

AGREEMENT

This Agreement is made on 30 May 2007, between the Governor of Haryana through the Director School Education – cum – Special Secretary to Govt. of Haryana, Education Department (hereinafter referred to as “Client” which expression shall, unless excluded by or repugnant to the context, include his successor in office and assigns and delegates) is first party,

And

M/s NICT having its registered office at GF-31 First Floor Scheme No. 54, Vijay Nagar, Sayaji Square, Indore-452010, (hereinafter referred to as “Service Provider” which expression unless excluded by or repugnant to the context, include his successors/administrators/assignees) is second party;

Whereas HARTRON on behalf of Client floated a tender notice 01/2006-07/Computer Education dated 6th November, 2006 and subsequently issued the Tender

Document (herein called the Tender) No. 01/2006-07/Computer Education on behalf of client inviting bids for Provision of Computer Education Services in Govt. Sr. Sec. Schools of Haryana and subsequent clarifications/amendments issued on 29th November, 2006 (which have hereby become the integral part of the tender document and this agreement) and in response the Bid Proposal has been submitted by the Service Provider for Provision of Computer Education Services in Govt. Sr. Sec. Schools of Haryana and has been selected to provide Computer Education Services along with AMC of the computers and peripherals in 8 districts (*presently in 373 Government Senior Secondary Schools) of the State, for a period of 3 years as per rates mentioned below:

Details	Service Fee for Provision of Computer Education Services for contract period (Rate per school per month for the total Contract period for all the goods and services inclusive of all taxes and levies and all other charges applicable)	Service Fee for providing Additional Faculty	***Service Fee for providing AMC per Computer per annum including printers and UPS (irrespective of make, age and configuration)
S.No.	1	2	3
In Figures	7,100	3,500	2,199
In Words	Seven Thousand One Hundred	Three Thousand Five Hundred	Two thousand one hundred and ninety nine

****Detail of Districts and Schools:**

Sr. No.	Name of District	No. of Schools
1	Fatehabad	35
2	Jind	64
3	Kaithal	56
4	Kurukshetra	32
5	Mahendergarh	54

6	Rewari	52
7	Sirsa	51
8	Yamunanagar	29

*The left over schools in the allotted districts will be covered under the project after placement of infrastructure.

**The number of schools is indicative.

***The estimated no. of computers year wise for which AMC will be required is as follows:

2007-08	704
2008-09	1044
2009-10	2266

Now, therefore, this agreement witnesses and both parties hereto agree as follows:-

- 1) The prescribed curriculum of 1-year duration each shall need to be taught to all students of classes 6th to 12th. The contract shall be in force from the date of signing of agreement and shall be in force upto end of academic session 2009-10. The Service Provider will be required to provide General Computer Education as per syllabus prescribed in the tender document. The Service Provider will have to ensure the teaching of the syllabus of Haryana Board of School Education from class VI to VIII to the students who opt for Computer Education as an optional subject. The Syllabus of optional subject (Class VI to VIII) will be as prescribed by the Board of School Education Haryana. The students who opt for Computer Education as an optional subject will have to purchase their own courseware as prescribed by Haryana Board of School Education whereas students who opt Computer Subject under General Computer Education (Class VI to XII) will be provided courseware as per syllabus prescribed in the tender document free of cost by the service provider. Client reserves the right to revise the course as well as modify the prescribed syllabus in the tender document.

- 2) Period of execution of the contract will be 60 days as agreed during presentation. The execution period means that the Service Provider has to start the teaching work in the allotted schools within 60 days of the award of the contract.

- 3) The Service Provider shall ensure that at all times during the currency of the contract a Project Manager at Chandigarh, acceptable to the client, shall take charge of the performance of the contract. The address, telephone, fax numbers and email addresses of this Project Manager's office will be given in the schools as well as to the client. The Service Provider will also provide one District Coordinator per district for coordinating the activities in the concerned district. The District Coordinator will sit in the DIET or any other designated place by the client and will coordinate and supervise all the activities including Teacher training etc.
- 4) Computer and Basic infrastructure like Computer Lab, Tables, Chairs will be provided by the client in the allotted Govt. Sr. Sec. Schools. However; the client reserves the right to increase or decrease the number of schools.
- 5) A minimum of 4 computers and 1 printer with UPS will be provided in each Govt. Sr. Sec. School for minimum 200 students and for every additional 50 students joining this programme additional computers will be provided by the client. The practical class would consist of a batch depending on number of computers in the school. It is expected that two students will share one computer. However, if the number of students are significantly more than the required number of computers, then there will be 3(Three) students sharing one computer.
- 6) Comprehensive maintenance of hardware irrespective of make, age and configuration of the hardware and connected accessories like UPS, Printer etc. will be the responsibility of the Service Provider.
- 7) The Service Provider will provide two faculties in each School. Regarding provision of additional faculty, Service Provider will be required to provide additional faculty as per the following criteria:

No. of Students Joining this Programme	Faculty
Upto 599	2
600-899	3

900-1199	4
And so on	

The appointed faculties should have the following minimum educational qualifications or their equivalent in computer education from recognized institutions: -

Graduate with post graduate Diploma in Computer Application from recognized Institution with at least 1 year Computer teaching experience.

OR

Bachelor in Computer Applications (BCA)/B.Sc. (Computers) with at least 1 year Computer teaching experience.

OR

3 years Diploma in Computer Science from State Board of Technical Education with at least 1 year Computer teaching experience.

OR

'A' Level DOE accredited course or equivalent with at least 1 year Computer teaching experience.

- 8) All statutory obligations / liabilities like Salary, ESI, and PF as per labour laws for manpower employed will be the sole responsibility of the Service Provider. The Deptt./Govt. will not be in any way responsible for any statutory obligation in respect of the staff deployed for the purpose. The emoluments to be paid to the Faculty should not be below the minimum prescribed wages under the labour laws. The manpower deployed will be the sole responsibility of the Service Provider and will never become the liability of the State Government under any circumstances.
- 9) All kinds of licensed software i.e. Educational Softwares and application softwares for teaching purpose will be provided by the Service Provider.
- 10) The Service Provider will impart basic computer training especially the use of MS Word, MS PowerPoint and Internet as tools for Project based learning to 15 (fifteen) teachers of every allotted school to be nominated by the Principal/Head teacher every year free of cost.
- 11) The Service Provider will issue the certificates jointly with the client to all the students who pass the year end examination and have more than 70% attendance.

- 12) Training on Internet will be provided to the teachers and students by the Service Provider whereas the expenditure of Telephone and Internet connection will be borne by the client.
- 13) (i) The payment for the bills submitted for providing computer education services for the preceding month will be made to the Service Provider in the following month subject to the condition that the Service Provider submits his claim within a week. For example the payment of March will be made by 30th April if the claim is submitted by 7th April. The payment will be made by the client after a satisfactory performance certificate duly signed by the respective Principals of the school is submitted. The payment will be made for the entire contract period. However, the Client will make due payment for the actual services rendered by the service provider in case any adversity happens under the writ petition (Refer Clause 58).
(ii) The payment for maintenance of machines (AMC) will be made in equated quarterly installments. The first installment will be released on receiving a satisfactory performance certificate of the first quarter, duly signed by respective principal of the school.
- 14) All payments will be subjected to tax deduction at source as applicable at the prevailing tax rates. The decision of the client in this regard will be final and binding and no disputes in this regard will be entertained.
- 15) In case any faculty goes on leave, a substitute will be provided by the Service Provider.
- 16) District Coordinator of the Service Provider will visit every school at least once a month or against the call by the school principal.
- 17) Computer exams will be held along with schools examination.
- 18) Stationery and Consumables such as Printer's ribbon, floppies etc. under the contract will be provided by the Service Provider as follows:
 - i) 12 Nos. of fan fold A4 Reams of at least 70 GSM per school per annum of HP/ JK/ Century/ Ballarpur make in case of dot matrix printer(or 12 Nos. of Reams of above specifications without fan fold in case of Inkjet/Laser printer).

- ii) 1 floppy per student per school per annum.
 - iii) 12 new ribbons per school per annum in case of dot matrix printer(or 1 toner /1 cartridge and 2 refills in case of Inkjet/Laser printer).
- 19) Electricity bill will be paid by the school.
 - 20) Faculty although employee of the Service Provider will also be under the concurrent control of the school Principal.
 - 21) The Service Provider will be responsible for the entire system including teaching, tests and examinations etc. The question paper will also be set by Service Provider. All faculties appointed will report to the respective schools within the stipulated period i.e. 60 days. Courseware, consumables will also be supplied to all schools well in time before the start of the classes. The Service Provider will submit monthly report to the client duly signed by the Principal on mutually decided formats. The report will carry information like faculty attendance, conduction of classes, status of hardware etc.
 - 22) Client reserves full right to inspect/evaluate independently or through any agency the entire system's functioning, implementation and administration.
 - 23) The General Course would be covered in 90 hours duration, with 60 hrs. practical and 30 hrs. theory classes in an academic session.
 - 24) Books/Courseware for the General Course duly approved by the client will be provided by the Service Provider free of cost among faculty and students respectively. The courseware for Computer Education will be designed and printed in English.
 - 25) Service Provider, if required, will give courseware in bilingual.
 - 26) The school will provide necessary infrastructure with adequate Hardware. The existing Electricity Connection of the school will be utilized for computer Education purpose. In case of non-availability of existing connection, the School Authorities will arrange a new Electricity connection. The Electricity charges for running the centre will be borne by the School authorities.
 - 27) The entire infrastructure and hardware assets would always remain to be the property of the client/school from the beginning of the project. At the end of the contract period, the entire infrastructure like Instruction Material, Software, Hardware, furniture, Books and site installations provided for the project would be handed over in proper condition

to the concerned Principal of the school. The Intellectual Property Rights for the material would continue to remain with the respective owner. However, the intellectual property right of the material developed during the process of teaching or interaction with the children will be the sole property of the client.

- 28) The Watch & ward of the hardware and other installations will mainly be the responsibility of the School Authorities after the School hours. However; the Service Provider will ensure that the assets are not misused, damaged or lost due to negligence on his part. The computer hardware, fittings and furniture will be adequately insured for loss due to fire, theft and natural calamities by the client. The Service Provider will not damage or replace the Equipment or any part thereof and if any such incident comes into the notice of the School Authorities at any time, then the Service Provider will be liable to make good such loss at the market value plus interest @15% within ten days.
- 29) Service Provider will maintain an MIS (Management Information System) as per mutually agreed formats in close co-ordination with the concerned Head of the institution and would pass on the information to the client.
- 30) The contract can be further extended at the sole discretion of the client with the consent of the Service Provider for one more academic year. The client shall inform the Service Provider of its intention to extend the contract at least 30 days before the termination of the contract.
- 31) If the Service Provider is not able to implement the contract within the stipulated period i.e. 60 days, a penalty at the rate of 1% per week of the total contract value will be levied on the Service Provider for a maximum period of 4 weeks. If the implementation is not completed even within this 4-week period also, the contract can be terminated and the EMD amount will be forfeited.
- 32) Service Provider will have to open office in Haryana if not existing.
- 33) Service Provider shall not assign, in whole or in part, its rights and obligations to perform under this Contract to a third party, directly or indirectly.

- 34) The list of the persons being hired shall be submitted to the client within 15 days of recruitment. The client can verify the qualifications and experience of any faculty deployed by the Service Provider.
- 35) The normal institutional hours will be notified from time to time.
- 36) Service Provider shall impart computer Education in bilingual form e.g. (both in Hindi and in English). He will provide bilingual software wherever possible as a mode of computer education. The preferential mode of communication with the students in rural institutions will be Hindi and the faculty should have adequate knowledge of both the languages.
- 37) The implementation schedule should be strictly adhered to.
- 38) The Service Provider shall abide by any direction prescribed by the client in due course with regards to evaluation of students in respect of Computer Education imparted by the Service Provider.
- 39) Evaluation/Examination for the Certification of computer education courses has to be adhered as per direction by the client from time to time.
- 40) Government reserves the right to issue additional/supplemental orders, instructions, guidelines, memos etc. and modifications/amendments to the project towards successful implementation and/or in the best interest of this project.
- 41) **PENALTY CLAUSE:**
 - (i) A penalty of Rs.100 per day shall be imposed for every day missed by the Service Provider because of faculty being absent for more than two teaching days. However; if the faculty remains absent due to any reason whatsoever, and the Service Provider fails to provide a substitute faculty after two days, then, the penalty so imposed will be calculated from day one. The absence of the faculty will be counted from the day it is informed by the Head teacher to District Coordinator on phone/fax or in writing. The penalty will be calculated on monthly basis and deducted from monthly payment to be made to the Service Provider. The District Coordinator will give a complaint number in turn to the Principal/Head Teacher to ensure the proper maintenance of record.

- (ii) If at any time, the Service Provider defaults in more than 15% of the total Schools allotted to it, then, the whole amount of Bank guarantee of the Service Provider will be forfeited.
- (iii) In case the penalty amount exceeds the due amount to be paid in respect of a particular school, then the Service Provider will have to pay the balance amount within 15 days of being informed and in case of any delay, interest @ 12% p.a. shall be charged.
- (iv) The maximum down time of equipment during the period of Comprehensive Annual Maintenance Service shall not be more than 48 hours. In case the down time of equipment exceeds 48 hours, then penalty of Rs. 100 per day shall be imposed.

42) STANDARD OF PERFORMANCE

Service Provider shall carry out the services and its obligations under the contract with due diligence, efficiency and economy in accordance with generally accepted norms, techniques and practices used in the industry. Service Provider shall also adhere to professional engineering and consulting standards recognized by international professional bodies and shall observe sound management, technical and engineering practices. It shall employ appropriate advanced technology and safe and effective equipment, machinery, material and methods. The Service Provider shall always act in respect of any matter relating to this contract, as faithful advisors to the client and shall, at all times, support and safeguard the client's legitimate interests in any dealings with the third party.

43) USE OF CONTRACT DOCUMENTS AND INFORMATION

- (i) Service Provider shall not, without the client's prior written consent, disclose the contract or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the client in connection therewith to any person other than a person employed by the Service Provider in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

(ii) Service Provider shall not, without the client's prior written consent, make use of any document or information.

(iv) Any document other than the contract itself shall remain the property of the client and shall be returned (in all copies) to the client on completion of Service Provider performance under the contract if so required by the client.

44) TERMINATION FOR DEFAULT

(i) The client may, without prejudice, to any other remedy for breach of contract, by written notice of 30 days of default sent to the Service Provider, terminate the contract in whole or in part & vice-versa if:-

(a) Service Provider fails to deliver any or all of the obligations within the time period (s) specified in the contract, or any extension thereof granted by the client.

(b) Service Provider fails to perform any of the obligation(s) under the contract.

(c) The client may at any time terminate the contract/agreement by giving written notice to the Service Provider without compensation to the Service Provider, if Service Provider becomes, bankrupt or otherwise insolvent, provided that such termination will not prejudice or effect any right of action or remedy which has accrued thereafter to the client.

45) PERFORMANCE GUARANTEE/SECURITY

Service Provider shall be required to deposit a security for due performance of the contract in the form of irrevocable Bank Guarantee on any scheduled/nationalised Bank at Chandigarh amounting to 5% of the total contract value, pledged in favour of Director School Education, Haryana, valid upto a period of six months after the date of expiry of the stipulated period of providing Computer Education Services. The Performance Guarantee can be revoked at the Chandigarh bank branch in case of violation/non performance of contract. The Service Provider shall be required to deposit requisite amount of performance guarantee within ten days from the date of signing of Agreement, failing which, the order shall be withdrawn at the discretion of the client and the EMD of the Service Provider shall be forfeited

46) NO CLAIM CERTIFICATE

Service Provider shall not, be entitled to make any claim, whatsoever, against the client under or by virtue of or arising out of this contract/ agreement nor shall the client entertain or consider any such claim, if made by the Service Provider after he shall have signed a “No claim” certificate in favour of the client in such forms as shall be required by the client after the works are finally accepted. The Client will issue a “No Claim Certificate” to the Service Provider upon successful completion of the project.

47) SUSPENSION

(i) The client may by a written notice of suspension to the Service Provider, suspend all payments to the Service Provider under the contract, if the Service Provider failed to perform any of its obligations under this contract, (including the carrying out of the services) provided that such notice of the suspension:-

(a) Shall specify the nature of the failure.

(b) Shall request the Service Provider to remedy such failure within a specified period from the date of receipt of such notice of suspension by the Service Provider.

48) DOCUMENTS PREPARED BY THE SERVICE PROVIDER TO BE THE PROPERTY OF THE CLIENT

All plans, drawings, specifications, designs, data tables, presentations, reports and other documents prepared by the Service Provider in the execution of the contract shall become and remain the property of the client, and before termination or expiration of this contract, the Service Provider shall deliver all such documents to the client along with the detailed inventory thereof.

49) CONFIDENTIALITY

The Service Provider and their personnel shall not, either during the term or after expiration of this contract, disclose any proprietary or confidential information relating to the services, contract or the client's business or operations without the prior written consent of the client.

- 50) Service Provider will meet all statutory rules of employment of faculties/teachers employed in the project. Service Provider will also cover the faculties under various statutory requirements as per employment rules of the State Govt. and any other statutory requirements that are applicable in this project.
- 51) All the other deliverables of the project as specified in the tender document and as per the clarifications/amendments to the tender document vide Letter No. 15268-15280 dated 29.11.2006 will be adhered to by Service Provider.
- 52) Service Provider indemnifies the Client and Hartron against the liabilities in terms of employment of the faculties/teachers deployed under the project.
- 53) Service Provider will provide adequate backup faculty.
- 54) Service Provider will provide monthly performance report in summarized form which will also be accessible to Client through Internet.
- 55) FORCE MAJEURE
- (i) Notwithstanding the provisions of the tender, the Service Provider shall not be liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of Force Majeure.
 - (ii) For purposes of this Clause, "Force Majeure" means an event beyond the control of the Service Provider and not involving the Service Provider and not involving the Service Provider's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the client either in its sovereign or contractual capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
 - (iii) If a Force Majeure situation arises, the Service Provider shall promptly notify the client in writing of such conditions and the cause thereof. Unless otherwise directed by the client in writing, the Service Provider shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. Even the client may terminate this contract, by giving a written

notice of minimum 30 days to the Service Provider, if as a result of Force Majeure, the Service Provider being unable to perform a material portion of the services for a period of more than 60 days.

56) ARBITRATION

All disputes, differences, claims and demands arising under or pursuant to or touching the contract shall be referred to the sole arbitrator i.e. Financial Commissioner and Principal Secretary to Government of Haryana, Department of Education and Languages. This is notwithstanding the fact that the sole arbitrator may be connected in any manner with the official process of finalizing the Contract. The award of the sole arbitrator shall be final and binding on both the parties under the provisions of the Arbitration and Conciliation Act, 1996 or by statutory modification re-enactment thereof for the time being in force. Such arbitration shall be held at Chandigarh.

57) That both the parties agree that the Contract Agreement shall consist of and be governed by the following documents referred to herein (the 'Contract Documents') all of which are incorporated herein by reference and part hereof:

- (i) Tender No. 01/2006-07/Computer Education issued by Haryana State Electronics Development Corporation Ltd. and clarifications/amendments issued on 29.11.2006 (thereby becoming the integral part of the tender document) and subsequent Presentation made on 3.1.2007.
- (ii) Bid submitted by Service Provider.
- (iii) Service Provider's final offer vide Letter No. NICT/HO/IND/07/00873 dated 13.3.2007.
- (iv) Letter of Intent vide No. Hartron:AGM(D):2007:428 dated 6.4.2007 and acceptance by Service Provider thereof.
- (v) This Contract Agreement and annexures attached to it.
- (vi) Performance Guarantee/Security.
- (vii) EMD submitted by Service Provider.

58) The Service Provider is hereby informed that one of the unsuccessful bidder, M/s GCS who could not qualify Pre Qualification cum Technical Bid has filed writ petition (CWP No. 1560 of 2007) in the Hon'ble Punjab and Haryana High Court. As per directions of court, the award of contract shall be subject to further order of this writ petition. The decision of the Hon'ble Court will be conveyed to the Service Provider.

IN WITNESS WHERE OF THE PARTIES HERETO HAVE HERE UNTO SET THEIR RESPECTIVE HANDS AND SEALS THE DAY AND THE YEAR FIRST ABOVE WRITTEN.

Signature _____

Signature _____

For and on behalf of Government of Haryana

Date: 30.05.2007

(MUKESH HAJELA)
CEO & Vice Chairman, NICT
GF-31, 1st Floor, Scheme No.54
Vijay Nagar, Sayaji Square
Indore-452010

Date: 30.05.2007

Witnesses:

1. Signature : _____
Name: : _____
Designation : _____
Date: 30.05.2007

2. Signature : _____
Name: : _____
Designation : _____
Date :30.05.2007

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