

# **REQUEST FOR PROPOSAL**

**VOLUME II: CONDITIONS OF CONTRACT**

**Tender Document No.: M.11012/1/2015-MMPC**

## **APPOINTMENT OF A HELPDESK SERVICE PROVIDER FOR AUGMENTATION OF MOTHER AND CHILD TRACKING FACILITATION CENTRE ON TURNKEY BASIS FOR MoHFW**

**17<sup>th</sup> June 2015**

**Ministry of Health & Family Welfare,  
Government of India  
Nirman Bhawan, Maulana Azad Road  
New Delhi - 110011**

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CCN	Change Control Note
EDI	Electronic Data Interchange
GCC	General Conditions of Contract
MCTFC	Mother and Child Tracking Facilitation Centre
IT	Information Technology
ICT	Information and Communications Technology
ITB	Instructions to Bidders
O&M	Operation & Maintenance
RFP	Request for Proposal
SCC	Special Conditions of Contract
HSP	Helpdesk Service Provider
SLA	Service Level Agreement
VAT	Value Added Tax
w.e.f.	With effect from

# **AGREEMENT**

## **AGREEMENT**

THIS AGREEMENT (the "Agreement") is entered into at Delhi on this, the \_\_\_\_ day of \_\_\_\_\_, 2015 for Augmentation of Mother and Child Tracking Facilitation Centre (MCTFC) on turnkey basis for Ministry of Health and Family Welfare.

BY AND BETWEEN

Department of Health and Family Welfare, Ministry of Health & Family Welfare, Nirman Bhawan, Maulana Azad Road, New Delhi - 110011, hereinafter referred to as "Client" which expression, unless excluded by or repugnant to the context or meaning, shall be deemed to include its successors in office and assigns

AND

\_\_\_\_\_, a company incorporated under The Companies Act, 1956, having its registered office at \_\_\_\_\_ (and is a prime bidder of consortium of Companies in case of consortium) represented by its duly authorized signatory \_\_\_\_\_ hereinafter referred to as "Helpdesk Service Provider or HSP" which expression, unless excluded by or repugnant to the context or meaning shall be deemed to include its successors and permitted assigns.

NOW THIS AGREEMENT WITNESSETH as follows:-

1. In this Agreement words and expression shall have same meanings as are respectively assigned to them in the General and Special Conditions of Contract hereinafter referred to.
2. The following contract documents along with all addenda thereof shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority
  - a) This Agreement (including Special Conditions of Contract and General Conditions of Contract) and the Annexures attached to the Agreement
  - b) Request for Proposal (including amendments made in and addendums issued to the RFP)
  - c) Letter of Award issued by the Client
  - d) Letter of Acceptance by the HSP
  - e) Project Work Plan
  - f) HSP's bid proposal (including subsequent clarifications submitted to the Client), technical proposal, consortium agreement and original price schedules.
  - g) All documents and correspondence forming part of the contract (and all parts of these documents) are intended to be correlative, complementary and mutually explanatory. The contract shall be read as a whole.
3. In consideration of the payments to be made by the Client to the HSP as hereinafter mentioned, the HSP hereby covenants with Client to execute the project requirement as mentioned in RFP Vol. I w.e.f. \_\_\_\_\_ as per the provision of this Agreement.
4. Client hereby covenants to pay the HSP in consideration of the execution and

completion of the project requirement as per RFP Vol. I and corrigendum thereon, if any, the contract value of **[amount of INR in words]**, **[amount in figures]**, being the sum stated in the letter of award subject to such additions thereto or deductions therefrom as may be made under the provisions of contract. The payment will be made as per the terms of payment schedule provided in Section 4.8 of RFP Vol. I.

IN WITNESS WHEREOF the parties hereto have signed the Agreement the day and the year first above written.

FOR AND ON BEHALF OF  
[Department of Health and Family Welfare, Ministry of Health & Family Welfare]

[Authorized Representative]

FOR AND ON BEHALF OF  
[\_\_\_\_\_]

[Authorized Representative]

Witness 1

Name:

Date:

Address:

Witness 2

Name:

Date:

Address:



## **GENERAL CONDITIONS OF CONTRACT**

## 1 DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

1.1.1 In this draft contract, the following terms shall be interpreted as indicated below:

- a) Contract elements
  - i. "Contract" means the Agreement entered into between the Client and the HSP, together with the contract documents referred to therein (refer Clause 2 of Agreement). The Agreement and the contract documents shall constitute the contract, and the term "contract" shall in all such documents be construed accordingly.
  - ii. "Contract documents" means the documents specified in Clause 2 (contract documents) Agreement, including any amendment(s) to these documents.
  - iii. "Agreement" means the contract entered into between the Client and the HSP using the form of Agreement and any modifications to this form agreed to by the Client and the HSP. The date of the Agreement shall be recorded in the signed form.
  - iv. "Correspondence" means any written or digital communication exchanged between the Client and HSP. Correspondences may come in the form of personal delivery, post, courier or electronic mail.
  - v. "GCC" means the General Conditions of Contract.
  - vi. "SCC" means the Special Conditions of Contract.
  - vii. "Request for Proposal (RFP)" refers to Volume I and Volume II of the bidding documents along with the annexures, including any corrigendum to RFP to and modification therein.
  - viii. "Project" refers to augmentation of Mother and Child Tracking Facilitation Centre (MCTFC) on turnkey basis for the Client by the HSP.
  - ix. "Contract value" means the value defined in Clause 3 of the Agreement.
  - x. "Bidding documents" refers to the collection of documents issued by the Client to instruct and inform potential bidders of the processes for bidding, selection of the winning proposal and contract formation, as well as the contractual conditions governing the relationship between the Client and the HSP.
- b) Entities
  - i. "Company" means a Company incorporated under the Companies Act, 1956
  - ii. "Client" means the Department of Health and Family Welfare, Ministry of Health & Family Welfare, Nirman Bhawan, Maulana Azad Road, New Delhi - 110011, who is appointing Helpdesk Service Provider (HSP) for augmentation of MCTFC on turnkey basis.
  - iii. "Helpdesk Service Provider (HSP)" means (name of the Company), a Company (prime bidder or consortium in case of consortium of Companies) whose proposal to perform the contract has been accepted by the Client and is named as such in the Agreement.
  - iv. "HSP's representative" means any person nominated by the HSP and approved by the Client in the manner provided in GCC Clause 5.1.1 (HSP's representative) to perform the duties delegated by the HSP.
  - v. "Sub-contractor," means any firm or vendor to whom any of the obligations of the HSP, if and as permitted by this Agreement, is sub-contracted directly or indirectly by the HSP.

- vi. "Stakeholders" mean all the stakeholders of the project who would be the target audience of MCTFC and required to provide inputs and necessary approvals for MCTFC. They would include:
- Beneficiaries
  - Eligible couple
  - Health workers
  - Client / Technical Coordination Committee / Functional Implementation Committee/ Programme Divisions
  - NIC
  - Members of MCTS / RCH project
  - State / UT health department.
- c) Scope
- i. "Mother and Child Tracking Facilitation Centre (MCTFC)", means all the Information and Communications Technology (ICT) and non-IT infrastructure to be supplied, installed, integrated, made operational and managed (inclusive of the HSP's equipment), together with the services to be carried out by the HSP under this contract.
- ii. "Information and Communications Technology (ICT)" means all information processing and communications related hardware, software, supplies and consumable items that the HSP is required to procure, install and maintain under the contract.
- iii. "Services" means all technical, logistical, management and any other services to be provided by the HSP under the contract to supply, install, customize, integrate and make operational the MCTFC. Such services may include, but are not restricted to, calling operations and its quality assurance, design, development, customization, documentation, transportation, insurance, inspection, installation, integration, training, data migration, database management, network management, security management, help desk management, commissioning, maintenance and technical support for MCTFC.
- iv. "Service level" means the level of service including deliverable and other performance criteria pertaining to the services provided by the HSP.
- v. "Service Level Agreement (SLA)" means the agreement between parties about the service levels to be provided / maintained by the HSP.
- vi. "Project work plan" means the document submitted by the HSP and approved by the Client, pursuant to GCC Clause 5.2, which should be in line with deliverables and timelines mentioned in Section 3.13 of RFP Vol. I included in the HSP's proposal. Should project work plan conflict with the contract in any way, the relevant provisions of the contract, including any amendments, shall prevail.
- vii. "Standard Software" or "COTS" means Commercial off-the-shelf (COTS) software that is ready-made and available for sale, lease, or license to the general public.
- viii. "Custom Software" or "BESPOKE" means the software designed, developed, tested and deployed by the HSP for the purposes of rendering the Services to the Stakeholders of the Project and includes the source code along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products (except for the customization components on such products), proprietary software components

and tools deployed by the HSP and which shall be solely owned by the Client.

- ix. "Application software" means software formulated to perform specific business or technical functions and interface with the end users of MCTFC and such other software as the parties may agree in writing to be application software.
- x. "Source code" means the database structures, dictionaries, definitions, program source files, code of the applications, any Application Programming Interfaces, Dynamic Link Libraries and controls etc. and any other symbolic representations necessary for the compilation, execution and subsequent maintenance of the software.
- xi. "Intellectual property rights" means all processes, products, data, knowledge products, training material and other documents which have been developed by the HSP during the performance of services and for the purposes of, inter alia, use or sub-license of such services under this project. The HSP undertakes to disclose all intellectual property rights arising out of or in connection with the performance of the services to the Client and execute all such agreements / documents and file all relevant applications, effect transfers and obtain all permits and approvals that may be necessary in this regard to effectively transfer and conserve the intellectual property rights of Client.
- xii. "HSP's equipment" means all equipment, tools, apparatus or things of every kind required in or for installation, completion and maintenance of MCTFC that are to be provided by the HSP.
- xiii. "Project assets" means those project assets which are procured by the HSP in the name of Client for the purpose of the project and used for delivering the services to the stakeholder. Project assets shall also include those project assets which are procured by the HSP and installed at the Project Site.
- xiv. "Software development" is a set of activities that result in the development of a software product as per the requirements specified.

d) Activities

- i. "Delivery" means the transfer of ICT and non-IT equipment from the HSP to Project Site in accordance with deliverables and timelines mentioned in Section 3.13 of RFP Vol. I.
- ii. "User acceptance tests" means the tests specified in deliverables and timelines mentioned in Section 3.13 of RFP Vol. I to be carried out to ascertain whether the software is able to attain the functional and performance requirements specified in Section 3, Scope of Work of RFP Vol. I.
- iii. "Sign-off" means the issuance of certificate by the Client for acceptance of ICT / non-IT / deliverable after ensuring that they meet the entire requirement mentioned in the RFP Vol. I.
- iv. "Deliverable" means any document, output, activity, task, milestone, provision, service, which is required to be carried out or submitted or provided by the HSP to the Client for the purpose of successfully completion of the project and including those as mentioned in Section 3 of RFP Vol.

e) Place and time

- i. "Project site(s)" means the place(s) specified in the SCC for the supply and installation of MCTFC.

## GENERAL CONDITIONS OF CONTRACT

- ii. "Day" means calendar day of the Gregorian calendar.
- iii. "Week" means seven (7) consecutive days, beginning the day of the week as is customary in India.
- iv. "Month" means calendar month of the Gregorian calendar.
- v. "Year" means twelve (12) consecutive months.
- vi. "Effective date" means the date of fulfillment of all the conditions mentioned below:
  - This contract has been duly executed for and on behalf of the Client and the HSP;
  - The HSP has submitted to the Client the performance security in accordance with GCC Clause 3.3;
  - Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.
- vii. "Contract period" is the time period during which this contract governs the relations and obligations of the Client and HSP in relation to MCTFC, as specified in the SCC. The timelines and deliverables for MCTFC project are specified in Section 3.13 of RFP Vol. I.
- viii. "Operation & maintenance phase" means the phase commencing at date of the "Go-Live" of MCTFC, during which the HSP is responsible for carrying out the activities specified in Section 3.13 of RFP Vol. I.
- ix. "Coverage period" mean the days of the week and the hours of those days during which maintenance, operational and / or technical support services (if any) must be available.
- x. "Go Live" means the date on which the Client issues the sign off of the completion of implementation phase.

## 1.2 Interpretations

### 1.2.1 Language

- 1.2.1.1 All contract documents, all correspondence and communications to be given shall be written in English language and the contract shall be construed and interpreted in accordance with that language.

### 1.2.2 Singular and Plural

- 1.2.2.1 The singular shall include the plural and the plural the singular, except where the context otherwise requires.

### 1.2.3 Headings

- 1.2.3.1 The headings and marginal notes in the GCC are included for ease of reference and shall neither constitute a part of the contract nor affect its interpretation.

### 1.2.4 Persons

- 1.2.4.1 Words importing persons or parties shall include firms, corporations and Government entities.

### 1.2.5 Entire Agreement

- 1.2.5.1 The contract constitutes the entire agreement between the Client and HSP with respect to the subject matter of contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect to the subject matter of the contract made prior to the date of contract.

### 1.2.6 Amendment

- 1.2.6.1 No amendment or other variation of the contract shall be effective unless it is in

## GENERAL CONDITIONS OF CONTRACT

writing, is dated, expressly refers to the contract and is signed by a duly authorized representative of each party to the contract.

- 1.2.6.2 Subject to the provisions of the contract, the HSP shall be solely responsible for the manner in which the contract is performed. All employees, representatives or sub-contractors engaged by the HSP in connection with the performance of the contract shall be under the complete control of the HSP and shall not be deemed to be employees of the Client and nothing contained in the contract or in any sub-contract awarded by the HSP shall be construed to create any contractual relationship between any such employees, representatives or sub-contractors and the Client.

### 1.2.7 Consortium

- 1.2.7.1 Consortium is allowed and governed as per Section 4.5.4 of the RFP Vol. I.
- 1.2.7.2 Consortium's agreement and details of consortium partners will be placed in Annexure I, point 5: Consortium agreement as per Section 4.5.4 of RFP Vol. I.

## 1.3 Notices

- 1.3.1 Unless otherwise stated in the contract, all notices to be given under the contract shall be in writing and shall be sent by personal delivery, post, courier, electronic mail or to the address of the relevant party as specified in the SCC, with the following provisions.
  - 1.3.1.1 Any notice sent by post or courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by post or courier.
  - 1.3.1.2 Any notice delivered personally or sent by electronic mail shall be deemed to have been delivered on the date of its dispatch. Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the contract.
  - 1.3.1.3 Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by hand delivery, recognized courier, registered post, email and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Client: Attn: <\*\*\*>

Tel: Fax: Email: Contact:

With a copy to:

If to the HSP: Attn. <\*\*\*>

Phone: <\*\*\*> Fax No. <\*\*\*>

## 1.4 Governing Laws

- 1.4.1 The contract shall be governed by and interpreted in accordance with laws of India. The laws will include all national, provincial, municipal or other laws that affect the performance of the contract and are binding upon the HSP.

## 1.5 Settlement of Disputes

- 1.5.1 Dispute Resolution

## GENERAL CONDITIONS OF CONTRACT

- 1.5.1.1 If any dispute of any kind whatsoever shall arise between the Client and the HSP in connection with or arising out of the contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination or the operation of MCTFC (whether during the progress of implementation or after Go-Live and whether before or after the termination, abandonment or breach of the contract), the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation within 28 days, either party may move to the notification of arbitration pursuant to GCC Clause 1.5.2 (Arbitration).
- 1.5.1.2 In case of any doubts about a clause of the contract which includes contract documents, the interpretation given by the Client shall be final and binding, till the time any other interpretation is ordered in pursuance to GCC Clause 1.5.1.
- 1.5.1.3 Notwithstanding anything stated in the contract, and while the process of resolution of differences as stated in GCC Clause 1.5.1 is underway, the HSP shall continue to provide services under this contract without any disruption or dilution in accordance with the Service Level Agreement.
- 1.5.2 Arbitration
  - 1.5.2.1 In the event of any dispute relating to the import or meaning of any terms and conditions which could not be solved amicably by the parties, the parties may refer the matter to the Arbitrator to be appointed by Client on the request of either of the parties for arbitration in consonance with the provisions of the Arbitration and Conciliation Act, 1996 (Act 26 of 1996) on the designated reference in dispute. All legal proceedings shall lie to the jurisdiction of courts situated in New Delhi.

## 1.6 Conditions Precedent

### 1.6.1 Conditions Precedent for HSP

The HSP shall have to fulfill conditions precedent, which are as follows:

- 1.6.1.1 Provide Performance Bank Guarantee to the Client as specified in Annexure 7 of RFP Vol. I;
- 1.6.1.2 The HSP shall warrant and represent to the Client that it has full capacity and authority and all necessary approvals to enter into and to perform its obligations under this contract;
- 1.6.2 Conditions Precedent for Client
  - 1.6.2.1 The Client shall obtain applicable permits, if any, required by the HSP to begin operations in accordance with this contract.
- 1.6.3 Non-fulfillment of Conditions Precedent
  - 1.6.3.1 In the event that any of the conditions precedent relating to HSP has not been fulfilled and the same has not been waived by the Client fully or partially, this contract shall cease to have any effect as of that date.
  - 1.6.3.2 In the event that the contract fails to come into effect on account of non-fulfillment of the HSP's conditions precedent, the Client shall not be liable in any manner whatsoever to the HSP and the Client shall forthwith revoke the Performance Bank Guarantee.
  - 1.6.3.3 Instead of terminating this contract as provided above, the parties may extend the time for fulfilling the conditions precedent and the term of this contract by

mutual agreement. It is clarified that any extension of time shall be subject to imposition of penalties as per Section 4.7, RFP Vol. I, on the HSP linked to the delay in fulfilling the conditions precedent and the entire equipment will be forfeited by the Client.

- 1.6.3.4 In event of termination of the contract, the next suitable bidder will be entitled for executing the project with the validity of the bid or as extended by the bidder without any additional financial obligation of the Client.

## **2 SCOPE OF WORK**

### **2.1 Scope of Services**

- 2.1.1 Client is planning the augmentation of the MCTFC with enhanced features. The envisaged MCTFC would add various functionalities to the existing MCTFC operation. The detailed scope of work is specified in Section 3 of RFP Vol. I.

## **3 PAYMENT**

### **3.1 Contract Value**

- 3.1.1 The contract value of the project shall be as specified in Section 4.5.8 of RFP Vol. I.
- 3.1.2 The contract value shall be a firm lump sum inclusive of all taxes and duties as applicable on the date of submission of bid document not subject to any alteration, except in accordance with GCC Clause 3.1.4, GCC Clause 3.1.5 or in the event of a change in MCTFC pursuant to GCC Clause 8.1, GCC Clause 3.4.1 or other clauses in the contract.
- 3.1.3 The HSP shall have to satisfy itself as to the correctness and sufficiency of the contract value, which shall, except as otherwise provided for in the contract, cover all its obligations under the contract.
- 3.1.4 HSP has to procure the complete ICT and non-IT infrastructure and / or services, in whole or in part or in excess, as listed by the HSP in its financial proposal. The contract value shall be adjusted based on the unit price provided by the HSP in its financial proposal.
- 3.1.5 No adjustment of the contract value shall be made on account of any variations in costs of labour and materials or any other cost component affecting the total cost in fulfilling the obligations under the contract.

### **3.2 Terms of Payment**

- 3.2.1 The payment schedule of the project shall be as specified in Section 4.8 of RFP Vol. I. The HSP's request for payment shall be made to the Client in writing, accompanied by an invoice describing, as appropriate, services, delivered, installed and accepted, and by documents submitted pursuant to GCC Clause 5.5 and upon fulfillment of other obligations stipulated in the contract.
- 3.2.2 HSP shall raise the invoice and submit to the Client, the payment of which shall be made with approval of invoice.
- 3.2.3 All payments shall be made in Indian Rupees, pursuant to GCC Clause 3.1.
- 3.2.4 In consideration of the services and subject to the provisions of this contract and of the SLA, Client shall pay to the HSP for the services rendered in pursuance of this contract, in accordance with the terms of payment schedule specified in Section 4.8 of RFP Vol. I.



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- 3.2.5 Client shall not be required to make any payments in respect of the services other than those covered by the terms of payment as stated in the terms of payment schedule.
- 3.2.6 All the payments to the HSP shall be subject to the satisfactory accomplishment / completion of the concerned activity / task as approved by Client.
- 3.2.7 No payment shall be made directly to any third party except the release of payment to HSP as per the provisions of this contract.

### **3.3 Securities**

#### **3.3.1 Performance Bank Guarantee (PBG)**

- 3.3.1.1 The HSP shall, within thirty (30) working days of the date of letter of award issued by the Client, provide a security for the due performance of the contract in the amount and currency specified in the GCC Clause 3.2.
- 3.3.1.2 The security shall be in the form of a Performance Bank Guarantee, as per the form provided in the Annexure 7 of the RFP Vol. I from a commercial bank.
- 3.3.1.3 The Performance Bank Guarantee will be for an amount of 10% of the total value of contract in Indian Rupees. All incidental charges whatsoever such as premium, commission etc. with respect to the Performance Bank Guarantee shall be borne by the HSP. The PBG shall be valid till the end of three months after the completion of Phase II (operation, maintenance & on-going support) of the MCTFC project (i.e. five years plus three months after Go-Live of MCTFC). This additional three months is required for facilitating closure of the project.
- 3.3.1.4 In the event of the HSP being unable to service the contract for whatever reason, the Client would revoke the PBG. Notwithstanding and without prejudice to any rights whatsoever of the Client under the contract in the matter, the proceeds of the PBG shall be payable to the Client as compensation for any loss resulting from the HSP's failure to fulfill its obligations under the contract. The Client shall notify the HSP in writing of the exercise of its right to receive such compensation of default by HSP, indicating the contractual obligation(s) for which the HSP is in default.
- 3.3.1.5 The PBG may be discharged / returned by the Client upon being satisfied that there has been due performance of the obligations of the HSP under the contract. However, no interest shall be payable by Client on the PBG.

### **3.4 Taxes and Duties**

- 3.4.1 All taxes, duties etc. shall be payable by the HSP. However, in case of change or revision of service tax or its equivalent in any new tax structure, the payment will be made as applicable. The documentary evidences for payment of applicable tax structure will be submitted by the HSP along with the invoices.
- 3.4.2 The mandatory taxes / duties etc. as applicable shall be deducted by Client.

## **4 INTELLECTUAL PROPERTY RIGHTS**

### **4.1 Copyright**

- 4.1.1 Intellectual Property Rights (IPR) should inure to the benefits of the client. If Client desires, the HSP shall be obliged to ensure that all approvals, registrations, licenses,

permits and rights which are, inter alia, necessary for use of MCTFC equipment installed by the HSP, are acquired in the name of Client, prior to termination of this contract and which shall be assigned by Client to the HSP for the purpose of execution of any of its obligations under the terms of the bid or this contract. However, subsequent to the termination of this contract, such approvals etc. shall inure to the exclusive benefit of Client.

- 4.1.2 The HSP shall ensure that while it uses any software, hardware, processes or material in the course of performing the services, it does not infringe the IPRs of any person or entity. Also the HSP shall keep the Client indemnified against all costs, expenses and liabilities howsoever, arising out of any illegal or unauthorized use (piracy) or in connection with any claim or proceedings relating to any breach or violation of any permission / license terms or infringement of any IPRs by the HSP during the contract and after the completion of contract as well.
- 4.1.3 Client shall retain all right, title and interest in and to any and all data, entered or generated by the HSP for Client pursuant to this contract, and any modifications thereto or works derived therefrom
- 4.1.4 The IPRs in all Standard Software and Standard Materials shall remain vested in the owner of such rights.
- 4.1.5 The IPRs in all Custom Software and Custom Materials shall, at the date of this contract or on creation of the rights (if later than the date of this Contract), vest with the Client. The HSP shall do and execute or arrange for the doing and executing of each necessary act, document and thing that the Client may consider necessary or desirable to protect the right, title and interest of the Client in and to those rights.
- 4.1.6 For all Custom Software and Custom Materials, the HSP shall relinquish to the Client the source code along with adequate detailed documents. The source code with version control system should be submitted to the Client.
- 4.1.7 The HSP shall indemnify, defend and hold harmless the Client and its respective officers, employees, successors and assigns, from and against any and all losses arising from claims by third parties that any deliverable (or the access, use or other rights thereto) created by HSP pursuant to this contract, the SLA or any equipment, software, information, methods of operation or other intellectual property (or the access, use or other rights thereto) provided by HSP or sub-contractors to the HSP pursuant to this contract and / or the SLA
  - a) infringes a copyright enforceable in India,
  - b) infringes a patent issued in India, or
  - c) constitutes misappropriation or unlawful disclosure or use of another party's trade secret under the laws of the India (collectively, "infringement claims"); provided, however, that this will not apply to any deliverable (or the access, use or other rights thereto) created by (A) Client; (B) third parties (i.e., other than HSP or HSP's sub-contractors) at the direction of the Client.
- 4.1.8 The Client shall have no liability or obligation to HSP or any other party mentioned above to the extent the infringement claim is based upon any use of the equipment, software, information, methods of operation or other intellectual property (or the access, use or other rights thereto) for the benefit of any party (including any use by HSP or its nominees outside the scope of the services) other than for contract.

## 4.2 Information Security

- 4.2.1 The HSP shall not carry and / or transmit any written material, information, layouts, diagrams, storage media (hard disk / tapes) or any other goods / materials in physical or electronic form, which are proprietary to or owned by Client out of MCTFC premises without prior written permission from Client. HSP acknowledges that Client's business data and other Client proprietary information or materials, whether developed by Client or being used by Client pursuant to a license agreement with a third party (the foregoing collectively referred to herein as "proprietary information") are confidential and proprietary to Client; and HSP agrees to use reasonable care to safeguard the proprietary information and to prevent the unauthorized use or disclosure thereof, which care shall not be less than that used by HSP to protect its own proprietary information. HSP recognizes that the goodwill of Client depends, among other things, upon HSP keeping such proprietary information confidential and that unauthorized disclosure of the same by HSP could damage Client, by reason of breach of HSP's duties hereunder. HSP may come into possession of such proprietary information even though HSP does not take any direct part in or furnish the services performed for the creation of said proprietary information and shall limit access thereto to employees with a need to such access to perform the services required by this contract. HSP shall use such information only for the purpose of performing the said services. HSP shall, upon termination of this contract for any reason, or upon demand by Client, whichever is earlier, return any and all information provided to HSP by Client, including any copies or reproductions, both hard copy and electronic.
- 4.2.2 The Client agrees to restrict use, copying or duplication of the Standard Software and Standard Materials in accordance with GCC Clause 4.3, except that additional copies of Standard Materials may be made by the Client for use within the scope of the contract.
- 4.2.3 The Client's contractual rights to use the Standard Software or elements of the Standard Software may not be assigned, licensed or otherwise transferred except in accordance with the relevant license agreement or as may be otherwise specified in the SCC.

### **4.3 Software License Agreements**

- 4.3.1 Except to the extent that the IPRs in the software vest with the Client, the HSP hereby grants to the Client (including all stakeholders) license to access and use the software relating to MCTFC, including all inventions, designs and marks embodied in the software; and permit the software to be:
- i. used or copied for use on or transferred to a replacement computer(s) (and use on the original and replacement computer(s) may be simultaneous during transitional period)
  - ii. if the nature of the software is such as to permit such access, accessed from other computers connected to the primary and / or backup computer(s) by means of a local or wide-area network or internet or intranet or similar arrangement and used on or copied for use on those other computers to the extent necessary to that access;
  - iii. reproduced for safekeeping or backup purposes;
  - iv. customized, adapted or combined with other computer software for use by the Client, provided that derivative software incorporating any substantial part of the

- delivered, restricted software shall be subject to same restrictions as are set forth in this contract;
- v. disclosed to, and reproduced for use by, the Client and by such other persons as are specified in the SCC (and the Client may sub-license such persons to use and copy for use the software), subject to the same restrictions as are set forth in this contract.
  - vi. used by any other HSP appointed by the Client in case first HSP leaves the contract mid-way.

## **5 INSTALLATION, TESTING AND ACCEPTANCE OF MCTFC**

### **5.1 Representative**

#### **5.1.1 HSP's Representative**

- 5.1.1.1 Program Manager of the core team would be considered as the HSP's representative and shall have the authority to represent the HSP on all day-to-day matters relating to MCTFC or arising from the contract. The HSP's representative shall give to the Client all the HSP's notices, instructions, information and all other communications under the contract.
- 5.1.1.2 All notices, instructions, information and all other communications given by the Client to the HSP under the contract shall be given to the HSP's representative except as otherwise provided for in this contract.
- 5.1.1.3 The HSP shall not revoke the appointment of the HSP's representative without the Client's prior written consent. If the Client consents to such an action, the HSP shall appoint another person of equal or superior qualifications as the HSP's representative, pursuant to the procedure set out in GCC Clause 5.1.
- 5.1.1.4 The HSP's representative and staff are obliged to work closely with the Client and act within their own authority and abide by directives issued by the Client that are consistent with the terms of the contract. The HSP's representative is responsible for managing the activities of its personnel and any sub-contracted personnel.
- 5.1.1.5 Personnel assigned by HSP to perform the services shall be employee(s) of HSP, and under no circumstances will such personnel be considered employee(s) of the Client. HSP shall have the sole responsibility for supervision and control of its personnel and for payment of such personnel's entire compensation, including salary, withholding of income tax, social security taxes, provident fund, superannuation fund, worker's compensation, employee and disability benefits and the like and shall be responsible for all employer obligations under all applicable laws.
- 5.1.1.6 Any replacement by the HSP of the core team member(s) assigned for performance of services shall be made by appointment of personnel with equal or superior qualifications, to be duly approved by the Client as per section 3.6.6 of RFP Vol. I.

#### **5.1.2 Objections and Removals**

- 5.1.2.1 The Client may by notice to the HSP object to any representative or person employed by the HSP in the execution of the contract who, in the opinion of the Client, may have behaved inappropriately, be incompetent or be negligent.
- 5.1.2.2 If any representative or person employed by the HSP is objected by the Client as mentioned in GCC Clause 5.1.2.1, the HSP shall, where required, promptly

appoint a replacement, of equal or superior qualifications, within two weeks to be duly approved by the Client as per section 3.6.6 of RFP Vol. I.

## **5.2 Project Work Plan**

- 5.2.1 The HSP shall implement the project, in accordance with the final project work plan. The approved project work plan shall be referred to as the final project work plan and mentioned in the contract as Annexure I, point 4: "Project work plan".

## **5.3 Sub-contracting**

- 5.3.1 HSP may sub-contract the activities mentioned in Section 4.5.5, "Sub-Contracting" in RFP Vol. I.

## **5.4 Technical Design and Architecture**

### **5.4.1 Technical Specifications and Drawings**

- 5.4.1.1 The HSP shall execute the basic and detailed design and the implementation activities necessary for successful installation of MCTFC equipment in compliance with the provisions of the contract or, where not so specified, in accordance with best industry practices.

### **5.4.2 Approval/Review of Technical Documents by Client**

- 5.4.2.1 The HSP shall prepare and furnish to the Client the documents as specified in Section 3.13 of RFP Vol. I for Client's review.
- 5.4.2.2 Any part of equipment of MCTFC covered by or related to the documents to be approved by the Client shall be executed only after approval of these documents by the Client.
- 5.4.2.3 GCC Clauses 5.4.2.2 through 5.4.2.6 shall apply to those documents requiring the Client's approval, but not to those furnished to the Client for its review only.
- 5.4.2.4 If the Client disapproves the document, the HSP shall modify the document and resubmit it for the Client's approval in accordance with GCC Clause 5.4.2.
- 5.4.2.5 If the Client approves the document subject to modification(s), the HSP shall make the required modification(s), and the document shall then be approved by the Client on the modifications made, subject to this clause. The procedure set out in GCC Clauses 5.4.2.2 through 5.4.2.4 shall be repeated, as appropriate, until the Client approves such documents.
- 5.4.2.6 The Client's approval, with or without modification of the document furnished by the HSP, shall not relieve the HSP of any responsibility or liability imposed upon it by any provisions of the contract.
- 5.4.2.7 The HSP shall not depart from any approved document unless the HSP has first submitted to the Client an amended document and obtained the Client's approval of the document, pursuant to the provisions of this GCC Clause 5.4.2. If the Client requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GCC Clause 8.1 shall apply to such request.

## **5.5 Procurement, Delivery, and Transport**

- 5.5.1 HSP shall procure and transport all ICT and non-IT equipment and other goods in an expeditious and orderly manner to the Project Site.
- 5.5.2 Delivery of the ICT and non-IT equipment, materials and other goods shall be made

by the HSP in accordance with the RFP subject to the final project work plan.

## **5.6 Software Updates**

- 5.6.1 During performance of the Contract, the HSP shall offer to the Client all updates of Standard Software, as well as related documentation and technical support services, within one month of release of updates of Standard Software. In no case will the prices for this software exceed those quoted by the HSP in its financial proposal.
- 5.6.2 At the time of completion of the project and before the handover of MCTFC to the Client, the HSP must certify that all patches / service released up to the time of completion date have been properly installed.

## **5.7 Implementation, Installation, and Other Services**

- 5.7.1 The HSP shall provide all goods, works and services specified in the contract, RFP Vol. I and final project work plan in accordance with the highest standards of professional competence and integrity.

## **5.8 Inspections and Tests**

- 5.8.1 The Client may require the HSP to carry out third party audit specified in section 3.11.5 of RFP Vol. I. If such inspection and /or test impede the progress of work on MCTFC and /or the HSP's performance of its other obligations under the contract, due allowance can be made in respect of the time for achieving the obligations so affected if any.

## **5.9 Installation of ICT equipment at Project Site**

- 5.9.1 As soon as ICT equipment at Project Site has been, in the opinion of the HSP, made ready for user acceptance testing and Go-Live of MCTFC in accordance with Section 3.13 of RFP Vol. I and final project work plan, the HSP shall so notify the Client in writing.

# **6 PROTECTION AND LIMITATIONS**

## **6.1 Warranties**

- 6.1.1 The HSP warrants and represents to the Client that:
  - i. It has full capacity and authority and all necessary approvals to enter into and to perform its obligations under this contract for entire project duration;
  - ii. HSP should maintain warranty for all the existing and new hardware and software procured by them for the entire duration of project.
  - iii. This contract is executed by a duly authorized representative of HSP;
  - iv. The HSP is experienced in managing and providing works similar to the services and that it will perform the services with all due skill, care and diligence so as to comply with the requirements of the RFP;
  - v. The services will be provided and rendered by appropriately qualified, trained and experienced personnel;
  - vi. HSP has and will have all necessary licenses, approvals, consents of third parties and all necessary technology, hardware and software to enable it to provide the services;
  - vii. The services will be supplied in conformance with all applicable laws, enactments, orders and regulations;

- viii. If HSP uses in the course of the provision of the services components, equipment, software and hardware manufactured by any third party which are embedded in the deliverables or are essential for the successful use of the deliverables, it will pass through third party manufacturer's warranties relating to those components, equipment, software and hardware to the extent possible. In the event that such warranties cannot be enforced by the Client, the HSP will enforce such warranties on behalf of the Client and pass on to the Client the benefit of any other remedy received in relation to such warranties.
- ix. The Client shall promptly notify the HSP in writing of any claims arising under this warranty. Upon receipt of such notice, the HSP shall, within the warranty period and with all reasonable speed, repair or replace the defective systems, without costs to the Client and within the time specified and acceptable to Client.
- x. During the comprehensive warranty period, the HSP will provide all product(s) and documentation updates, patches / fixes, and version upgrades within one month of their availability and should carry out installation and make operational the same at no additional cost to the Client.

## **6.2 Intellectual Property Rights Warranty**

### **6.2.1 The HSP hereby represents and warrants that:**

- i. The ICT infrastructure as supplied, installed, tested and accepted;
- ii. ICT infrastructure will be used in accordance with the contract; and
- iii. Copying of the software and materials provided to the Client in accordance with the contract do not and will not infringe any intellectual property rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses and other transfers of intellectual property rights and the warranties set forth in the contract and for the Client to own or exercise all intellectual property rights as provided in the contract. Without limitation, the HSP shall secure all necessary written agreements, consents and transfers of rights from its employees and other persons or entities whose services are used for development of MCTFC.

## **6.3 Intellectual Property Rights Indemnity**

### **6.3.1 Indemnity**

- 6.3.1.1 The HSP shall execute and furnish a Deed of Indemnity in favour of the Client in a form and manner acceptable to the Client, indemnifying the Client from and against any costs, loss, damages, expense, claims including those from third parties or liabilities of any kind howsoever suffered, arising or incurred, inter alia, during and after the contract period out of:
  - a) any negligence or wrongful act or omission by the HSP or the HSP's team or third party in connection with or incidental to the contract; or
  - b) any breach of any of the terms of the contract by the HSP, the HSP's team or any member of third party.
- 6.3.2 The HSP shall indemnify and hold harmless the Client and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities and costs incurred in defending a claim alleging such a liability), that the Client or its employees or officers may suffer as a result of any infringement or alleged infringement of any intellectual property rights by reason of:

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- i. installation of the ICT infrastructure by the HSP or the use of ICT infrastructure, including the materials, at Project Site;
  - ii. copying of the software and materials provided by the HSP in accordance with the contract; and
  - iii. the indemnity shall be to the extent of 100% of the contract value in favour of the Client.
- 6.3.3 Such indemnity shall not cover any use of MCTFC, including the materials, other than for the purpose indicated by or to be reasonably inferred from the contract, any infringement resulting from the use of MCTFC, or any products of MCTFC produced thereby in association or combination with any other goods or services not supplied by the HSP, where the infringement arises because of such association or combination and not because of use of MCTFC in its own right.
- 6.3.4 Such indemnities shall also not apply if any claim of infringement:
  - i. is asserted by a subsidiary or affiliate of the Client;
  - ii. is a direct result of a design mandated by the Client's functional & technical requirements and the possibility of such infringement was duly noted in the HSP's proposal; or
  - iii. results from the alteration of MCTFC, including the materials, by the Client or any persons other than the HSP or a person authorized by the HSP.
- 6.3.5 The Client shall indemnify and hold harmless the HSP and its employees, officers and sub-contractors from and against any and all losses, liabilities and costs (including losses, liabilities and costs incurred in defending a claim alleging such a liability) that the HSP or its employees, officers or sub-contractors may suffer as a result of any infringement or alleged infringement of any intellectual property rights arising out of or in connection with any design, data, drawing, specification or other documents or materials provided to the HSP in connection with this contract by the Client or any persons (other than the HSP) contracted by the Client, except to the extent that such losses, liabilities and costs arise as a result of the HSP's breach of GCC Clause 6.3.1.
- 6.3.6 Such indemnity shall not cover any use of the design, data, drawing, specification or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the contract, or any infringement resulting from the use of the design, data, drawing, specification or other documents or materials, or any products produced thereby, in association or combination with any other goods or services not provided by the Client or any other person contacted by the Client, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification or other documents or materials in its own right.
- 6.3.7 Such indemnities shall also not apply:
  - i. if any claim of infringement is asserted by a parent, subsidiary or affiliate of the HSP's organization;
  - ii. to the extent that any claim of infringement is caused by the alteration, by the HSP, or any persons contracted by the HSP, of the design, data, drawing, specification or other documents or materials provided to the HSP by the Client or any persons contracted by the Client.
- 6.3.8 If any proceedings are brought or any claim is made against the HSP arising out of the matters referred to in GCC Clause 6.3.1, the HSP shall promptly give the Client notice of such proceedings or claims.



#### **6.4 Limitation of Liability**

6.4.1 Provided the following does not exclude or limit any liabilities of HSP in ways not permitted by applicable law:

- i. The HSP shall not be liable to the Client, whether in contract or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the HSP to pay liquidated damages to the Client; and
- ii. There shall be no limitation of liability in case of any damages for bodily injury (including death) and damage to real property, tangible personal property, intangible personal property and intellectual property rights.
- iii. However, where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the HSP, the HSP's liability under the contract shall be subject to the amount of its financial limit.
- iv. The aggregate liability of the HSP to the Client, whether under the contract, or otherwise, shall not exceed the total contract value, provided that this limitation shall not apply to any obligation of the HSP to indemnify the Client with respect to infringement of intellectual property rights and the liability as mentioned in GCC clause 7.4.2.

#### **6.5 Objection handling**

6.5.1 Any objection/ complaint regarding provision of services (covered under the contract) from the stakeholder shall be taken very seriously by the Client. HSP will take corrective action in consultation with the client, if necessary.

### **7 RISK DISTRIBUTION**

#### **7.1 Ownership**

- 7.1.1 All the procurement relating to goods, works, services, information technologies, etc. shall be done in the name of Client. All the goods, works, services, information technologies, etc. procured under the contract shall remain under the custody of HSP throughout the contract period. The goods, works, services, information technologies, etc. which are under the custody of the HSP shall be transferred, in working condition and in a proper manner, to the Client at the time of exit or otherwise under terms that may be agreed upon and specified in the contract.
- 7.1.2 Ownership and the terms of usage of the software and materials supplied under the contract shall be governed by GCC Clause 4.1 (Copyright) and any elaboration made in the Vol. I of the RFP.
- 7.1.3 Ownership of the HSP's equipment used by the HSP and its sub-contractors in connection with the contract shall remain with the HSP or its sub-contractors.
- 7.1.4 Renewal of the operation and maintenance services with the existing HSP or handover to the Client / any other vendor by the Client shall be as mentioned in SCC.

#### **7.2 Insurance to be taken out by HSP**

- 7.2.1 The HSP (a) shall take out and maintain, and shall cause any sub-contractor to take out and maintain, at their (or the sub-contractors', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks in the

name of Client, and for the coverage, as shall be specified in the SCC; and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.

7.2.2 In connection with the provision of the services, the HSP must have and maintain insurance coverage:

- i. for the contract period, valid and enforceable for:
  - a) public liability;
  - b) either professional indemnity or errors and omissions;
  - c) product liability;
  - d) workers' compensation as required by law;
- ii. for one year following the expiry or termination of the contract, valid and enforceable insurance policies (if relevant),
- iii. insurance cover should include all the IT and non-IT equipment installed at Project Site.

### **7.3 Care of MCTFC**

7.3.1 The HSP shall be responsible for the care and custody of Project Site from the date of site takeover. The HSP shall make good at its own cost any loss or damage that may occur to Project Site from any cause from the date of site takeover and throughout the contract period.

### **7.4 Loss of or Damage to Property; Accident or Injury to Workers; Indemnification**

7.4.1 The HSP and each and every sub-contractor shall abide by the job safety, insurance, customs and immigration measures prevalent and laws in force in India.

7.4.2 Notwithstanding anything contained in this contract, the HSP shall indemnify and hold harmless the Client and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities and costs incurred in defending a claim alleging such a liability) that the Client or its employees or officers may suffer as a result of the death or injury of any person or loss of or damage to any property (including other than MCTFC, whether accepted or not) arising in connection with the supply, installation, testing and commissioning of MCTFC and by reason of the negligence of the HSP or its sub-contractors or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Client, its contractors, employees, officers or agents.

7.4.3 The party entitled to the benefit of an indemnity under this clause shall take all reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

### **7.5 Force Majeure**

7.5.1 A Force Majeure event means any event or circumstance or a combination of events and circumstances referred to in this clause, which:

- 7.5.1.1 is beyond the reasonable control of the affected party;
- 7.5.1.2 such party could not have prevented or reasonably overcome with the exercise of reasonable skill and care;
- 7.5.1.3 does not result from the negligence of such party or the failure of such party to perform its obligations under this contract;

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7.5.1.4 is of an incapacitating nature and prevents or causes a delay or impediment in performance; and

7.5.1.5 may be classified as all or any of the following events:

- i. Non-Political Events
  - a) Act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions;
  - b) Radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the HSP's use of radiation or radio- activity or biologically contaminating material;
  - c) Strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances, as the case may be, not arising on account of the acts or omissions of the HSP and which affect the timely implementation and continued operation of the project; or
  - d) Any event or circumstances of a nature analogous to any of the foregoing.
- ii. Political Events
  - a) Change in law, other than any change in law for which relief is provided under this contract;
  - b) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the HSP in any proceedings for reasons other than failure of the HSP to comply with applicable laws or required consents or on account of breach thereof, or of any contract, or enforcement of this contract or exercise of any of its rights under this contract;
  - c) Unlawful or unauthorized revocation of, or refusal by any authority other than the Client or any of their nominated agencies to renew or grant any required consents required by the HSP to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the HSP's inability or failure to comply with any condition relating to grant, maintenance or renewal of such required consents applied on a non-discriminatory basis;
  - d) Any requisition of the project by any other authority; or
  - e) Any requisition of the project by the Client or any of their nominated agencies.
  - f) For the avoidance of doubt, suspension of the contract in accordance with the provisions of this contract shall not be considered a requisition for the purposes of Force Majeure event.
- iii. Other Events
  - a) An act of war (whether declared or undeclared), hostilities, invasion, armed conflict or act of foreign enemy, blockade, embargo, prolonged riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage, for a continuous period exceeding seven (7) days.
  - b) Failure, by the HSP, to obtain the necessary export permit(s) from the governments of the Country(s) of Origin of the Information Technologies or other goods, or HSP's equipment provided that the HSP has made all reasonable efforts to obtain the required export permit(s), including the exercise of due diligence in determining the eligibility of MCTFC and all of its components for receipt of the necessary export permits.

7.5.1.6 If either party is prevented, hindered, or delayed from or in performing any of

its obligations under the contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.

- 7.5.1.7 For the avoidance of doubt, it is expressly clarified that the failure on the part of the HSP under this contract or the SLA to implement any disaster contingency planning and back-up and other data safeguards in accordance with the terms of this contract or the SLA against natural disaster, fire, sabotage or other similar occurrence shall not be deemed to be a Force Majeure event. For the avoidance of doubt, it is further clarified that any negligence in performance of services which directly causes any breach of security like hacking are not the forces of nature and hence wouldn't be qualified under the definition of "Force Majeure". In so far as applicable to the performance of services, HSP will be solely responsible to complete the risk assessment and ensure implementation of adequate security measures, best practices, processes and technology to prevent any breach of security and any resulting liability therefrom (wherever applicable).

### 7.5.2 Notification procedure for Force Majeure

- 7.5.2.1 The affected party shall notify the other party of a Force Majeure event within seven (7) days of occurrence of such event. If the other party disputes the claim for relief under Force Majeure it shall give the claiming party written notice of such dispute within thirty (30) days of receipt of such notice. Such dispute shall be dealt with in accordance with the dispute resolution mechanism in accordance with Clause 1.5.1

- 7.5.2.2 Upon cessation of the situation which led the party claiming Force Majeure, the claiming party shall within seven (7) days hereof notify the other party in writing of the cessation and the parties shall as soon as practicable thereafter continue performance of all obligations under this contract.

### 7.5.3 Allocation of costs arising out of Force Majeure

- 7.5.3.1 Upon the occurrence of any Force Majeure event prior to the effective date, the parties shall bear their respective costs and no party shall be required to pay to the other party any costs thereof.

- 7.5.3.2 Upon occurrence of a Force Majeure event after the effective date, the costs incurred and attributable to such event and directly relating to the project ('Force Majeure costs') shall be allocated and paid as follows:

- i. Upon occurrence of a Non-Political Event, the parties shall bear their respective Force Majeure costs and neither party shall be required to pay to the other party any costs thereof.
- ii. Upon occurrence of an Other Event of Force Majeure, all Force Majeure costs attributable to such Other Event, and not exceeding the insurance cover for such Other Event, shall be borne by the HSP and to the extent Force Majeure costs exceed such insurance cover, one half of such excess amount shall be reimbursed by the Client to the HSP.
- iii. For the avoidance of doubt, it is clarified that Force Majeure costs may include interest payments on debt, operation and maintenance expenses, any increase in the cost of the services on account of inflation and all other costs

directly attributable to the Force Majeure event.

- iv. Save and except as expressly provided in this clause, neither party shall be liable in any manner whatsoever to the other party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure event or exercise of any right pursuant hereof.

**7.5.4 Consultation and duty to mitigate**

- 7.5.4.1 Except as otherwise provided in this clause, the affected party shall, at its own cost, take all steps reasonably required to remedy and mitigate the effects of the Force Majeure event and restore its ability to perform its obligations under this contract as soon as reasonably practicable. The parties shall consult with each other to determine the reasonable measures to be implemented to minimize the losses of each party resulting from the Force Majeure event. The affected party shall keep the other parties informed of its efforts to remedy the effect of the Force Majeure event and shall make reasonable efforts to mitigate such event on a continuous basis and shall provide written notice of the resumption of performance of services hereunder.

## **8 CHANGES IN CONTRACT ELEMENTS**

### **8.1 Changes to MCTFC**

- 8.1.1 The Client and the HSP recognize that for providing better and improved services change is an inevitable part of delivering services and that a significant element of this change can be accomplished by re-organizing processes and responsibilities without an effect on the cost. A change may involve, but is not restricted to the submission of updated information technologies and related services in accordance with GCC clause 5.6. (Software updates). The HSP will endeavour, wherever reasonably practicable, to effect change without any change in the terms of payment as stated in the payment schedule mentioned in Section 4.8 of RFP Vol. I and the Client will work with the HSP to ensure that all changes are discussed and managed in a constructive manner.

**8.1.2 Change Control Note (CCN):**

- 8.1.2.1 Change requests in respect of this contract will emanate from the authorized representative of either the Client or the HSP, who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the change control process and will complete Part A of the Change Control Note (CCN) attached in Annexure I Format 6. CCNs will be presented to the other party's authorized representative who will acknowledge receipt by signature of the CCN.
- 8.1.2.2 The HSP and the Client, while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of services including ancillary and concomitant services required for the project (including but not restricted to requirements specified in scope of work mentioned in Section 3 of RFP Vol. I) and is suggested and applicable only after Go-Live of MCTFC project as set out in this contract.
- 8.1.2.3 It is hereby also clarified that the changes would be mutually agreed upon and payment for the changes brought in after Go-Live of MCTFC project may be calculated based on the financial bid quoted by the HSP as per the Section 5.1.4 of RFP Vol. I and accepted by the Client.

8.1.2.4 The HSP shall assess the CCN and complete Part B of the CCN. In completing Part B of the CCN the HSP shall provide as a minimum:

- i. A description of the change;
- ii. Options available for implementing change and evaluation thereon;
- iii. A list of deliverables required for implementing the change;
- iv. A timetable for implementation;
- v. An estimate of any proposed change;
- vi. Any relevant acceptance criteria;
- vii. An assessment of the value of the proposed change;
- viii. Evidence to prove that the proposed change is not already covered within the scope of the project, SLA, or contract.

8.1.2.5 Prior to submission of the completed CCN to the Client, or its nominated agencies, the HSP will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the HSP shall consider the materiality of the proposed change in the context of this contract and the total effect that may arise from implementation of the change.

8.1.2.6 Each party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the HSP meets the obligations as set in the CCN. In the event the HSP is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party will be borne by the HSP.

8.1.2.7 Change requests and CCNs will be reported monthly by the HSP to facilitate effective change review and control.

8.1.2.8 The HSP shall be obliged to implement any proposed changes once approved in accordance with clause above, with effect from the date agreed for implementation.

## **8.2 Termination of Contract**

### **8.2.1 Termination for Default**

8.2.1.1 Client may, without prejudice to any other remedy for breach of contract, by written notice of default sent to HSP, terminate the contract in whole or in part if:

8.2.1.2 The HSP 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

8.2.1.3 The HSP fails to perform any other obligation(s) under the contract.

8.2.2 However, the disputes, if any, may be referred to arbitration pursuant to Clause 1.5.2 of contract.

### **8.2.3 Termination for Insolvency, Dissolution etc**

8.2.3.1 Client may at any time terminate the contract by giving written notice to the HSP without compensation to the HSP, if the HSP becomes bankrupt or otherwise insolvent or in case of dissolution of firm or winding up of company, and such termination will not prejudice or affect any right of action or remedy which has accrued thereafter to the Client.

### **8.2.4 Termination for Convenience**

## GENERAL CONDITIONS OF CONTRACT

8.2.4.1 Client reserves the right to terminate by prior written notice, the whole or part of the contract. The notice of termination shall specify that termination is for Client's convenience, the extent to which performance of work under the contract is terminated and the date on which such termination becomes effective.

### 8.2.5 Withdrawal by the HSP

8.2.5.1 Withdrawal of HSP from the contract at any point of time during contract period shall constitute sufficient grounds for the termination of contract. If Client gets the work done from elsewhere, the difference in the cost of getting the work done will be borne by the erstwhile HSP.

### 8.2.6 No Claim Certificate

8.2.6.1 The HSP shall not be entitled to make any claim, whatsoever, against Client under or by virtue of or arising out of the contract nor shall Client entertain or consider any such claim after HSP shall have signed a "no claim" certificate in favour of Client in such forms as shall be required by Client after the works are finally accepted.

### 8.2.7 Suspension

8.2.7.1 Client may by a written notice of suspension, suspend all payments to HSP under the contract, if the HSP fails to perform any of its obligations under the contract, (including carrying out of the services) provided that the notice of suspension:

8.2.7.2 Shall specify the nature of the failure and

8.2.7.3 Shall request the HSP to remedy such failure within a specified period from the date of issue of such notice of suspension.

### 8.2.8 Consequences of Termination

8.2.8.1 In the event of termination of the contract due to any cause whatsoever, whether consequent to the stipulated term of the contract or otherwise, the Client shall be entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective business continuity (as per exit management plan) of the project which the HSP shall be obliged to comply with and take all available steps to minimize loss resulting from that termination / breach and further allow and provide all such assistance to Client and / or the successor HSP, as may be required to take over the obligations of the erstwhile HSP in relation to the execution / continued execution of the scope of the contract.

8.2.8.2 Nothing herein shall restrict the right of the Client to revoke the Bank Guarantee and other guarantees furnished hereunder, enforce the Deed of Indemnity and pursue such other rights and / or remedies that may be available to the Client under law.

8.2.8.3 The termination of contract shall neither affect any accrued right or liability of either party nor affect the operation of the provisions of the contract that are expressly or by implication intended to come into or continue in force on or after such termination.

## 8.3 Conflict of Interest

## GENERAL CONDITIONS OF CONTRACT

- a) Neither the Helpdesk Service Provider nor any of the Helpdesk Service Provider's personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract.
- b) The Helpdesk Service Provider and the Helpdesk Service Provider's personnel shall notify the Client immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided. Accordingly client will take appropriate action on the same.

### **8.4 Miscellaneous**

- a) Neither Client nor the HSP shall, without the express prior written consent of the other, assign to any third party the contract or any part thereof or any right, benefit, obligation or interest therein or there under, except that the Service Provider shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the contract.
- b) The services to be rendered under the contract shall conform to the standards mentioned in this document, and in case no applicable standards are mentioned, to the latest authoritative standards as laid down by the competent institution governing that standard.

## **9 Exit Management**

### **9.1 Exit Management Plan**

- 9.1.1 The HSP should submit a detailed exit management plan and revise it on yearly basis to keep it relevant and up-to-date as specified in the Section 3 of RFP Vol. I.
- 9.1.2 The HSP should also comply with the exit management plan in case of termination as specified in the clause 8.2 Termination of Contract.



## **SPECIAL CONDITIONS OF CONTRACT**

## 10 Variation

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

## 11 Waiver

11.1.1 Waiver including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

11.1.1.1 Shall be in writing

11.1.1.2 Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

11.1.1.3 Shall be executed by a duly authorized representative of the Party; and

11.1.1.4 Shall not affect the validity or enforceability of this Agreement in any manner.

## 12 Agreement Owners

The following personnel shall be notified to discuss the Agreement and take into consideration any proposed SLA change requests:

Name	Title	Telephone	Email
Client	Authorized Representative, Client	<***>	<***>
HSP	Authorized Representative, HSP	<***>	<***>

### 12.1 Contact List

12.1.1 In the event that there is any change in the listed contacts, the same shall be communicated and updated prior to such change occurring. The HSP's representative for the HSP shall be <\*\*\*> and will be available 24X7.

Name	Title	Location	Telephone
Client	Authorized Representative, Client	<***>	<***>
HSP	Authorized Representative, HSP	<***>	<***>

## 13 Non-Disclosure of Information

### 13.1 Obligations of the receiving parties

13.1.1 Neither of the Parties shall, without the consent of the other, divulge or permit its officers, employees, or agents to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them to properly carry out their duties) any information concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party. Both

Parties agree that confidentiality obligations do not apply to:

- a) Information that is already known to third parties without breach of this Contract; and
- b) Information that is required to be disclosed by an order of a court of competent jurisdiction or an appropriately empowered public authority, or as a result of an obligation arising under the Right to Information Act or other public disclosure law.

### **13.2 Obligations of the HSP**

- 13.2.1 HSP shall use the confidential information only for the business purpose and shall hold the confidential information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, taking into account the nature of the confidential information;
- 13.2.2 HSP shall grant access to confidential information only to its employees on a need to know basis and restrict such access as and when not necessary to carry out the business purpose;
- 13.2.3 HSP shall cause its employees to comply with the provisions of this Clause;
- 13.2.4 HSP shall reproduce confidential information only to the extent essential to fulfilling the business purpose;
- 13.2.5 HSP shall prevent disclosure of confidential information to personnel, sub-contractors, third parties only on a need to know basis; provided that by doing so it ensures confidentiality of information as specified in this clause;
- 13.2.6 Upon the client's request, the HSP shall either return to the client all confidential information or shall certify that all media containing confidential information have been destroyed.

### **13.3 Ambiguities within the Contract**

In case of ambiguities or discrepancies within this contract, decision of the client shall be final and binding on the HSP

## **14 Service Levels**

### **14.1 Compliance to SLAs**

As per Section 5.8 of the RFP Vol. I. HSP shall ensure compliance with the SLAs as per the provision of the contract.

## **ANNEXURE I- FORMATS**

### **1 Terms of Payment**

(Final payment schedule shall be provided here)

### **2 Financial Quote**

(As per the bidder's proposal to the format provided in Annexure 4.1.4 of RFP Vol. I)

### **3 Bill of Material**

(As per the bidder's proposal to the format provided in Annexure 12 of RFP Vol. I)

### **4 Project Work Plan**

### **5 Consortium Agreement**

### **6 Change Order Procedure and Form**

Date: [insert: date]

Contract: "Appointment of HSP for augmentation of MCTFC project on turnkey basis"

## **CONTENTS**

General

Change Order Log

Change Form

General

This section provides samples of procedures and forms for carrying out changes to MCTFC during the performance of the contract in accordance with GCC Clause 8.1 (Changes to MCTFC) of the contract.

Change Order Log

The HSP shall keep an up-to-date Change Order Log to show the current status of Change Requests and Change Orders authorized or pending. Changes shall be entered regularly in the Change Order Log to ensure that the log is kept up-to-date. The HSP shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Client.

# Change Form

CHANGE CONTROL NOTE		CCN NUMBER:
Part A: Initiation		
Title:		
Originator:	<u>Name and Designation of the Person</u>	
Sponsor:		
Date of Initiation:		
Details of Proposed Change		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, A3 etc.)		
Authorized by Client	Date:	
Name and Designation :		
Signature:		
Received by the HSP	Date:	
Name and Designation:		
Signature:		
CHANGE CONTROL NOTE		CCN NUMBER:
Part B : Evaluation		
(Identify any attachments as B1, B2, B3 etc.) Changes to services, charging structure, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue.		
Brief Description of Solution:		
Impact:		
Deliverables:		
Timelines:		

Charges for Implementation (if any): (including a schedule of payments)	
Other Relevant Information: (including value-added and acceptance criteria)	
Authorized by the Client	Date:
Name:	
Signature:	
CHANGE CONTROL NOTE	CCN NUMBER :
Part C : Authority to Proceed	
Implementation of this CCN as submitted in Part A, in accordance with Part B is: (tick as appropriate)	
<input type="checkbox"/> Approved  <input type="checkbox"/> Rejected  <input type="checkbox"/> Requires further information	
For the Client	For the HSP
Signature	Signature
Name	Name
Title	Title
Date	Date

*End of Volume II of the RFP*