALLAHABAD for providing services while the service at DISTRICT COURTS shall be provided by a local or nearest Service Centres of SELLER at Commissionery/District level whose addresses are given below:-

At Allahabad :-

For DISTRICT COURTS :-

10.7 SELLER will maintain appropriate spare parts inventory in the premises of HIGH COURT at ALLAHABAD and its all Service Centers at Commissionery/District level during warranty period and the period of AMC thereafter, if HIGH COURT opts for AMC, to avoid any delay in maintaining the items.

10.8 On completion of the warranty period of three years HIGH COURT will either enter into Annual Maintenance Contract with the SELLER for post warranty maintenance of the items as mentioned in Annexure-I or a part of it or maintain them in-house. In case HIGH COURT opts to maintain the items in-house, the SELLER shall make available all necessary spares (same or equivalent spares) on reasonable rates without affecting the compatibility or performance of any part(s) of the system, for a period of at least four years after completion of the warranty period of three years. This shall be binding on the SELLER under the terms and conditions of this DEED.

ARTICLE - XI COMPENSATION FOR DAMAGES

11.1 Computation of compensation for damage shall be based on working hours. The time when items are not used due to any reason except the fault in items shall be treated as uptime. If any of the accessories attached with any equipment is down, the complete equipment shall be treated as down.

11.2 According to this agreement SELLER shall be duty bound to give 100% uptime on all the items. However, the BUYER considering several unavoidable circumstances will overlook 1% downtime for (_____details of items_____) and 5% downtime on Personal Computers, LaserJet Printers and off-line Uninterrupted Power Supply systems. But in case 99% uptime is not maintained for (_____details of items_____) installed and 95% uptime for Personal Computers, LaserJet Printers and off-line Uninterrupted Power Supply systems installed is not maintained in any year by SELLER, then compensation for damages for not maintaining the required uptime shall have to be borne by the SELLER.

11.3 If uptime is equal to or more than 99% in a year for (_____details of items_____) and 95% in a year for Personal Computers, LaserJet Printers and off-line Uninterrupted Power Supply systems, then no compensation shall be charged for downtime in that year. If the downtime exceeds 1% for (_____details of items_____) and 5% for Personal Computers, LaserJet Printers and off-line Uninterrupted Power Supply systems of the total time available in a year, then total downtime for (_____details of items_____) systems (i.e. the time by which the uptime was less than 100%) in any year considering 365 days and 24 hours per day will be considered for calculating the compensation for damages and for Personal Computers, LaserJet Printers and off-line Uninterrupted Power Supply systems (i.e. the time by which the uptime was less than 100%) in any year considering 8 hours per working day will be considered for calculating the compensation for damages. If average down time in days of (_____details of items_____) systems exceeds 4 days in a year, then the compensation @ Rs. 2000/- per day per equipment shall be charged from the SELLER. If average down time in days of the Personal Computers, LaserJet Printers and off-line Uninterrupted Power Supply systems exceeds 15 days in a year, then the compensation @ Rs.200/- per day per Personal Computer, @ Rs.200/- per day per LaserJet printers and @ Rs.200/- per day per offline Uninterrupted Power Supply system shall be charged from the SELLER. In case of local or nearest Service Center at Districts, the complaints must be attended to within 4 working hours of the receipt of communication by the HIGH COURT/DISTRICT COURTS. If the complaint is not attended to within 4 working hours, then the compensation @ Rs.200/- per day per Personal Computer, @ Rs.200/- per day per LaserJet printers and @ Rs.200/- per day per offline Uninterrupted Power Supply system shall be charged from the SELLER and warranty shall be extended by equal number of days.

11.4 If average downtime days of (_____details of items_____) systems in a year is less than or equal to 4 days and if average downtime days of Personal Computers, LaserJet Printers and off-line Uninterrupted Power Supply systems in a year is less than or equal to 15 days, the period covered by the warranty shall be extended for an equal number of working days for all the (_____details of items_____) systems, Personal Computers, LaserJet Printers and off-line Uninterrupted Power Supply systems accordingly.

11.5 If average downtime days of (_____details of items_____) systems in a year is less than or equal to 4 days and if average downtime days of Personal Computers, LaserJet

Printers and off-line Uninterrupted Power Supply systems in a year is less than or equal to 15 days, the period covered by the AMC shall be extended for an equal number of working days for the (_____ details of items _____) systems, Personal Computers, LaserJet Printers and off-line Uninterrupted Power Supply systems accordingly without paying any amount to SELLER for above said extended days.

11.6 The amount of compensation so calculated as per clause 11.3 shall be deducted from the advance payable to SELLER from the money due after every year is completed during the full three years warranty. In case the computation of compensation for damages is delayed at the BUYER's end for any reasons, or this agreement is terminated, then the compensation for the damages shall have to be paid by SELLER within one month from the date of receipt of bills from the BUYER for the same. If any amount is payable to SELLER under this contract then, the compensation for damages may be deducted from that amount before releasing the payment. In case AMC contract is not signed and no amount is due to be paid to the SELLER and if he refuses to pay the compensation for damages, then the same may be recovered by invoking the bank guarantee submitted by SELLER in favour of BUYER and the proceeds thereof shall be forfeited by HIGH COURT. In case, there is no bank guarantee or the compensation amount is more than the amount of bank guarantee, the compensation amount or the rest of the compensation amount, as the case may be, shall be recovered from SELLER as an arrears of land revenue.

ARTICLE - XII OPERATIONAL SERVICES

12.1 SELLER will post a resident service engineer in the premises of HIGH COURT at ALLAHABAD to be stationed at HIGH COURT at ALLAHABAD for the period of at least three years after commissioning of all the items. At DISTRICT COURTS, Service Engineer of SELLER will visit once in six months during the warranty period for the preventive maintenance of all the items in addition to the visits for corrective maintenance when complaints are logged. SELLER will not be paid any additional charges for posting a resident Service Engineer in the premises of HIGH COURT at ALLAHABAD during the warranty period.

12.2 The SELLER shall maintain a Service Centre with telephone facility at Commissionery/ Districts to record the complain if any and will provide all maintenance support services to the DISTRICT COURTS. The address of the above said Service Centre is mentioned in clause 10.6 of Article X.

12.3 Resident Service Engineer for Allahabad and Service Engineers at nearest Service Centers of SELLER will be responsible for providing maintenance services of all the items on behalf of SELLER.

12.4 HIGH COURT will provide space for resident service Engineer and suitable place with necessary environmental conditions for keeping the necessary spares for maintenance in its

premises for the period of three years for which resident service engineer is posted in the premises of HIGH COURT at ALLAHABAD.

- 12.5 The resident Service Engineer will collect the complaints from logbook maintained in the premises of HIGH COURT at ALLAHABAD and will provide maintenance services from 9:30 am to 6:00 pm with 1/2 an hour lunch break on every working day of HIGH COURT. The shift timing will be at the discretion of HIGH COURT which can be changed or increased.
- 12.6 SELLER shall be solely responsible for the safety protection and security of its resident service engineer. Accordingly, SELLER shall comply faithfully with all pertinent laws, regulations and ordinances and shall, at his own expense, take all requisite protection measures to eliminate the occurrences of accidents, loss or damage of any kind to its personnel during the performance of his/her duties under this contract. SELLER will pay all indemnities arising from accidents or loss of life due to SELLER's negligence and will not hold BUYER responsible or obligated. SELLER will treat as confidential all data and information about HIGH COURT, obtained in the execution of his responsibilities, in strict confidence and will not reveal such information to any other party without the prior written approval of the BUYER.
- 12.7 If the items supplied by SELLER are to be moved from one place to other place, in the premises of HIGH COURT at ALLAHABAD or at respective DISTRICT COURTS, then the movement to the new site and its installation at new site will be done safely by SELLER at its risk and cost.
- 12.8 Service Engineer will fill a log book with date and signature, the format of which is given at **Annexure-II**. It will be duly counter signed by authorised person of HIGH COURT/ DISTRICT COURTS where computer systems are installed. These records in the log book shall be used for calculation of monthly uptime of individual items.
- 12.9 HIGH COURT/ DISTRICT COURTS shall arrange for full access to the items supplied and installed by SELLER to enable the Service Engineer to provide maintenance services.

ARTICLE - XIII MAINTENANCE

- 13.1 SELLER shall provide free maintenance services of the items supplied by the SELLER from the date of commissioning, during the warranty period of three years on one shift (8 hours) basis on all working days of HIGH COURT. The shift hours can be changed or increased by HIGH COURT. The maintenance will include preventive maintenance on mutually agreeable schedule between HIGH COURT and SELLER. The preventive maintenance hours will not exceed 4 hours in a month on each item.
- 13.2 If HIGH COURT opts for annual maintenance contract with SELLER, then SELLER shall be responsible for maintenance of complete items supplied by SELLER. SELLER shall

also guarantee minimum 99% uptime for (_____details of items_____) system and minimum 99% uptime for Personal Computers , LaserJet printers and offline Uninterrupted Power Supply system during maintenance period. If the uptime is below 99% for (_____details of items_____) system and 95% for Personal Computers , LaserJet printers and offline Uninterrupted Power Supply system, then the SELLER shall have to pay the compensation as per provisions of Article XI of this contract.

13.3 The AMC charges will be maximum 6% of the hardware value per year for the next 4 years after expiry of warranty period of three years.

13.4 SELLER shall provide corrective maintenance service on urgent basis to HIGH COURT's complaints on holidays and beyond office hours, if necessary. The name, address and telephone number of the person to be contacted for registering the complaint on Sundays, Second Saturdays, holidays and after working hours of HIGH COURT/ DISTRICT COURTS are as follows :

Contact person and address at Allahabad :- Contact person and address of SELLER's Service Centers for DISTRICT COURTS :-

Resident Service Engineer to be posted by
SELLER,
C/o Computer Centre,
High Court,
Allahabad, India.

13.5 Whether a defective item or component is to be repaired or replaced shall be at the discretion of the SELLER to the satisfaction of HIGH COURT/DISTRICT COURTS.

13.6 Any item or component damaged due to natural disaster (Force majeure conditions) shall be excluded from this contract. The cost of repair or replacement of parts due to these reasons shall be borne by HIGH COURT.

13.7 Maintenance shall not include floppy diskettes, CDRoms and CD-RWs.

13.8 Any items which have been altered or repaired by any person other than SELLER's authorized service personnel shall not be covered by this contract and SELLER shall in no case be liable thereof.

ARTICLE - XIV DOCUMENTATION

14.1 One hard copy of complete documentation with each set of the software will be supplied free of cost by the SELLER to HIGH COURT/DISTRICT COURTS. The software copies including the media and documentation to be supplied by the SELLER to HIGH COURT/DISTRICT COURTS shall be authorized copies. The SELLER shall give a certificate to this effect to HIGH COURT. Any subsequent update in the software supplied will be provided by SELLER to HIGH COURT/ DISTRICT COURTS free of cost. Only the legal softwares on CD's along with their original document/manuals shall be accepted by HIGH COURT.

14.2 Unless and otherwise agreed, the items as mentioned in **Annexure-I** shall not be considered to be completed for the purpose of taking over until all the manuals and drawings required have been supplied to the BUYER.

ARTICLE - XV PATENT RIGHTS

SELLER shall indemnify HIGH COURT against all third-party claims of infringement of patent, trademark or industrial design rights or intellectual property rights or copy rights arising from use of the items or any part thereof in India or abroad at any international destination.

ARTICLE - XVI LIMITATIONS OF LIABILITIES

16.1 Except the conditions of warranties expressed in this DEED if anything comes out neither written nor expressed or not implied therein, but it is outcome of this contract, HIGH COURT and SELLER or their authorized representative will sit together and decide the matter amicably and reasonably and the decision so taken shall be signed by both the parties and that shall be treated as part of this contract and that will be called supplementary of this DEED and that will be binding on both the parties. If no agreement is reached, then the matter shall be referred to Arbitrator.

16.2 The HIGH COURT shall not be liable for any repair or replacement necessitated by fault of the SELLER or its representative.

ARTICLE - XVII ENTIRE AGREEMENT

17.1 The contract between the parties shall consist of this contract and Annexures attached hereto.

17.2 If anything which is not in this contract but unavoidably needed to be done in course of working of the items supplied by SELLER then the BUYER and SELLER or their authorized agents and/or authorized representative will sit together and decide the matter amicably and reasonably for the better functioning and working of the items and decision so taken shall

be signed by both the parties and shall be treated as part of this contract and be called supplementary of this DEED which will also be binding on both the parties.

ARTICLE - XVIII FORCE MAJEURE

Neither party shall be liable or deemed to be in default for any delay or failure in performance under this contract resulting directly or indirectly from the causes beyond the reasonable control of such party. Such causes include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulation superimposed after the contract is signed, fire, earthquake or other disasters.

ARTICLE - XIX ARBITRATION

19.1 Dispute, differences or ambiguities, if any, arising between the parties regarding any term or terms, condition or conditions whether covered under this contract or otherwise and clause or clauses of this contract, shall be decided through arbitration and the aggrieved party shall present its arbitration petition to the single arbitrator nominated by Hon'ble the Chief Justice, HIGH COURT. The award given by the arbitrator shall be final subject to the provisions of Arbitration and Conciliation Act 1996.

19.2 During the arbitration period, except the Clause or Clauses under dispute and/ or ambiguous and referred to the arbitration, rest clauses of the contract shall remain enforceable among the parties.

ARTICLE - XX LIQUIDATED DAMAGES

In the event of failure of SELLER to supply, installation and commissioning of all the items in the stipulated period as given in Article VIII, the High Court reserves the right to recover from the SELLER as liquidated damages for the period after the said delivery schedules as follows :-

- (a) 0.5% of the Purchase Order value per week of delay in delivery, subject to a maximum of 5% of Purchase Order value.
- (b) 0.5% of the Purchase Order value per week of delay attributable to SELLER in installation and commissioning of all the items ordered subject to a maximum of 5% of Purchase Order value.
- (c) HIGH COURT reserves the right to cancel the Purchase Order, if the delivery gets delayed by more than four weeks. The High Court shall have no responsibility whatsoever for any damages sustained by SELLER due to cancellation of the Purchase Order. In such case the earnest money deposited by the SELLER shall be forfeited.

ARTICLE -XXI NOTICES

21.1 All notices under this contract shall be given in writing and shall be served by sending the same by registered post with acknowledgment due addressed to the following: -

In the case of SELLER:-

In case of the BUYER :-

Registrar General,

High Court of Judicature at Allahabad,

Allahabad.

and in providing services of such notices, it shall be sufficient to show that the same has been properly addressed and posted. Purchase Order will be placed to the factory office of SELLER at (-----name of the party-----) and a copy of same will be sent by the BUYER to its local office.

21.2 If either of the parties intends to change its present postal address, it will give a written notice of intimation by registered post to the other party at least one month before, indicating therein the date upto which the letters to be sent to the present address and from which date the letters to be sent to the newly changed address.

ARTICLE - XXII VALIDITY PERIOD

22. This contract shall be effective from the date of placement of the Purchase Order and shall continue to be in force for a period of thirty six months from the date of commissioning of the items or upto such time as the warranty extends under this contract, whichever is later.

ARTICLE - XXIII LOCAL JURISDICTION OF CIVIL COURTS

23. The parties agree that only the Civil Court at Allahabad shall have jurisdiction if there is any occasion to invoke jurisdiction in respect of any matter under or arising out of this contract.

IN WITNESS WHEREOF the parties hereto have signed this DEED on the date first above written.

For and on behalf of the
SELLER

For and on behalf of Governor of Uttar Pradesh

Registrar General,

High Court, Allahabad.

(1) Witness

(1) Witness

High Court, Allahabad.

(2) Witness

(2) Witness

High Court, Allahabad.

ANNEXURE-I

Hardware Items	Software Items
For High Court	
1. Database Server/ Application Server :2nos.	1. Red Hat Enterprise Linux (AS) 4.0 Edition OS
2. Storage Area Network, SAN switches and HBA's :1 no.	2. Oracle Database Enterprise Edition 10g Release 2 or latest
3. Tape Library :1 no.	3. Oracle Application Server 10g Standard Edition One Release 3 or latest
4. Server Rack Unit and KVM Switch :1no.	4. Oracle Developer suite 10g or latest
5. 5-KVA Online U.P.S. :1 no.	
For District Courts (List of District Courts)	
1. PC's :74 nos.	Red Hat Enterprise Linux 4.0 Desktop Edition
2. Laser Printers :74 nos.	
3. Line Interactive UPS :74 nos.	

ANNEXURE-II

(Format for complaints register)

ADDRESS OF INSTALLATION LOCATION : _____

NAME AND ADDRESS OF SERVICE CENTRE OF THE FIRM/COMPANY _____

Sl. No.	Failure Date/ Time	Complaint Date/ Time	Booking Complaint No.	Desc. of defective items alongwith serial nos.	Attended Date/Time	Repaired Date/Time	Downtime in days	Engineer Name & Signature	Remarks