

VOLUME II: CONDITIONS OF CONTRACT

Tender Document No.: JSK/14(03)/2015/Helpline

Request for Proposal (RFP)
for
“Selection of Call-centre Service Provider (CSP) on
Outsourced model for
Ministry of Health & Family Welfare (MoHFW),
Government of India (GoI)

27th October, 2017

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

GLOSSARY

CCN	Change Control Note
GCC	General Conditions of Contract
IT	Information Technology
ICT	Information and Communications Technology
RFP	Request for Proposal
SCC	Special Conditions of Contract
SLA	Service Level Agreement
w.e.f.	With effect from

Table of Contents

AGREEMENT	4
GENERAL CONDITIONS OF CONTRACT	6
1 DEFINITIONS AND INTERPRETATIONS.....	6
2 SCOPE OF WORK	11
3 PAYMENT	11
4 INTELLECTUAL PROPERTY RIGHTS (IPR)	12
5 PERSONNEL OF CSP	13
6 PROTECTION AND LIMITATIONS.....	14
7 RISK DISTRIBUTION	17
8 CHANGES IN CONTRACT ELEMENTS.....	20
9 TERMINATION & SUSPENSION OF CONTRACT	21
10 MISCELLANEOUS	22
SPECIAL CONDITIONS OF CONTRACT	23
11 NON-DISCLOSURE OF INFORMATION	23
ANNEXURE I- FORMATS	25
1 PAYMENT SCHEDULE.....	25
2 FINANCIAL SUMMARY	25
3 PROJECT WORK PLAN	25
4 CONSORTIUM AGREEMENT (IF APPLICABLE)	25
5 CHANGE ORDER PROCEDURE AND FORM.....	25
6 SLA	27

AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into at Delhi on this, the ___ day of _____, 2016 for "Selection of Call centre Service Provider (CSP) on Outsourced model" for Ministry of Health and Family Welfare (MoHFW).

BY AND BETWEEN

<<Name of Respective Programme Division >>, 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 /2013>>, having its registered office at _____ represented by its duly authorized signatory _____ hereinafter referred to as "Call-Centre Service Provider or CSP" 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) Project implementation plan approved by Client
 - c) Letter of Intent (LoI) issued by Client
 - d) Request for Proposal (including corrigenda issued to the RFP)
 - e) Letter of Acceptance (LoA) by the CSP
 - f) CSP'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 CSP as hereinafter mentioned, the CSP hereby covenants with Client to execute the project requirement as mentioned in RFP Vol. I & corrigendum thereon, if any, w.e.f. _____ as per the provision of this Agreement.
4. Client hereby covenants to pay the CSP 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**]

inclusive of Taxes and Duties, 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 RFP Vol. I.

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

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

For and on behalf of the CSP
Signature of the authorized official

For and on behalf of MoHFW
Signature of the authorized official

Name of the Officer

Name of the Officer

Stamp/Seal of the CSP
By the said
(Name on behalf of the CSP)

Stamp/Seal of MoHFW
By the said
(Name on behalf of MoHFW)

In the presence of:

In the presence of

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 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 CSP, 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 CSP using the form of Agreement and any modifications to this form agreed to by the Client and the CSP. The date of the Agreement shall be recorded in the signed form.
 - iv. "Bidding documents" refers to the RFP document and subsequent corrigendum (if any) issued by MoHFW to instruct and inform potential bidders of the processes for bidding, selection of successful bidder and Contract formation governing the relationship between Client and the CSP.
 - v. "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.
 - vi. "Correspondence" means any written or digital communication exchanged between the Client and CSP. Correspondences may come in the form of personal delivery, post, courier or electronic mail.
 - vii. "Project" refers to "Selection of Call-centre Service Provider (CSP) on Outsourced model".
 - viii. "GCC" means the General Conditions of Contract.
 - ix. "SCC" means the Special Conditions of Contract.
 - x. "Parties" in plural means Client and CSP.
 - xi. "Party" in singular means either Client or CSP.
 - xii. "Contract value" means the value defined in Clause 3 of the Agreement.
- b) Entities
 - i. "Company" means a Company incorporated under the Companies Act, 1956 / 2013.
 - ii. "Client" means Ministry of Health & Family Welfare (MoHFW) or any Programme Division or Department of MoHFW, Nirman Bhawan, Maulana Azad Road, New Delhi - 110011, who is appointing Call-centre Service Provider (CSP) on Outsourced model for various programmes of MoHFW.
 - iii. "Call-centre Service Provider (CSP)" means (name of the Company), a Company whose proposal to perform the contract has been accepted by the Client and is named as such in the Agreement.
 - iv. "CSP's representative" means any person nominated by the CSP and approved by the Client in the manner provided in GCC Clause 5.1(CSP's representative) to perform the duties delegated by the CSP.
 - v. "Stakeholders" mean all the stakeholders of the project. A person or entity who is directly or indirectly involved in the project will be considered as the stakeholder for the project.

c) Scope

- i. Project means all the Services to be carried out by the CSP under this contract.
- ii. "Information and Communications Technology (ICT)" means information and communications related hardware, software, supplies and consumable items that the CSP is required to procure, install and maintain to provide the services as per the SLA as per the provision of this contract.
- iii. "Services" means all operational, management and any other related services to be provided by the CSP under the contract. Such services may include, but are not restricted to, calling operations and its quality assurance, design, development, customization, documentation, inspection, integration, training, security management, call centre management, maintenance and technical support for this project.
- iv. "Project work plan" means the work plan approved by the Client in line with deliverables and timelines mentioned in RFP Vol. I and as placed in Annexure I, point 3: Project Work Plan.
- v. "Service level" means the level of service including deliverable and other performance indicators pertaining to the services detailed in the contract and to be provided by the CSP.
- vi. "Service Level Agreement (SLA)" means the agreement between parties about the service levels to be provided / maintained by the CSP.
- vii. "Source code" means the database structures, dictionaries, definitions, program source files, code of the applications, any Application Programming Interfaces (API), Dynamic Link Libraries (DLL) and controls etc. and any other symbolic representations necessary for the compilation, execution and subsequent maintenance of the software.
- viii. "Intellectual property rights" means all processes, products, data, knowledge products, training material and other documents which have been developed by the CSP during the performance of services and for the purposes of, inter alia, use or sub-license of such services under this project. The CSP 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.
- ix. "Software development" is a set of activities that result in the development of an application software service as per the requirements of the project.
- x. "CSP's equipment" means all equipment, tools, apparatus or things of every kind used by the CSP for the project.

d) Activities

- i. "Deliverable" means any document, output, activity, task, milestone, provision, service, which is required to be carried out or submitted or provided by the CSP to the Client for the purpose of successful completion of the project.
- ii. "Delivery" means the delivery of services as per scope of work, from the Project Site of CSP in accordance with timelines and service levels mentioned in RFP Vol. I.
- i. "Go Live" means the date on which the Client issues the sign off for implementation of the project and its readiness for operationalization.

e) Place and time

- i. "Project site(s)" means the place(s) specified in the contract for the execution of the project.
- 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 of the Gregorian calendar.
- vi. "Commencement Date" means the date on which the CSP has started the services based on the request made by MoHFW through Letter of Award (LoA) and subsequently accepted by the CSP. The obligation of the CSP towards the project including scope of work, deliverables & timelines and terms of reference will start from this date.
- vii. "Effective date" means the date of fulfillment of all the conditions mentioned below:
 - a. This agreement has been duly executed for and on behalf of the Client and the CSP;
 - b. The CSP has submitted to the Client the performance security in accordance with GCC Clause 3.3;
 - c. Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.
- viii. "Contract period" is the time period during which this contract governs the relations and obligations of the Client and CSP in relation to the project. CSP will carry out the project operations for a period of three (3) years from the date of Go-Live.
- ix. "Operational Time" mean the days of the week and month and year, and the hours of those days during which the services as per provision of RFP volume 1 must be made available by the CSP.

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 CSP 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 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 CSP shall be solely responsible for the manner in which the contract is performed. All employees, representatives or sub-contractors engaged by the CSP in connection with the performance of the contract shall be under the complete control of the CSP 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 CSP 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 RFP Vol. I.
- 1.2.7.2 Consortium's agreement and details of consortium partners will be placed in Annexure I, point 4: Consortium agreement as per 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 contract 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 CSP: Attn. <***>
 - Phone: <***> Fax No. <***>

1.4 Governing Laws

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 CSP.

1.5 Settlement of Disputes

1.5.1 Dispute Resolution

- 1.5.1.1 If any dispute of any kind whatsoever shall arise between the Client and the CSP 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 (whether during the progress of the project 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 CSP 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 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.

1.5.3 Conditions Precedent

1.5.3.1 Conditions Precedent for CSP

- a) The CSP shall have to fulfill conditions precedent, which are as follows:
 - i) Provide performance security to the Client as specified in RFP Vol. I;
 - ii) The CSP 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;

1.5.3.2 Conditions Precedent for Client

- a) The Client shall obtain applicable permits, if any, required by the CSP to begin operations in accordance with this contract.

1.5.4 Non-fulfillment of Conditions Precedent

- a) In the event that any of the conditions precedent relating to CSP 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.
- b) In the event that the contract fails to come into effect on account of non-fulfillment of the CSP's conditions precedent, the Client shall not be liable in any manner whatsoever to the CSP and the Client shall forthwith invoke the bid security / performance security, as the case may be.
- c) 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.

2 SCOPE OF WORK

2.1 Scope of Services

The detailed scope of work is specified in RFP Vol. I.

3 PAYMENT

3.1 Contract Value

- 3.1.1 The contract value of the project shall be as defined in RFP Vol. I.
- 3.1.2 The contract value, shall, except as otherwise provided for in the contract, cover all obligations of CSP under the contract.
- 3.1.3 The contract value shall be adjusted based on the unit price provided by the CSP in its financial proposal based on the additional services, if any, agreed by the Client.
- 3.1.4 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 RFP Vol. I. The CSP's request for payment shall be made to the Client in writing, accompanied by an invoice describing the services provided.
- 3.2.2 CSP shall raise the invoice and submit to the Client, the payment of which shall be made after the 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 CSP for the services rendered in pursuance of this contract, in accordance with the terms of payment schedule specified in RFP Vol. I.
- 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 CSP shall be subject to the satisfactory delivery of services as approved by Client.
- 3.2.7 No payment shall be made directly to any third party except the release of payment to CSP as per the provisions of this contract.

3.3 Performance Security

- 3.3.1 The CSP 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 currency specified in the GCC Clause 3.2.
- 3.3.2 The performance security shall be in the form of a Bank Guarantee / Fixed Deposit Receipt from a scheduled Commercial bank.
- 3.3.3 The performance security will be for an amount of 10% of the value of contract in Indian Rupees. All incidental charges whatsoever such as premium, commission etc. with respect to the performance security shall be borne by the CSP. The performance security shall be valid for a period of 60 days beyond the date of completion of all contractual obligations of the CSP. These additional sixty days are

required for facilitating closure of the project.

- 3.3.4 In the event of the CSP being unable to service the contract for whatever reason, the Client would invoke the performance security. Notwithstanding and without prejudice to any rights whatsoever of the Client under the contract in the matter, the proceeds of the performance security shall be payable to the Client as compensation for any loss resulting from the CSP's failure to fulfill its obligations under the contract. The Client shall notify the CSP in writing of the exercise of its right to receive such compensation of default by CSP, indicating the contractual obligation(s) for which the CSP is in default.
- 3.3.5 The performance security may be discharged / returned by the Client upon being satisfied that there has been due performance of the obligations of the CSP under the contract. However, no interest shall be payable by Client on the performance security.

3.4 Taxes and Duties

- 3.4.1 All taxes, duties etc. shall be payable by the CSP. 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 CSP along with the invoices.
- 3.4.2 The mandatory taxes / duties etc. as applicable shall be deducted by Client.

4 INTELLECTUAL PROPERTY RIGHTS (IPR)

4.1 Intellectual Property

- 4.1.1 The CSP 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 CSP 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 CSP during the contract and after the completion of contract as well.
- 4.1.2 Client shall retain all right, title and interest in and to any and all data, entered or generated by the CSP for Client pursuant to this contract, and any modifications thereto or works derived therefrom
- 4.1.3 The IPRs in all Standard Software and Standard Materials shall remain vested in the owner of such rights.
- 4.1.4 The CSP 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 CSP 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 CSP, 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 CSP) at the direction of the Client.

- 4.1.5 The Client shall have no liability or obligation to CSP 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 CSP or its nominees outside the scope of the services) other than for contract.

4.2 Information Security

- 4.2.1 The CSP 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 project premises without prior written permission from Client. CSP 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 CSP 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 CSP to protect its own proprietary information. CSP recognizes that the goodwill of Client depends, among other things, upon CSP keeping such proprietary information confidential and that unauthorized disclosure of the same by CSP could damage Client, by reason of breach of CSP's duties hereunder. CSP may come into possession of such proprietary information even though CSP 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. CSP shall use such information only for the purpose of performing the said services. CSP shall, upon termination of this contract for any reason, or upon demand by Client, whichever is earlier, return any and all information provided to CSP by Client, including any copies or reproductions, both hard copy and electronic.

5 PERSONNEL OF CSP

5.1 Representative / Personnel

- 5.1.1 All members of the CSP personnel working on the project shall be appropriately qualified, experienced and in a suitable physical condition so as to ensure that the CSP complies with all the obligations under this Contract.
- 5.1.2 No changes or substitutions may be made for the deployed personnel for the project without prior written consent of the Client. However any changes to the proposed personnel shall be done with equal or more qualified, skilled & experienced resources with the prior approval of the Client.
- 5.1.3 The Client may by notice to the CSP object to any representative or person employed by the CSP in the execution of the contract who, in the opinion of the Client, may have behaved inappropriately, be incompetent or be negligent.
- 5.1.4 If any representative or person employed by the CSP is objected to by the Client as mentioned in GCC Clause 5.1.3, the CSP shall, where required, promptly appoint a replacement, of equal or superior qualifications, within two weeks to be duly

approved by the Client.

- 5.1.5 The CSP is responsible for all acts and omissions of the CSP's personnel and for the health, safety and security of such persons and their property.
- 5.1.6 Personnel assigned by CSP to perform the services shall be employee(s) of CSP, and under no circumstances will such personnel be considered employee(s) of the Client. CSP 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. CSP shall assign a representative for the project who shall have the authority to represent the CSP on all day-to-day matters arising from the contract.
- 5.1.7 All notices, instructions, information and all other communications given by the Client to the CSP under the contract shall be given to the CSP's representative except as otherwise provided for in this contract.
- 5.1.8 The CSP'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 CSP's representative is responsible for managing the activities of its personnel and any sub-contracted personnel.

6 PROTECTION AND LIMITATIONS

6.1 Warranties

- 6.1.1 The CSP 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. This contract is executed by a duly authorized representative of CSP;
 - iii. The CSP 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 this project;
 - iv. The services will be provided and rendered by appropriately qualified, trained and experienced personnel;
 - v. CSP 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;
 - vi. The services will be supplied in conformance with all applicable laws, enactments, orders and regulations;

6.2 Indemnity

- 6.2.1 The CSP shall indemnify the Client 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 CSP or the CSP's personnel 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 CSP, the CSP's team or any member of third party.
- 6.2.2 The CSP 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:

- a) installation of the ICT infrastructure by the CSP or the use of ICT infrastructure, including the materials, at project site;
- b) copying of the software and materials provided by the CSP in accordance with the contract; and
- c) the indemnity shall be to the extent of 100% of the contract value in favour of the Client.

6.2.3 The Client shall indemnify and hold harmless the CSP and its employees 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 CSP or its employees 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 CSP in connection with this contract by the Client or any persons (other than the CSP) contracted by the Client, except to the extent that such losses, liabilities and costs arise as a result of the CSP's breach of GCC Clause 6.2.

6.2.4 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 contracted 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.

6.2.5 Such indemnities shall also not apply:

- a) if any claim of infringement is asserted by a parent, subsidiary or affiliate of the CSP's organization;
- b) to the extent that any claim of infringement is caused by the alteration, by the CSP, or any persons contracted by the CSP, of the design, data, drawing, specification or other documents or materials provided to the CSP by the Client or any persons contracted by the Client.

6.3 Confidentiality

6.3.1 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:

6.3.1.1 Information that is already known to third parties without breach of this Contract; and

6.3.1.2 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.

6.4 Access and Audit

- 6.4.1 The CSP shall keep accurate and systematic accounts, files and records ('the Records'). The Records shall clearly identify, among other things, the basis upon which invoices have been calculated and the CSP shall keep the Records throughout the duration of this Contract following its termination.
- 6.4.2 The CSP shall upon request provide the Client or its representatives or audit officials unrestricted access to the Records in order that the Records may be inspected and copied. The CSP shall co-operate fully in providing to the Client or its representatives answer to such enquiries as may be made about the Records. System shall have a special interface for the Client where access to all data shall be allowed without any modification or change permission. The Client reserves the right to appoint third parties to audit information security procedures, processes, systems put in place by the CSP at any time without giving prior notice. The Client also reserves the right to conduct un-scheduled quality audits as and when required. Quality audits shall focus on following broad areas (but not limited to):
- a) Quality of infrastructure deployed by the CSP
 - b) Quality of equipment like headsets, workstations etc.
 - c) IT infrastructure, network, servers, IVRS, ACD, TTS, CTI etc.
 - d) Physical and logical security etc.
 - e) Application and Data security.
- 6.4.3 Where it is found by the Client that any overpayment has been made to the CSP, the CSP shall reimburse the Client such amount within 30 days of the date of the Client's written demand.

6.5 Limitation of Liability

- 6.5.1 The following does not exclude or limit any liabilities of CSP in ways not permitted by applicable law:
- 6.5.1.1 The CSP 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 CSP to pay liquidated damages to the Client; and
- 6.5.1.2 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.
- 6.5.1.3 Where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the CSP, the CSP's liability under the contract shall be subject to the amount of total contract value.
- 6.5.1.4 The aggregate liability of the CSP 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 CSP to indemnify the Client with respect to infringement of intellectual property rights and the liability as mentioned in

GCC clause 7.3.2.

6.6 Objection Handling

- 6.6.1 Any objection/ complaint regarding provision of services (covered under the contract) shall be taken very seriously by the Client. CSP 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 CSP. All the goods, works, services, information technologies, etc. procured under the contract shall remain under the custody of CSP throughout the contract period.

7.2 Insurance to be taken by CSP

- 7.2.1 The CSP shall take and maintain at their own cost, insurance against the risks as deemed fit by the CSP.
- 7.2.2 In connection with the provision of the services, the CSP must have and maintain insurance coverage:
- 7.2.2.1 for the contract period, valid and enforceable for:
- a) public liability;
 - b) either professional indemnity or errors and omissions;
 - c) workers' compensation as required by law;
- 7.2.2.2 for one year following the expiry or termination of the contract, valid and enforceable insurance policies (if relevant),

7.3 Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

- 7.3.1 The CSP and each shall abide by the job safety, insurance, customs and immigration measures prevalent and laws in force in India.
- 7.3.2 Notwithstanding anything contained in this contract, the CSP 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 arising in connection with the project and by reason of the negligence of the CSP or their personnel, officers or agents, except any injury, death or property damage caused by the negligence of the Client, its contractors, employees, officers or agents.
- 7.3.3 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.

7.4 Force Majeure

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

7.4.1.1 is beyond the reasonable control of the affected party;

7.4.1.2 such party could not have prevented or reasonably overcome with the exercise of reasonable skill and care;

7.4.1.3 does not result from the negligence of such party or the failure of such party to perform its obligations under this contract;

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

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

a) Non-Political Events

i) 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;

ii) Radioactive contamination or ionizing radiation or biological contamination except as may be attributable to the CSP's use of radiation or radio-activity or biologically contaminating material;

iii) 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 CSP and which affect the timely implementation and continued operation of the project; or

iv) Any event or circumstances of a nature analogous to any of the foregoing.

b) Political Events

i) Change in law, other than any change in law for which relief is provided under this contract;

ii) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the CSP in any proceedings for reasons other than failure of the CSP 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;

iii) 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 CSP to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the CSP'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;

iv) Any requisition of the project by any other authority; or

v) Any requisition of the project by the Client or any of their nominated agencies.

vi) 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.

c) Other Events

i) 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.

- ii) Failure, by the CSP, to obtain the necessary export permit(s) from the governments of the Countries of Origin of the technologies or other goods, or CSP's equipment provided that the CSP has made all reasonable efforts to obtain the required export permit(s).

7.4.2 Notification procedure for Force Majeure

7.4.2.1 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

7.4.2.2 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.

7.4.3 Allocation of costs arising out of Force Majeure

7.4.3.1 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.

7.4.3.2 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:

- a) 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.
- b) 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 CSP 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 CSP.
- c) 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.
- d) 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.

7.4.4 Consultation and duty to mitigate

7.4.4.1 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 Project

- 8.1.1 The Client and the CSP 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 any effect on the cost. The CSP will endeavour, wherever reasonably practicable, to effect change without any change in the terms of payment as stated in the payment schedule mentioned in RFP Vol. I and the Client will work with the CSP 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 CSP, 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, point 5. CCNs will be presented to the other party's authorized representative who will acknowledge receipt by signature on the CCN.
- 8.1.2.2 The CSP 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 RFP Vol. I) and is suggested and applicable only after Go-Live of the 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 the project may be calculated based on the financial bid quoted by the CSP as per the RFP Vol. I and accepted by the Client.
- 8.1.2.4 The CSP shall assess the CCN and complete Part B of the CCN. In completing Part B of the CCN the CSP shall provide as a minimum:
- a) A description of the change;
 - b) Options available for implementing change and evaluation thereon;
 - c) A list of deliverables required for implementing the change;
 - d) A timetable for implementation;
 - e) An estimate of any proposed change;
 - f) Any relevant acceptance criteria;
 - g) An assessment of the value of the proposed change;
 - h) 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 CSP will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the CSP

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 CSP meets the obligations as set in the CCN. In the event the CSP 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 CSP.
- 8.1.2.7 Change requests and CCNs will be reported monthly by the CSP to facilitate effective change review and control.
- 8.1.2.8 The CSP shall be obliged to implement any proposed changes once approved in accordance with clause above, with effect from the date agreed for implementation.

9 TERMINATION & SUSPENSION OF CONTRACT

9.1 Termination for Default

- 9.1.1 Client may, without prejudice to any other remedy for breach of contract, by written notice of default sent to CSP, terminate the contract in whole or in part if:
 - 9.1.1.1 The CSP 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
 - 9.1.1.2 The CSP fails to perform any other obligation(s) under the contract.
- 9.1.2 However, the disputes, if any, may be referred to arbitration pursuant to Clause 1.5.2 of contract.

9.2 Termination for Insolvency, Dissolution etc

- 9.2.1 Client may at any time terminate the contract by giving written notice to the CSP without compensation to the CSP, if the CSP 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.

9.3 Termination for Convenience

- 9.3.1 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.
- 9.3.2 Subject to the Client's approval, the Client shall pay such amount to the CSP within a reasonable period from receipt of invoice from the CSP, in respect to the amount due.

9.4 Withdrawal by the CSP

- 9.4.1 Withdrawal of CSP 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 CSP.

9.5 No Claim Certificate

- 9.5.1 The CSP 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 CSP 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.

9.6 Suspension

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

9.6.1.1 Shall specify the nature of the failure and

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

9.7 Consequences of Termination

9.7.1 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 CSP 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 CSP, as may be required to take over the obligations of the erstwhile CSP in relation to the execution / continued execution of the scope of the contract.

9.7.2 Nothing herein shall restrict the right of the Client to invoke 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.

9.7.3 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.

10 MISCELLANEOUS

10.1 Conflict of interest

10.1.1 Neither the CSP nor any of its 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. The CSP and its personnel shall notify the Client immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.

10.2 Exit Management

10.2.1 The CSP should submit a detailed exit management plan and revise it on yearly basis to keep it relevant and up-to-date.

10.2.2 The CSP should also comply with the exit management plan in case of termination

or suspension as specified in the clause 9 of this contract.

10.3 Standards

10.3.1 The services to be rendered under the contract shall conform to the standards mentioned in this contract, and in case no applicable standards are mentioned, to the latest authoritative standards as laid down by the competent institution governing that standard.

10.4 Compliance to Service Levels

10.4.1 CSP shall ensure compliance with the SLAs (as provided in RFP Vol I) mentioned as per the provisions of the contract.

10.5 VARIATION

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

10.6 WAIVER

10.6.1 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 contract:-

10.6.1.1 Shall be in writing

10.6.1.2 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 contract;

10.6.1.3 Shall be executed by a duly authorized representative of the party; and

10.6.1.4 Shall not affect the validity or enforceability of this contract in any manner.

SPECIAL CONDITIONS OF CONTRACT

11 Non-Disclosure of Information

11.1 Obligations of the receiving parties

11.1.1 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 under 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.

11.1.2 Obligations of the CSP

- a) CSP 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;
- b) CSP 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;
 - c) CSP shall cause its employees to comply with the provisions of this Clause;
 - d) CSP shall reproduce confidential information only to the extent essential to fulfilling the business purpose;
 - e) CSP 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;
 - f) Upon the Client's request, the CSP shall either return to the Client all confidential information or shall certify that all media containing confidential information have been destroyed.

11.2 Ambiguities within the Contract

- 11.2.1 In case of ambiguities or discrepancies within this contract, decision of the Client shall be final and binding on the CSP

ANNEXURE I- FORMATS

1 Payment schedule

(Final payment schedule shall be provided here)

2 Financial Summary

(As per financial quotes provided by the bidder in their financial bids as per the financial formats provided in RFP Vol. I based on the resource & shift requirement by the Client)

3 Project Work Plan

4 Consortium Agreement (if applicable)

5 Change Order Procedure and Form

(Procedure and Form)

Date: [insert: date]

Contract: "Selection of Call-centre Service Provider (CSP) on Outsourced model for MoHFW"

CONTENTS

General

Change Order Log

Change Form

General

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

Change Order Log

The CSP 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 CSP 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:		Name and Designation of the Person	

CHANGE CONTROL NOTE		CCN NUMBER:
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 CSP	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)		
Approved		
Rejected		

CHANGE CONTROL NOTE	CCN NUMBER:
Requires further information	
For Client	For the CSP
Signature	Signature
Name	Name
Title	Title
Date	Date

6 SLA

(Final SLA shall be provided here)

End of Volume II of the RFP