

(To be printed on Rs 100 Stamp paper in duplicate issued in New Delhi)

NSDC WEB API USER AGENCY AGREEMENT

This NSDC Web API User Agency Agreement (“Agreement”) is made as of this _____ day of _____ and year _____ by and between:

National Skill Development Corporation having CIN U85300DL2008NPL181612 and registered address at *Block ‘A’, Clarion Collection (Qutab Hotel), Shaheed Jeet Singh Marg, New Delhi – 110009* (hereinafter called “**NSDC**” or “**Company**”) which expression shall unless excluded by or repugnant to the context be deemed to include his successor in office, administrators, and assigns), OF THE FIRST PART.

- AND -

_____ having its
registered address at _____

(hereinafter called “**Web API User Agency**” or “**Agency**”), which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns),
OF THE SECOND PART.

WHEREAS:

- A. NSDC is one of its kind, public private partnership in India, under the Ministry of Skill Development and Entrepreneurship (MSDE) to promote skill development by catalyzing creation of large, quality, for-profit vocational institutions which acts as a catalyst in skill development by providing funding to enterprises, companies and organizations that provide skill training.
- B. NSDC owns and operates Skill Development Management System, a software application platform, (hereinafter called “**SDMS**”) which supports core mandate of NSDC to invest in scalable, high quality, for-profit vocational training initiatives. SDMS is used by Ministry of Skill Development & Entrepreneurship (MSDE), NSDC, Training Partners (TP) & their Training Centers (TC), Sector Skill Councils (SSCs), Assessment Agencies (AA) and Assessors for different roles that they perform in the training ecosystem.
- C. Over a period, SDMS has evolved as a common platform for NSDC and other ecosystem partners for management of training programs, assessment & certification, and disbursement of monetary benefits. This has led to a requirement wherein external agencies must leverage common platform services offered by SDMS through a remote connection over internet in a technologically secure manner.
- D. To monitor and control access to remote connections, explained in para ‘C’ above, NSDC has deployed an intermediate layer of web services (hereinafter called “**API Framework**” or “**SDMS Platform Services**”) which allows isolation of core SDMS with the software application owned by Agencies, external to NSDC and SDMS, which leverage common platform services offered by SDMS.
- E. The Agency has expressed its desire to leverage SDMS services in its software applications to either perform read-write transactions on SDMS or fetch standard reports or fetch process data for generating reports themselves.
- F. The Agency is aware of, and understands, the fact that NSDC’s operation of the SDMS or API Framework is subject to limitations posed by technology, and NSDC does not represent and warrant the same to be defect free.

G. NSDC has evaluated the application of the Agency and has granted recognition to and approval for appointment of the Agency as an approved Agency for leveraging SDMS platform services.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree and this Agreement witnesseth as follows:

1. DEFINITIONS & INTERPRETATIONS

“Agreement” shall mean this agreement executed between the Parties, along with its schedules, annexures, and exhibits, if any, and all instruments supplemental to or amending, modifying, or confirming this agreement in accordance with the provisions of this agreement, if any, in each case as they may be supplemented or amended from time to time.

“Business Day” shall mean any day other than a Saturday, Sunday, or official public holiday in India.

“Law(s)” shall mean all applicable laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or person acting under the authority of any governmental authority, whether in effect or which may come into effect in the future.

“Party” refers individually to NSDC and the Agency and

“Parties” refer collectively to NSDC and Agency.

“Personally identifiable information (PII)” is any data that could potentially identify a specific individual. Any information that can be used to distinguish one person from another and can be used for de-anonymizing anonymous data.

“SDMS Platform Services” shall mean all business processes on SDMS server exposed to the Agency as Web Services for remote invocation over internet.

“Sender Id” shall mean a unique reference number issued to Agency to get access to SDMS platform services.

“Third Party” shall mean any party who is not a Party.

1.2 INTERPRETATION

1.2.1 In this Agreement, unless the context requires otherwise:

- i. reference to singular includes a reference to the plural and vice versa;
- ii. reference to any gender includes a reference to all other genders;
- iii. reference to an individual shall include his legal representative, successor, legal heir, executor, and administrator;
- iv. reference to statutory provisions shall be construed as meaning and including references also to any amendment or re-enactment (whether before or after the date of this Agreement) for the time being in force and to all statutory instruments or orders made pursuant to statutory provisions;
- v. references to any statute or regulation made using a commonly used abbreviation, shall be construed as a reference to the title of the statute or regulation;
- vi. references to any Article, Clause, Section, Schedule, or Annexure, if any, shall be deemed to be a reference to an Article, Clause, Section, Schedule, or Annexure of or to this Agreement;
- vii. Any word or phrase defined in the body of this Agreement shall have the meaning assigned to it in such definition throughout this Agreement unless the contrary is expressly stated or the contrary clearly appears from the context;
- viii. Reference to days, months or years in this Agreement shall be a reference to calendar days, months, or years, as the case may be, unless the contrary is expressly stated or clearly appears from the context;
- ix. Reference to any agreement, deed, document, instrument, rule, regulation, notification, statute, or the like shall mean a reference to the same, as may have been duly amended, modified, or replaced. For the avoidance of doubt, a document shall be construed as amended, modified, or replaced only if such amendment, modification, or replacement is executed in compliance with the provisions of such document(s).

2. AUTHORIZATION OF AGENCY

- 2.1 NSDC hereby authorizes Agency to connect to the SDMS through internet to leverage the SDMS Platform services.
- 2.2 The Agency hereby unequivocally accepts its authorization to consume SDMS Platform services in terms of clause 2.1 above.

3. TERMS AND CONDITIONS OF USAGE OF SDMS PLATFORM SERVICES

- 3.1 NSDC hereby grants the Agency a non-exclusive and revocable right to use SDMS Platform Services, for performing transactions & generating reports, in the manner set out in this Agreement.

- 3.2 The Agency understands that access to SDMS Platform services shall be provided at the sole discretion of NSDC, which reserves the right to add, revise, suspend in whole, or in part any of the services, at any time with prior notice, in its sole discretion, for any reason whatsoever.
- 3.3 It is hereby mutually agreed between the Parties that the rights and obligations of the Agency, under this Agreement, are non-transferable and non-assignable whether by sale, merger, or by operation of law, except with the express prior written consent of NSDC.
- 3.4 The Agency hereby unequivocally agrees that it shall use the SDMS Platform services solely for the purpose set out in the SCHEDULE-I to this Agreement and for no other purpose. In the event, the Agency decides to expand the usage of SDMS platform services for new services without compromising any of the terms of usages set out in this Agreement then it shall inform NSDC in this regard through a letter printed on Agency's letterhead.
- 3.5 The Agency hereby unequivocally agrees that all backend infrastructure, such as servers, databases etc., required specifically for the purpose of consuming SDMS platform services shall be based in the territory of India.
- 3.6 The Agency hereby unequivocally agrees that the use of the SDMS Platform Services by it shall not, in any manner, whether direct or indirect, be used for purposes that are anti-government or anti-state or discriminatory or related to money laundering or in contravention of any laws applicable in India.
- 3.7 SDMS data returned to Agency in response to a request may contain PII which may be sensitive in nature. Agency agrees unequivocally that responsibility of prevention of SDMS data from inappropriate usage lies with it and NSDC will have no control over it.

4. OBLIGATIONS OF NSDC

NSDC shall

- a) Determine rules and policies to consume SDMS platform services.
- b) Determine and prescribe standards for exchange and transmission of SDMS data.
- c) Determine and prescribe standards to ensure confidentiality, privacy, and security of SDMS data exchanged with the Agency.
- d) Ensure at least 95% up time of the SDMS Platform Services during work hours between 8 am and 7 pm on all business days and communicate through email or phone any scheduled downtime required for maintenance or bug fixes.
- e) Inform Agency about the changes in respect of upgrade of services or addition of new services or withdrawal of services that may be implemented on SDMS platform services from time to time.
- f) Monitor usage of SDMS platform services to prevent fraudulent activities.

- g) Designate a support personnel for taking complaints and suggestions from the Agency during the business day.

5. OBLIGATIONS OF AGENCY

- a) Protect from unauthorized usage of user id, passwords, api keys, encryption keys, sender id or any other information provided by NSDC to access SDMS platform.
- b) Nominate a primary and secondary point of contact to allow effective communication with NSDC.
- c) Protect SDMS data from unauthorized usage which may contain PII. Agency shall ensure that SDMS data containing PII is always stored in digitally encrypted format.
- d) The Agency shall, at all times, comply with the provisions contained in the Information Technology Act, 2000 and the statutory rules framed there under, from time to time, in so far the same has application to its operations in accordance with this Agreement, and also with all other Laws rules and regulations, whether already in force or which may be enacted anytime in the future, pertaining to data security and management, data storage, sharing and data protection
- e) Agency shall maintain log of all transactions conducted using SDMS Platform services capturing the complete details of the transaction such as unique transaction code, timestamp, service name, and unique response code. The Agency understands and agrees that the logs maintained by it shall be shared with any individual or entity only on a need-basis, and that the storage of the logs maintained by it shall comply with all the relevant laws, rules, and regulations, including, but not limited to, the Information Technology Act, 2000 and the Evidence Act, 1872.
- f) In the event of detection or reporting of inappropriate usage of SDMS platform services, Agency shall extend full cooperation to NSDC and/or any agency appointed/authorized by it and/or any other investigating agency, including, but not limited to providing access to its premises, records, personnel, and any other relevant resource/ information etc. relevant to investigation.
- g) Agency hereby agrees to inform NSDC of any misuse of Aadhaar data or any compromise of Aadhaar related data or systems within its network.

6. REPRESENTATIONS AND WARRANTIES

6.1 NSDC represents and warrants to the Agency that:

- a) NSDC is an entity legally constituted and validly existing under laws of India;
- b) NSDC has all requisite powers and authority and has taken all actions necessary to execute, deliver, and perform its obligations under this Agreement;

- c) this Agreement has been validly executed by NSDC and constitutes a valid agreement binding on NSDC and enforceable in accordance with the laws of India;

6.2 Agency represents and warrants to NSDC that:

- a) Agency is an entity legally constituted and validly existing under laws of India;
- b) Agency has all requisite powers and authority and has taken all actions necessary to execute, deliver, and perform its obligations under this Agreement;
- c) this Agreement has been validly executed by Agency and constitutes a valid agreement binding on Agency and enforceable in accordance with the laws of India;

7. INDEMNITY AND LIMITATION OF LIABILITY

7.1 It is hereby mutually agreed between Parties that NSDC shall not be liable for any unauthorized transaction or inappropriate usage of SDMS data and the Agency hereby fully indemnifies and holds NSDC harmless against any action, suit, proceedings initiated against it or any loss, cost or damage incurred by it as a result thereof.

7.2 Without prejudice to generality of the above, the Agency shall indemnify and keep NSDC harmless and indemnified from and against all claims, liabilities, losses and incurred costs, fines, penalties, expenses, taxes, assessment, punitive damages, fees (including advocate's/ attorney's fee), liabilities (including any investigative, legal and other expenses incurred in connection with, and any amounts paid in settlement of, any pending or threatened legal action or proceeding), judgments,

7.3 In the event of a third party claim or action against NSDC as a consequence of the use SDMS Services platform, the Agency shall:

- a) defend and/or assist NSDC in defending, at the Agency's cost, such claims, or actions either in legal proceeding or otherwise;
- b) indemnify NSDC and keep NSDC indemnified and harmless, at all times, against all actions, claims, demands, costs, charges and expenses arising out of or incurred by reason of any infringement of intellectual property rights of any Third Party in connection with the use of the SDMS Platform Services, irrespective of whether or not NSDC incurs any liability in this regard by virtue of any judgment of a court of competent jurisdiction.

7.4 The Agency is aware of, and understands, the fact that NSDC's operation of the SDMS Platform Services is not completely free from defect, and NSDC does not represent and warrant the same to be defect free. Unless, otherwise expressly specified in writing,

SDMS Platform services are provided on an 'as-is' basis without any express or implied warranties in respect thereof.

- 7.5 The Agency agrees that NSDC shall not be responsible in case of any kind of loss on account of incorrect operation or non-operation of SDMS platform services in any manner.
- 7.6 It is hereby mutually agreed that this clause 7 shall survive the termination of this Agreement.

8. CONFIDENTIALITY, DATA PROTECTION, SECURITY, AND USE OF INFORMATION

- 8.1 SDMS platform services may return data to Agency which may contain PII. The Agency shall treat all information which is disclosed to it through the operation under this Agreement as Confidential Information and shall keep the same confidential, maintain secrecy of all such information of confidential nature and shall not, at any time, divulge such or any part thereof to any third party except as may be compelled by any court or agency of competent jurisdiction, or as otherwise required by law, and shall also ensure that same is not disclosed to any person voluntarily, accidentally or by mistake.
- 8.2 The Agency hereby unequivocally agrees to undertake all measures, including security safeguards, to ensure that the information in the possession or control of the Agency, as a result of operation of this Agreement, is secured and protected against any loss or unauthorized access or use or unauthorized disclosure thereof.
- 8.3 It is hereby mutually agreed between the parties that NSDC assumes no responsibility or liability for any action or inaction, use or misuse of the Confidential Information and other data in the control of the Agency. The Agency agrees and acknowledges that any loss, damage, liability caused or suffered by the Agency due to disclosure of all information of confidential nature shall be borne by Agency without transferring any liability or responsibility towards NSDC.
- 8.4 It is hereby mutually agreed that this clause 8 shall survive the termination of this agreement

9. TERM, TERMINATION, AND CONSEQUENCES

- 9.1 This Agreement shall be in force for a period of twenty four (24) months from the effective date unless renewed by mutual consent in writing of the parties prior to the

expiry of this Agreement, upon such terms and conditions as may be mutually agreed between the parties.

- 9.2 NSDC shall have the right to terminate this Agreement by giving thirty (30) days' notice, in writing, prior to expiry of the Term, without any protest or demur from the Agency, in the event of the Agency:
- a) fails to comply with the Standards or the decision and directions issued by NSDC, from time to time, in respect of usage of SDMS platform services or the interpretation and enforcement of the Standards;
 - b) is in breach of its obligations under this Agreement;
 - c) uses the SDMS Platform services for purposes other than those specified in Schedule I of this Agreement without the approval of NSDC;
 - d) is in liquidation, or if a receiver has been appointed in respect of the Agency or the Agency becomes subject to any form of insolvency administration or files for voluntary liquidation.
- 9.3 The Agency shall have no right to compensation for termination of this Agreement by NSDC, in pursuance of clauses 9.2 above or clause 9.4 below.
- 9.4 The termination of this Agreement in pursuance of clauses 9.2 above or clause 9.5 below, shall result in automatic cancellation of the registration of the Agency, granted by NSDC, without any notification, in this regard, to the Agency
- 9.5 Either Party may terminate this Agreement without providing any reason by giving 30 days' notice in writing to other Party.

10. FORCE MAJEURE

- 10.1 The Parties agree that neither of them shall be liable to the other for any loss, delay, damage, or other casualty suffered or incurred by the other owing to earthquakes, floods, fires, explosions, acts of God, acts of State, war, terrorism, action of any governmental authority or any other cause which is beyond the reasonable control of that Party ("Force Majeure") and any failure or delay by any Party in the performance of any of its obligations under this Agreement owing to one or more of the foregoing causes shall not be considered as a breach of any of its obligations under this Agreement. The Parties however agree that any financial failure or non-performance of any financial obligations or covenants of the Parties shall not constitute Force Majeure.

- 10.2 The Party claiming benefit of Force Majeure shall however not be entitled to the same unless it has intimated the other Party of the occurrence of such event within a period of seventy-two (72) hours from the occurrence of such Force Majeure event indicating therein the steps that it is taking or intending to take to mitigate the effect of such Force Majeure on the performance of its obligations under this Agreement.
- 10.3 In the event, the Force Majeure event continues for a period of more than ninety (90) days, the Party shall renegotiate this Agreement in good faith and if the Parties do not reach any consensus on modifications to this Agreement within a period of one hundred twenty (120) days from the date of occurrence of the Force Majeure event, this Agreement shall automatically stand terminated on such date.

11. GOVERNING LAW AND DISPUTE RESOLUTION

- 11.1 This Agreement shall, in all respects, be governed by, and construed in accordance with the laws of India.
- 11.2 Any dispute of whatever nature, which arises out of in relation to or otherwise connected with:
- a) The interpretation or effect of;
 - b) The validity, enforceability, or rectification (whether in whole or in part) of;
 - c) the respective rights or obligations of the Parties; and/or;
 - d) a breach (including a breach of any representation and warranty and/or the materiality thereof and/or the amount of compensation payable in order to remedy such breach and/or the breach or failure to comply with any covenants or undertakings contained herein) or the termination or cancellation of, this Agreement or in regard to whether either Party have unreasonably withheld its approval or consent under circumstances in which it may not do so; shall be dealt with in accordance with succeeding provisions of this Clause 11.
- 11.3 All disputes arising out of reasons mentioned herein-above shall be collectively referred to hereinafter as a "Dispute(s)".
- 11.4 All Disputes shall at the first instance be resolved through good faith negotiations, which negotiations shall begin promptly after a Party has delivered to the other Party a written request for such consultation.

- 11.5 If the Parties are unable to resolve the Dispute in question within thirty (30) days of the commencement of negotiations in terms of Clause 11.3, then the Dispute shall, unless the Parties otherwise agree in writing, be referred for determination in accordance with the remaining provisions of this Clause 11.
- 11.6 The Dispute shall be referred to arbitration in accordance with the provisions of the (Indian) Arbitration and Conciliation Act, 1996.
- 11.7 The venue for arbitration shall be New Delhi, India and the language used in the arbitral proceedings shall be English.
- 11.8 The Parties shall continue to be performing their respective obligations under this Agreement, despite the continuance of the arbitration proceedings, except for the disputed part under arbitration.
- 11.9 This Clause 11 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 11.10 The Courts in New Delhi, India shall have exclusive jurisdiction in relation to this Agreement, including this Clause 11.
- 11.11 All fees and costs pertaining to arbitration proceedings shall be borne as provided in the Arbitral Award.

12. GENERAL

12.1 Notices

Any notice, direction or other documentation required or remitted to be given hereunder shall be in writing and may only be given by personal delivery, international courier, electronic mail or facsimile (with confirmation received) at the addresses hereinafter set forth:

a) For NSDC:

Address: Block 'A', Clarion Collection (Qutab Hotel), Shaheed Jeet Singh Marg, New Delhi 110009

Attention: The Managing Director & Chief Executive Officer

b) For Agency:

Address: _____

Attention: _____

12.2 Further Assurances

The Parties hereto shall sign such further and other papers, cause such meetings to be held, resolutions passed and bylaws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.

12.3 No waiver

No failure by a Party to take any action with respect to a breach of this Agreement or a default by other Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default. Waiver by any Party of any breach or failure to comply with any provision of this Agreement by other Party shall not be construed as, or constitute a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement, unless any such waiver has been consented to by the former Party in writing.

12.4 Severability

If any Clause or part thereof, of this Agreement or any agreement or document appended hereto or made a part hereof is rendered invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future Laws effective during the term of this Agreement, then it is the intention of the Parties that the remainder of the Agreement, or any agreement or document appended hereto or made a part hereof, shall not be affected thereby unless the deletion of such provision shall cause this Agreement to become materially adverse to any Party in which case the Parties shall negotiate in good faith such changes to the Agreement, or enter into suitable amendatory or supplementary agreements, as will best preserve for the Parties the benefits and obligations under such provision.

12.5 Counterparts

This Agreement may be executed in one or more counterparts, all of which shall be read and construed as one document and any facsimile signature hereto shall be deemed to be an original signature.

12.6 Independent Legal Advice

Each of the Parties acknowledges that it has received independent legal advice regarding the terms of this Agreement

12.7 Entire Agreement

This Agreement constitutes the entire agreement between the Parties. There are not and will not be any verbal statements, agreements, assurances, representations and warranties or undertakings among the Parties and this Agreement may not be amended or modified in any respect except by written instrument signed by the Parties.

12.8 Independence of the Parties with respect of each other

Each of the Parties is and shall remain independent parties. Neither Party nor any of their respective affiliates shall have the authority to enter into any contract or any obligation for, or make any warranty or representation on behalf of the other.

12.9 Expenses

Each of the Parties shall bear the fees and expenses of their respective counsels, accountants and experts and all other costs and expenses as may be incurred by them incidental to the negotiation, preparation, execution, and delivery of this Agreement.

12.10 Surviving Provisions

The provisions of this Agreement, which are intended to survive the term of this Agreement by their very nature, shall survive the termination of this Agreement. Notwithstanding the generality of the above, Clauses 8, 9 and 11 shall survive the termination/expiration of this Agreement

12.11 Assignment

This Agreement shall not be assigned by Agency without obtaining a prior written consent from NSDC. NSDC shall have the right to assign this Agreement to any third party with information to Agency.

IN WITNESS WHEREOF the Parties have each executed this Agreement by their duly authorized representatives as of the day and year first above written.

SIGNED AND DELIVERED FOR AND ON BEHALF OF

For NSDC

Name: _____

Designation: _____

Signature: _____

Date: __ / __ / _____

For Agency

Name: _____

Designation: _____

Signature: _____

Date: __ / __ / _____

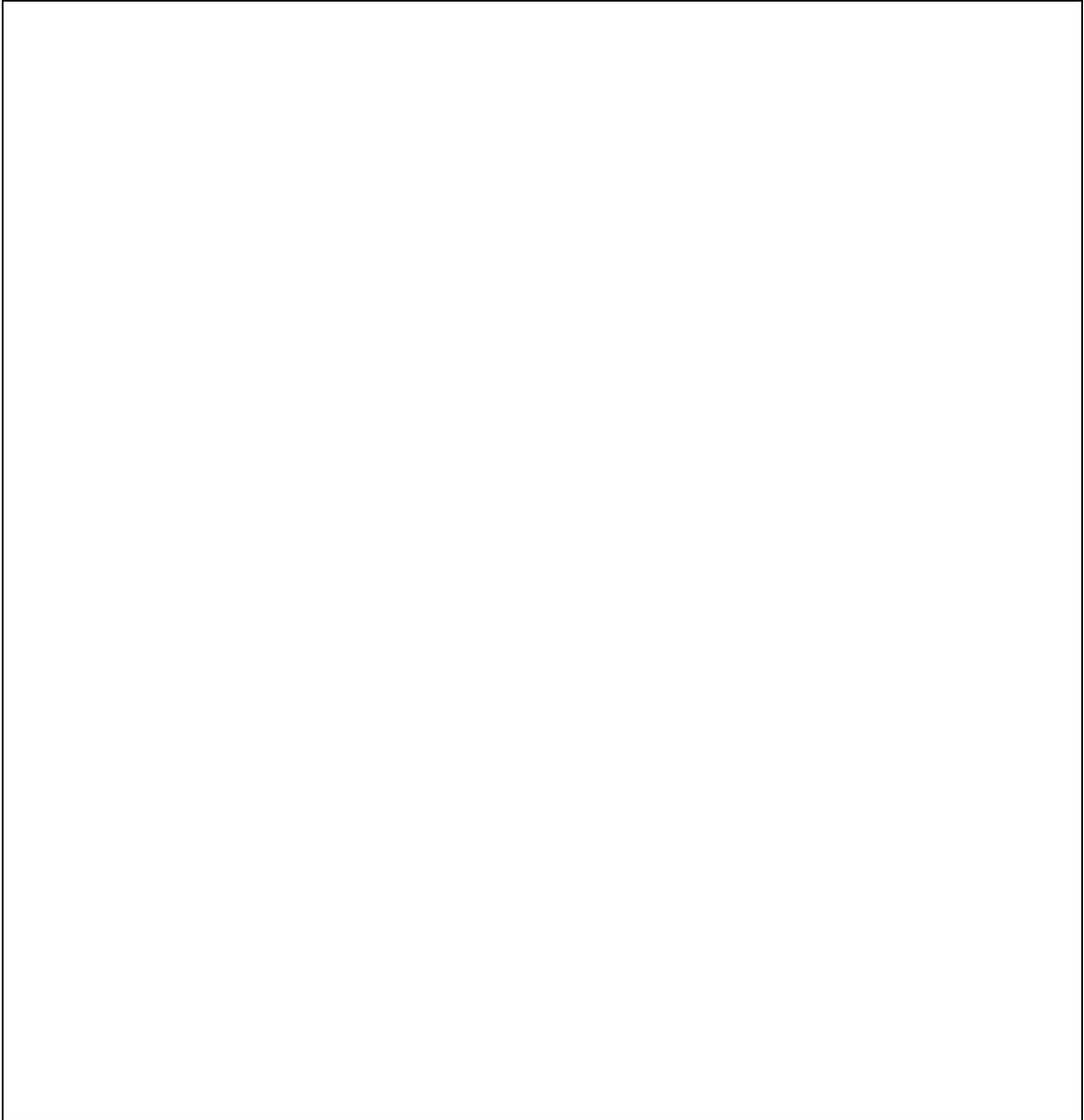
Witness 1 (Signature, Name & Address):

Witness 2 (Signature, Name & Address):

SCHEDULE -1

Statement of Purpose

(To be filled by Agency, in no more than 500 words please explain the usage of SDMS Web API Framework in your organization)

A large, empty rectangular box with a thin black border, intended for the agency to provide a statement of purpose regarding the usage of the SDMS Web API Framework. The box is currently blank.